

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



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

INVESTIGATION REPORT

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OFFICE OF THE PREMIER

**Subject: Analysis of the Plan on Official languages -
*Official Bilingualism: A Fundamental Value - 2015***

**SENT TO: Premier
Clerk of the Executive Council
Complainants**

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BACKGROUND

On June 21, 2013, following a mandatory review process, the Legislative Assembly made significant amendments to the *Official Languages Act* (OLA) of New Brunswick. These included the addition of subsection 5.1(1), which came into force on December 5, 2013. It requires the Province of New Brunswick to develop an implementation plan for the OLA.

Two complaints criticizing the lack of a plan pursuant to subsection 5.1(1) of the OLA were filed with the Office of the Commissioner in May and July 2015, respectively. The Commissioner then launched an investigation pursuant to subsection 43(10) of the OLA, which gives the Commissioner the authority to investigate, submit reports, and make recommendations.

In accordance with subsection 43(13) of the Act, on May 26 and July 20, 2015, two notices of investigation were sent to the Office of the Premier, who is responsible for the application of the OLA. On August 5, 2015, the Office of the Premier sent its implementation plan for the OLA, entitled *Plan on Official Languages – Official Bilingualism: A Fundamental Value, 2015* (“the Plan”), to the Office of the Commissioner.¹

Given the requirements of subsection 5.1(1) of the OLA, which sets out the elements that must be included in the plan, the investigation also had to review the substance of the plan to determine whether or not it was in compliance with the OLA.

On August 18, 2015, a letter was sent to the acting chief of staff of the Office of the Premier. In that letter, the Office of Commissioner indicated that the Plan needed to be analyzed and that it had a number of questions following an initial review of the document. A meeting with officials in charge of implementing the Plan was therefore requested and took place on September 10, 2015. Following this meeting, the Office of the Commissioner was able to conduct a detailed analysis of the Plan.

On October 21, 2015, the Office of the Commissioner submitted its initial analysis to the Clerk of the Executive Council and head of the Public Service (“the Clerk”) so she could respond to its findings and recommendations. The Clerk then sent the comments of the Executive Council Office to the Office of the Commissioner in a letter dated November 13, 2015.² Those comments were taken into consideration when the following investigation report was drafted.

BACKGROUND

Two complaints criticizing the lack of a plan pursuant to subsection 5.1(1) of the OLA were filed in May and July 2015.

METHODOLOGY

The objective of the Office of the Commissioner in this case was to analyze the Plan to determine whether or not it complies with subsection 5.1(1) of the OLA. That analysis covered the following aspects:

1. The Plan adoption date
2. The application of the Plan to the various portions of the public service
3. The requirements set out in subsection 5.1(1)
4. The four sectors of activity of the Plan:
 - language of service
 - language of work
 - development of the two official linguistic communities
 - knowledge of the Act and other related obligations
5. Implementation and accountability.

Distinction between the government Plan and the departmental action plans

According to the Plan, the departments and agencies must each adopt an action plan to support the government's Plan. These plans "determine the activities, evaluation methods and expected outcomes of the government plan's objectives" and "will take into consideration all of the objectives of the government plan."

It should be noted that the analysis in this investigation was concerned solely with the Plan, its appendices, and the implementation schedule. Pursuant to the OLA, the Plan—and not the departmental action plans—is the document that must contain the key measures for achieving the objectives set out in the OLA, since statutory requirements cannot be altered by administrative documents.

The Office of the Commissioner notes that the purpose of the Plan and its objectives is to set out specific measures that must then be aligned with those established by all of the departments and agencies. In this way, the Province will be able to meet its official languages obligations.

OBJECTIVE

The objective in this case was to analyze the Plan to determine whether or not it complies with subsection 5.1(1) of the OLA.

OUTCOMES

Government Plan adoption date

As indicated, the government has been required under the OLA to adopt an implementation plan since December 5, 2013. However, the government did not follow through on this until July 24, 2015,³ when it published the Plan. In the meantime, the government extended three times the previous *Plan on Official Languages*, a document adopted in 2011, before the enactment of subsection 5.1(1) of the OLA. It should be noted that the last extension of the earlier plan had a deadline of January 30, 2015.⁴

The Office of the Commissioner concludes that the government did not comply with subsection 5.1(1) of the OLA, since, for a period of almost six months, no implementation plan was in effect. As a result, it finds that the two complaints that were filed in May and July 2015, respectively, are **founded**.

Application of the Plan to the various portions of the public service

Subsection 5.1(3) of the OLA states that “each portion of the public service” shall prepare an action plan setting out how it will meet the goals and objectives included in the Plan. However, on page 4 of the document, it is stated that the Plan “will continue to focus on government departments and agencies and will apply to Part I of the public service.”

This restriction complies with the OLA, since subsection 45(a.1) of the Act indicates that the government may prescribe portions of the public service for the purposes of section 5.1. To do this, the government must adopt a regulation. However, it was not until nearly six months after the Plan³ was implemented that Regulation 2015-67 came into force, limiting the application of section 5.1 to Part I.

Measures included in the Plan under section 5.1(1) of the OLA

Subsection 5.1(1) of the OLA states that the implementation plan must include six categories of measures:

- (b) *measures to ensure the equality of status of the two linguistic communities;*
- (c) *measures to ensure the equality of use of the English and French language in the public service;*
- (d) *measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service;*
- (e) *measures to improve the bilingual capacity of senior management in the public service;*

NON-COMPLIANT ELEMENT

The Office of the Commissioner concludes that the government did not comply with subsection 5.1(1) of the OLA since, for a period of almost six months; no implementation plan was in effect.

