



Commissioner of Official Languages
for New Brunswick

2010 • 2011

Annual Report

COMMISSIONER OF
OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSAIRE AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK



2010-2011 Annual Report

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COMMISSIONER OF
OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSAIRE AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

September 2011

Honourable Dale Graham
Speaker of the Legislative Assembly of New Brunswick

Mr. Speaker:

Pursuant to Section 43(21) of the *Official Languages Act*, I am pleased to submit the report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick for the period of April 1, 2010 to March 31, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'm to'.

Michel A. Carrier, Q.C.
Commissioner of Official Languages for New Brunswick

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Foreword

New Brunswick: Only Officially Bilingual Province

English and French are the official languages of New Brunswick; they have equality of status and equal rights and privileges.

According to the 2006 Census, 64.4% of New Brunswickers have English as their mother tongue. French is the mother tongue of 32.4% of the province's residents.

Official Languages Act

The *Official Languages Act* (OLA) requires the following institutions to offer and provide their services in both official languages:

- Legislative Assembly and its agencies (e.g., the Office of the Commissioner of Official Languages for New Brunswick),
- provincial departments,
- hospitals and public health services,
- Crown corporations (e.g., NB Liquor, NB Power, Service New Brunswick),
- the province's courts,
- policing services,
- any board, commission or council, or other body or office, established to perform a governmental function.

In addition, the OLA imposes obligations on:

- cities (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, Saint John),
- municipalities with an official language minority of at least 20% of the population (Charlo, Dalhousie, Eel River Crossing, Rexton, Richibucto, Shediac and Tide Head),
- planning commissions and solid waste commissions serving an area with an official language minority of at least 20% of the population.

The OLA does not apply to private-sector enterprises, except in cases where they offer services to the public on behalf of the provincial government.

Active Offer

Institutions bound by the OLA have an obligation to inform citizens that their services are available in both official languages. As a result, it is not up to citizens to request service in their language, it is up to the institution to make that offer. Examples of active offer include answering the telephone or greeting someone in both official languages.

Commissioner of Official Languages

The OLA has established the position of Commissioner of Official Languages. The Commissioner has a dual mandate: to investigate and make recommendations with regard to compliance with the Act, and to promote the advancement of both official languages in the province. The Commissioner of Official Languages is an officer of the Legislative Assembly and is independent of government.

Annual Report

The Act provides that the Commissioner must report on his or her activities each year. This eighth Annual Report presents a description of the activities carried out between April 1, 2010, and March 31, 2011.

Summary

From the Commissioner

Language vitality is determined by several factors. The various issues with which the Commissioner was concerned during the year (education, immigration, health, etc.) are all examples of those factors. The Commissioner believes that the government has to go beyond official bilingualism and focus more on a comprehensive framework for official languages planning.

Language Issues

Immigration

The Commissioner turned his attention to the provincial government's initiatives concerning immigration in the province. Following this review, the Commissioner believes that the government has to adopt an official policy and clear guidelines to ensure that its immigration practices favour both linguistic communities equally.

Early Learning and Childcare Act

The new Early Learning and Childcare Act supports the existence of bilingual nursery schools. The Commissioner believes that the government must be consistent and fully implement the principle of duality in childcare services.

Review of the Official Languages Act

Numerous suggested enhancements to the Act are being put forward by the Commissioner in anticipation of the review exercise to commence before December 31, 2012.

Implementation strategy for the Official Languages Act

This strategy was on the verge of being officially unveiled when the last provincial election was called. The Commissioner is urging the new government to adopt this strategy as quickly as possible.

Language of Court Decisions

In the Commissioner's view, the report prepared by a task force on the language of court decisions contains most of the relevant elements for full implementation of section 24 of the OLA. He supports, among other things, the idea of establishing a protocol or guidelines for judges in interpreting that section of the Act.

Vitality of French in Francophone schools

The Commissioner proposes various means of enhancing the vitality of the French language in Francophone schools.

Investigations

During the year, the Commissioner received 200 complaints, or 38 more than the previous year. Most of the complaints had to do with deficient services in French. Selected complaints that were resolved during the year and the resulting recommendations are presented.

Court decisions

Two Provincial Court trials for impaired driving resulted in acquittals for violation of the language rights of the accused. Excerpts of the rulings show how the judges reached their decisions.

Promotion

This section mainly consists of a reproduction of the insert *Living Together with Two Languages*, published by the Office of the Commissioner of Official Languages in March 2011.

From the Commissioner



Move forward or lose ground

Progress with respect to language is fragile, because there is always the general trend of the predominance of English, both here and elsewhere in the world. To ensure the future of French in New Brunswick, it is essential that we continue to move forward on a number of fronts. The vitality of a language depends on many interrelated factors: demographics, education, language of work, official recognition, signage, and so on. The topics discussed in this annual report clearly show how government action can influence, either positively or negatively, the vitality of each of our two official languages. Following are a few examples.

On April 16, 2010, the *Early Learning and Childcare Act* was adopted by the Legislative Assembly. The preamble of the Act clearly sets out the importance of high-quality childcare services in promoting the development of young children. In that regard, one of the innovative aspects of the new legislation is the obligation for private daycare operators to use the provincial curriculum framework (a curriculum was developed for each language community). However, the new legislation allows daycare facilities to use both curricula, thus approving the existence of bilingual daycares, even though Francophone schools are struggling to francize an increasing number of students with a limited knowledge of French. We wonder how an *Early Learning and Childcare Act* can ignore such an issue and, especially, the principle of duality in education.

During the year, we dealt with the provincial government's immigration activities. The New Brunswick Provincial Nominee Program is the chief tool used by the Province to select immigrants. Interestingly, under

this program, the province gives preference to nominees who speak one or both official languages. However, it appears that there are no official policies or guidelines to ensure that each community benefits equally from the program. The long-term ramifications of such a situation readily spring to mind.

As in every year, this report presents a selection of complaints that were resolved. Some of the incidents they describe are isolated, and there is every indication that corrective measures will prevent them from ever happening again. However, there are those complaints that we keep seeing over and over, despite government commitments. For example, this is the third time we are reporting on serious incidents involving Ambulance New Brunswick. The most recent one saw a team of three unilingual Anglophone ambulance attendants being dispatched to a municipality in the Acadian Peninsula. Nine years after the coming into force of the new *Official Languages Act*, this type of situation is simply unacceptable. One of the other complaints presented in this chapter has to do with public signage

"New Brunswick has made remarkable progress in official languages over the past few decades. However, the government must not rest on its laurels. All of this progress is fragile because we must not forget, there is that general trend of the predominance of English. We therefore have to continue moving forward or lose ground."

Michel A. Carrier

in Fredericton. We chose to talk about it because it illustrates a very important facet of language vitality: its place in the linguistic landscape.

The opening of Casino New Brunswick was supposed to be good news for the Moncton region. However, the celebrations were short-lived, with deficient services in French quickly making headlines. It should be remembered that the government held all the cards in this case, for it set all the conditions for the granting of this monopoly. And yet, it chose not to impose complete bilingualism on the casino's operator. Why? The government's response is not very clear. The conclusion I draw from this is, however, a lack of vision and leadership.

Language vitality therefore depends on a number of factors. Moreover, the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* requires that the provincial government take positive actions to promote the cultural, economic, educational, and social development of both linguistic communities. How is the government carrying out this obligation, and, above all, how is it coordinating

its various actions to ensure they converge towards this development? To my knowledge, there is still no comprehensive development plan for our two linguistic communities. And yet, nothing is more important for our province's future.

The past year was marked by the election of a new government. It will have to complete the review of the *Official Languages Act*. We will be devoting part of this report to suggestions for improvement to the Act. One of our suggestions deserves to be mentioned here: that the government go beyond official bilingualism. What does this mean? It simply means that the government has to broaden and better coordinate its activities in order to stimulate the French language in the province.

New Brunswick has made remarkable progress in official languages over the past few decades. However, the government must not rest on its laurels. All of this progress is fragile because we must not forget, there is that general trend of the predominance of English. We therefore have to continue moving forward or lose ground.

Language Issues

Immigration to New Brunswick

Community vitality at stake

Faced with population decline and aging, the Government of New Brunswick is stepping up its efforts to increase immigration to the province. In so doing, it is playing a key role in shaping the future vitality of each linguistic community. In the Commissioner's view, the government has to adopt an official policy and clear guidelines to ensure that its immigration practices favour both linguistic communities equally.

In February 2007, the provincial government established the Population Growth Secretariat. One year later, it adopted a population growth strategy. The document, entitled *Be our future*, consists of a number of action areas:

- Increasing and targeting immigration;
- Improving supports for settlement services;
- Promoting diversity and multiculturalism;
- Retaining youth;
- Repatriating former New Brunswickers.

The *Be our future* strategy addresses the issue of Francophone immigration to the province. The document states, among other things, that “increased attention will be paid to maintaining the linguistic balance in the immigrant attraction and retention process” (p. 13). However, this “linguistic balance” is not defined.

In September 2009, the Government of Canada, through the Atlantic Canada Opportunities Agency, announced a \$10-million investment in a provincial initiative aimed at increasing Francophone immigration. According to official documents, this investment over four years (2009 to 2013), “will assist the Government of New Brunswick in preserving the population's linguistic profile with respect to immigrant recruitment.” The Population Growth Secretariat is administering these monies.

During the winter of 2010, the staff of the Office of the Commissioner of Official Languages met with the Population Growth Secretariat to obtain more information about Francophone immigration activities. The Office of the Commissioner's chief findings following these meetings were as follows:

\$10-million federal-provincial agreement

- The \$10-million federal contribution is being used for a range of recruitment, integration, and retention initiatives targeting Francophone immigration to New Brunswick. For example, the monies have helped establish regional immigration resource centres (Caraquet, Campbellton, and Edmundston, with a satellite office in Grand Falls), and assist with the efforts of existing resource centres (Bathurst, Miramichi, Moncton (2), and Saint-Léonard). According to the Secretariat, the establishment of these regional resource centres has enhanced the province's intake capacity considerably, which is a trump card for any immigration initiative.
- The federal funds are also making it possible for New Brunswick to take part in immigration fairs and other recruitment activities in other countries. In some cases, New Brunswick entrepreneurs are involved in the recruitment activities.
- New Brunswick's bilingual status is an asset that

is being used by provincial recruitment officers. However, the latter are taking care to paint an accurate picture of the province's linguistic situation. For example, people are being told that, in some regions, proficiency in English is necessary in order to enter the labour market.

New Brunswick Provincial Nominee Program

- The New Brunswick Provincial Nominee Program (PNP), a federal-provincial agreement, is the chief means the province can use to nominate qualified immigrants for permanent resident status. The PNP seeks to recruit and retain individuals who have specialized occupational or entrepreneurial skills in demand within the province. This program is managed by the Population Growth Secretariat.
- In assessing applicants' files, preference is given to those who speak one or both official languages. However, it appears that there are no official policies or guidelines to ensure that each community benefits equally from the program.
- The Secretariat has very little data on the success of its efforts to retain immigrants. It has taken steps to gather more data and obtain a clearer picture of those efforts. The Secretariat is relying on the regional immigration resource centres to gather more information. It is also helping to develop a federal-provincial data collection strategy.

Commissioner's recommendations

The Commissioner realizes that promoting Francophone immigration to New Brunswick is a complex process requiring a tremendous amount of effort and resources. In that respect, he notes that the Population Growth Secretariat is devoting considerable effort to recruiting and retaining French-speaking immigrants in the province. However, given the importance of immigration for the vitality of each linguistic community, he believes that the Secretariat's activities and programs should be bolstered so as to favour both linguistic communities equally. The Commissioner's recommendations are as follows:

- Given the particular challenges associated with Francophone immigration, the provincial government should develop and implement a long-term strategy on Francophone immigration. This strategy should also contain a component to promote the integration of Allophone immigrants in the Francophone community.
- Under the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* and the province's constitutional obligation to protect and promote the status, rights, and privileges of both linguistic communities, the provincial government should establish an official policy and clear guidelines to ensure that its immigration practices promote both linguistic communities equally.

New Brunswick Provincial Nominee Program

*Candidates accepted (broken down according to language(s) spoken)
April 1, 2009 to March 31, 2011*

Francophone candidates

Number of candidates: 28
Total number with family members: 66

Bilingual candidates (English and French)

Number of candidates: 96
Total number with family members: 248

Anglophone candidates

Number of candidates: 1,045
Total number with family members: 2,234

Source: Population Growth Secretariat

Early Learning and Childcare Act

Be consistent

On April 16, 2010, the Legislative Assembly enacted the *Early Learning and Childcare Act*¹. The preamble to the act clearly sets out the importance of high-quality early learning and childcare services in promoting the development of young children. In that regard, one of the innovative aspects of the new legislation is the obligation for childcare facilities to use the provincial curriculum framework. There are two versions of this curriculum: one developed by the Francophone community, and one by the Anglophone community. It is important to note that the new legislation allows childcare facility operators to use both curricula at a single facility, thus approving bilingual centres. In the commissioner's opinion, this latter provision is diametrically opposed to the very objective of the act.

In the press release of March 12, 2010, announcing the tabling of the early learning and childcare bill, the government indicated that it “recognizes that early learning opportunities are as important to a child's development as learning from kindergarten to Grade 12.”

This issue is therefore a central focus of preschool learning. In this respect, the Act directs the use of two provincial curriculum frameworks and compulsory training for staff responsible for applying it.

A curriculum framework was developed by and for each linguistic community. However, the Act also holds that the two curriculum frameworks may be used at a single facility, and thus approves the existence of bilingual daycare facilities. It should be remembered that bilingual settings often spell assimilation for members of minority communities. This is also why New Brunswick has two public school systems, one for Francophones and one for Anglophones.

The *Early Learning and Childcare Act* is not the first legislative measure with regard to childcare services. The *Family Services Act* and its Regulation currently govern this activity sector. Like the new act, the earlier legislative tools do not prohibit the existence of bilingual daycare facilities. However, the Commissioner believes that enacting new legislation in this field is an excellent opportunity to change this situation and take up the challenge of francization.

Some statistics on private daycare facilities

As of April 1, 2011

Language	Number of Daycares	Percentage
English	349	56%
French	199	32%
Bilingual	73	12%
Not specified	1	0%
Total	622	100%

Source: Education and Early Childhood Development

The challenge of francization

One of the main reasons for imposing a curriculum framework is to promote the development of children in preparation for school entry. In that respect, many Francophone schools are faced with the challenge of welcoming students who have not developed a sufficient vocabulary in French. Such is often the case for children who live in minority settings or who are the product of exogamous parents (only one of the parents is Francophone). To prevent academic delays, these schools therefore have to allocate additional resources to francization during the early years. Obviously, homogeneous nursery schools constitute an important tool in order to meet the challenge of francization.

The Commissioner recognizes that nursery schools are private enterprises, not schools, and that they are

¹ As the Annual Report went to press, the *Early Learning and Childcare Act* was still not in force.

not subject to the principle of duality in education. However, he believes that the logic enabling the government to regulate childcare services should also require it to prohibit bilingual daycares. By imposing the use of a curriculum framework, the government has recognized the key role of early learning and childcare services in child development. Henceforth, how can it accept a practice that compromises Francophone children's chances of starting school on the right foot?

