

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



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

## **INVESTIGATION REPORT**

**FILES 2016-3013 AND 2016-3017**

**February 2017**

### **CITY OF FREDERICTON POLICE FORCE**

**Subject: Allegations of deficiencies in communications and  
the provision of services in French**

**SENT TO THE:**

**Premier  
Chief Administrative Officer of the City of Fredericton  
Chief of the Police Force of the City of Fredericton  
Clerk of the Executive Council  
Complainants**

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## CONTEXT

The case at hand comprises two complaints against the City of Fredericton Police Force (the “institution”). In this particular case, deficiencies are alleged respecting the provision of services in French and bilingual signage. After consulting the parties to obtain their version of the facts, the Office of the Commissioner can summarize the two incidents as follows:

### 2016-3013

The complainant alleges that signage at the City of Fredericton Police Force building at 311 Queen Street, in particular in the building’s reception area, is in breach of the *Official Languages Act* (the “OLA”). According to the complainant, notices, commemorative plaques and general information about City of Fredericton Police Force activities are exclusively in English<sup>1</sup>.

On May 31, 2016, the complainant was in the public parking lot behind the Court of Appeal at 427 Queen Street in Fredericton, and wanted to obtain information from an officer, who was in the process of issuing tickets. The complainant alleges being obliged to speak English as the officer concerned was unable to communicate in the complainant’s language of choice, i.e., French, and that the officer made no effort to ensure service in the complainant’s language of choice.

### 2016-3017

On May 1, 2016, the complainant was stopped by a police officer around noon at the corner of Prospect and Smythe streets. The complainant alleges to have stopped the vehicle and, as the police officer approached, lowered the car-door window so as to be able to speak to him and find out the reason for being stopped. The complainant alleges that the police officer did not start the conversation with the customary greeting (active offer of service) “Hello, Bonjour!” and that the police officer spoke exclusively in English. Although the complainant states to have indicated that French was the language of choice, the police officer continued speaking in English, asking for identification and proof of insurance; at no time did the officer make any attempt to comply with the complainant’s language rights.

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<sup>1</sup> **Appendix A** – Samples of communications in English only in the reception area of the City of Fredericton Police Force building.

The complainant says that, after proof of identity and other documents were given back, the police officer spoke in English into his radio and then indicated that the complainant should wait. With no further explanation, the police officer returned to his vehicle. The complainant alleges having to wait in the vehicle for over 25 minutes, during which time nothing happened, making the complainant feel very uncomfortable, anxious and perplexed. After this long wait, a second police vehicle arrived. The complainant reported that the newly arrived police officer spoke to the first officer for a few minutes.

The second police officer then approached the complainant's vehicle and spoke to the complainant providing an active offer of service. After the complainant indicated wanting to be served in French, the complainant reports that the police officer went on to explain why the complainant had been stopped. The complainant had some questions and the second officer had to act as an intermediary and an interpreter between the complainant and the first police officer. Although the complainant was greatly inconvenienced by what the complainant felt was an inordinate amount of time the complainant had to wait from the time the complainant was stopped until the time the complainant received the ticket, the complainant took the ticket so as to leave as quickly as possible.

On May 26, 2016, three weeks after this incident, the complainant states having gone to the Fredericton Police Force building at 311 Queen Street to file a complaint about the violation of the complainant's language rights on May 1. The complainant reports having to wait, once again, for over an hour (90 minutes) to meet a supervisor who was able to provide service in the complainant's language of choice. The complainant alleges that during this meeting the duty supervisor informed the complainant that unilingual Anglophone police officers did not receive even basic training in French. The supervisor also informed the complainant that there was no mechanism in place, such as a written bilingual message, to mitigate the failure to provide service in the language of choice of a member of the public who had been stopped by a police officer who could not speak this language.

### Institution's response

The institution made no comment regarding file 2016-3017 and claimed that it could not respond to the complainant's allegations, since an investigation under the *Police Act* was under way. To that end, the Office of the Commissioner points to the scope of subsection 4(1) of the *Inquiries Act*, the statute under which the Office of the Commissioner conducts its investigations:

- 4(1)** Any one commissioner may by summons, in the prescribed form, require the attendance before the commissioners of any person whose evidence may be material to the subject of the inquiry and may order any person to produce the books, papers and documents that appear necessary.