- (f) *measures to provide for the review and the improvement, when necessary, of the public signage policies of the Province, which policies shall include consideration of the two linguistic communities and of the linguistic composition of a region; and*
- (g) *performance measures for evaluating the effectiveness of the measures implemented under the plan and time frames within which they must be implemented.*

It is important to note that paragraph 5.1(1)(a) stipulates that the Plan must include the following:

- (a) *goals and objectives with respect to its obligations under this Act.*

The Office of the Commissioner notes that the Plan repeats the four sectors of activity set out in the 2011 *Plan on Official Languages* and that it is not structured according to the six categories of measures specified in subsection 5.1 of the OLA. However, its analysis shows that the document does include, with the exception of paragraph (c), most of the measures set out in this provision of the Act. In fact, trying to find measures specific to paragraph 5.1(1)(c), i.e., those “to ensure the equality of use of the English and French language in the public service,” is a laborious exercise, since the Plan makes no mention of “equality of use.”

At a meeting with government representatives,⁵ the Office of the Commissioner was informed that measures related to language of work as mentioned in the Plan are designed to promote this equality of use. However, paragraph 5.1(1)(d) deals with this very point:

“measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service”.

The Office of the Commissioner concludes that “the equality of the use of the English and French language in the public service” is an overly vague ambition that would seem more to reflect the intent to ensure a bilingual public service.

In this regard, we must be mindful of excerpt from the report of Select Committee on the Revision of the OLA, which served as a model for the amendments made to the Act in 2013:

“The committee believes that it is important to confirm in the Act the government’s obligation to provide itself with a comprehensive plan for ensuring compliance with the *Official Languages Act*. The plan should present a series of instruments for meeting challenges and should contain novel measures to promote the creation of a bilingual culture in the public service

NOTEWORTHY ELEMENT

The analysis of the Plan shows that this document includes, with the exception of paragraph (c), most of the measures set out in subsection 5.1 of the OLA.

NON-COMPLIANT ELEMENT

Following its analysis of the measures contained in the four sectors of activity of the Plan, the Office of the Commissioner can conclude that these will not ensure the “equality of use of the English and French language in the public service,” thereby violating paragraph 5.1(1)(c) of the OLA.

and progress toward the true equality of the two official language communities.”

This excerpt from the Select Committee’s report explains why the Plan must contain specific measures “to ensure the equality of use of the English and French language in the public service.” According to the analysis done by the Office of the Commissioner, a “bilingual culture in the public service” measures a work environment where employees are free to use, without restriction, either of the two official languages in the performance of their duties, provided they respect the right of members of the public to receive service in the official language of their choice.

Following its analysis of the measures contained in the four sectors of activity of the Plan, the Office of the Commissioner can conclude that they will not ensure the “equality of use of the English and French language in the public service” and that they therefore violate paragraph 5.1(1)(c) of the OLA.

ANALYSIS OF THE FOUR SECTORS OF ACTIVITY OF THE PLAN

FOCUS 1: Language of service

The Plan defines the language of service focus as follows:

“Active offer and provision of all provincial government services in English and French throughout the province. New Brunswickers have a legal right to receive provincial government services in the official language of their choice.”

Following its analysis, the Office of the Commissioner identified novel measures and actions in Focus 1 of the Plan aimed at enhancing the delivery of bilingual services to New Brunswickers. These measures include sampling, evaluating, and maintaining the linguistic capacity of employees who require proficiency in both official languages to perform their duties:

- Departments and agencies will put measures in place to ensure that the linguistic capacity of employees in the other official language is maintained or improved. (p. 11)
- Departments will evaluate the linguistic capacity of all employees that are part of the Bilingual Essential complement every two years. (p. 22)
- Departments will [...] determine the acceptable language level⁶ for each linguistic team and the status / level of the individual’s evaluation certificate for future reporting. (p. 22)

NOTEWORTHY ELEMENT

The Office of the Commissioner finds in this first focus of the Plan a number of innovative measures and activities for improving the delivery of bilingual services to the public.

Although these measures are relevant, the Office of the Commissioner notes that the Plan provides little detail about how they will be implemented. For example, it does not indicate how “the linguistic capacity of employees in the other official language is maintained or improved.” Neither does the Plan specify how “the acceptable language levels” for each linguistic team will be determined.

In this regard, the Office of the Commissioner note with disappointment that the Plan pays little attention to the findings and recommendations presented in a study on bilingual staffing and second-language training in the provincial public service.⁷ This study highlighted problems that seriously compromise the provision of services of equal quality in both official languages. Only one of the study’s recommendations, namely identification of the linguistic capacity required in work groups, was included in the Plan. This measure is insufficient to allow the government to fully meet its obligations to provide services of equal quality in both official languages across the province. In its response, the Province provided the following clarifications:

A number of documents and analyses of all kinds were considered when developing this Plan, including the Office of the Commissioner’s 2013–2014 annual report (study on bilingual staffing and language training). While they were not all adopted, the recommendations contained in that annual report will continue to be considered during the implementation of the Plan.

[Translation]

Recommendation

The Commissioner recommends that the objectives and measures in the Plan with respect to language of service be reconsidered in light of the recommendations made in the Office of the Commissioner’s study on bilingual staffing and second-language training in the public service;⁸

RECOMMENDATION

The Commissioner recommends that the objectives and measures in the Plan pertaining to language of service be reviewed in the light of the recommendations proposed in the study done by the Office of the Commissioner on bilingual staffing and second-language training in the public service.

Excerpt from the 2013-2044 annual report of the Office of the Commissioner of Official Languages concerning bilingual staffing and second-language training in the public service

Human Resources are at the heart of the delivery of government services in both official languages. In that regard, a study conducted by the Office of the Commissioner reveals serious shortcomings in relation to

- the determination of the required levels of second-language proficiency for bilingual positions;
- the bilingual staffing process;
- second-language training;
- maintenance of second-language proficiency levels of bilingual employees.

As a result of this study, the Commissioner concludes that the many deficiencies noted have the same cause: a lack of rigour in the planning, provision, and assessment of bilingual services offered to the public. The Commissioner makes the following recommendations:

- That required levels of second-language proficiency be associated with work teams for different categories of bilingual positions.
- Based on the duties and responsibilities of positions, that specific guidelines be developed to assist departments in objectively determining the required and relevant levels of second-language proficiency for different categories of bilingual positions.
- For all positions advertised with a bilingual requirement, that the required level of second-language proficiency (beginner, intermediate, advanced, superior) be clearly indicated in all job postings and that an Internet link be included to the descriptions of language proficiency levels.
- That the provincial government adopt effective strategies and tools for assessing and addressing its needs in terms of a bilingual workforce, second-language training, and the maintenance of language proficiency of its employees.