Like many other stakeholders, the Commissioner has recommended to the provincial government that it be consistent in its actions. If it truly wishes to give

children, including Francophone children, every chance of success, it must fully implement the principle of duality in childcare services. In the Commissioner's view, this principle should be incorporated into the *Early Learning and Childcare Act*.

On October 17, 2010, in introducing the new members of his Cabinet, the Premier entrusted early childhood services to the Minister of Education, and in so doing initiated application of the principle of duality to these services. However, that is only one aspect of the issue. The principle of duality has to apply to all early childhood services.

Other points of view on the issue

[Translation] "Given the early childhood education situation that I mentioned, we might well ask ourselves what role government could play to revitalize the Francophone and Acadian communities from a linguistic perspective. In my view, the government would be taking a positive step if it were to acknowledge the existence of institutional duality in early childhood education. That way, duality of the school system recognized by all the provinces and territories could extend down to the grassroots and encompass all or part of early childhood services. This also was in fact what was proposed by the Commission on Francophone Schools in New Brunswick, chaired by Gino LeBlanc (LeBlanc, 2009). The government should also support the establishment of daycares linked with the school structures or managed autonomously by a Francophone infrastructure, which would promote early socialization in French for preschoolers. With early childhood education under the jurisdiction of the provinces and territories, the federal government could provide financial support for these programs under bipartite agreements."

Rodrigue Landry, *Petite enfance et autonomie culturelle Là où le nombre le justifie... V*, Canadian Institute for Research on Linguistic Minorities, 2010, p. 48.

"For Acadians and Francophones, it is not only urgent to press ahead in terms of pedagogy and education; it is a matter of survival of a language and retention of a culture. Early childhood intervention entails addressing the assimilation issue upstream and providing for early intervention with young people and their parents in the areas of learning, developmental issues, and identity building."

Gino Leblanc, *Education in Acadian New Brunswick: A path to cultural and linguistic self-sufficiency*, Chair's Report, Commission on Francophone Schools, 2009, p. 5.

Review of the *Official Languages Act*

Fully implement the principle of equality

In June 2002, the members of the Legislative Assembly of New Brunswick unanimously adopted the new and long-awaited Official Languages Act. The first Act, adopted in 1969, had become seriously outdated in the intervening years. To prevent such a situation from happening again, the new Official Languages Act contains a clause stipulating that the Premier must initiate its review before December 31, 2012. In the Commissioner's opinion, the review of the Act is an opportunity to fully apply the principle of equality of both official languages and both linguistic communities in New Brunswick. This is therefore why he is submitting to the Legislative Assembly's attention numerous proposals stemming mainly from his investigations and matters that he has examined since taking up his duties in 2003. The proposals submitted by the Commissioner fall under the following four categories:

1. Scope of the OLA

- Incorporate into the Act the right of civil servants to work in the official language of their choice.
- Make parapublic organizations, such as professional associations, subject to the OLA.
- Better define and frame the applicable language obligations in the case of public-private partnerships, the privatization of public services, and the granting of monopolies to private agencies.
- Set up a standing legislative committee to conduct an annual review of OLA-related matters.
- Clarify the Regulation to the OLA in order to avoid ambiguities.
- Incorporate provisions into the Act on government signage to ensure that the latter, while giving both official languages equal prominence, reflects, through the positioning of the words in English and French, the regions' linguistic reality.

2. Application of the OLA

- Incorporate provisions into the OLA requiring institutions to develop and apply a plan to implement their linguistic obligations.
- Set up a standing deputy ministers' committee on official languages.
- Give Provincial Court judges the authority to rule on the language rights entrenched in the OLA.
- Make it compulsory to review the OLA every 10 years and set a time limit for the review period.

3. The powers and work of the Commissioner of Official Languages

- Bestow the same powers on the Commissioner as those given to the Ombudsman.
- Incorporate provisions into the OLA to protect complainants against reprisals.

4. Going beyond Official Bilingualism - Languages planning

- Incorporate provisions into the OLA so that the government can develop and implement a comprehensive framework for official languages planning.

Where it all began

In its Speech from the Throne of November 20, 2001, the government of the day announced that it would "continue its work to ensure New Brunswick's *Official Languages Act* meets the required constitutional obligations." Truth be told, the government did not really have a choice in that regard. Several of the provisions of the first Act

adopted in 1969 had become obsolete because the legal framework for language rights had evolved significantly in the intervening years.

Several milestones marked the evolution of this legal framework. First, there was the adoption in

1981 of the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. This Act added a collective dimension to language rights. In addition to affirming the equality of status and the equality of the rights and privileges of both official language communities, the Act confers on both communities the right to separate institutions in which cultural, educational, and social activities may take place. Then, in 1982, New Brunswick was successful in having certain language rights entrenched in the *Canadian Charter of Rights and Freedoms*, thereby making these rights more permanent. The latter include the right for citizens in New Brunswick to use English or French when communicating with, or receiving services from, the provincial government. Finally, in 1993, the *Canadian Charter of Rights and Freedoms* was amended once again to include the principles set out in the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

Investigation reports

The evolution in the legal framework is also rooted in the many studies on language issues in New Brunswick. Three of these studies are worthy of note here: the Poirier-Bastarache report of 1982, the Guérette-Smith report of 1986, and the Delaney-LeBlanc report of 1996.

Court decisions

Decisions handed down by the courts reshape the legal landscape. In matters of language, these rulings have been very influential. One such example is the Supreme Court of Canada decision in 1999 in the Beaulac case. That decision radically changed the principles guiding the interpretation of language rights. In Beaulac, the Court ruled that language rights must in all cases be

interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. This decision did not have any direct impact on New Brunswick's *Official Languages Act* of 1969. However, the decision in Beaulac greatly changed the legal landscape in matters of language.

A game changer

The ruling handed down by the Court of Appeal of New Brunswick in the Charlebois case (December 20, 2001) triggered, in a way, the reform of the 1969 Act. The Court of Appeal of New Brunswick struck down the City of Moncton's by-laws because they had been adopted in a single language. The Court held that New Brunswick municipalities were institutions of the Province and thus subject to the Charter, meaning they had to adopt and publish their by-laws in both official languages.

Once more, the 1969 Act had become obsolete. Section 13 of the Act, which gave municipalities the option to adopt by-laws in a single language, was struck down. To avoid creating a legal vacuum, the Court of Appeal suspended the declaration of invalidity for one year. With this extra time, the City of Moncton and the provincial government could take the necessary measures to meet their constitutional obligations. The provincial government chose not to appeal from the decision and announced its intention to act.

A sign of the times: a new Act

Six months later, on June 4, 2002, the then Premier Bernard Lord tabled the new *Official Languages Act* in the Legislative Assembly. The transcript of the debate

Beaulac case: a new interpretation of language rights by the Supreme Court of Canada

Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. To the extent that Société des Acadiens stands for a restrictive interpretation of language rights, it is to be rejected. The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply. *R. v. Beaulac*, [1999] 1 S.C.R. 768

surrounding the new bill makes for interesting reading. A remarkable atmosphere of collaboration prevailed between the three parties in the Legislative Assembly at that time. As a result of this harmony, three major amendments, two of which had been proposed by the Opposition, were adopted:

- addition of the principle of active offer of service;
- expansion of the mandate of the Commissioner of Official Languages to include the advancement of both English and French in the province;
- obligation for the Minister of Health to consider the customary working language in the hospitals in developing the provincial health plan.

Three days later, on June 7, the new *Official Languages Act* of New Brunswick was adopted. Compared to the 1969 Act, the 2002 version is much more detailed: the first Act consisted of five pages, and the new one, 16. Not only are institutions' linguistic obligations more explicit now, certain areas not specifically mentioned in the first Act, i.e., health and policing services, were added. As a result, the scope of the Act is much clearer. Furthermore, citizens no longer have to ask for service

in their language; the institutions have to offer it. This is what is commonly known as active offer of service.

The principle of active offer significantly changed the dynamic of language rights in New Brunswick. The 1969 Act put the onus on citizens to ask for service in the official language of their choice. Many people hesitated to assert their rights, causing bilingual services to stagnate. The new Act of 2002 changed that dynamic: henceforth, the institutions must take the necessary steps to make it known to the members of the public that they may obtain services in the official language of their choice.

Other fundamental improvements to the new Act include the fact that services offered to the public by third parties on behalf of the province or its institutions must be in both official languages. In addition, all cities as well as municipalities that have an Anglophone or Francophone minority of 20% or more now have linguistic obligations. A redress mechanism was created with the establishment of the Office of the Commissioner of Official Languages. Lastly, the new Act stipulates that the Premier must initiate a review of the Act before December 31, 2012.

Review of the Act

The Commissioner's stance

The Commissioner acknowledges that the elected representatives of the Legislative Assembly are responsible for reviewing the *Official Languages Act* and deciding whether or not to amend it. At the same time, the Commissioner believes that the many investigations he has conducted have enabled him to pinpoint the shortcomings in the new Act, both in its wording and in its application. That is why he has decided to publicly explain how the Act could be improved.

The proposals submitted by the Commissioner fall under the four following categories:

1. Scope of the Act
2. Application of the Act
3. The powers and work of the Commissioner of Official Languages
4. Official languages planning

One precept

The Commissioner is of the view that, during this review process, the Legislative Assembly should be guided by one precept: to seek to fully implement the principle of equality that is at the heart of the Act. In his opinion, all too often, the government lags behind the courts in their interpretation of this principle. This is also what happened in 2001, when the Court of Appeal of New Brunswick struck down the City of Moncton's by-laws. To ensure that the French language has as much influence as the English language in New Brunswick, the Legislative Assembly must seek to fully apply the principle of equality of both official languages and of both linguistic communities.

1. Scope of the Act

❖ Incorporate into the Act the right of civil servants ❖ to work in the official language of their choice

During the debate surrounding the new *Official Languages Act* in the Legislative Assembly, the then Premier Bernard Lord stated, “We wanted to ensure that we would not wait another 33 years to ensure that the bill that was in place reflected the realities of New Brunswick, met the obligations of the government of New Brunswick, and fulfilled the aspirations of the people of New Brunswick. That was why we included the principle that a review must be undertaken. The Premier shall initiate a review of this Act before December 31, 2012.” (Hansard, June 5, 2002, p. 48)

It is also conceivable that the purpose of this review obligation was to make it possible to add to the Act elements that had not garnered enough consensus in 2002. The issue of language of work in the Public Service, which was not included in the new Act, is definitely one of those elements.

When the 2002 Act was adopted, the government of the day explained its actions mainly by asserting the province’s constitutional obligations. One of these

obligations is to preserve and promote the equality of the two linguistic communities. Pursuant to this obligation, it is clear that every provincial public servant in New Brunswick should be able to work in the official language of his or her choice. In fact, that right already exists under Official Languages – Language of Work Policy and Guidelines (AD 2920), which was significantly enhanced in 2009. However, there is little disputing the fact that a right included in a policy does not carry the same weight as one incorporated into an Act. Consequently, the right of a public servant to work in the official language of his or her choice should be entrenched in the *Official Languages Act*. Of course, this right has to be subject to the government’s obligation to offer and provide services in the official language chosen by the public.

It is important to note that inclusion in the Act of the right to work in one’s language should not be considered the only way to encourage the use of both official languages in the Public Service. The reports

Official Languages - Language of Work Policy and Guidelines Government of New Brunswick

Number: AD-2920 - Effective Date: April 1, 2009

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. Please refer to the tool kit.

Drafting Documents

Employees can draft documents in their official language of choice. Documents must be fully translated once ready for broader circulation or when seeking comments and feedback from a broader audience.

Policy Application

Managers must encourage employees to draft documents in the official language that they are most comfortable in using. Once the documents are completed or close to be completed and circulated, they must be sent to the Translation Bureau.

of the federal Commissioner of Official Languages consistently show just how much progress remains to be achieved in that area in the federal Public Service, even though that right is included in the federal *Official Languages Act*. Consequently, the inclusion in the *Official Languages Act* of New Brunswick of the right to work in one's language should be accompanied by a series of promotional measures and especially by a show of strong leadership by all managers.

◇◇ **Make parapublic organizations subject to the OLA**

The OLA review process should be an opportunity for the Legislative Assembly to impose linguistic obligations on parapublic organizations not currently subject to the Act.

In recent years, the Commissioner has recommended to the provincial government that it examine the issue of professional regulating bodies. The latter, established by laws of the Legislative Assembly, are given the role by government to regulate their professions and protect the public. However, these organizations are not part of the machinery of government.

Following a survey of these organizations in 2006, the Office of the Commissioner of Official Languages determined that they were largely able to provide bilingual services. Moreover, some of them are already offering all their services in both official languages.

Of course, the number of paying members within such a body and thus the revenue at its disposal play a key role in its ability to provide services in both official languages. The Commissioner believes that the Legislative Assembly could make professional associations subject to the *Official Languages Act* while circumscribing by regulation the range of services to be offered in both languages. Two categories could be established: basic services, mandatory for all professional regulating bodies; supplementary services, based on a revenue scale.

The Commissioner also believes that it would be appropriate to explore the possibility that organizations that offer services subsidized by government, such as nursing homes and special care homes, should have a certain number of linguistic obligations.

◇◇ **Better define and frame the applicable language obligations in the case of public-private partnerships, the privatization of public services, and the granting of exclusive rights (monopolies) to private agencies**

Section 30 of the OLA requires that the province and its institutions ensure that services to the public by third parties for the province or its institutions be provided in both official languages.

Two investigations by the Office of the Commissioner of Official Languages uncovered serious deficiencies in how this section of the Act is interpreted and applied.

The first investigation was concerned with the Warm Hearts, Warm Homes program, a public-private partnership between the Department of Energy and two non-profit agencies for the delivery of a public service (emergency financial assistance for heating costs). Even though a language clause had been inserted into the contract, the Department did not check how the agencies would provide equivalent services in both languages. In addition, the Department did not verify compliance with that clause. The result was that one of the non-profit agencies did not provide service of equal quality in both official languages.

The second investigation involved Casino New Brunswick. Although the provincial government had set the rules for the granting of this monopoly, it decided not to make it mandatory for all services to be provided in both official languages. A careful reading of the OLA did not make it possible to definitively conclude that section 30 applied to the granting of a monopoly to a private-sector enterprise. Following his investigation, the Commissioner recommended that the government, in the context of the OLA review in 2012, amend the OLA as it currently stands to further clarify the issue of public-private partnerships. That would allow to better define and frame the language obligations that apply to these various kinds of partnerships, the privatization of public services, and the granting of exclusive rights (monopolies) to private agencies.

❖ **Set up a standing legislative committee to conduct an annual review of OLA-related matters**

Under the *Official Language Act*, the Commissioner is required to submit an annual report each year to the Legislative Assembly. However, there is no formal framework for following up on the tabling of this report or for discussing matters relating to official languages. The Commissioner therefore believes that the OLA should provide for the establishment of a legislative committee on official languages. This committee would meet regularly to study the various issues related to this topic. Moreover, the Commissioner should appear before this committee at least once a year.