The Office of the Commissioner determines that the institution should have complied with this subsection and provided the information being sought by the Office of the Commissioner since its powers of inquiry take precedence over all other legislation on account of the quasi-constitutional status of the *Official Languages Act*.

As regards the service delivery component of complaint 2016-3013, the institution did not dispute or confirm the events. Instead it stated that the officer had no precise recollection of the incident in question. Regarding the communication/signage component, the institution issued a statement to the effect that "official communications" were available in both official languages.

### **INVESTIGATION**

Following receipt of the two complaints, the Office of the Commissioner issued the institution concerned with a notice of investigation. The institution subsequently initiated its own in-house investigations to rebut or confirm the complainants' allegations about what took place.

The Office of the Commissioner took care to include in the notice of investigation twelve (12) questions in order to clarify the context in which the incidents occurred. The questions raised with the institution and the latter's replies are as follows:

1. What verification process has the City of Fredericton Police Force developed for approving communications materials posted both in the reception area of the building at 311 Queen Street and throughout the building? Please provide details in this respect.

2. How does the City of Fredericton Police Force ensure that approved communications comply with the requirements of section 29 of the OLA respecting postings in both official languages?
3. Are police officers in the employ of the City of Fredericton Police Force given training on language rights and are they made aware of the institution's obligations under the OLA? Please submit details of any training provided<sup>2</sup>.
4. What is the procedure when a unilingual police officer in the employ of the City of Fredericton Police Force speaks to a member of the public who wishes to be served in an official language in which the police officer is unable to communicate? Please submit the applicable directive.
5. In May 2016, what was the bilingual capacity\* of police officers in the employ of the City of Fredericton Police Force?

$$\text{*bilingual capacity} = \frac{\text{number of bilingual officers employed by the City of Fredericton Police Force}}{\text{Total number of police officers employed by the City of Fredericton Police Force}}$$

6. Has the City of Fredericton Police Force already conducted an internal evaluation to determine the bilingual capacity it needs in order to be able to provide members of the public with quality service in both official languages at all times as required under the OLA? If it has done so, please submit details of this evaluation, as well your institution's justification for reaching this conclusion.
7. According to your most recent data, after a police officer stops a member of the public for an offence under the *Motor Vehicle Act*, how long does it take on average to issue a ticket? Please submit this information.

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<sup>2</sup> Time when the employees receive training; the documents they receive; presentation content; information as to whether the training is mandatory for all City of Fredericton Police Force officers and staff and as to whether there is any follow-up to the training, etc.

8. Has your institution set a target regarding the average time it should take from the moment a member of the public is stopped by a police officer to the time he or she receives a ticket for an offence under the *Motor Vehicle Act*? If it has done so, please submit this information.
9. Please send us data for March and April 2016 showing the number of overtime hours carried out by designated bilingual police officers in the employ of the City of Fredericton Police Force, compared with the number of overtime hours carried out by non-bilingual police officers.
10. From January 2014 to June 2016, i.e., over a period of two and a half years, how many police officers were hired by the Fredericton Police Force?
11. From January 2014 to June 2016, was bilingualism required as an essential competency whenever a position as a police officer in the employ of the City of Fredericton Police Force was posted?
12. How many of the officers referred to in Question 10 possessed a bilingual competency?

The institution provided comments with respect to the questions raised by the Office of the Commissioner and an analysis of the submitted replies is provided in this report.

## **ANALYSIS**

After receiving the institution's reply and considering all of the facts, the Office of the Commissioner has determined that both complaints are **founded** and that in both incidents involving the City of Fredericton Police Force there was a violation of the *Official Languages Act* (OLA). Specifically, subsections 31(1), 31(2) and 31(3) of the OLA were violated. Obligations under these subsections are as follows:

### Policing Services

- 31(1) Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.

- 31(2)** If a peace officer is unable to provide service in the language chosen under subsection (1), the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made under subsection (1).
- 31(3)** A police force or agency, as the case may be, shall ensure the availability of the means necessary to respond to the choice made by a member of the public under subsection (1) and to support the obligation placed on a peace officer under subsection (2).

The Office of the Commissioner reiterates that its conclusion is further to the analysis of facts as presented by the parties based on the balance of probabilities, and is of the opinion that the institution was unable to provide complainants with quality service in their language of choice within a reasonable time and that some messages were posted exclusively in English at the City of Fredericton police station.

