

**OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK**



**COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK**

JULY 2015

INVESTIGATION REPORT

FILE NO.: 2015-2329

DEPARTMENT OF JUSTICE

**SENT TO THE: PREMIER
DEPUTY MINISTER OF JUSTICE
CLERK OF THE EXECUTIVE COUNCIL
COMPLAINANT**

**IN THE MATTER OF THE *OFFICIAL LANGUAGES ACT*
OF NEW BRUNSWICK, R.S.N.B. 2002, CHAPTER O-0.5**

**Subject: Complaint under the *Official Languages Act*
Department of Justice – Sheriff Services
Deficiencies in the provision of service in French at the Fredericton Courthouse**

**Investigation Report
File No.: 2015-2329**

1. Complaint

On March 26, 2015, a Fredericton resident contacted us to file a complaint against the Department of Justice. The particulars of the allegations are as follows:

The complainant, an articling student, goes to the Fredericton Courthouse on a frequent basis (several times a week) to file documents with the Clerk's Office.

According to the complainant, the sheriff's officers at the main entrance to the building do not provide the active offer on a regular basis. In addition, when the complainant makes it clear of a preference to be served in French, it takes several minutes for a bilingual officer to arrive. And, on some visits, the complainant has been asked, "Is English okay?"

The complainant states that these incidents occur fairly often, with the most recent ones being in March 2015. In the complainant's opinion, if unilingual sheriff's officers working at that service point understood the meaning of the word "greffier" in French, it would spare the complainant the unpleasantness regularly endured.

2. Investigation

On April 15, 2015, pursuant to subsection 43(13) of the *Official Languages Act* (the OLA), a letter was sent to the Department of Justice (hereafter "Department" or "institution") to signify our intention to conduct an investigation in this matter. We asked the institution to respond to the complainant's allegations. Our letter also contained the following passage:

[Translation]

As you know, the Fredericton Courthouse has been the subject of numerous complaints in recent years. In our most recent investigation report (file numbers: 2014-2047, 2014-2154 and 2014-2221) dated December 10, 2014, we made the following recommendation among others:

[Translation]

Recommendation No. 2

That the Department establish a periodic control mechanism to:

- **ensure that Sheriff Services' officers across the province provide services in accordance with the requirements of the OLA; ...**

Consequently, kindly indicate whether this recommendation has been implemented. We would also encourage you to provide us with any other information you consider relevant in this new matter.

In a letter dated April 22, 2015, the Department acknowledged receipt of our correspondence and indicated that the file was under review. We received the institution's response on July 3, 2015, in a letter dated July 2. Following is an excerpt:

[Translation]

The Department of Justice continues to diligently communicate the objective of the *Language of Service Policy*. It regularly advises staff that they must provide quality service in the official language chosen by the client.

As we explained in a letter in 2014, according to the linguistic profile of the Fredericton region, when the sheriff's officer on site is not able to respond adequately in the language requested, the officer is to inform the client that someone else will come to provide service in the language of his or her choice. The Department requires that services be actively offered in both official languages at all times.

The Department of Justice's Court Services Division has begun a process to make organizational changes that take this linguistic profile into account. In addition, with the support of the Human Resources Branch, a meeting was held with staff of the Sheriff Services' Office in the Fredericton region to educate them about the requirements of the *Language of Service Policy*. In other words, the legal duty under the *Official Languages Act* to actively offer service to members of the public and to provide service in their preferred language was specifically addressed.

Furthermore, to ensure that Sheriff Services' staff honour the requirement to actively offer service in the language chosen by the public, Court Services Division staff who are not known to the Sheriff Services' staff currently make random visits to the Fredericton Courthouse.

On the basis of the above information, we are able to draw conclusions without the need to continue our investigation or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

3. Analysis and observations

With respect to communication with the public, the OLA states as follows:

- 27** Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.
- 28** An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.

28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

It goes without saying that sheriff's officers on duty at the entrance to the Fredericton Courthouse are the first persons that members of the public speak to when they arrive on the premises. Accordingly, since these officers are the public's first point of contact with the institution, it is incumbent upon them to actively offer service, as required by section 28.1 above.

The active offer of service is of particular importance, as it allows members of the public to avail themselves of the right to be served in the official language of their choice. By responding to the active offer, the public makes its preference known and determines the language in which the communication will take place. It is therefore unacceptable to ask someone "Is English okay?" when the person would prefer to receive service in French. However, we note with satisfaction the awareness efforts conducted by the Department with Sheriff Services' staff in the Fredericton region in that regard, and we would hope that the measures taken will be effective.

With regard to the waiting time to obtain service in the client's language of choice, the Legislature has not set any time limit, but it must be reasonable. However, that should only be a last resort. Should such a measure become routine practice for serving French-speaking clients only, it will definitely not provide members of the public with service of equal quality in both official languages, because English-speaking clients will be able to communicate directly with the officers without delay. Consequently, the objective should be to ensure bilingual capacity at this service point in order to meet the requirements of the OLA at all times.

We should point out that, for reasons unrelated to this case, our investigation staff went to the Fredericton Courthouse in May 2015. When they arrived, they were actively offered service in an appropriate manner, and were able to communicate in French with one of the sheriff's officers who was present at that time. It is to be hoped that this situation will continue.

4. Conclusion

We consider this complaint to be founded, as the Department did not refute the complainant's allegations.

However, given the scope of the recommendations made previously and the Department's commitment to implement them, and the steps presented by the institution in this case, we do not deem it necessary to issue new recommendations at this stage.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Deputy Minister of Justice and the complainant. We also believe it is appropriate to forward this report to the Clerk of the Executive Council.

In the event that the complainant is not satisfied with our conclusions, the complainant can apply to the Court of Queen's Bench of New Brunswick for a remedy under subsection 43(18) of the OLA.

[Original signed by]

Katherine d'Entremont, MPA
Commissioner of Official Languages for New Brunswick

Dated at Fredericton,
in the Province of New Brunswick
this 16th day of July 2015