❖ **Clarify the Regulation to the OLA in order to avoid ambiguities**

As a direct result of the Court of Appeal ruling in the Charlebois case, all cities as well as municipalities that have a minority Anglophone or Francophone population of 20% or more have certain language obligations under the 2002 Act. It is important to note that these obligations are spelled out in Regulation 2002-63 of the Act. This document includes the list of services and communications that must be bilingual. For each element, a deadline for compliance was set (the final one being December 31, 2005).

In recent years, the Commissioner has noted that certain items on this list have been open to interpretation. For example, in an investigation of the City of Fredericton's signage practices, the latter stated that street signs were not part of the "traffic signs" element included in the list. The Commissioner believes that the Regulation to the Act should be reviewed in order to clarify all the grey areas noted over the years.

❖ **Incorporate provisions into the Act on government signage to ensure that the latter, while giving both official languages equal prominence, reflects, through the positioning of the words in English and French, the regions' linguistic reality**

Pursuant to section 29 of the OLA, "Institutions shall publish all postings, publications and documents intended for the general public in both official languages."

Road signs (including tourism signage), signs in front of government buildings, and signs within government offices are all examples of government postings. In general, this signage complies with the OLA. However, it has been noted that the order of presentation of the two languages generally favours English, even in predominantly Francophone regions: English is on the left or on top, French on the right or bottom. Given that we read from left to right and top to bottom, the current order of presentation does not help to promote the French language. Although certain graphic layouts are logical owing to syntax (e.g., Ch. Mazerolle Rd), an order of presentation that favours English in predominantly Francophone regions seems inappropriate, because it does not reflect the linguistic reality.

In his 2009-2010 annual report, the Commissioner recommended to the Premier that the Province adopt a balanced government signage policy that fully complies with the principle of equality of both official languages and at the same time takes into account the regions' linguistic reality. Under this new policy, all signs produced by an institution subject to the OLA should give both languages equal prominence while reflecting the region's linguistic reality. Accordingly, in predominantly Anglophone regions, English would be on the left and French on the right. In predominantly Francophone regions, French would be on the left and English on the right. In all other regions, the positioning would alternate to reflect the equality of the two languages. Moreover, English and French should appear side by side, not one below the other. An over-and-under format would be permitted only when the physical space is inadequate, and, where appropriate, the order of presentation should reflect the region's linguistic reality.

The Commissioner is of the opinion that the principles of this balanced policy on government signage should be incorporated into the OLA.

2. Application of the Act

- ◇ Incorporate provisions into the OLA requiring
- ◇ institutions to develop and apply a plan to
- ◇ implement their language obligations

The reader will agree that it is not enough to adopt official languages legislation for citizens to suddenly be able to take full advantage of the rights it confers. The legislation must also be accompanied by implementing measures. In certain respects, some of those measures already exist, i.e., government policies on language of service and language of work. The Commissioner believes, however, that these two tools are insufficient, as is evidenced by the frequent violations of the OLA. The Commissioner has been recommending to the provincial government for several years now that it adopt a comprehensive strategy for implementing the Act.

This strategy would first be based on an assessment of the situation with regard to compliance with the obligations established by the Act. It would present a series of ways for meeting challenges and providing services of equal quality in both official languages. Targets would be set to measure progress, and control mechanisms would be adopted to ensure compliance. This strategy would rely on leadership by senior management, language training, and promotional campaigns to create within institutions a culture genuinely promoting both official languages. In addition, it would propose innovative measures to ensure the development of both linguistic communities.

In the Commissioner's view, most of the resources needed to develop and implement such a strategy are already in place in the institutions subject to the Act. It would basically be a matter of gathering these resources together and coordinating them better to attain the objectives of the strategy.

- ◇ Set up a standing deputy ministers' committee
- ◇ on official languages

The deputy ministers have primary responsibility for the day-to-day application of the OLA. Their leadership in this regard will make it possible to ensure

full compliance with the OLA's linguistic obligations as well as to build a corporate culture that promotes the use and the advancement of both official languages. In the Commissioner's view, the fundamental role played by the deputy ministers in this respect must be given more recognition and support. That is why he is proposing that the OLA set up a standing deputy ministers' committee on Official Languages. In addition to being a forum for the advancement of official bilingualism within government, this committee could play a key role in the development and implementation of the government's OLA implementation strategy.

- ◇ Give Provincial Court judges the authority to rule
- ◇ on the language rights entrenched in the OLA

The OLA stipulates that citizens may turn to the Commissioner of Official Languages or the Court of Queen's Bench if they believe that their language rights have been violated. It should also be noted that Provincial Court judges can already grant redress for violations of language rights entrenched in the *Canadian Charter of Rights and Freedoms*.

Given that the language rights entrenched in the Charter closely parallel those in the OLA, the Commissioner believes that the Legislative Assembly should give Provincial Court judges the power to rule on language rights entrenched in the *Official Languages Act* of New Brunswick.

- ◇ Make it compulsory to review the OLA every
- ◇ 10 years and set a time limit for the review period

Pursuant to the OLA, the Premier is required to initiate a review of the Act before December 31, 2012. However, no time limit for completion of the review has been set. Moreover, it would be desirable if this review exercise took place every 10 years.

3. The powers and work of the Commissioner of Official Languages

◇ Bestow the same powers on the Commissioner ◇ of Official Languages as those given to the ◇ Ombudsman of New Brunswick

The Commissioner of Official Languages is a language ombudsman, and, like other ombudsmen, his *modus operandi*, or his action philosophy, is very different from that of a court. He cannot impose corrective measures or sanctions. To influence the machinery of government, he has only his power of persuasion, which derives from his legal status, his independence, and his credibility.

The Commissioner of Official Languages is not demanding more or fewer powers than those enjoyed by other ombudsmen. In that regard, when we compare the New Brunswick *Ombudsman Act* with the *Official Languages Act*, we see that the Ombudsman has a wider range of tools with which to influence the government. Yet, the role of these two positions is similar in nature:

to investigate failings by the government and make recommendations.

Relying on eight years of experience, the Commissioner believes that the current Act should be expanded to include elements that would enhance both the effectiveness and scope of his work.

Undue restrictions

Pursuant to the *Official Languages Act* of New Brunswick, after carrying out an investigation, the Commissioner must communicate the results and any recommendations only to the Premier, the deputy head of the institution concerned and the complainant.

This provision limits the possibility for the Commissioner

Excerpts of the New Brunswick Ombudsman Act

24(1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for anything he may do or report or say in the course of the exercise or intended exercise of any of his functions under this Act whether or not that function was within his jurisdiction, unless it is shown he acted in bad faith.

24(2) The Ombudsman or any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of any of his functions under this Act whether or not that function was within his jurisdiction.

25(2) The Ombudsman, in the public interest or in the interests of a person or an authority, may publish reports relating generally to the exercise of his functions under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the Legislative Assembly under this Act.

27 Every person who

- (a) without lawful jurisdiction or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his functions under this Act,
- (b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act, or
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act,

commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category E offence.

to publicly denounce a situation he deems prejudicial to the public interest and that requires immediate action by the government.

The Commissioner believes that this restriction should be lifted while ensuring the confidentiality of the complainant if requested.

Obligation to follow up

Once the Commissioner of Official Languages has forwarded his investigation report to the authorities, the institution concerned is under no obligation to follow up.

The *Ombudsman Act* of New Brunswick states that the institution concerned must comply with the lawful requirement made by the Ombudsman, unless it believes that it has a lawful reason not to do so.

The Commissioner believes that, at the very least, the *Official Languages Act* of New Brunswick should impose on institutions the obligation to respond in writing to his recommendations.

Protection against proceedings

Following the example of the measures that protect the Ombudsman and his staff, the Commissioner is of the view that he and his staff should be protected from proceedings before the courts, unless it is shown that they failed to act in good faith.

Quick resolution of complaints

Even though the Commissioner already has discretionary authority in deciding whether or not to conduct an investigation, the Act should expressly provide for the informal resolution of complaints concerning minor aspects, such as a spelling mistake in an official document.

◇ Incorporate provisions into the OLA to protect complainants against reprisals

Over the years, the Commissioner has seen situations where citizens have chosen not to file complaints or to withdraw their complaints, because they feared that their identity would be discovered and that they would be penalized in some way. For that reason, the Commissioner believes that the Act should better protect complainants.

4. Going beyond Official Bilingualism - Languages Planning

◇ Incorporate provisions into the OLA so that the government can develop and implement a comprehensive framework for official languages planning

While official recognition of a language and the delivery of bilingual government services are very important, status is not sufficient to ensure the future of a minority language. A number of other factors must be considered: demographics, education, toponymy, language of signage, language of work in the public and private sectors, media, etc.

The *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* reflects this diverse set of factors affecting the vitality of languages and communities. In fact, this Act requires that the Government of New Brunswick encourage, through positive actions, the cultural, economic, educational, and social development of the two linguistic communities.

Through its various actions, the provincial government directly and indirectly influences several factors of language vitality. How can we ensure that all these government actions contribute to the vitality of the minority language? What are the other areas of activity that are vital for the future of French in New Brunswick? What role could the government play in that area?

The Commissioner believes that the review of the *Official Languages Act* should be an opportunity for the Government of New Brunswick to adopt a legislative framework that would enable it to develop and implement a comprehensive strategy for official languages planning in the province.

Implementation strategy for the *Official Languages Act*

The Commissioner expresses concerns

On November 5, 2010, the Commissioner met with Premier David Alward to look at a few language issues, particularly the implementation strategy for the *Official Languages Act*. That strategy was about to be officially launched by the previous administration when the provincial election was called. In addition, the Department of Intergovernmental Affairs had informed the Commissioner that most of the departmental action plans supporting the strategy had been developed.

During the meeting with the Premier, the Commissioner reiterated that the strategy is a fundamental tool not only for ensuring better application of the Act but also for promoting more sustained progress towards the equality of the two official languages in the province. The Premier replied that his government wanted to familiarize itself with the strategy before making any decisions.

Four months after that meeting, the OLA implementation strategy had still not been officially ratified by the government. Concerned about this situation, the Commissioner wrote to the Premier to inquire about his intentions regarding the initiative. Following is an excerpt from his letter:

“Since I became the Commissioner of Official Languages, I have noted an urgent need for an implementation strategy for the Act. The many

complaints that we receive each year demonstrate that. I understand that a new government would want to examine an initiative put forward by the previous administration. However, the strategy's objectives should be universally accepted since they are an extension of the Act. I therefore hope that your government will demonstrate its support for official languages by officially adopting a strategy for the implementation of the Act as quickly as possible.”

Update

In a letter dated April 15, 2011, Premier Alward responded to the Commissioner's concerns as follows:

“As for the adoption of an OLA implementation plan mentioned in your letter of March 30th, rest assured that our government remains committed to putting a strategic tool in place to promote a better understanding of official language obligations within the Public Service. This would also ensure that all legal obligations in terms of official languages are met by government departments and agencies. Our review of what has already been developed will soon be completed and we will make the necessary decisions in the coming months.”

Language of Court Decisions

Taking Action

Under the *Official Languages Act* of New Brunswick, court decisions must be published in both official languages if the question of law is of interest or importance to the general public or if the proceedings were conducted in whole or in part in both official languages. For the past several years, despite the Commissioner's recommendations, the Department of Justice and Consumer Affairs has interpreted this obligation under the Act in a very restrictive manner. As a result, important court decisions have been published in only one official language. Owing to a change in interpretation on the part of the provincial government and the conclusions of a working group set up to study this issue, it was possible to bring together all of the elements necessary to ensure this obligation is met. The government must now take action.

Background

Following the filing of a complaint by the Association des juristes d'expression française du Nouveau-Brunswick (AJEFNB) in October 2003, the Office of the Commissioner of Official Languages began an investigation into whether the province's courts were complying with section 24 of the *Official Languages Act*, which prescribes that

Any final decision, order or judgment of any court, including any reasons given therefore and summaries, shall be published in both official languages where (a) it determines a question of law of interest or importance to the general public, or (b) the proceedings leading to its issuance were conducted in whole or in part in both official languages.

The AJEFNB's interpretation of "shall be published in both official languages" was that the decisions, orders, and judgments of a court are to be made available in both languages simultaneously prior to being distributed. That interpretation is based on subsection 24(2) of the OLA, which states that only in extraordinary circumstances could a court publish its decision first in one official language and then in the other. The AJEFNB also pointed out, and the Commissioner's investigation confirmed, that the Government of New Brunswick did not seem to have a policy for determining which decisions, orders, and judgments merited translation pursuant to section 24. As for the interpretation of the word "published," the Department of Justice and Consumer Affairs informed the Commissioner that it meant the moment the final decision, order, or judgment was printed in New Brunswick Reports. (This publication is a compilation

of the province's court decisions produced by Maritime Law Book, a privately owned company located in Fredericton that serves as the provincial government's official publisher). The Commissioner was unable to find any basis for this interpretation in the case law provided by the Department of Justice and Consumer Affairs.

The Commissioner's investigation revealed as well that the Department of Justice and Consumer Affairs had delegated the responsibility for deciding which decisions should be translated to the staff of Maritime Law Book. This meant that anyone wanting to read the translation of a court decision written in English, for instance, would have to wait until the decision was published in New Brunswick Reports before being able to read it in French and then, as of January 2005, only if the staff at Maritime Law Book deemed the decision worthy of translation.

The only exception to this state of affairs was the New Brunswick Court of Appeal. In the case of *Town of Caraquet v. New Brunswick* (Minister of Health and Wellness), Chief Justice Ernest Drapeau declared that a decision is considered published within the meaning of the OLA when it is filed with the Office of the Registrar. He added that the decision in the case at hand would be published as soon as it had been translated into the other official language. So, for the Court of Appeal, the obligation imposed by the OLA was clear: Final decisions, orders, and judgments are to be translated immediately and then filed with the Office of the Registrar in both official languages.

Following his investigation, the Commissioner concluded

that the Department of Justice and Consumer Affairs' interpretation of the OLA with regard to the language of court decisions, orders, and judgments did not respect the public's right to receive an equal level of service in the official language of choice. Since most decisions, orders, and judgments rendered by New Brunswick courts are in English, the complainant suggested, and the Commissioner agreed, that this put Francophones at a significant disadvantage.

The Commissioner therefore recommended that:

- the Department of Justice and Consumer Affairs consult immediately with all stakeholders in order to develop a policy on the translation and availability of final court decisions, orders, and judgments that is in compliance with the OLA and its principles and that, once the consultation has been completed, steps be taken immediately to implement the policy;
- that such a policy be similar to the one adopted by the New Brunswick Court of Appeal;
- that the Department of Justice and Consumer Affairs take steps as soon as possible to ensure that all decisions appearing in New Brunswick Reports (bound edition or other) be published in both official languages;
- if the Department did not agree with his interpretation of the word "published", it take the necessary steps to refer the matter to the New Brunswick Court of Appeal as soon as possible.