That the provincial government develop and implement effective monitoring mechanisms to assess the actual ability of work teams to provide services of equal quality in both official languages.

Bilingualism of senior and middle management

Paragraph 5.1(1)(e) of the OLA states that the Plan must contain “measures to improve the bilingual capacity of senior management in the public service.” The Plan deals with this matter, and the Office of the Commissioner endorses the government’s commitment to the continuous improvement of the bilingual capacity of middle management:

- The government will develop mechanisms to strengthen the bilingual capacity of middle management in the provincial public service to better serve the public. (p. 11)
- The government will develop mechanisms to strengthen the bilingual capacity of senior management in the provincial public service to better serve the public. (p. 11)

However, it should be noted that no targets have been set with respect to the bilingual capacity of managers. According to the Plan Template, a target will be identified during the second year of implementation. An exercise to determine the current number of bilingual managers has to be conducted

NON-COMPLIANT ELEMENT

Paragraph 5.1(1)(e) of the OLA requires that the government take measures to improve the bilingual capacity of senior management. This obligation is ongoing because no timeline is established by the OLA. Based on its analysis of the facts, the Office of the Commissioner believes that this objective is contrary to the OLA for three reasons.

first. A time frame should be mentioned in the “evaluation method” section, which provides information about the apparent goal of this action:

- The number of bilingual employees in senior management positions is balanced with the overall number of civil servants who report to them. (p. 23)

The meeting of September 10, 2015, with government representatives did not clarify for the Office of the Commissioner what “balanced with the overall number of civil servants who report to them” actually measures. Furthermore, in its reply, the government stated as follows:

“We agree that this wording is unclear, and we will review it.”

[Translation]

Paragraph 5.1(1)(e) of the OLA requires that the government take measures to improve the bilingual capacity of senior management. This is an ongoing obligation, since no timeline is laid down in the OLA. The Plan mentions making efforts to achieve a balanced ratio. On the basis of its analysis of the facts, the Office of the Commissioner considers that this objective is contrary to the OLA for three reasons:

1. It may maintain the status quo in the event that a department or agency already has a balanced ratio.
2. It may allow for a reduction of bilingual requirements in the event that a department or agency already has a high ratio within its senior management.
3. It may make it possible to achieve a balanced ratio through a simple reorganization of administrative units, thereby circumventing the bilingualism requirements.

As will be demonstrated in the analysis section of this report, the Province’s position on the bilingualism of management seriously compromises the objective set out in subsection 5.1(1)(c) of the OLA, namely to “ensure the equality of use of the English and French language in the public service.”

Recommendation

The Commissioner recommends that the objectives and measures with respect to the bilingual capacity of senior management be redefined to ensure their consistency with the wording of paragraph 5.1(1)(e).

NOTEWORTHY ELEMENT

The Office of the Commissioner endorses the government’s commitment to the continuous improvement of the bilingual capacity of middle managers.

RECOMMENDATION

The Office of the Commissioner recommends that the objectives and measures with respect to the bilingual capacity of senior management be redefined to ensure their consistency with the wording of paragraph 5.1(1)(e), i.e., directed at continuous improvement of the bilingual capacity of senior management.

Mechanisms for improving bilingual capacity

Although the Plan clearly states that “the government will develop mechanisms to strengthen the bilingual capacity of senior management,” these mechanisms are not set out anywhere in the document. The only exercise established is that of determining the current number of bilingual managers. However, since the amendments to the OLA in 2013, the Province knows that it has a duty to improve the bilingual capacity of senior management. It is therefore worrisome that the Province is still unable to determine the bilingual capacity of its senior managers.

Paragraph 5.1(1)(e) of the OLA requires that the government take measures to improve the bilingual capacity of senior management. Since no measures to achieve this objective could be identified, the Office of the Commissioner must conclude that the Plan does not meet the requirements of this provision of the OLA.

Level of second-language proficiency sought

The only specific information in the Plan relating to the bilingualism of senior managers is the minimum level of second-language proficiency sought, i.e., Intermediate Plus (2+). The Office of the Commissioner finds this level to be insufficient.

And yet, in 2011, the Province commissioned a study from Goss Gilroy Inc., a management consulting firm, on second-language training. It addresses the level of second-language proficiency required for public servants (*Report on the Review of the New Brunswick Second Language Services*)⁹. The report arising from that study is unequivocal when it states as follows:

“key respondents indicate that level 3 is the norm when staffing bilingual positions.”

This finding is not unusual since communication is at the heart of the work of senior officials. Indeed, every day, they must analyze complex information, explain in detail their organization’s policies and programs, advise political leaders, negotiate contracts, manage labour relations, and effectively defend the interests of their organization to various audiences.

To support this claim, the Office of the Commissioner has reproduced in Appendix A of this report the oral proficiency rating scale developed by the Department of Post-Secondary Education, Training and Labour, as well as a few examples of language tasks and role playing in Appendix B. After reviewing this scale, the Office of the Commissioner concluded that the “Advanced” (3) oral communication level is the minimum level of oral bilingualism that should be required of senior officials in order to ensure they can carry out their duties, as described in the preceding paragraph,

NON-COMPLIANT ELEMENT

Paragraph 5.1(1)(e) of the OLA requires that the government develop measures to improve the bilingual capacity of senior management. Since no measures to achieve this objective could be identified, the Office of the Commissioner must conclude that the Plan does not meet the requirements of this provision of the OLA.

and to ensure that employees under their authority can work in an environment where the obligations set out in the OLA are respected.

Recommendation

The Commissioner recommends that the “Advanced” (3) oral communication level be the minimum benchmark to ensure that measures implemented in accordance with paragraph 5.1(1)(e) of the OLA for the purpose of improving the bilingual capacity of senior management are effective.