These failures constitute violations of the institution's obligations under the *Official Languages Act*.

- **Delivery of service in language of choice**

The first question to address the delivery of service in the language of choice was **Question 3**, which sought information about training members of the police force received with respect to language rights.

- Training delivered to members of the Fredericton Police Force

The institution states that it ensures that all police force members are aware of obligations respecting police services under section 31 of the *Official Languages Act*. To this effect, it reports that the Fredericton Police Force operations manual is issued to all members of the police service through the delivery of standing orders.

The institution goes on to say that it issues all police officers with a pocket-size translation aid containing expressions to help officers communicate with members of the public and to inform them of their right to be served in the official language of their choice.

The institution points out that staff receive basic language pronunciation training for making an active offer of service and that the Fredericton Police Force plans to look at the need for refresher training in this respect. Lastly, the institution reports that talks are under way about the provision of additional French-language training sessions, something the Fredericton Police Force and the union deemed beneficial.

- Service delivery procedure

At **Question 4**, the Office of the Commissioner asked the institution what procedure police officers were told to follow when addressing a member of the public who wants to continue in an official language in which the officer is not proficient. The institution said that it had implemented an official languages policy describing the process to follow when a member of the public wants to receive service in one of the official languages.

Subsections 4.i, 4.j and 4.k of the policy stipulate that members of the public must be promptly informed by the institution, through the active offer of service, that they are entitled to avail themselves of their language rights and must not find themselves at any disadvantage on account of their choice. Paragraph 5.a.1.d of the policy stipulates that:

“Officers who do not have the knowledge of the other official language may refer to the card to inform the person that they are dealing with that a communication link will be provided as soon as possible.”

Subsection 2.g also stipulates that, if the officer or the employee making the offer of service is unable to serve the individual in the language of their choice, as determined by the language the individual uses, he or she must immediately ask an officer with the required language skills to “take care of the individual”.

The policy also stipulates that officers must not attempt to serve an individual in a language other than that of their choosing. Even when the officer is not familiar with the other official language, he or she must make an active offer of service and inform the member of the public that he or she will seek assistance.

- Bilingual capacity of City of Fredericton Police Force members

To identify the extent to which the institution was able to provide services in both official languages, in **Question 5** the Office of the Commissioner requested information about the composition of the City of Fredericton Police Force and its bilingual capacity.

More specifically, the Office of the Commissioner asked about the City of Fredericton Police Force's bilingual capacity in May 2016, and was informed by the institution that 20% of staff members on its team were bilingual, i.e., 22 officers out of a total of 108.

In its reply to **Question 6**, the aim of which was to inform the Office of the Commissioner about any steps the institution had already taken to determine the bilingual capacity the City of Fredericton Police Force needed to provide members of the public with quality service in a timely fashion, the institution indicated that it had never carried out a review of this nature.

- Timely delivery of services in the language of choice

Having received this information, the Office of the Commissioner sought to determine whether the City of Fredericton Police Force had the bilingual capacity needed to meet its linguistic obligations and to be able to offer members of the public service in their language of choice within a reasonable time frame.

To do this, in **Question 7**, with respect to the incident referred to in file number 2016-3017, the Office of the Commissioner asked whether the institution was able to provide up-to-date data about the average length of time between a member of the public being stopped and a ticket being issued for an offence under the *Motor Vehicle Act*. In its reply, the institution said that this exact information was not available as there are several factors involved in a person being stopped and that not everyone who is stopped ends up with a ticket.

The Office of the Commissioner asked **Question 8** to determine whether the institution had set a target for the interval between a vehicle being stopped and a ticket being issued under the *Motor Vehicle Act*. The institution informed the Office of the Commissioner that no target had been set in this respect. However, a pilot project involving the Province and the RCMP had been in place since January 2017 to issue tickets electronically, which would reduce the length of time during which a vehicle was stopped to approximately 10 minutes. This pilot project should be extended to the entire province in 2018.

The Office of the Commissioner also wanted to be able to look at the number of overtime hours worked by the City of Fredericton Police Force's bilingual officers, compared with the overtime hours worked by unilingual officers. In replying to **Question 9**, the institution said that Fredericton Police Force members had put in a total of 1,337.5 overtime hours, 315 of which were worked by bilingual officers.