Despite the evidence of the conclusions in the Commissioner's report, the Department of Justice and Consumer Affairs refused to act on these recommendations.

Moving Forward

A few years later, in fall 2009, the arrival of a new Minister of Justice and Consumer Affairs made it possible to move forward on this issue. The Department finally recognized the correctness of the Commissioner's interpretation of section 24. Moreover, following the Commissioner's recommendation, the Minister of Justice and Consumer Affairs set up a working group to examine the publication and translation of New Brunswick court decisions.

In January 2011, that working group submitted its final report to the Minister. In the document, the group proposed a series of criteria to guide judges in determining which decisions should be translated and published simultaneously. The group suggested that a judgment be translated if the decision:

- lays down a rule of law or changes or modifies an existing rule;
- applies an existing rule of law to new and different circumstances;
- interprets a statute;
- criticizes existing law or overrules or casts doubt on a published decision;
- affirms, reverses, or varies a published decision of a lower court;
- contains a useful review and discussion of law applied by a lower court;
- deals with a point of practice or procedure;
- resolves an apparent jurisprudential conflict.

The working group also recommended the establishment of a centralized management system within the legal system for coordinating the translation of judgments. That management system would enable judges to know the turnaround time for a translation and, consequently, determine whether it would result in a hardship to the parties to the proceedings. (It should be recalled that section 24(2) of the Act provides that a judgment may be published first in one official language and then, at the earliest possible time, in the other official language where the publication of a final decision, order, or judgment in both official languages would result in a delay or injustice or hardship to a party to the proceedings.)

Taking Action

The Commissioner believes that the working group's report contains most of the elements required for full implementation of section 24 of the OLA. He supports the idea of establishing a protocol or guidelines that would guide judges in interpreting section 24(1). It should be noted that New Brunswick has already had similar protocols, specifically the Woman Abuse Protocols and the Child Victims of Abuse and Neglect Protocols. The provincial government must now take action.

The vitality of French in Francophone schools in a minority setting

A group of parents in southeast New Brunswick informed the Commissioner of their concerns regarding the quality of French in the Francophone schools. Since the *Official Languages Act* does not apply to the education sector, the Commissioner does not have the authority to intervene directly in this matter. However, aware of the importance of this issue, he consulted with experts in order to gain a better understanding of the problem and suggest avenues for addressing this challenge.

In November 2010, the group *Parents pour une éducation en français de qualité* (parents for a quality French education) sent the Commissioner a document entitled “Pourquoi la majorité des élèves francophones du Sud-Est du Nouveau-Brunswick est incapable de lire, écrire et s’exprimer correctement en français?” (why are a majority of Francophone students in southeast New Brunswick unable to read, write and express themselves correctly in French?). In that document, the parents expressed their deep concern with respect to the quality of written and spoken language in the schools and offered a range of ways to correct the situation.

The Commissioner understood the parents’ concerns. They chose French schools so that their children could acquire a command of the language. They are therefore entitled to expect that the quality of the language be a priority of the schools. The Commissioner also recognized that Francophone schools in a minority setting face special challenges.

- *Unequal level of knowledge of the French language*
Increasingly, students in Francophone schools are from exogamous couples (just one of the parents speaks French). Since English is often the language routinely used at home, the children of these couples enter the Francophone school with a very limited knowledge of French. In order to keep such children from falling behind in their academic progress, the school provides francization programs for them.
- *Strong English influence*
In the minority setting, school is often one of the few places that exist for Francophone socialization. It must therefore serve as a counterbalance to an environment where English is omnipresent and

exercises a strong influence even on the language practices of the students. The relevance of language and Francophone culture may then arise for the students. Instilling in students the desire to speak and live in French is a complex mission.

- *Language variation and linguistic insecurity*
All languages evolve and produce variants. The discrepancy between a so-called “standard” language can cause the speaker to develop linguistic insecurity, i.e., the feeling of not being able to speak and write in one’s mother tongue correctly. Schools must avoid fueling the linguistic insecurity, since that feeling can undermine students’ efforts and create a negative attitude toward the French language.

Given the fundamental role that Francophone schools play in maintaining the vitality of the French language, the Commissioner considers it imperative that they have adequate strategies and tools to meet the challenge of safeguarding the vitality of the language. In this regard, the Commissioner is delighted by the Department of Education’s language and cultural development policy. That project, which involves a broad partnership, is expected to better equip schools to meet the challenge of safeguarding French vitality. Since the policy is still being developed, the Commissioner would like to take this opportunity to offer a series of suggestions.

Ici, nous parlons français (French spoken here): a new alliance with the community

In the minority setting, Francophone schools take in many bilingual students. It is understandable that these students want to express themselves in English outside the classroom. Such a practice, however, hinders the school’s efforts to create an environment conducive to the full mastery of French.

The Commissioner believes that Francophone schools must affirm their mission more clearly with parents and students so that all work together to create an environment for learning French.

For that to happen, the Commissioner believes that Francophone schools must establish a strong culture of promoting the language that is based on a new alliance between schools, parents, students, and the community. In that regard, the Commissioner suggests to draw inspiration from the community schools program, which focuses on the contribution of the community to encourage student success.

Such a new alliance would have the advantage of establishing clear roles for all the parties in creating a linguistic environment that is fully Francophone. Thus, parents would be asked to create an environment conducive to the use of French at home, and this means simple gestures such as speaking French at home, playing in that language, and watching French television. For their part, schools could promote the use of French outside the classroom by using turning time devoted to recreation and school transportation into an opportunity for students to speak French while having fun. To foster student support, these activities could be developed and run by them. This culture of valuing the language would also mean that all teachers and staff would be expected to promote the French language as part of their work. Lastly, community support could further affirm the importance of mastering the French language outside the school context.

Forging ties

Students in a minority setting often lack a social environment enabling them to become proficient in their language. Such a situation may even lead them to wonder about the relevance of learning this language. For that reason, the Commissioner believes that Francophone schools must forge more ties with other Francophone communities, including schools in the Canadian and international Francophonie. Such an approach would make students aware of the importance and modernity of the French language. In this regard, the Commissioner believes that new communication technologies and the use of social media could be very practical and inexpensive when forging such ties.

Moreover, creating these ties could allow students to see for themselves the importance of acquiring standard French in order to be able to communicate with Francophones across the globe.

Learn the language by speaking it

There are fewer opportunities to speak French in minority settings. Schools must compensate for this deficiency by becoming a place of communication. The Commissioner therefore shares the view of educators who believe that instruction in Francophone schools should be more focused on language, both oral and written.

[Translation] “The communicative approach allows us to see language as an expression of personality and culture. We use language to reflect and to think and for interpersonal communication, but mainly we use it to express ourselves. It is in that spirit that we must look at language instruction, i.e., in all of its various functions (Cazabon, 1997). Indeed, to truly enter into a relationship with the community, the teacher could make the work both communicative and public (posting signs in the corridor, inviting another class to listen to a presentation, communicating research results to the community by publishing an article in the local paper, participating in community radio, writing a letter to a real person...). These types of communication broaden the language repertoire and they can be done both orally and in writing. They make students aware of the fact that French is used to communicate, which is perhaps something that they rarely observe inside the reality of their communities. Without a communicative approach and without the chance to communicate in French in the community, students may perceive French as a language associated only with school. Worse still, they will see the language as something that is only written and spoken in order to be evaluated (and corrected) by the teacher.”

Cormier, M. (2011). La pédagogie en milieu francophone minoritaire (education in a Francophone minority setting). In J. Rocque (ed.), La direction d'école et le leadership pédagogique en milieu francophone minoritaire (pp. 287-306), Winnipeg: Presses universitaires de Saint-Boniface.

From linguistic insecurity to linguistic security

It is easy to juxtapose standard French against the vernacular language spoken in a region. But such an approach is in fact a false debate. Indeed, all languages are subject to the phenomenon of variation. The challenge is rather to ensure the acquisition of standard French at school without fueling linguistic insecurity.

The work¹ of researchers Annette Boudreau and Lise Dubois sheds a very interesting light on the students' impression of their language and the linguistic insecurity that may result. To counter the negative impressions, the researchers make various recommendations for Francophone schools. In particular, they suggest helping students to understand the origins of the linguistic distinctiveness of their communities in order to put the differences into perspective. That way, students should also gain an understanding of the issues surrounding this question, including the need to expand their linguistic repertoire so they can communicate effectively in various situations. The researchers also suggest that schools help students to broaden their technical vocabulary. Such a measure would allow them to see that French describes our modern age just as well as English. Lastly, Annette Boudreau and Lise Dubois recommend placing a greater emphasis on literature (regional literature in particular), and its role as a creation tool in order to change students' impression of the French language.

While acknowledging the phenomenon of language variation and linguistic insecurity, the Commissioner believes that it must be clear to all that the role of the Francophone school is to enable each student to expand his/her repertoire and gain a mastery of standard French. To do so, schools must create an environment that encourages – in all subjects and at every level – ongoing efforts to attain that goal. The introduction of such a culture should not be done by disparaging the language variation, but rather by demonstrating the relevance of standard French in a context of openness to the world. In many ways, a mastery of standard French is the best antidote for linguistic insecurity.

Support for teaching staff

“These teachers are dealing with the same insecurities and often find it just as difficult to establish contact with the culture of the minority language as their students do. To allow them to become “transmitters of culture” [...] they must experience identity building and a positive relationship with the language and culture.”

Excerpt from the Université de Moncton's Faculty of Education's brief to the Commission on Francophone Schools.

Teaching in a minority setting is fraught with challenges and it is vital the teaching staff be well-equipped to meet them. The Commissioner shares the recommendations of the Chair of the Commission on Francophone Schools when it comes to the importance of having training that is adapted to the minority reality. In his Report, the Chair proposes the following possible solutions:

- In the context of initial training, Université de Moncton's Faculty of Education must increase courses and content related to the issues and challenges of teaching in a minority setting, including the challenges related to francization, while making sure that the most important courses are designated as compulsory. Several excellent suggestions have been made, including setting up a faculty committee that would be in charge of content development, and even developing a course in identity building that would increase students' awareness of their role as transmitters of culture.
- Workshops on teaching adapted to a minority setting and identity building must be offered in all schools. The Commission commends the announcement that the course "EDUC 4323 - Éducation en milieu minoritaire" will become compulsory; however, most of the teachers currently in the system have not been able to take this course. Raising awareness of teaching in a minority setting must be an integral part of professional development.

¹ Représentations, sécurité/insécurité linguistique in Francophonie minorités et pédagogie. Sylvie Roy and Phyllis Dalley (ed.). University of Ottawa Press. pp. 145-175.

- The Commission is proposing to develop another course, similar to the one on teaching in a minority setting, on educational leadership in a minority setting intended for school and school district administrators.

A solid foundation

Over the course of the consultations the Commissioner conducted on this matter, he found that all participants agreed on the fact that Francophone schools had to

ensure that all students acquire a full command of standard French. Any differences of opinion that do exist are centered mainly on the ways in which to achieve that goal.

Mastering a language is the foundation on which it can flourish. Given the importance of this issue, the Commissioner believes that all stakeholders should be able to agree on an overall strategy through which Francophone students can ensure the influence of the French language both here and elsewhere in the world.

Official Languages and Health

Measures Taken by Regional Health Authorities

In July 2010, the New Brunswick Health Council (NBHC) published the results of the first province-wide survey on quality of care in provincial hospitals. One of the elements evaluated was access to care in the official language of one's choice. It was determined that 91% of patients who wanted to receive care in English indicated that they had received services in that language. Of patients who chose French, 74.6% responded that their language choice had been respected. According to the NBHC, "language of service is an area where many facilities still have work to do, in both of the province's official languages".

The Commissioner believes these results confirm the need for the regional health authorities to develop and implement a strategy aimed at ensuring full delivery of services in both official languages. Furthermore, according to the new section 18.1(3) of the *Regional Health Authorities Act*, the regional health authorities are responsible for improving the delivery of French-language health services. Hence, the Commissioner wrote to the two regional health authorities to inquire about their intentions regarding an official languages strategy.

The Horizon Health Network informed the Commissioner that it had adopted an official languages strategic plan on November 25, 2010. That plan sets out objectives to be achieved by 2014, as well as a series of measures relating to awareness, service improvement, and performance evaluation. In addition, the Horizon Health Network set up a Francophone liaison committee, which held its first meeting on January 31, 2011. Lastly, it adopted an official languages policy to ensure that all staff understand their obligations in this regard.

The Vitalité Health Network responded that it had started developing an official languages action plan. In a subsequent letter on how this initiative is progressing, the organization's Chief Executive Officer specified that the areas of involvement and objectives to be attained have already been defined. The activities that will make it possible to achieve those objectives remain to be determined.

The Commissioner is pleased by the proactive attitude of the regional health authorities and has every hope that these implementation plans will lead to full compliance with their linguistic obligations.

Survey on Hospital Patient Care Experience in New Brunswick

The objective of this survey, conducted by the New Brunswick Health Council, was to provide baseline data and information about each hospital in the province in order to be able to measure and monitor improvements over time. The respondents were hospital patients who had spent at least one night in an acute care setting during the months of November and December 2009 and January 2010. More than 10,000 questionnaires were mailed out, with a response rate of nearly 50%.

Other Interventions by the Commissioner

Use of Social Media: Adopt Guidelines to Stay on Course

In view of the growing use of social media by the public, a number of public agencies are thinking about using, or are already using, these new communication tools. Over the past year, some organizations have contacted the Commissioner's office to inquire about the application of the *Official Languages Act* to social media.

In several instances, the office's response was to confirm that the Act's provisions applied in full. In others, the office was asked to comment on the issue of compliance in certain very specific cases. Since the office's role is not to set rules, staff members were able only to reiterate certain general principles of the Act.

In the Commissioner's view, these inquiries clearly demonstrate the need to establish guidelines for public agencies in this regard. Furthermore, he has recommended this to the Premier. Related to the Language of Service Policy, such guidelines would set out general rules and deal with particular situations, including the following:

- the use of bilingual public forums and unilingual forums;
- the use of personal accounts (e.g., Twitter) by government employees and the resulting linguistic obligations;
- the use of third parties in the management or moderation of government public forums.

Voice Mail System: Please Wait...

The active offer of service in both official languages is a key feature of the OLA since it encourages New Brunswickers to exercise their language rights. Yet the provincial government's automated voice mail system is not fully compliant with this principle. Although employees can record a bilingual greeting, the automated greeting (if the personalized message option is not chosen) and the standardized instructions (provided automatically during and at the end of the message) are in only one language, English or French, depending on the choice of the person whose voice mail it is.

On February 9, 2010, the Department of Supply and Services wrote to the Commissioner with an update on this. The Department indicated that the new system did not adequately meet government policy on active offer and that an "acceptable solution" could not be put in place until February 2011, at the earliest.

As of March 31, 2011, that "acceptable solution" had still not been implemented. The Commissioner wrote to the New Brunswick Internal Services Agency (the agency now responsible for this matter) to obtain details about the scheduled date for the implementation of a solution that is fully compliant with the *Official Languages Act*. When this report went to press, the Commissioner had still not received a reply.