Second-language training

Bilingual staffing and second-language training are the two main ways the government can acquire bilingual employees and thus ensure the delivery of government services in English and French throughout the province. The Plan was supposed to include measures to support the improvement of the quality of government second-language programs. Those measures are described on page 11 of the document:

1.4 The government will strengthen the quality of the current second-language training program with proactive involvement at student and provider levels.

- Language progression of employees in language training will be assessed.
- The determination of participants for second-language training will be made on the basis of a priority model.
- Guidelines will be developed to address critical areas of program.
- Official Languages Community of Practice will be established.

The Officer of the Commissioner notes that the Plan makes no mention of the recent findings of two studies commissioned by the Province: *Report on the Review of the New Brunswick Second Language Services* and the document entitled *Final Report: Review of the Language Training Program of the New Brunswick Public Service*¹⁰, dealing with this issue.

The Office of the Commissioner cautions that the steps taken by the government with respect to second-language training will be compromised unless the findings of these two studies are taken into account.

RECOMMENDATION

The Commissioner recommends that “Advanced” (3) oral communication level be the minimum benchmark to ensure that measures implemented in accordance with paragraph 5.1(1)(e) of the OLA for the purpose of improving the bilingual capacity of senior management are effective.

Recommendation

The Commissioner recommends that the government take into account the findings of the *Report on the Review of the New Brunswick Second Language Services* and the *Final Report: Review of the Language Training Program of the New Brunswick Public Service* in its efforts aimed at improving the second-language training program. In its reply, the government stated as follows:

“We note your comments and recommendation as to strengthening the quality of government programs for second-language training.”

[Translation]

Excerpt from the Goss Gilroy Inc. report on second-language training provided for provincial public servants

- It is a generic program that is designed mainly for the classroom and could be better suited to the Government of New Brunswick’s needs and made more accessible by using a greater variety of delivery approaches.
- Although learners are selected according to criteria established by the language training policy, it is not sufficiently centred on attainment of the objectives of the Language of Work and Language of Service Policies.
- The majority of learners do not use their language skills at work at all, or use them very little. Currently, there is nothing requiring employees to develop a learning plan or compelling their managers to ensure they have both the opportunity and the duty to use these skills at work and in the provision of services.

Public signage

Paragraph 5.1(1)(f) of the OLA states that the Plan must include measures “to provide for the review and the improvement, when necessary, of the public signage policies of the Province, which policies shall include consideration of the two linguistic communities and of the linguistic composition of a region.” This obligation is reflected only in Appendix 2 of the Plan, which states:

“The government will develop a signage policy.”

RECOMMENDATION

The Commissioner recommends that the government take into account the findings of the Report on the Review of the New Brunswick Second Language Services and the Final Report: Review of the Language Training Program of the New Brunswick Public Service in its efforts aimed at improving the second-language training program.

That passage notwithstanding, there is no indication as to how this policy will take the linguistic composition of a region into account. In its reply, the government stated the following:

“The government is reviewing its public signage policies with a view to improving them, taking into account the two linguistic communities and the linguistic composition of a region. “We did not consider it necessary for the wording of the measure used in the Plan to be an exact copy of the text of paragraph 5.1(1)(f), but be assured that the objectives are consistent with the OLA, as is the work that is being done.”

[Translation]

Recommendation

The Commissioner recommends that the Plan clarify the obligation with respect to public signage, so as to fulfil the requirements of paragraph 5.1(1)(f) of the OLA.

FOCUS 2: Language of work

“The language of work is defined as the oral and written language used by civil servants in their offices to prepare documents, confer with their colleagues, their superiors and their juniors. It is the language used in acquiring their competence and carrying out their duties. It is the language in which they are evaluated.”¹¹

With this definition, the Province has two options for enabling public servants to work and be supervised in the official language of their choice:

- requiring that all supervisors be bilingual;
- creating work teams that operate in French, in English, and in both languages.

Neither option is included in the Plan as presented. Furthermore, the Plan does not propose any practical measures that would allow both Anglophone and Francophone civil servants to work and be supervised in the official language of their choice.

Bilingualism of senior and middle management

“Most departments offer their staff the right to work in their language of choice, but they are the first to admit that, in some situations, it is very difficult, if not impossible, to work in one’s language of choice if that language is French. The reasons for this include time constraints and the presence of unilingual senior officials in a particular department.” (p. 12)

RECOMMENDATION

The Commissioner recommends that the Plan clarify the obligation with respect to public signage, in accordance with paragraph 5.1(1)(f) of the OLA.

This excerpt from the Plan paints a picture of the situation with respect to language of work in Part I. Although the unilingualism of senior officials hinders the ability of public servants to work in the official language of their choice, this issue is not discussed at all in the Language of Work focus of the Plan.

At a meeting with government representatives, it was confirmed that the measures related to the bilingualism of senior management were placed in the Language of Service focus, as it was in that area that the unilingualism of managers presented the most significant challenges. According to government representatives, it was not necessary to repeat these measures in the Language of Work focus. At the very least, this explanation reveals a lack of understanding of the reality in the field. Working in the official language of one's choice implies the ability of supervisors to communicate in the language of their employees.

To achieve the objectives supported by paragraph 5.1(1)(f), it is inconceivable that measures related to the bilingual capacity of senior officials and middle managers are not presented in this focus of the Plan as well.

Choice of language of work

The following measures, taken from page 27 of the Plan, are relevant here:

- Department of Human Resources will prepare a standard letter of offer and an orientation guide for identifying the preferred language of work of all new employees.
- Each department will send an information sheet to all current employees seeking information about their preferred language of work and the language of their performance review, which will then be added to their file.

The Office of the Commissioner considers that merely allowing employees to work in their language of choice is insufficient for them to avail themselves of that right. A work environment that actively supports the use of English and French is needed for changes to occur in this regard. The Office of the Commissioner notes that the Plan indicates that “the employer will implement the necessary measures to develop a work climate and environment conducive to the introduction of the language of work policy.” However, the Plan contains very few substantive measures to address the following challenges:

- pressure exerted on Francophone employees by an organizational culture that favours English (close to 90% of the documents sent to the Translation Bureau by provincial departments are written in English);
- constraints related to proficiency in the French language (presence of unilingual Anglophone managers, presence of unilingual Anglophone employees on teams, translation deadlines for documents, lack of knowledge of specialized terms in French, etc.);

- the phenomenon of linguistic insecurity (employees believe they do not have a good grasp of their mother tongue), which can push Francophone civil servants to use English to express themselves.