Using the data the institution provided in reply to **Question 5**, the Office of the Commissioner calculated that 22 bilingual officers had, on average, worked 14.32 hours of overtime, compared with 11.89 hours for 86 unilingual officers. This means that the first-mentioned group is responsible for almost 25% of the overtime hours worked by all members of the City of Fredericton Police Force.

- Hiring additional bilingual officers

In **Question 10**, the Office of the Commissioner asked the institution for information about the hiring of bilingual officers between January 2014 and June 2016. The institution said it had hired eight officers during this period; however, in its reply to **Question 12**, it said that none of these eight officers possessed bilingual competency.

The Office of the Commissioner also sought information about the importance placed on this competency when employment offers were posted; more specifically, whether bilingualism was considered an asset or an essential competency. The institution reported that, between January 2014 and June 2016, bilingualism did not constitute an essential hiring competency; however, it was considered an asset for which additional points would be awarded in any selection or competition process.

Lastly, in reply to **Question 12**, the institution added, with respect to the hiring of bilingual officers, that, as part of its latest hiring process, its recruitment efforts had significantly targeted the École nationale de police du Québec and that the City of Fredericton Police Force was in the process of improving its practices for recruiting and hiring police officers with respect to factors that included both language and diversity.

• **Signage in both official languages**

Following the investigation held with respect to these two files, in reply to **Question 1** and **Question 2** about signage in the reception area and throughout the building at 311 Queen Street, the institution stated the following:

Messages posted in the building's reception area are approved by the Chief of Police or the communications officer in charge of internal and external communications for the Fredericton Police Force in compliance with section 12.FPF.1 – *Official Languages Act* of the Force's in-house policy. The Fredericton Police Force strives to ensure that signage in the reception area of the police station complies with the *Official Languages Act*. Official signs on all public entrances are in both official languages and the video of the strategic plan is available in both official languages.

The institution goes on to state that:

The Fredericton Police Force strives to ensure that all notices are provided in both official languages in compliance with section 12.FPF.1, *Official Languages Act*, of its in-house policy.

## **COMMENT**

After analyzing the institution's answers to the questions, the Office of the Commissioner deems it necessary to look at these more closely from two different perspectives to support the institution in its efforts to identify possible solutions that will allow it to fully respect its linguistic obligations under the OLA.

- **Concrete identification of needs required**

The institution stated that it had never assessed the required bilingual capacity of its team in order to be able to serve members of the public in both official languages at all times without unreasonable delay.

With only 22 bilingual officers within its team, and assuming that all of them work "on the ground," it is difficult to consider it possible to provide service in French at all times without unreasonable delays. Based on the data submitted by the institution, it can be deduced that the average number of overtime hours worked by bilingual officers is higher than that of unilingual officers.

The Office of the Commissioner finds it revealing and problematic that this small distinct group works nearly one quarter of the overtime hours worked by all officers in the Fredericton Police Force. From a strictly budgetary standpoint, the institution has not adopted a financially responsible approach in having to pay bilingual officers an overtime rate on a recurring basis. Instead, it must ensure that it has a sufficient number of bilingual officers so that it does not have to continually rely on paying overtime and the associated costs. It is therefore necessary to hire additional bilingual officers to ensure not only respect for the linguistic rights of members of the public, but also responsible management of the institution's finances.

Prevention is the best course of action as it means not having to manage incidents of this nature after the fact. By identifying needs and putting adequate measures in place, the institution will be able to ensure that it enjoys the conditions needed to be able to provide service of equal quality for both linguistic communities in compliance with OLA requirements, instead of having to react whenever a situation gives rise to a complaint. To this end, the Office of the Commissioner stresses that it is the institution's responsibility to take proactive steps to ensure that its service delivery meets linguistic requirements.

The institution's in-house policy on language rights is comprehensive. The problem is that there are not enough bilingual officers to apply the policy and to satisfy the "reasonable time" component. In fact, if the pilot project is setting a target of 10 minutes, as the institution states in its reply to **Question 8** of the notice of investigation, half an hour effectively constitutes an inordinate delay. During this period, members of the public may experience a lot of stress, and confusion and may even fear reprisals because they are "complicating" matters for the officer who, although he stopped them, is unable to deal with them in their language of choice.