Possible Privatization of NB Liquor: Ensuring Protection for Language Rights

In view of the fight against the deficit, the provincial government asked NB Liquor to study various options for increasing its profitability. A merger with other liquor corporations in the Atlantic region and privatization were stated publically.

As a Crown corporation, NB Liquor is subject to the *Official Languages Act* and must therefore serve its customers in both languages. The Commissioner therefore believes it is very important that the linguistic obligations imposed on NB Liquor be maintained should it be privatized or merged into a new corporation serving the Atlantic provinces.

On February 9, 2011, the Commissioner wrote to the Premier to make him aware of this issue. Here is an excerpt from that letter:

"When the issue of privatizing Crown corporations and the impact of such initiatives on language rights comes up, we often think of the case of Air Canada. When that corporation was privatized in 1988, arrangements were made to ensure that the new company continued to operate and serve people in both official languages. Unfortunately, the reports of federal official language commissioners always point to serious problems. Furthermore, the federal commissioner recently recommended that Parliament intervene once again to fill the legal void that remains with respect to the linguistic obligations of Air Canada's various entities. In our view, this example shows that we must proceed with utmost rigour from the very start of a privatization process to ensure respect for language rights.

Protection of language rights should be a prime consideration in any effort aimed at privatizing a Crown corporation. I sincerely hope that such will be the case should NB Liquor be privatized."

Update

In a letter dated March 1, 2011, Premier David Alward responded as follows:

"Please be assured that our government remains committed to the Act, and any discussions about the future of the beverage alcohol retail model in the province will be respectful of it."

Investigations

Role of the Commissioner as regards Compliance with the *Official Languages Act*

The Commissioner conducts and carries out investigations either pursuant to any complaint made to the Commissioner or on his own initiative. He then reports and makes recommendations with a view to ensuring compliance with the OLA when he believes there has been a breach of the Act. The Commissioner makes every effort to follow up on complaints as swiftly as possible by first ascertaining the relevance of each complaint and then, if necessary, interceding with the institutions concerned.

The Commissioner works discreetly and in a spirit of cooperation with the institutions concerned and favours a transparent approach characterized by support and collaboration. However, the Commissioner will not, if confronted by a blatant lack of cooperation on the part of an institution, shy away from publicly denouncing such resistance in his annual report to the Legislative Assembly.

Filing of Complaints

Anyone wishing to file a complaint may do so either in person, by phoning, in writing, or by e-mail. The Office of the Commissioner's website (www.officiallanguages.nb.ca) describes the procedure for filing a complaint. All complaints received are considered confidential, and every effort is made to keep the complainant's identity confidential.

The Commissioner may refuse to investigate or cease to investigate any complaint if, in his opinion, the complaint is:

- trivial, frivolous, or vexatious;
- is not made in good faith;
- does not involve a contravention or failure to comply with the Act;
- does not come within the authority of the Commissioner.

In such cases, the Commissioner must provide the complainant with reasons for the decision to do so.

Main steps in complaint-handling process

- The Office of the Commissioner receives the complaint and determines if it is admissible for investigation.
- If the complaint is accepted, the Commissioner notifies the institution concerned of his intention to investigate.
- The investigation is carried out.
- At the end of his investigation, the Commissioner forwards his report to the Premier, the administrative head of the institution concerned, and the person who filed the complaint. He may include in his report any recommendations he deems appropriate as well as any opinion or reasons supporting his recommendations.

If the complainant is not satisfied with the conclusions of the Commissioner, he or she may apply to the Court of Queen's Bench of New Brunswick. A judge may decide on the remedy that he or she considers appropriate and just in the circumstances.

It should be noted that nothing in the Act precludes a complainant from applying directly to the Court of Queen's Bench instead of filing a complaint with the Commissioner of Official Languages. However, such a process entails costs for the person initiating it.

Also, the Commissioner may take up a matter with an institution without there being an official investigation. For example, a situation that does not directly contravene the OLA may nonetheless adversely affect the advancement of the two official languages. Under his promotional mandate, the Commissioner may see fit to make the institution concerned aware of this situation.

Complaints Received between April 1, 2010, and March 31, 2011

Between April 1, 2010, and March 31, 2011, the Commissioner's office handled 200 complaints. Of that number, 133 were admissible, with 115 based on lack of service in French and 18 on lack of service in English. A total of 48 complaints were deemed inadmissible on the grounds that they did not come under the Commissioner's authority or did not concern

an institution within the meaning of the OLA, and 19 complaints were referred to other institutions for consideration. In addition, the Commissioner's office responded to 72 requests for information.

Complaint Trends since the Establishment of the Office of the Commissioner of Official Languages

The Commissioner's office notes that the grounds for the complaints filed in 2010-2011 are very similar to those of previous years. The Commissioner remains convinced that the best way for the provincial government and its institutions to fulfill their linguistic obligations towards the public would be to adopt a strategy for implementation of the OLA that would apply to all of the institutions concerned.

Statistics 2010 - 2011

TABLE 1 Complaints and requests for information

	French	English	Total
Admissible complaints	115	18	133
Inadmissible complaints	21	27	48
Complaints referred elsewhere ¹	11	8	19
TOTAL OF COMPLAINTS	147	53	200
Requests for information	24	48	72

¹ 1 Complaints referred to: federal Office of the Commissioner of Official Languages, Human Rights Commission, Ombudsman, other.

TABLE 2 Admissible complaints by category

Category	French	English	Total
In person	24	5	29
Signage	11	1	12
Telephone communication	18	3	21
Website	10	0	10
Documentation	26	8	34
Other	26	1	27
TOTAL	115	18	133

TABLE 3 Status of admissible complaints

Status	French	English	Total
Complaints under investigation or completed	82	6	88
Investigations not initiated (pending additional information from the complainant and/or institution)	21	1	22
Complaints withdrawn [by the complainant or the Commissioner under subsection 43(11) of the OLA]	12	11	23
TOTAL	115	18	133

TABLE 4 Institutions targeted and status of complaint-handling

Institutions	Number of Complaints	Investigations under way	Investigations completed	Founded	Unfounded
Atlantic Lottery Corporation	5	1	4	4	0
Communications NB	1	0	1	0	1
Efficiency NB	2	1	1	1	0
Election NB	6	6	0	0	0
Environment	1	0	1	0	1
Finance ¹	19	1	18	2	16
Health ²	5	3	2	2	0
Justice and Consumer Affairs	5	3	2	2	0
Legislative Assembly	1	0	1	1	0
Local Government ³	12	8	4	4	0
Natural Resources	1	0	1	1	0
NB Liquor	5	0	5	5	0
NB Power	1	1	0	0	0
Office of the Premier	1	0	1	1	0
Post-Secondary Education, Training and Labour	3	1	2	2	0
Public Safety	4	1	3	3	0
Service New Brunswick	5	2	3	3	0
Social Development	2	0	2	2	0
Supply and Services	2	0	2	2	0
Tourism and Parks	2	0	2	2	0
Transportation	2	1	1	1	0
Wellness, Culture and Sport	2	0	2	2	0
Westmorland-Albert Solid Waste Corporation	1	0	1	1	0
TOTAL	88	29	59	41	18

1 Three of these complaints are related to the services provided by the Department of Finance. The other sixteen had to do with the services of Casino New Brunswick. These are unfounded under the *Official Languages Act* but raise important questions with respect to the responsibilities under the *Act recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. See page 43 for more details.

2 One of these complaints is related to the services provided by the Department of Health. Another one is related to the services provided by Ambulance NB. The other three (3) had to do with health care facilities.

3 One of these complaints is related to the services provided by the Assessment and Planning Appeal Board. The other eleven (11) had to do with the services of certain municipalities (Fredericton, Campbellton, Dalhousie, Miramichi, Saint John). None of these complaints are related to the services provided by the Department of Local Government.

Selection of Complaints

Here is a selection of complaints resolved by the Office of the Commissioner of Official Languages in 2010-2011. These complaints, which were founded, illustrate the wide range of situations brought to the Commissioner's attention.

Department of Health - Ambulance New Brunswick (ANB)

On May 12, 2010, the father of the complainant felt some discomfort while at a restaurant in Lavillette, on the Acadian Peninsula. An ambulance was therefore called to the premises. According to the complainant, none of the three attendants on board the emergency vehicle could speak French, the language of the patient and his family. The complainant was critical of that fact, particularly since the situation was making the entire family anxious.

Observations and analysis as a result of the investigation

The provisions of the *Official Languages Act* whose application is at issue in this case are as follows:

27 Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.

28 An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.

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

Punctuality, simultaneity, and equivalency in the quality of the services obtained are the concepts underpinning these provisions.

The investigation conducted by the Office of Commissioner did in fact reveal that none of the three attendants on board the emergency vehicle could speak French. Since that was in violation of sections 27, 28, and 28.1 of the OLA, the complaint is therefore founded.

In September 2008 and 2009, the Commissioner made a series of recommendations to ensure that Ambulance NB fully meets its linguistic obligations. Those recommendations dealt with the recruitment and training of bilingual personnel, better distribution of staff, and mandatory training for ambulance attendants concerning the OLA.

In connection with this investigation, the Commissioner requested an update on the application of those recommendations. Here is an excerpt from the Department of Health's response:

“The official languages consultant monitored ANB to ensure that your recommendations were being implemented, and the following changes have been made:

- Paramedics take e-training on official languages. In a March 2010 assessment, 85% of paramedics had completed the program, and the rest were to complete it by July 31, 2010.
- Work schedules have been changed to ensure better deployment of bilingual resources, and translation services are available at the medical communication centre to help paramedics facing challenges related to official languages.
- In July 2010, more than 80 new graduates will be hired and deployed strategically in order to meet the linguistic profile.”

Conclusions and recommendations

Being of the opinion that the recommendations made in the two previous investigation reports are still relevant, the Commissioner is applying them to this matter as

well. In addition, where some of these recommendations have already been implemented, the Department, in cooperation with ANB, must determine the degree of success achieved and make any necessary adjustments.

This is the third year in a row that the Commissioner has reported on deficiencies in the delivery of French-language services by ANB. Although the institution has taken some corrective action, the Commissioner believes that the incident that occurred on the Acadian Peninsula shows that it still has much work to do. The institution must absolutely step up its efforts to meet its linguistic obligations diligently. It must act now, because respect for language rights and patient safety leaves no room for complacency or half measures. To that end, the Department, in cooperation with ANB, must now implement a complete, comprehensive official languages strategy. The Commissioner therefore recommends the following:

Recommendation

That the Department ensure the development of a master plan that provides ANB with a comprehensive strategy regarding communications and services in both official languages.

This plan should include:

- an evaluation of the language skills of its personnel to determine if ANB is adequately staffed to meet OLA requirements, i.e., that it serve the public equally in both official languages at all times throughout New Brunswick;
- a periodic review of that evaluation;
- random checks designed to determine whether the measures set out in the master plan are being implemented on a day-to-day basis.

Department of Justice and Consumer Affairs - Miramichi Courthouse

On November 26, 2009, the complainant received a notice summoning him for jury duty. Since the trial was to take place in English and the complainant believed his skills in that language to be limited, he immediately telephoned Sheriff Services in Miramichi to request that he be released from that obligation. The call was transferred to an officer who answered in English only and did not inform the complainant that he had the right to be served in the language of his choice. When the complainant asked the officer if he spoke French, the officer replied, "No, I don't speak French," and did not offer to transfer the call to a co-worker who could serve the complainant in French.

Observations and analysis as a result of the investigation

Section 27 of the OLA states that "members of the public have the right to communicate with any institution and to receive its services in the official language of their choice." Furthermore, it is up to the institution to ensure that members of the public are able to enjoy this right at all times and to inform them of that right at first contact.

The delivery of services in the language chosen goes well beyond mere accommodation. The OLA is designed to guarantee equal access, in either of the two official languages, to all services provided by the offices of the institutions of the Legislature or the Government of New Brunswick. Moreover, equal access must be

reflected in the availability of service, which is to be prompt, courteous, of equal quality, and available in the language chosen by the client without undue transfers or waiting periods. Hence the importance of making an active offer of service in both official languages and rigorously meeting all legal obligations arising from the OLA.

When the complainant telephoned Sheriff Services, not only was there no active offer, but his language rights were not respected. The complaint is therefore founded.

This is not the first time the Commissioner has contacted the Department of Justice and Consumer Affairs regarding complaints about French-language services at the Miramichi Courthouse. Over the past few years, he has conducted three investigations during which he discussed issues relating to the delivery of services in accordance with OLA requirements.

In a letter dated March 26, 2010, the Department of Justice and Consumer Affairs informed the Commissioner of corrective measures taken to avoid any incidents that could interfere with the application of the OLA.

“In the Sheriff Services office in Miramichi, there are currently 2 bilingual employees, 7 unilingual English employees, 2 vacancies, and 2 bilingual casual employees. The linguistic profile for this group is being changed to a requirement of 6 bilingual employees and 6 unilingual English employees. Therefore in upcoming competitions, we will be recruiting bilingual employees to ensure that we are meeting the new requirement.

The Department has reminded all staff in the Miramichi Sheriff Services office of their obligation under the OLA to provide an active offer of service in both official languages and to seek assistance from a bilingual co-worker, if necessary. We have also requested that all staff complete the online i-learn course on Language of Service.

Until we recruit more bilingual staff in the Miramichi Sheriff Services office, we have made arrangements with Court Services in Miramichi to seek assistance from their bilingual staff, if necessary. We can also transfer calls to the Sheriff Offices in Bathurst, Edmundston, or Moncton if absolutely necessary.”

Conclusions and recommendations

The Commissioner believes that the Department must show more determination in ensuring that the measures in place are effective and produce the anticipated results. He therefore recommends the following:

Recommendation 1

That the Department continue to make random active offer checks but make them frequently and in all of the administrative offices of the Provincial Court. The Department must also adopt a way of determining whether employees who have taken the online i-learn course on language of service or any other training regarding their responsibilities with respect to services in both official languages are able to understand and implement all of the elements necessary to ensure that they are acting in compliance with OLA requirements.

As for the linguistic composition of the staff of the Sheriff Services office in Miramichi, the Commissioner believes that the current situation requires more rigour on the Department's part. The Department cannot afford just to wait for future competitions to meet what appears to be a current need. The Department suggested that, for the time being, if need be, unilingual employees could transfer calls from citizens who have chosen French as their language of service to the Sheriff Services office in Bathurst, Edmundston, or Moncton. In the Commissioner's view, this is just a stopgap measure that should be used only in the short term. He therefore recommends the following:

Recommendation 2

That the Department set a tighter schedule for the hiring of bilingual employees.

For several years now, the Commissioner has been recommending that the provincial government adopt a master plan to ensure full implementation of the OLA. In 2009, the provincial government accepted that recommendation and announced the development of a comprehensive strategy that would have to make it possible to identify the measures necessary to ensure that all departments meet their obligations under the

Act and propose positive measures for the development of the linguistic communities as defined by *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

This case provides the Department with the opportunity to start developing a plan immediately that will enable it to meet the challenges it faces. The Commissioner therefore recommends the following:

Recommendation 3

That the Department develop an official languages action plan (in accordance with the government's proposed official languages strategy initiated by the Premier) concerning, among other things, the linguistic composition of the staff of the Department to ensure that it is able to serve the members of the official language communities equally and consistently.