The lack of substantive measures that would make it possible to develop mechanisms that address the aforementioned challenges leads the Office of the Commissioner to conclude that the Plan cannot “ensure the equality of use of the English and French language in the public service,” as required by paragraph 5.1(1)(c) of the OLA.

Measures proposed by the Office of the Commissioner of Official Languages for New Brunswick for creating a bilingual organizational culture (2011–2012 annual report)

- Awareness sessions on the use of both official languages in the workplace. These sessions will provide an opportunity for employees to discuss the role of French in oral and written communications, reflect on the consequences of using a single language on the vitality of the other language, and suggest innovative strategies for ensuring the equality of French and English.
- Set up temporary work teams operating in French. These groups, consisting of Francophones and Anglophones who speak French, would address the unilingualism of certain managers while enabling Anglophone public servants to practise their French-language skills.
- Offer language training to unilingual managers on a priority basis.
- Help employees who have taken language training to use their second language by setting up a mentoring program under which they will be supervised in this language.
- Distribute information capsules on official languages to public servants on a regular basis. These would pertain to, among other things, the policies related to language of service and language of work.
- Develop activities to encourage employees to use French at work; for example, designate certain days of the week as Writing in French Day.
- Offer French upgrading courses to encourage employees to use that language in the workplace.
- Alternate the order in which the English and French versions are presented (left and right columns, top and bottom of page) in documents distributed to employees.

Work teams

The Plan contains the following measures to enable all civil servants to work in the official language of their choice:

- All departments and agencies will review their linguistic profiles and determine how to enable all employees to work in the language of their choice. (p. 28)

It should be noted that the reason for having linguistic profiles is to establish the linguistic composition of work teams, i.e., the number of bilingual employees, unilingual Anglophones, and unilingual Francophones working on each team in order to provide bilingual service to members of the public.

At the meeting with government representatives in September 2015, they indicated that, although the Plan provides for the review of linguistic profiles, this does not ensure that teams will be reconfigured to ensure that public servants can work in the official language of their choice. According to the representatives, these linguistic teams were established to enable institutions to provide bilingual services to the public. The Office of the Commissioner therefore questions how the measure to review linguistic profiles will improve the situation.

The meeting with government representatives did not result in obtaining a clear description of how employees would be able to work and be supervised in the official language of their choice. In its reply, the government stated the following:

“We agree with you that the opportunity to work in their language of choice is closely linked with the unilingualism/bilingualism of the immediate supervisor. We must continue to address the inherent challenges associated with the unilingualism of the immediate supervisor.”

[Translation]

Language of Work Policy

The Office of the Commissioner has deemed it appropriate to delve further into this issue by reviewing the Language of Work Policy. The following excerpt sheds light on the approach currently being used in the provincial public service:

Language of Work Policy

Communication between supervisors and their employees

Day-to-day communications between a supervisor and an employee must be in the official language chosen by the employee.

Policy Application

Supervisors who have the ability to communicate in both official languages must do so by using their employees’ official language of choice. A supervisor who cannot communicate in the official language chosen by the employee must ensure that processes are in place to facilitate the employee’s request to communicate in his/her preferred language.

NOTE

Being able to use a language in the workplace is an acknowledged critical factor for ensuring the longevity of that language.

The tool kit associated with the Policy provides the following mechanisms in dealing with a unilingual supervisor:

Tool kit

If a supervisor cannot communicate in the official language chosen by the employee, a third person such as the next level of management or a representative from the Human Resources section or another person deemed appropriate by both the employee and the supervisor can be brought in to assist.

If a supervisor has the ability to comprehend the other language, he/she encourages employees to communicate in their preferred language. The supervisor communicates with his/her employees as per his/her own abilities.

Given the reality of workplaces in the provincial public service, the Office of the Commissioner notes that it would be difficult to identify a single employee who has used the first mechanism in the tool kit. It should also be noted that the second mechanism contradicts *de facto* the right of employees to work in the language of their choice.

The measures provided in the Language of Work Policy and the tool kit is, in fact, accommodations that contradict the constitutional principle of the equality of the two official languages and two official linguistic communities. As a result, these measures run counter to the obligation set out in paragraph 5.1 (1)(c) of the OLA to “ensure the equality of use of the English and French language in the public service.”

The public service: An influential employer

Being able to use a language in the workplace is an acknowledged critical factor to ensure the vitality of that language. This observation is legitimized when you take into consideration the amount of time people devote to their jobs. Consequently, measures to promote the use of a language in the workplace will strengthen its status, recognition, and influence.

The Office of the Commissioner concludes that the Plan does not take sufficient account of the role of government as a lever for the vitality of the French language in New Brunswick. In that regard, it reiterates that paragraph 5.1(1)(b) requires that the government’s Plan include measures “to ensure the equality of status of the two linguistic communities.”

**NON-COMPLIANT
ELEMENT**

The Office of the Commissioner concludes that the measures concerning language of work will not guarantee the implementation of mechanisms enabling provincial public servants to work and be supervised in the official language of their choice.

Finding

After detailed analysis of the measures concerning language of work, the Office of the Commissioner concludes that these will not guarantee the implementation of mechanisms enabling provincial public servants to work and be supervised in the official language of their choice. Consequently, the Plan does not fulfil the requirements of paragraph 5.1(1)(d) of the OLA.

Recommendation

The Office of the Commissioner recommends that the objectives and measures concerning language of work be reviewed in order to implement mechanisms that will ensure respect for the right of public servants to work and be supervised in the official language of their choice.

FOCUS 3: Development of the two official linguistic communities

The focus on the development of the two linguistic communities is defined as follows in the Plan:

“All provincial government efforts, including legislation, distribution of public resources, and development of policies and programs, to encourage, via positive measures, the cultural, economic, educational and social development of the two official linguistic communities.”