In its reply to **Question 12**, the institution said that its "recruitment efforts had significantly targeted the École nationale de police du Québec"; however, in reply to **Questions 10 and 11**, it says that it had not hired any bilingual officers in the course of over two years. The Office of the Commissioner is obligated to point out this inconsistency. Thus, the institution must increase its recruitment efforts, which means not only going to meet prospective bilingual employees, but also putting in place conditions that are conducive to their being hired.

The institution must ensure that it complies fully and must set its sights above merely achieving the minimum of its obligations. It must therefore evaluate what it needs in order to comply fully with its obligations under the OLA and make recruiting bilingual officers its priority by making bilingualism an essential competency in the hiring process.

- **Respecting language rights: beyond appearances**

2016-3017

With respect to this case, the complainant told the Office of the Commissioner that the ticket issued as a result of this incident was rescinded on the pretext that the officer was reportedly not available to attend court on the day set for the hearing. Although the complainant was ultimately hoping for this outcome, the complainant feels that the problem at the heart of this case was not addressed.

The institution must increase its recruitment efforts, which means not only going to meet prospective bilingual employees, but also putting in place conditions that are conducive to their being hired.

It is appropriate to mention that the complainant also complained directly to the institution about the incident that occurred on May 1, 2016. The complainant was sent an acknowledgement of receipt by the institution<sup>3</sup>, but, to date, has never been informed of the latter's findings. Once again, the Office of the Commissioner is of the opinion that the institution must modernize its perception with respect to the scope of the language rights of members of the public.

Until the institution starts treating this matter with the seriousness it requires, Francophone citizens will continue to receive services of unequal quality delivered within an unpredictable time frame, a situation their Anglophone counterparts do not have to contend with.

### 2016-3013

In relation to the matters raised in file 2016-3013, it is important to point out that sections 27 and 28 of the OLA stipulate that members of the public have the right to receive services in the official language of their choice and that employees must clearly make an active offer of service so that citizens are informed of their right as soon as they enter the premises. Ignoring a member of the public's language of choice may heighten the discomfort felt by the person concerned, who may simply be trying to be served in his or her language of choice.

Although in this particular case, the institution reports that the employee has no recollection of the event, the Office of the Commissioner has no grounds for rejecting the complainant's allegations. Even though a procedure has been put in place, the institution must ensure that it is able to comply with it. An employee working alone in an isolated location such as a parking lot will not be able to provide quality service in both official languages if he or she is only proficient in one of the two.

With respect to the City employee in charge of the parking lot, in keeping with the Office of the Commissioner's recommendations pertaining to security services in file 2015-2377, it is the Office of the Commissioner's contention that communicating after the event is not appropriate for this type of service. The individual on duty must be able to communicate immediately with a member of the public in both official languages. The institution cannot hope to meet its linguistic obligations by providing immediate service for English-speaking clients, while those who wish to be served in French have to be content to wait until someone comes along who can communicate with them.

With respect to the City employee in charge of the parking lot, the institution cannot hope to meet its linguistic obligations by providing immediate service for English-speaking clients, while those who wish to be served in French have to be content to wait.

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<sup>3</sup> **Appendix B** – A letter to the complainant dated June 1, 2016, in reply to the complaint the latter submitted directly to the institution about the incident that occurred on May 1, 2016.

Favouring a so-called “team” approach in a context in which it is inapplicable, as it is not synonymous with the provision of services of equal quality, is a violation of the requirements of sections 27 to 30 of the OLA.

- Bilingual signage: there must be no distinction

In its reply to the notice of investigation, the institution states that “official signs” inside the building are posted in both official languages. However, the scope of section 29 of the OLA is unequivocal and targets all postings intended for the general public. The fact that the complainant was able to identify communications posted in English only<sup>4</sup> demonstrates that the institution is in violation of this obligation.

In its reply to **Question 12**, the institution states that it is aiming to improve its practices for recruiting and hiring police officers with respect to factors that include both language and diversity. Although the Office of the Commissioner supports the institution’s plans to improve its practices regarding diversity, it must point out that language rights are derived from constitutional obligations, which must not be considered to be optional, symbolic or of little significance.

The institution must, therefore, give consideration to language rights at every stage of its activities. Consequently, not only must all communications inside and outside the institution’s building be posted in both official languages, the size of the lettering must be the same and the messages displayed in such a way that one text is not more prominent than the other<sup>5</sup>.