Department of Wellness, Culture and Sport - New Brunswick Museum

The complainant, a French immersion teacher, considers the quality of the French-language services provided by the guides at the New Brunswick Museum to be unacceptable. During a school tour that was supposed to have been given in French, the complainant noted that the French vocabulary of the guides was so poor that they had to resort to using many English terms. Moreover, according to the complainant, they were unfamiliar with some of the basic rules of French, such as the use of the feminine and masculine.

Observations and analysis as a result of the investigation

At first glance, the linguistic profile of the staff responsible for public services at the museum appears to be impressive: nine bilingual positions and one Anglophone position. The levels of linguistic proficiency associated with these bilingual positions also appear to be satisfactory. The question is therefore why, despite this, the complainant was able to note the deficiencies that were reported to us.

The Department indicated that, until quite recently, the New Brunswick Museum (NBM) was content to rely on the statements in résumés or immersion certificates to determine an applicant's level of linguistic proficiency.

The Commissioner believes that this practice cannot guarantee that the person hired for a position actually has the level of proficiency required. He therefore approves the NBM's decision to require that henceforth applicants undergo an oral proficiency assessment

administered by the Department of Post-Secondary Education, Training and Labour and provide the NBM with a copy of the certificate obtained following that assessment. Since these certificates are valid for three years, it is important that the NBM ensure that its employees maintain their level of proficiency during that period and undergo another assessment when they expire. The Commissioner hopes that the training offered to permanent employees and casual guides/interpreters hired in the long term will help to maintain proficiency.

Also, the Commissioner was interested to note the measures taken by the NBM during the summer to ensure that summer students are assigned to work teams in a manner consistent with a linguistic profile that complies with OLA requirements. He wishes to point out that this profile absolutely must remain balanced throughout the year.

The NBM is the only institution of its type in New Brunswick. Since it welcomes visitors from all over, it is essential that the services offered to the general public reflect a province where French and English have equal status.

The Commissioner commends the corrective measures taken to remedy the situation underlying the complaint and hopes they will contribute to improving the quality of service delivery at the NBM. Although this

complaint is founded, he does not consider it necessary to make any formal recommendations in this matter. However, he does strongly encourage the Department and the New Brunswick Museum to continue their efforts to offer equal services in both official languages at all times and in all circumstances.

City of Fredericton

A Fredericton resident brought deficiencies in bilingual road signage in the city to the Commissioner's attention. The complainant provided the Commissioner with photographs showing a unilingual English sign on a fire station, unilingual English street signs, and stop signs on which only the word "stop" appears.

Observations and analysis as a result of the investigation

Section 36 of the OLA requires all cities as well as municipalities whose official language minority population represents at least 20% of the total population to offer the services and communications prescribed by regulation in both official languages.

With regard to signage, the Regulation 2002-63 prescribes bilingualism for the following categories in accordance with the deadlines below:

- 1 [...]
 - (d) new building and facility signs
December 31, 2002
 - (e) existing building and facility signs
December 31, 2003
 - (f) new traffic signs
December 31, 2002
 - (g) existing traffic signs
December 31, 2005

Building signs

In its letter of reply, the City recognized that the sign for the Fredericton north fire station was not

in compliance with the Regulation. As a corrective measure, it proposed putting up a bilingual panel and asked the Commissioner to indicate whether the proposed solution was acceptable. The text on the new panel appears to comply with the provisions of the OLA and the above-mentioned Regulation. However, the Commissioner believes that such a panel is more of an accommodation and does not reflect the equal status of the two official languages. Indeed, the unilingual sign "Northside Fire Station" engraved in large letters on the building is much more visible to the public eye and can only transmit the message that French is a secondary language. The Commissioner does not object to the City's putting up the panel as a temporary measure, but it must also agree to come up with and implement a permanent solution that fully reflects the equal status of both official languages as quickly as possible.

The Commission notes that this is not a unique case. For example, the engraved sign on the E. John Bliss Water Treatment Plant is in English only as well. However, the bilingual sign on Willie O'Ree Place shows that the City does not always overlook its linguistic obligations. Why then, in certain cases, does the municipality fail to provide adequate signage while,

in others, the problem does not arise? Furthermore, those buildings and facilities were built recently, i.e., well after the deadlines set out in the Regulation. It is therefore difficult to understand why the wording of the signs was not considered when the buildings were being designed to ensure they met OLA requirements. Such rigour would no doubt enable the City to avoid running up extra costs in order to remedy the situation.

Street signs

The City indicated that its staff had issued a recommendation that bilingual street signs be installed when existing signs were replaced or new signs put up. It then added that, in June 2003, the municipal council had asked staff to implement this measure proactively, which, in the City's view, exceeded the regulatory requirements and made it possible to put up bilingual street signs gradually, at no additional cost. While the Commissioner notes the efforts made by the City in this regard, he believes that the latter's position is debatable at the least when it states that, under the terms of the Act, a municipality is not required to put up bilingual street signs.

The Commissioner believes that street signs serve as reference points for users of the local road system and therefore facilitate their movements through the city. Consequently, a generous interpretation of sections 1(f) and (g) of the Regulation would include street signs in the "traffic sign" category, and that is what the Commissioner recommend.

Discussions with the municipalities subject to the OLA show divergences in the interpretation of certain provisions of the Regulation, which point to its ambiguity. That is why the Commissioner is asking that the Office of the Premier, as part of the upcoming review of the Act in 2012, ensure that the provisions of the OLA and the Regulation are clarified.

Stop signs

With regard to road signs and, more specifically, stop signs, the City says the Transportation Association of Canada considers this term bilingual.

In the Commissioner's opinion, this matter should be considered not by looking at what is done elsewhere

but on the basis of the province's officially bilingual status. Indeed, this status and the measures arising from it are there to support the linguistic communities in their development and growth. We must examine these issues, keeping in mind the reason or motive that led to the adoption of legislative and other measures. The approach used must be based specifically on what our courts have decided. In the Beaulac decision, the Supreme Court states as follows:

"Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."

It is therefore clear that, in New Brunswick, government institutions must act in such a way as to support the official language communities.

As the New Brunswick Department of Transportation's Work Area Traffic Control Manual seems to indicate, bilingualism must be part of all road signage, including panels that inform road users that they must stop. Signs must therefore contain the words "stop" and "arrêt." It is true that this manual applies to provincial highways and not specifically to municipal roads. However, the message is clear as to the principle that should guide municipalities on this issue. Unfortunately, a quick look shows that the province's municipalities do not have a systematic or uniform practice when it comes to putting the words "stop" and/or "arrêt" on their signs. Indeed, some municipalities have put up signs containing both "stop" and "arrêt," some use only the word "stop," and others, the City of Fredericton included, have unilingual signs at some intersections and bilingual signs at others.

This lack of uniformity, the need to respect the equal status of both official languages, the obligation to support linguistic communities, and the adoption of a provincial signage manual are all factors that militate in favour of provincial government intervention to clarify the issue. It would be desirable to amend the OLA in order to resolve this issue once and for all and for this measure to dictate that, henceforth, bilingual "stop/arrêt" signs will be used across the province, including within municipalities. However, the Commissioner believes that municipalities should not wait for the

amendment to come into force to adopt the practice of ensuring that all new stop signs are bilingual. As the provincial capital, the City of Fredericton should certainly set an example. This should require only minimal effort and additional costs. The fact that the municipality gets all of its road signs from the provincial Department of Transportation and bilingual signs are already found on certain street corners in the city shows that everything is in place to adopt bilingual signs from now on.

Conclusions and recommendations

Over the past few years, the Commissioner has observed some improvement in municipal signage. However, this matter shows that the City of Fredericton is still facing some challenges in this regard.

As was mentioned earlier, Regulation 2002-63 under the OLA contains some ambiguities, and the Commissioner believes that some amendments are necessary. As a result, he makes the following recommendations aimed at both the City of Fredericton and the Premier, who is responsible for the administration of the OLA.

With regard to the City of Fredericton, the Commissioner believes that the development and implementation of a formal strategy for ensuring compliance with the obligations prescribed by the OLA and its Regulation would enable it to avoid the deficiencies and inconsistencies this matter has brought to light. The Commissioner therefore makes the following recommendations:

Recommendation 1

That the City adopt a comprehensive official languages master plan aimed at ensuring compliance with all of the obligations set out in the OLA and the Regulation.

Recommendation 2

That the City look at the signs on all of its buildings and municipal facilities to ensure that they meet the requirements of the Regulation and that it identify the measures to be taken for the signs that need to be corrected or replaced.

With respect to the lack of clarity of certain sections of the Regulation and the role that the government must play in order to clearly define the requirements for traffic signs and street signs, the Commissioner recommends the following:

Recommendation 3

That the Premier engage in a process that will enable the government to conduct an exhaustive study of the current situation regarding bilingualism in government and municipal signage and, without limiting the scope of the foregoing, focus specifically on the issue of stop signs and street signs. This study should evaluate the effectiveness of existing legislative measures and make the changes necessary to clarify signage requirements.

Casino New Brunswick

Language Rights: A Game of Chance?

The opening of Casino New Brunswick in the spring of 2010 caused quite a commotion. And for good reason: French-speaking clients were being asked to speak English at the gaming tables... Forty-one years after the adoption of the first official languages act, many felt that we had gone back to a time when English was the only language permitted to be used in Moncton.

While the provincial government deplored the situation, it defended itself, saying that the casino was a private enterprise and was therefore not bound by the obligations of the *Official Languages Act*. However, the same government, through the New Brunswick Lotteries and Gaming Corporation, had set the rules for the granting of this monopoly. Why did it not make it mandatory to deliver all services in both official languages?

The Office of the Commissioner of Official Languages received a number of complaints about the casino. However, there is a question that must be answered first: Does the *Official Languages Act* apply to Casino New Brunswick? A thorough analysis of the text of the act does not make it possible to answer this question definitively. However, the Commissioner believes that the New Brunswick Lotteries and Gaming Corporation, the government organization that chose the casino operator, had the power and duty to require the operator to serve its clientele fully in both official languages, in accordance with the principles of the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. It opted not to do so.

The government and Casino New Brunswick have made amends. French-language services at the casino have been improved. However, deficiencies remain.

At least this unfortunate matter shows that the *Official Languages Act* has to better protect the language rights of New Brunswickers in cases of public-private partnerships. The Commissioner hopes the government will take advantage of the review of the Act to improve this protection.

Highlights from the Investigation Report

The Commissioner's office received 16 complaints about Casino New Brunswick. They concerned numerous deficiencies with respect to the delivery of services in French, including the following:

- the dominance of the English language;
- the lack of services in French;
- the ban on speaking French at the gaming tables;
- the lack of bilingual slot machines;
- the English-only signage;
- the 1-800 number for contacting the casino's ticket office;
- the shortcomings in the French version of the casino's website.

Does the *Official Languages Act* apply?

The Commissioner's first task was to examine the *Official Languages Act* (OLA) carefully to determine whether it applied to Casino New Brunswick. That examination revolved around sections 1, 27, 29, and 30 of the Act (see *sidebar at page 44*).

The *Official Languages Act* does not cover situations where the Province grants private organizations, such as Casino New Brunswick, the exclusive right to operate a business. As a result, the Commissioner was unable to conclude that Casino New Brunswick is an institution of the government with obligations pursuant to sections 27 and 29 of the OLA. In addition, the Commissioner does not believe that the wording of section 30 enables him to state that Casino New Brunswick and the New Brunswick Lotteries and Gaming Corporation

(NBLGC) have linguistic obligations under this section. However, the Commissioner does believe that the situation would be quite different if section 30 of the OLA were better defined and if the expression “third parties on their behalf” were clarified, even amended, in order to include monopolies.

Although the *Official Languages Act* does not apply directly to Casino New Brunswick, the Commissioner believes the NBLGC still had some obligations. Since the NBLGC is an institution of the provincial government, it was responsible for ensuring that the services offered to the public by Casino New Brunswick were consistent to the greatest extent possible with the values and principles at the heart of the OLA and the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

The NBLGC says that Casino New Brunswick has acknowledged publically that it did not offer an acceptable level of bilingual services to its clientele and that it is taking steps to remedy that situation. In a letter dated January 24, 2011, the Corporation’s Chief of Operations brought the following points to our attention:

“The service improvements notwithstanding, your points regarding the provision of bilingual services are well taken. [...] Unfortunately, in our eagerness

to bring important economic benefits to the Province, we underestimated the private third party operator’s understanding regarding the importance of service provision in the language of choice, and regret that this has offended members of the community.”

Corrective Measures regarding the Complaints

The Commissioner notes the efforts made by Casino New Brunswick and the NBLGC since the casino opened to improve the delivery of services in both official languages. Here is an overview of those corrective measures (categorized by the deficiencies noted in the complaints).

Dominance of the English language and lack of services in French

- The NBLGC informed the Commissioner of the intensification of efforts to train employees and recruit bilingual staff so they can run games in both languages. Since the opening, the percentage of bilingual staff at the casino has gone from 40% to 62% (263 of the 425 employees are bilingual). All of the client service personnel are bilingual, and the management team believes that approximately 70% of the frontline staff can provide service in both languages.

Sections 1, 27, 29, and 30 of the Act

1 In this Act

"institution" means an institution of the Legislative Assembly or the Government of New Brunswick, the courts, any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of the Legislature or by or under the authority of the Lieutenant-Governor in Council, a department of the Government of New Brunswick, a Crown corporation established by or pursuant to an Act of the Legislature or any other body that is specified by an Act of the Legislature to be an agent of Her Majesty in right of the Province or to be subject to the direction of the Lieutenant-Governor in Council or a minister of the Crown.

27 Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.

29 Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

30 The Province and its institutions are responsible for ensuring that all services offered to the public by third parties on their behalf are delivered in both official languages.

- A new management structure was set up at the casino. In addition, representatives of the NBLGC meet regularly with the members of the casino's management team, and the delivery of services in both official languages is discussed regularly at those meetings.

Ban on speaking French at the gaming tables

- The casino currently offers bilingual gaming tables for blackjack and roulette and offers clients the option of playing Texas Hold'em in French or English.

Lack of bilingual slot machines

- Casino New Brunswick set up a partnership with the Casino de Montréal in order to obtain slot machines that meet the technical and regulatory requirements in both languages. There are currently 47 slot machines that work in both languages (the casino has about 500 machines).

Signage in English, the 1-800 number for contacting the casino ticket office, and the shortcomings in the French version of the casino's website

- The Commissioner did not receive any specific responses to these complaints. However, he hopes that certain measures of a "general nature," particularly the new management structure and the ongoing cooperation between the NBLGC and the casino, will make it possible to address the alleged deficiencies mentioned above.