This strategic objective is ambitious. However, the analysis done by the Office of the Commissioner shows that the measures to support the achievement of this objective are limited. This finding notwithstanding, it is important to note the measures in the Plan pertaining to the content of briefs submitted to the Executive Council.

- Briefs submitted to the Executive Council will contain a section discussing the potential impact of the program or policy on Anglophone and Francophone communities.
- A practical guide will be developed for writing MECs concerning official languages. (p. 13)

In addition, the Office of the Commissioner endorses the following objective:

“takes advantage of official bilingualism for the purposes of economic development and job creation.”

RECOMMENDATION

The Commissioner recommends that the objectives and measures concerning language of work be reviewed in order to implement mechanisms that will ensure respect for the right of public servants to work and be supervised in the language of their choice.

NOTEWORTHY ELEMENT

The Office of the Commissioner endorses the measures concerning the content of briefs submitted to the Executive Council.

However, the measures for achieving these objectives are vague. The Office of the Commissioner restates that it is counterproductive that the Plan fails to consider the conclusions of the study entitled *Two Languages: It's Good for Business*¹².

FOCUS 4: Knowledge of the Act and other obligations

This focus contains very few innovative measures. The Office of the Commissioner notes that the government has reinstated a measure that was in the first *Plan on Official Languages*, i.e., the one related to the official languages coordinator. In that regard, the Office of the Commissioner notes that, over the past several years, this aspect has received very little attention, and it is hoped that tools to remedy the situation will be developed in a timely manner.

IMPLEMENTATION AND ACCOUNTABILITY

How will the government ensure that the implementation plan for the OLA is actually carried out? What financial and human resources will be involved? What accountability mechanisms will be implemented to ensure that progress is made towards achieving the objectives set out in the Plan? The relevance of these questions is clear from a reading of this excerpt from the first *Plan on Official Languages: Official Bilingualism – A Strength*,¹³ an excerpt that is reproduced on page 4 of the new Plan:

“The implementation of the plan started off promisingly, but a common theme soon emerged in the form of inconsistent support within the area of leadership. This served to undermine the accountability process, which, in turn, impeded any chance of genuine success for the plan.”

The Office of the Commissioner’s 2014–2015 annual report devoted an entire chapter to an analysis of the evaluation report on the initial Plan put forward by the government between 2011 and 2013. The recommendations below were made to ensure the success of the *Plan on Official Languages*:

Recommendations made by the Office of the Commissioner of Official Languages for New Brunswick (2014–2015 annual report)

- The success of a plan on official languages starts with a clear, visible, and sustained commitment from government.
- Government must find ways to implement the measures of the Plan.
 - Have adequate resources to coordinate and oversee the implementation
 - Have adequate resources to implement the Plan

- A solid accountability process must be implemented in order to measure progress and ensure ongoing progress towards the objectives of the Plan
- The deputy ministers must exercise solid leadership and accountability in terms of progress on a regular basis
- To report regularly
- The government must establish reliable mechanisms to measure progress

The following excerpts, taken from the evaluation report on the first Plan on Official Languages, highlight the consequences of the lack of leadership shown by deputy ministers in implementing the first Plan on Official Languages.

Excerpts from the evaluation report on the *Plan on Official Languages: Bilingualism – A Strength 2011–2013*

The Plan made much of its success dependent on the accountability of the stakeholders. For example, deputy ministers were to be “responsible to meet government’s official language objectives.” What is more, the various players in the departments and agencies were to look at “instilling a climate of confidence in their workplace that will place top priority on official languages.” And the Plan expected these various players to make sure that “their official language objectives and the lens through which they measure their progress are constantly monitored.

According to the information collected, however, many members of the senior public service have not mastered the Government Plan on Official Languages and have not played the leadership role which the Plan appears to assign to them.

The research team collected comments to the effect that senior management in certain departments and agencies received the action plan with a mixture of skepticism and disinterest.

Recommendation

That the reporting mechanisms in the Government Plan on Official Languages be strengthened so as to solidify and give shape to the accountability of deputy ministers in the provincial government.

The province replied as follows:

“Deputy Ministers will have to report annually on activities carried out in their departments. A follow-up report on performance will be submitted in June of each year to the Executive Council Office, and an evaluation report will be presented to the Premier. The Premier will then have to report on progress to the Legislative Assembly at the beginning of the autumn session of each year.”

[Translation]

The Office of the Commissioner must conclude that the Plan is not sufficiently thorough on the issue of accountability, particularly with respect to the responsibilities of deputy ministers, which leaving one to doubt its effectiveness.

Recommendation

The Commissioner recommends that deputy ministers play a central role in the implementation of the Plan.

EVALUATION

The Office of the Commissioner notes that officials in the various departments will have to report annually on progress made towards implementing the Plan. However, the five-year time frame for conducting a thorough evaluation of the Plan is inappropriate as this timeframe is too long.

Recommendation

The Commissioner recommends that the government undertake a complete review of the Plan every three years.

SUMMARY OF RECOMMENDATIONS

“The new Plan on Official Languages is designed to promote official bilingualism and help move New Brunswick forward.”

This excerpt from the Premier’s message included in the introduction to the Plan indicates its very reason for being: to make progress towards achieving the equality of our two languages and our two official linguistic communities. The Office of the Commissioner therefore attempted to identify concrete measures to ensure this progress. However, the analysis of the 2015 Plan on Official Languages concludes that this document is more declaratory in nature rather than an operational action plan.

RECOMMENDATION

The Commissioner recommends that deputy ministers play a central role in the implementation of the Plan.

RECOMMENDATION

The Commissioner recommends that the Province conduct a complete review of the Plan every three years.

Action plans set out specific objectives and measures for achieving desired results. However, several components of the Plan do not mention these at all. It is understood that departmental action plans will support the implementation of the Plan. However, the OLA specifically states that the Province is responsible for implementing measures to achieve the objectives prescribed by the Act.