## RECOMMENDATIONS

Since, in this instance, the Office of the Commissioner has concluded that the institution was in violation of its obligations under subsections 31(1), 31(2) and 31(3) of the OLA, thereby indicating that the institution failed to provide services of equal quality in both official languages in a timely manner to the complainants, certain measures must be taken to enable the Institution to comply fully with its linguistic obligations in the future.

Certain measures must be implemented to prevent future violations of the OLA.

<sup>4</sup> **Appendix A** – Samples of communications posted in English only in the reception area of the City of Fredericton Police Force building.

<sup>5</sup> There must be no distinction with respect to the type of communication with messages having to be posted in both official languages using lettering of the same size and layout.

The Commissioner therefore finds it necessary to make the following four (4) recommendations:

- THAT** the institution conduct a review of the required number of bilingual officers within the City of Fredericton Police Force that will enable it to provide service of equal quality at all times and without undue delay;
- THAT** after determining the required number of bilingual officers within the City of Fredericton Police Force that will enable it to provide service of equal quality at all times and without undue delay, the institution undertake to fulfil this requirement by hiring bilingual employees as soon as the next round of hiring takes place;
- THAT** the institution provide additional training for officers to ensure that they understand and respect the linguistic rights of citizens at all times;
- THAT** the institution implement necessary measures to ensure that the information on all signage both inside and outside the City of Fredericton Police Station is in both official languages in an equivalent manner.

## **CONCLUSION**

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the Chief Administrative Officer of the City of Fredericton, to the Chief of the City of Fredericton Police Force, to the Clerk of the Executive Council, and to the complainants.

The Office of the Commissioner also wishes to advise that, pursuant to subsection 43(18) of the OLA, if one or several of the complainants are dissatisfied with the conclusions presented following this investigation, they may apply to the Court of Queen's Bench of New Brunswick for a remedy.

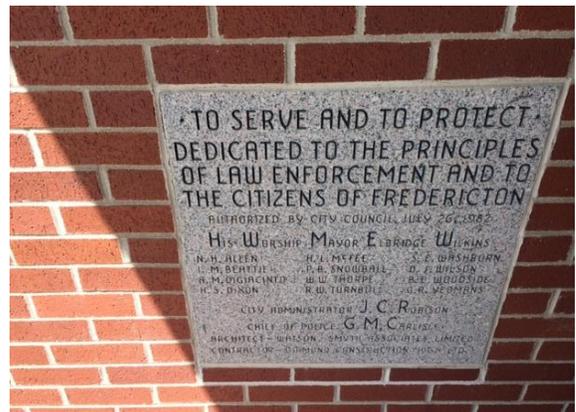
[Original signed by]

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

Dated at Fredericton, in the  
Province of New Brunswick,  
this 24th day of February, 2017

## APPENDIX A

### Samples Submitted by the Complainant of Communications Posted in the Reception Area of the City of Fredericton Police Force Building (2016-3013)



## APPENDIX B

Letter dated June 1, 2016, to the complainant in reply to the direct complaint made to the institution respecting an incident on May 1, 2016.

[Translation.]



June 1, 2016

Ref. No.: FPF 2016-10683

I hereby acknowledge receipt of your complaint filed on 16 May 2016, to Corporal [REDACTED] [REDACTED] respecting the conduct of Constable [REDACTED], a member of the Fredericton Police Force.

The *New Brunswick Police Act* requires that I first characterize the complaint made against a police officer and that I advise the complainant of that characterization.

Pursuant to subsection 25.2(1) of the *Police Act*, I am required to characterize a complaint as:

- (a) a service or policy complaint,
- (b) a conduct complaint, or
- (c) a combination of (a) and (b).

Pursuant to subsection 25.2(5), notice is hereby given that under subsection 25.2(1), I have characterized this matter **as a service complaint**.

I have assigned Sergeant [REDACTED] as the investigator and an investigation into this matter will be conducted. If you have any further questions prior to receiving the next written correspondence, please feel free to call Deputy Chief [REDACTED] at 506-460-2421.

Thank you for bringing this matter to our attention.

Sincerely,

*signed*

\_\_\_\_\_  
Leanne J. Fitch M.O.M.  
Chief of Police

c.c. [REDACTED], Chair, New Brunswick Police Commission  
[REDACTED], City Administrator on behalf of Civic Authority

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