Conclusions and recommendations

As was mentioned previously, the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* requires that the provincial government (and its institutions) take positive actions to promote the cultural, economic, educational, and social development of the official linguistic communities. Consequently, the government and the NBLGC had the choice and the power to impose clear and precise criteria designed to protect and promote the official languages. It would seem that a more hazy approach was taken, which unfortunately led to the results we witnessed.

The deficiencies identified in this report demonstrate the extent to which the NBLGC must continue to be vigilant and proactive in its interactions with Casino New Brunswick to ensure that the services it offers to the public respect the two official language communities to the greatest extent possible.

The Commissioner is therefore encouraged to learn that the delivery of services in the two official languages is a regular item on the agenda at NBLGC and Casino New Brunswick meetings. He believes that this cooperation between the NBLGC and the operator must not only continue but that it must increase. In that respect, although he is pleased by the commitments of the NBLGC, he nevertheless makes the following recommendations:

Recommendation 1

That the NBLGC make sure that it is even more vigilant and proactive and that it act promptly by continuing its interventions with Casino New Brunswick to ensure that the services offered to the public by that operator comply with our values in terms of official languages and that they respect and support our linguistic communities.

Recommendation 2

That the government, when conducting its review of the OLA in 2012, amend the existing provisions of the Act to further clarify the matter of public-private partnerships so as to better define and frame the linguistic obligations that apply to these various types of partnerships, particularly the privatization of public services and the granting of exclusive rights (monopolies) to private agencies.

Pending the legislative amendments to the OLA recommended above, it is essential that the NBLGC ensure that public-private partnership agreements, especially those granting exclusive rights (monopolies) to private agencies, as was the case in this matter, contain clear and precise provisions guaranteeing that these agencies will act in such a way that they not only serve the public in both official languages but also that they respect and support the official languages communities as is incumbent on institutions of the government pursuant to the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

The Commissioner therefore makes the following recommendation:

Recommendation 3

a) That, henceforth, the NBLGC, when concluding any agreement with a private agency to which it has granted exclusive rights, include clear and precise provisions setting out the responsibilities and obligations required of the parties in order to ensure the delivery of services of equal quality in both official languages in accordance with the wording and spirit of the OLA.

b) That the NBLGC take positive measures in all of its activities, including its interaction with private agencies, to promote the cultural, economic, educational, and social development of the official languages communities in accordance with the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* and the spirit of the OLA.

Update

On May 6, 2011, the Premier wrote to the Commissioner assuring him that his government would continue its efforts to ensure that Casino New Brunswick offers services and communications in both official languages. The Premier said as well that he would take into consideration the Commissioner's recommendation concerning amendments to the OLA.

Miramichi: An Investigation that Drags On and On

An investigation targeting the City of Miramichi has been dragging on for two years because the municipal government has shown little cooperation. The complaints underlying this investigation concern among other things the city's website (most of which is in English only) and municipal by-laws (in English only).

When the city did not respond to the official notice of investigation, an investigator with the Commissioner's office telephoned the city clerk, who confirmed that he had received the notice but could not reply to it because it was in French. The investigator then explained the office's in-house communications policy, which is to use the language chosen by the complainant throughout the investigation process. The administrator said that he would have the notice of investigation translated "eventually" but that it was not priority for him.

The Commissioner ended up having to write to the mayor himself in order to get the city to cooperate. In his letter, the Commission wrote [Translation] "We are not indifferent to the fact that administrators and other municipal employees have many things to deal with; however, we consider the delay in responding to these matters and the scant importance that seems to be attached to them absolutely unacceptable."

Lastly, in May 2011, the lawyer for the City of Miramichi sent the Commissioner a letter in which the city stated its position on the various complaints made against it. The investigation continues.

Court decisions

Serious Consequences to Language Rights Violations

In New Brunswick, all individuals have the right, when communicating with a peace officer, to receive service in the official language of their choice. In addition, they must be informed of that right. This second obligation is what is commonly called active offer of service.

In 2010, the Court of Queen's Bench of New Brunswick stated that the absence of an active offer by a peace officer was not only a violation of subsection of 31(1) of the *Official Languages Act* but also a violation of subsection 20(2) of the *Canadian Charter of Rights and Freedoms* (*R. v. Gaudet*, 2010 NBQB 27). This interpretation by the Court of Queen's Bench is important because a failure to respect the rights set out in the Charter can greatly affect the outcome of a trial. Indeed, under section 24(2) of the Charter, evidence obtained in violation of Charter-protected rights must be excluded by the court "if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

Two recent Provincial Court decisions (*R. v. Losier*, 2010 NBPC 24 and *R. v. Robichaud*, 2011 NBPC 2) take this new interpretation into account. In both of these cases, which involved drunk driving charges, it was established that the police officers had not immediately informed the accused of their right to communicate in the official language of their choice. Believing that the use of evidence obtained in violation of language rights might bring the administration of justice into disrepute, the judges excluded that evidence, resulting in acquittals. Below, we present some excerpts from these judgments, which explain how the judges reached their verdicts.

The provincial government appealed the decisions in both of these cases.

R. v. Losier, 2010 NBPC 24

On September 3, 2008, a member of the Fredericton Police Force stopped a vehicle during a spot check. The officer did not inform the driver, Mr. Losier, of his right to be served in the official language of his choice. Although the officer noted that the man had a strong French accent, he continued to speak to him in English only. After giving Mr. Losier a first breath test in the patrol car, the officer told him he would have to accompany him to the police station. In addition, he read him the usual warning and informed him of his right to retain and instruct counsel, still in English. When the officer asked him if he wished to speak to a lawyer, the accused replied in rudimentary English, "Contact one but French." It was only then that the officer asked him if he would prefer to communicate in French. Mr. Losier replied that English was fine but that he would prefer a Francophone officer. The officer informed him that he would have access to a Francophone officer and lawyer once they arrived at the police station.

Note: The excerpts from judgments in this section do not necessarily contain all of the elements taken into consideration by the judges in their decisions. The reader may consult the full judgment by visiting www.canlii.org and using the reference provided for each decision.

Excerpts from judgment

At the time of trial, the New Brunswick Provincial Court was divided as to the constitutional nature of s. 31(1) of the *Official Languages Act*. A judge of the Court of Queen's Bench has since decided the issue. In *R. v. Gaudet*, [2010] N.B.J. No. 25, Lavigne, J. ruled that “the absence of an active offer on the part of the peace officer amounted not only to a violation of s. 31(1) of the *Official Languages Act* but also to a violation of s. 20(2) of the Charter”, and that this opened the way to remedial action under s. 24 of the Charter. (see para.10)

(...)

In light of Lavigne, J.'s remarks, I find that Constable Jordan violated Mr. Losier's Charter language rights in this case when he failed to inform him of these rights before he asked to speak to a French-speaking lawyer. It should be kept in mind that the process leading up to Mr. Losier's arrest had begun approximately 30 minutes earlier. The accused had already undergone testing with an approved screening device, and had spoken with a police officer who informed him of some of his Charter rights. I am unable to find in this scenario that the accused was informed of his right to be served in the official language of his choice at the right moment or within a reasonable time as guaranteed under s. 31(1) of the *Official Languages Act* and s. 20(2) of the Charter.

That being said, whether remedial action under s. 24(2) is justified, and whether the qualified technician's certificate should be excluded from the evidence remains to be determined. In *R. v. Grant*, [2009] S.C.J. No. 32, the Supreme Court of Canada explained the avenues of inquiry that must be assessed to determine whether the admission of evidence obtained in breach of the Charter would bring the administration of justice into disrepute, within the meaning of s. 24(2). According to this new analytical framework, the court's role is to look at all of the circumstances in light of the following factors:

- (1) the seriousness of the Charter-infringing state conduct (admission may send the message that the justice system condones serious state misconduct),
- (2) the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little), and

- (3) society's interest in the adjudication of the case on its merits.

The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute. (para. 71)

1) The seriousness of the Charter-infringing state conduct

When considering this question, the court must assess whether the admission of the evidence would bring the administration of justice into disrepute by sending a message that the courts will condone state deviations from the rule of law. As the Supreme Court stated, the purpose is not to punish the police or to deter Charter breaches. Rather, “the main concern is to preserve public confidence in the rule of law and its processes.” (para. 73)

When called upon to determine the seriousness of a breach, a judge must obviously consider all of the circumstances surrounding the conduct of the police officer that resulted in the violation. In this regard, the following factors are relevant in this instance:

- 1) The officer noticed that Mr. Losier spoke with a strong French accent and, according to the evidence, even if it appeared that Mr. Losier understood English, it should have been obvious to the police officer that his English was rudimentary at best;
- 2) The police officer admitted that he was aware of his duty under s. 31(1) of the *Official Languages Act*. Yet oddly enough, even in these circumstances, he never informed Mr. Losier of his right to be served in the official language of his choice until Mr. Losier told him that he would prefer a French-speaking lawyer;
- 3) By that time, it had been approximately 30 minutes since Mr. Losier was initially detained and he had already provided a sample of his breath using an approved screening device;
- 4) Finally, I also take into account the remarks made by the Crown Prosecutor in his submissions where he told the Court that this was the third trial involving the Fredericton Police Force in which non-compliance with s. 31(1) was at issue.

In this regard, though I am not prepared to draw the inference that Officer Jordan deliberately acted in bad faith, I cannot help but find that he showed a rather troubling lack of concern for Mr. Losier's linguistic rights on the night in question. Mr. Losier's difficulty expressing himself in English should have at least reminded the officer of his known duty to offer services in French to the accused before the latter was obliged to make the request. Accordingly, I find the officer's conduct to be a blatant violation of Mr. Losier's language rights under the *Official Languages Act* and the Charter.

2) The impact of the breach on the Charter-protected interests of the accused

As the Supreme Court stated in para. 76 of *Grant*, "This inquiry focuses on the seriousness of the impact of the Charter breach on the Charter-protected interests of the accused. It calls for an evaluation of the extent to which the breach actually undermined the interests protected by the right infringed."

I have already cited the remarks of Lavigne, J. with respect to the importance of language rights in New Brunswick at paragraph 14 above. Those remarks were also highlighted by Chief Justice Drapeau in *R. v. McGraw*, [2007] N.B.J. No. 39, where he stated unequivocally as follows:

35 I would wrap up the proceedings by echoing the summary conviction appeal judge's emphasis on the importance of linguistic rights in New Brunswick, the only Province with two official languages. Language rights, whether sourced in the Charter, the *Official Languages Act* or POPA, set us apart in the Canadian federation; as time goes by, more and more of our citizens proudly view those rights as what defines them as New Brunswickers. Hopefully, the outcome of these proceedings will bring home to peace officers engaged in the enforcement of provincial legislation that language rights are infrangible.

New Brunswick has put a mechanism in place that is unique in Canada and whose purpose is to ensure that all citizens of this province are able to communicate with governmental institutions in the official language

of their choice. Clearly, the right to communicate in the language of one's choice is particularly important during communications with a peace officer in a situation where the freedom and security of the person are at stake.

3) Society's interest in the adjudication of the case on its merits

The notion that society is entitled to expect that a criminal allegation will be adjudicated on its merits is well-recognized. It is therefore important to determine whether "the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion." Accordingly, "the fact that the evidence obtained in breach of the Charter may facilitate the discovery of the truth and the adjudication of a case on its merits must therefore be weighed against factors pointing to exclusion, in order to balance the interests of truth with the integrity of the justice system. (*Grant*, paras. 79 and 82)

It is clear the certificate of the qualified technician is central to the prosecution of this case and that its exclusion would lead to an acquittal without the matter ever being heard on its merits. It is also true that driving while impaired or with an excessive blood alcohol level is a serious offence. Furthermore, I am aware that the results of Mr. Losier's breathalyzer test were obtained after he was put in contact with an officer with whom he could communicate in the language of his choice. However, the fact remains that the reasonable grounds relied upon by the officer to require the accused to submit to a breathalyzer test were formulated before the accused was offered French language services, and this constituted a flagrant violation of his language rights.

Conclusion

After examining all of these issues and balancing the various factors referred to above, I find that the certificate of the qualified technician must be excluded. Notwithstanding society's interest in the adjudication of a criminal allegation on its merits, it is my view that the admission of this evidence on the particular facts of this case would bring the administration of justice into disrepute. The violation of Mr. Losier's language rights

by a police officer who was totally aware of his duty is serious, and any evidence obtained as a result must be excluded in order to preserve public confidence in the justice system and its processes.

(...)

As I have already stated, my decision to exclude the certificate of the qualified technician requires me at

law to acquit Mr. Losier of the offence under s. 253(1)(b) of the Code. As for the charge under s. 253(1)(a), the Crown acknowledged that the evidence does not prove the accused's guilt beyond a reasonable doubt and accordingly, he must be acquitted of that offence as well.

R. c. Robichaud, 2011 NBPC 2

On June 8, 2007, an RCMP officer was informed that a man whose faculties were impaired was sleeping in a truck parked near a business in Shippagan. Once on site, the officer communicated with the man in French only and took him to the police station for a breathalyzer test. The man refused to take the test. Two charges were laid against Mr. Robichaud: having the care of a motor vehicle while his faculties were impaired and refusing to provide a breath sample.

The accused was acquitted of the first charge because the Crown did not establish beyond a reasonable doubt that the accused had the care or control of the motor vehicle. As for the second charge, the judge in the matter believed that Mr. Robichaud's language rights had been violated because the officers had not informed him of his right to use either official language. The judge therefore had to determine whether a remedy should be granted to the accused, and if so, what it should be.

Excerpts from judgment

[Translation] Officer Dulac testified that, when Mr. Robichaud woke up in his truck and noticed him at the window, he said in French, "Ah, the RCMP." The officer then used the French language throughout his interaction with Mr. Robichaud, and Officer Fontaine did the same.

The Crown recognized that the officers had never raised the issue of language with Mr. Robichaud and that section 31 of the *Official Languages Act* had been violated.

(...)

Omission, neglect, or simply ignorance of the police officer with respect to the implementation of this right through the lack of an active offer does not make the violation less serious. In this case, it is the omission itself that is serious, and for which responsibility must be assumed by the Province and its agents.

Neither should the decisions of our courts in cases involving a violation of language rights result in the creation of different regimes from region to region in our province. It is therefore crucial to prevent the "circumstances" in this case from justifying the refusal to grant a remedy for a violation of language rights since the existence of the positive obligation set out in s. 31(1) of the *Official Languages Act* and s. 20(2) of the Charter would become futile and devoid of any real use if the violation of the right did not result in a remedy demonstrating its significance.

In the Grant case, the Chief Justice reiterated the following principles (para. 80):

The concern for truth-seeking is only one of the considerations under s. 24(2) application. The view that reliable evidence is admissible regardless of how it was obtained is inconsistent with the Charter's affirmation

of rights. More specifically, it is inconsistent with the wording of s. 24(2), which mandates a broad inquiry into all the circumstances, not just the reliability of the evidence.

The *Official Languages Act* has existed since 2002; section 31 imposes on police officers an obligation that is clearly expressed and should therefore not still be the subject of debate before our courts today. In the McGraw case, Chief Justice Drapeau wrote as follows:

Hopefully, the outcome of these proceedings will bring home to peace officers engaged in the enforcement of provincial legislation that language rights are infrangible.