In that respect, the Office of the Commissioner notes that the strategic objectives in the Plan cannot be met unless strategic measures applicable to all government agencies are put forward. Failing this results, among institutions will remain uneven, and the Province will not be able to ensure that its linguistic obligations as set out in the OLA are met. After conducting a thorough analysis of the objectives and measures proposed in the Plan, the Office of the Commissioner notes that several of these will not make it possible to achieve the objectives set out in the OLA. Consequently, the Commissioner concludes that fundamental aspects of the Plan are not in compliance with subsection 5.1(1) of the OLA and recommends that the government correct the noted deficiencies.

In light of all of the information gathered during this investigation, the Commissioner deems it necessary to make the following recommendation and to restate the recommendations made previously in the Analysis section of this report:

- THAT** the Plan on Official Languages be reconsidered to ensure it fulfils the obligations set out in section 5(1) of the OLA;
- THAT** the objectives and measures in the Plan with respect to language of service be reconsidered in light of the recommendations made in the Office of the Commissioner’s study on bilingual staffing and second-language training in the public service;
- THAT** the objectives and measures with respect to the bilingual capacity of senior management be redefined to ensure they are consistent with the wording of paragraph 5.1(1)(e);
- THAT** the “Advanced” (3) oral communication level be the minimum benchmark to ensure that measures implemented in accordance with paragraph 5.1(1)(e) of the OLA for the purpose of improving the bilingual capacity of senior management are effective;
- THAT** the government take into account the findings in the *Report on the Review of the New Brunswick Second Language Services* and the *Final Report: Review of the Language Training Program of the New Brunswick Public Service* in its initiatives aimed at improving the second-language training program;
- THAT** the Plan clarify the obligation with respect to public signage, so as to meet the requirements set out in paragraph 5.1(1)(f) of the OLA;

- THAT** the objectives and measures concerning language of work be reviewed with a view to implementing mechanisms ensuring respect for the right of employees to work and be supervised in the official language of their choice;
- THAT** deputy ministers play a central role in the implementation of the Plan;
- THAT** the Province conduct a complete review of the Plan every three years.

CONCLUSION

The Office of the Commissioner endorses the statement by the Premier, the Honourable Brian Gallant, when he states that the purpose of the Plan is to “promote official bilingualism.” However, the analysis of the document concludes that the Province has not adopted the measures necessary to reach this goal.

Pursuant to subsection 43(16) of the OLA, the Office of the Commissioner respectfully submits this report to the Premier, the Clerk of the Executive Council, and the complainants. The Office of the Commissioner also wishes to advise that if the complainants are not satisfied with the conclusions in this case, they may apply to The Court of Queen’s Bench of New Brunswick for a remedy, pursuant to subsection 43(18) of the OLA.

[Original signed by]

Katherine d’Entremont, M.P.A.
Commissioner of Official Languages for New Brunswick

Dated at Fredericton,
In the Province of New Brunswick,
this 31th day of March, 2016

REFERENCES

1. *Plan on Official Languages: Official Bilingualism: A Fundamental Value (Fredericton, N.B.: Executive Council Office, 2015).*
2. Letter from the deputy minister of the Executive Council Office and head of the public service, November 13, 2015.
3. News release from the Government of New Brunswick on the release of the new *Plan on Official Languages*, July 24, 2015.
4. "New Brunswick Regulation 2015-67 under the Official Languages Act (O.C. 2015-290), filed December 22, 2015," *The Royal Gazette*, January 6, 2016.
5. Office of the Commissioner of Official Languages for New Brunswick, *2013-2014 Annual Report* (Fredericton, N.B.: Office of the Commissioner of Official Languages for New Brunswick, 2014).
6. Meeting of September 10, 2015, between representatives of the Office of the Commissioner of Official Languages for New Brunswick and the provincial government.
7. At the meeting with government representatives, it was determined that the wording was incorrect and a level was set for each position requiring bilingualism.
8. *Final Report: Review of the Language Training Program of the New Brunswick Public Service* ([N.p.]: Collège communautaire du Nouveau-Brunswick, March 2012).
9. *Report on the Review of the New Brunswick Second Language Services* (St. John's, N.L.: Goss Gilroy Inc., March 2011).
10. *Final Report: Review of the Language Training Program of the New Brunswick Public Service* ([N.p.]: Collège communautaire du Nouveau-Brunswick, March 2012).
11. *Report of the Advisory Committee on Official Languages of New Brunswick* (Fredericton: Advisory Committee on Official Languages of New Brunswick, 1986).
12. *Two Languages: It's Good for Business* (Fredericton, N.B.: Office of the Commissioner of Official Languages for New Brunswick, March 2015). Study conducted by Pierre-Marcel Desjardins and David Campbell on behalf of the Office of the Commissioner of Official Languages for New Brunswick.
13. *2011-13 Government Plan on Official Languages: Official Bilingualism – A Strength* (Fredericton, N.B.: Department of Intergovernmental Affairs, 2011).

APPENDIX "A"

Oral Proficiency Rating Scale; Departement of Post-Secondary Eduction, Traning and Labour

Novice (0+) Memorized Proficiency

Able to satisfy immediate needs using rehearsed utterances. Shows little real autonomy of expression, flexibility or spontaneity. Can ask questions or make statements with reasonable accuracy only with memorized utterances or formulae. Attempts at creating speech are usually unsuccessful.

Basic (1) Elementary Proficiency

Able to satisfy minimum courtesy requirements and maintain very simple face-to-face conversations on familiar topics. A native speaker must often use slowed speech, repetition, paraphrase or a combination of these to be understood by this individual. Similarly, the native speaker must strain and employ real-world knowledge to understand even simple statements/questions from this individual. This speaker has a functional but limited proficiency. Misunderstandings are frequent, but the individual is able to ask for help and to verify comprehension of native speech in face-to-face interaction. The individual is unable to produce continuous discourse except with rehearsed material.

Basic+ (1+) Elementary Proficiency Plus

Can initiate and maintain predictable face-to-face conversations and satisfy limited social demands. He/she may, however, have little understanding of the social conventions of conversation. The native speaker is generally required to strain and employ real-world knowledge to understand even some simple speech. The speaker at this level may hesitate and may have to change subjects due to lack of language. Speech largely consists of a series of short, discrete utterances.

Intermediate (2) Limited Working Proficiency

Able to satisfy routine social demands and limited work requirements. Can handle routine work-related interactions that are limited in scope. In more complex and sophisticated work-related tasks, language usage generally disturbs the native speaker. Can handle with confidence, but not with facility, most normal, high-frequency social conversational situations, including extensive but casual conversations about current events, as well as work, family and autobiographical information. The individual can get the gist of most everyday conversations but has some difficulty understanding native speakers in situations that require specialized or sophisticated knowledge. The individual's utterances are minimally cohesive. Linguistic structure is usually not very elaborate and not thoroughly controlled; errors are frequent. Vocabulary use is appropriate for high-frequency utterances but unusual or imprecise elsewhere.

Intermediate+ (2+) Limited Working Proficiency Plus

Able to satisfy most requirements with language usage that is often, but not always, acceptable and effective. The individual shows considerable ability to communicate effectively on topics relating to particular interests and special fields of competence. Often shows a high degree of fluency and ease of speech, yet when under tension or pressure, the ability to use the language effectively may deteriorate. Comprehension of normal native speech is typically nearly complete. The individual may miss cultural and local references and may require a native speaker to adjust to his/her limitations in some ways. Native speakers often perceive the individual's speech to contain awkward or inaccurate phrasing of ideas, mistaken time, space and person references, or to be in some way inappropriate, if not strictly incorrect.

Advanced (3) General Professional Proficiency

Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social and professional topics. Nevertheless, the individual's limitations generally restrict the professional contexts of language use to matters of shared knowledge and/or international convention. Discourse is cohesive. The individual uses the language acceptably but with some noticeable imperfections; yet, errors virtually never interfere with understanding and rarely disturb the native speaker. The individual can effectively combine structure and vocabulary to convey his/her meaning accurately. The individual speaks readily and fills pauses suitably. In face-to-face conversation with natives speaking the standard dialect at a normal rate of speech, comprehension is quite complete. Although cultural references, proverbs and the implications of nuances and idioms may not be fully understood, the individual can easily repair the conversation. Pronunciation may be obviously foreign. Individual sounds are accurate, but stress, intonation and pitch control may be faulty.

Advanced+ (3+) General Professional Proficiency Plus

Able to use the language to satisfy professional needs in a wide range of sophisticated and demanding tasks.

Superior (4) Advanced Professional Proficiency

Able to use the language fluently and accurately on all levels normally pertinent to professional needs. The individual's language usage and ability to function are fully successful. Organizes discourse well, using appropriate rhetorical speech devices, native cultural references, and understanding. Language ability only rarely hinders him/her in performing any task requiring language; yet, the individual would seldom be perceived as a native. Speaks effortlessly and smoothly and is able to use the language with a high degree of effectiveness, reliability and precision for all representational purposes within the range of personal and professional experience and scope or responsibilities. Can serve as an informal interpreter in a range of unpredictable circumstances. Can perform extensive, sophisticated language tasks, encompassing most matters of interest to well-educated native speakers, including tasks which do not bear directly on a professional specialty.

Source: Judith Liskin-Gasparro. *Testing and Teaching for Oral Proficiency*. Boston: Heinle and Heinle Publications. 1987.

Departement of Post-Secondary Education, Training and Labour, *Oral Proficiency Rating Scale* [Online] http://www2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/Skills/content/AdultLearningAndEssentialSkills/oral_proficiencyratingscale.html (March 2016)

APPENDIX "B"

Language Tasks and Role Play Examples, Department of Post-Secondary Education, Training and Labour

Basic Level

Language task examples:

- Ask and answer simple questions
- Give directions or simple instructions
- Deal with simple work-related situations

Role play examples:

- A mechanic asks a co-worker how to obtain a certain tool
- A receptionist directs a visitor to the cafeteria
- A manager gives a clerk simple instructions concerning a file that is needed
- A clerk tells a visitor that the director is out of town and is therefore unable to attend a meeting

Intermediate Level

Language task examples:

- Give simple explanations
- Describe people, places and things in concrete terms
- Narration of events in the past, present or future
- Deal with somewhat complicated work-related situations

Role play examples:

- An administrative officer explains to a manager the procedure for hiring temporary help
- An agent describes to a supervisor the appearance, colour and size of brochures ordered
- A security officer describes the circumstances of a break and enter violation
- A clerk deals with the person in charge of deliveries to resolve a problem concerning delivery of an incomplete order of supplies

Advanced Level

Language task examples:

- Give detailed explanations and descriptions with precision
- Deal with hypothetical issues
- Defend an opinion, convey a point of view or justify an action
- Give advice and counsel
- Deal with complex work-related situations

Role play examples:

- One secretary explains to another the complex procedures for handling ministerial correspondence
- A lab technician explains the stages of an experiment to a co-worker
- A manager explains to a supervisor how a compressed workweek would affect the unit's productivity
- A project manager justifies the hiring of two extra employees to complete a project on time
- One manager advises another on the best method of handling a difficult situation or project

Superior Level

Language task examples:

- Persuade and negotiate
- Tailor language to fit audience (adopt different registers)
- Deal diplomatically with sensitive work-related issues
- Represent different points of view
- Convey a specific tone or attitude

Role play examples:

- A clerical worker represents a bargaining unit in acrimonious contract negotiations
- A protocol officer greets a delegation of visiting dignitaries and explains why their appointment with the Premier has been cancelled
- A manager mediates between two employees whose personality conflict is affecting morale at the office
- A receptionist fields calls from unsuccessful applicants for student loans
- A government lawyer defends a client department in a civil suit
- A director conducts a performance review of a disgruntled employee
- An information officer conducts a press conference on a controversial issue

Language Tasks and Role Play Examples, *Departement of Post-Secondary Education, Training and Labour* [Online] http://www.2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/Skills/content/AdultLearningAndEssentialSkills/language_tasks_androleplayexamples.html (March 2016)