It should be noted that this judgment was rendered in February 2007. In a decision handed down in Fredericton in May 2010 concerning an incident that had occurred in September 2008, my colleague, Associate Chief Judge Pierre Arseneault, wrote as follows (*R. v. Losier*, 2010 NBPC 24 (CanLII), para. 20):

Finally, I also take into account the remarks made by the Crown Prosecutor in his submissions where he told the Court that this was the third trial involving the Fredericton Police Force in which non-compliance with s. 31(1) was at issue.

(...)

Against the backdrop of the constitutional language guarantees that are unique to New Brunswick, the long-

term objective is that of requiring police officers to respect the language rights at issue. It would therefore run counter to this objective for evidence not to be excluded following a violation of those rights, for if this does not occur, officers might think the violation has no real consequences, thus creating the long-term risk of encouraging repeated violations.

In the case of a charge under s. 254(5), the Crown must demonstrate, among other things, that a request for breath samples was made, that the accused understood that request and the consequences of a refusal, and that the accused was informed of his right to consult a lawyer. Furthermore, the accused must be provided with instructions while the approved screening device or instrument is being used. Obviously, this evidence will come from communications between the police officer, the qualified technician, and the accused. In the light of the preceding, it would be paradoxical, to say the least, to conclude that these obligations were met and that the instructions were understood if, at the outset, the officer did not offer to proceed in the official language of the accused's choice. In the circumstances and in view of the preceding, I conclude that the evidence from the conversations between the accused and the officers must be excluded.

The exclusion of that evidence creates an absence of evidence regarding the essential elements of the charge indicated above. Consequently, the accused is acquitted of the charge under subsection 254(5) of the Criminal Code.

Sections at the Heart of the Decisions

Official Languages Act of New Brunswick – 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).

Canadian Charter of Rights and Freedoms

Official languages of New Brunswick

16.(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

24.(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Minor Infringement Does Not Justify Reversing a Conviction

In March 2011, the New Brunswick Court of Appeal refused to reverse an impaired-driving conviction. The complainant alleged that his language rights had been violated during the trial. Indeed, during the hearing of witnesses, the prosecutor requested, in English, that the trial be adjourned even though the trial was being held in French. The Appeal Court justices recognized that a minor violation had occurred but said that it did not justify reversing the conviction.

Excerpt from judgment

Bujold v. R., 2011 NBCA 24

That said, as Justice Charron, now a judge of the Supreme Court of Canada, indicated in *R. v. M.P.*, [2004] O.J. No. 2550 (C.A.) (QL), [TRANSLATION] “[a] trial will not necessarily be vitiated every time a few words are spoken in an official language other than that of the accused” (para. 37). In this case, the violation was of short duration and the trial judge acceded to the accused’s objection to the adjournment motion. Moreover, the accused did not consider the violation to his language rights was sufficiently serious to seek redress at once and the prosecutor who replaced

the one who committed the breach spoke exclusively in French at the hearing of witnesses a few hours later. Although we readily acknowledge the violation of Mr. Bujold’s right guaranteed under s. 530.1(e), we are of the view that the relief sought in the Notice of Appeal is disproportionate to the seriousness of the violation, which we deem to be relatively minor given the circumstances as a whole, including the scrupulous adherence to the provisions of s. 530.1 throughout every aspect of the remainder of the proceedings, notably the hearing of witnesses at trial.

Promotion

Teaching a Second Language to... Adults

New Brunswick devotes considerable resources to second-language learning in elementary and high schools. However, the Commissioner considers that very little is done for adults wishing to learn the other official language.

During the past few years, many citizens have contacted the Office of the Commissioner to criticize the lack of programs and support measures for adults wishing to learn English or French. As a result, the Commissioner believes that the provincial government should conduct a study in order to determine the needs in this regard, the support measures required (loans, bursaries, etc.), and the teaching methods best suited to adult learners.

The Commissioner considers that bilingualism is a huge societal project and that everyone should be able to participate in it.

Living Together with Two Languages

That is the title of a new brochure produced by the Office of the Commissioner of Official Languages. Its objective is quite simple: to provide clear answers to questions often asked by New Brunswickers about official languages and linguistic duality. Since language is at the heart of people's identities, the brochure contains a number of testimonials by New Brunswickers on official bilingualism and the richness of languages.

The 170 000 copies of *Living Together with Two Languages* were distributed in the province's daily newspapers and some of its weeklies. The brochure is reproduced in the last section of this annual report.

Commissioner Meets Delegation from Sri Lanka

A delegation of senior government and university officials from Sri Lanka met with the Commissioner of Official Languages on June 7, 2010, as part of a study mission on Canadian policies and practices regarding official languages and language planning. During his presentation, the Commissioner looked at the evolution of language rights and provided an overview of the *Official Languages Act*, his mandate, and the activities of his office. The members of the delegation found the meeting to be most informative.

Financial Support

As in previous years, the Commissioner provided financial support for events that promote both official languages:

- Frye Festival
- Great Walk for Linguistic Equality
- French for the Future local forums
- Research Rally of Dialogue New Brunswick
- 2010 Conference of the Canadian Association of Immersion Teachers
- 2010 Conference of the Association des parents francophones du Nouveau-Brunswick

Pins are still just as popular

Again this year, the Office of the Commissioner of Official Languages distributed hundreds of "English-Français" pins free of charge to numerous private-sector groups and government institutions interested in promoting bilingual services. The organizations that requested them include:

- Canadian Blood Services (Moncton)
- Canadian Tire (Oromocto)
- Capitol Theatre (Moncton)
- Co-op Atlantic
- Crowne Plaza Lord Beaverbrook Hotel (Fredericton)
- Fredericton Co-op
- Fredkid Annual Fair (Fredericton)
- Hotel Casino New Brunswick
- New Brunswick Lotteries and Gaming Corporation
- Scotiabank (Bathurst)
- Sjkid Annual Fair (Saint John)
- Staples (Bathurst)

The Office of the Commissioner also distributed "J'apprends le français! Parlez-moi" pins. This pin communicates that the wearer is learning French and is designed to encourage learners to speak the language without feeling self-conscious and to encourage those around them to provide them with opportunities to converse in French.

The Commissioner believes that the actions of the above organizations contribute to the advancement of New Brunswick as a bilingual province accepting of others.

Living Together with Two Languages



*Answering questions
about official languages in New Brunswick*

Hello!

Bonjour!



At the heart of our identity

*Do I have the right to get services in my language in any hospital?
Why do we have two school systems, one Anglophone, the other Francophone?
Do all government employees have to be bilingual?*

These are some of the questions raised when people talk about official languages in New Brunswick. The goal of this brochure is to answer many of them.

Language and culture are at the very heart of people's identities. That is why some New Brunswickers are also speaking out in this document. They share their thoughts on the importance of bilingual services, the value of languages and the characteristics of our public education system.

We have everything to gain by acquiring a better understanding of what makes New Brunswick richer: a province where two linguistic groups live together.

Happy reading,

Michel A. Carrier
Commissioner of Official Languages for New Brunswick

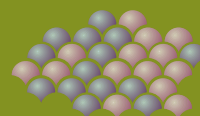
About this document

This document is published by the Office of the Commissioner of Official Languages for New Brunswick. It contains general information about official bilingualism and linguistic duality. However, it is not a legal text. Readers are invited to consult the official texts of the statutes and regulations if they would like more details about the issues addressed in this document.

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Commissioner of
Official Languages
for New Brunswick



Commissaire aux
langues officielles du
Nouveau-Brunswick

It's your right! Use it!

Across New Brunswick, the provincial government and many organizations must serve you in the official language of your choice.

One Province, Two Official Languages

Official Bilingualism

Since English and French are the official languages of New Brunswick, government services must be provided in both of these languages. The *Official Languages Act* of New Brunswick describes the rights of citizens and the obligations of the government and organizations. Here are a few highlights from that Act.

- All individuals have the right to communicate with and receive services from provincial institutions in the official language of their choice.
Provincial institutions are:
 - provincial departments¹ (e.g., the Department of Health);
 - Crown corporations (e.g., NB Liquor, NB Power, Service New Brunswick);
 - courts;
 - agencies of the Legislative Assembly (e.g., the Office of the Commissioner of Official Languages for New Brunswick);
 - police services;
 - hospitals and public health services;
 - any board, commission or council, or other body or office, established to perform a governmental function.
- Provincial institutions must actively offer the public their services in both official languages. This is done by means of bilingual signage and greeting people in both languages over the phone and in person.
- Provincial institutions must publish information intended for the general public in both official languages.
- Private or other bodies that provide services on behalf of the provincial government must do so in both official languages.
- Cities² must provide certain services³ in both official languages. These services include communications intended for the general public. This obligation also applies to any municipality⁴ with an official language minority of at least 20% of its total population.
- Planning Commissions and Solid Waste Commissions serving an area with an official language minority of at least 20% of their total population are required to provide certain services³ in both official languages.

1 The *Official Languages Act* of New Brunswick does not apply to the English and French sections of the Department of Education.

2 Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, and Saint John.

3 See Services and Communications Regulation 2002-63 under the *Official Languages Act* of New Brunswick.

4 Charlo, Dalhousie, Eel River Crossing, Rexton, Richibucto, Shediac, and Tide Head.

Questions & Answers

Do I have to request service in my language or must it be offered to me?

Upon first contact, provincial institutions must offer you service in both official languages. That's what is called an *active offer*.

For example, when you phone a provincial department, the employee who answers must greet you in both official languages. That lets you know that you have the right to receive the government service in English or French.

Does the *Official Languages Act* apply to schools?

No. School districts, public schools, community centres, community colleges, and universities do not have to offer services in both official languages (see section on duality on page 9).

Do private companies have to offer service in both official languages?

No. However, a private company that provides a service on behalf of the New Brunswick government must serve you in the official language of your choice.

Is the aim of the *Official Languages Act* to make all New Brunswickers bilingual?

No. The Act in no way forces people to be bilingual. The Act gives people the right to receive government services in the official language of their choice.

Do English and French services have to be of equal quality?


Yes. The *Official Languages Act* states that English and French have equality of status as to their use within the provincial government.

The *Official Languages Act* applies across the province. Wouldn't it be simpler to designate some Anglophone regions, some Francophone regions, and some bilingual regions?


There are Anglophone and Francophone communities throughout New Brunswick. If the *Official Languages Act* applied only in certain regions, some residents would not get government services in their official language of choice. That is why the Act applies across New Brunswick.

What should I do if I don't get a government or public service in my language of choice?

You may file a complaint with the Commissioner of Official Languages for New Brunswick (see the last page of this brochure).



Hello!
Bonjour!



Thank you for offering
me services in both
official languages!



"It's about respect and understanding."

Beatrice Long

When she was a teenage girl, Beatrice Long went on a 4-H trip to British Columbia. She remembered helping a participant from Quebec understand the others with her limited French. "It made me think how important it is to have these two languages in your back pocket. They weigh nothing and are worth so much," Long said.

A lifelong resident of Grand Falls, Beatrice learned French over the years and she is now fully bilingual. However, she likes being able to obtain government services in English, which is her mother tongue. "When it comes to technical terms, medical words, numbers, I want to make sure I fully understand," she explained. "That's why I prefer getting these services in English. For me, official bilingualism is about respect and understanding."

"Language isn't just a communications tool, it's what I am! And speaking another language means being open to others and their culture."

Eric Kennedy



Did you know?

- According to the 2006 Census, 64.4% of New Brunswickers have English as their mother tongue. French is the mother tongue of 32.4% of the province's residents.
- New Brunswick's first *Official Languages Act* was passed in 1969. In 2002, the New Brunswick Legislative Assembly adopted a new one. Both acts were adopted unanimously by the members.

Questions & Answers

Do all civil servants need to be bilingual?

No. The New Brunswick government does not require that all employees be bilingual. However, a sufficient number of positions have to be filled by people who can communicate in both official languages. This is necessary in order for government departments and agencies to serve the public equally in both official languages.

In order to provide the public with bilingual services, the provincial government uses a team approach. That means that all of the linguistic skills of team members are used in providing services in English and French.

Departments create teams with a linguistic profile. This profile sets out the minimum requirements for communicating in each and both of the official languages. On March 31, 2010, the linguistic profiles as a whole for provincial departments stipulated that 39.5%* of employees had to be bilingual.

The provincial government must ensure that its linguistic profiles enable it to provide equal services in both official languages.

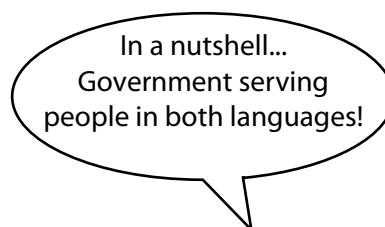
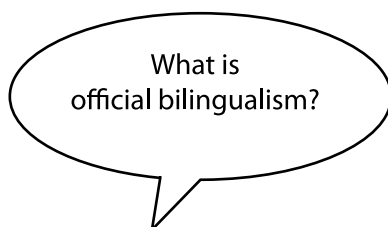
* Source: Office of Human Resources
Government of New Brunswick

Are employees of the provincial government able to work in the official language of their choice?

The *Official Languages Act* does not deal with the issue of language of work in the public service. However, the provincial government has adopted a policy to allow its employees to work in the official language of their choice. The policy contains measures and tools that aim to create a work environment that promotes the use of both official languages. The fact that a government employee may work in English or French has no bearing on the government's obligation to provide services in both official languages.

The Commissioner of Official Languages has recommended that the provincial government include the right of civil servants to work in the official language of their choice in New Brunswick's *Official Languages Act*.

**On March 31, 2010, the linguistic profiles
as a whole for provincial departments
stipulated that 39.5%* of employees
had to be bilingual.**





“People love diversity!”

Gervais Mbarga

Gervais Mbarga is a native of Cameroon, a country where, as in Canada, English and French are the two official languages. However, his mother tongue is Ewondo, one of the 240 national languages spoken in that African country.

Mr. Mbarga believes that every language provides a view of the world. “When I was a journalist in Africa, I sometimes could not find an English or a French equivalent to what I would have said in my mother tongue,” he said. He gives the example of the word “elike,” which refers both to material heritage and to genetic identity, lineage, kinship, place of birth. “It’s almost untranslatable.” In his opinion, this illustrates the richness of languages. “People love diversity,” he continued. “If everyone spoke just one language, I think we’d get bored quickly and would want to invent another one.”

After working in Africa and Europe, Mr. Mbarga decided to immigrate to Canada. For the past two years, this doctor of sociology has been teaching in New Brunswick. “What interested me, basically, was the fact that I can speak French and be in a bilingual environment. It’s a bit like being in Cameroon.”

“I like my services in French!”

Victorine Robichaud

Victorine Robichaud has lived in the Saint John area for about 30 years. She has witnessed firsthand the major progress of the French presence in the Port City. “It’s like night and day. People no longer turn around in the street when someone speaks French,” she said. Perfectly bilingual, Victorine nonetheless prefers to receive government services in French. “You feel at home; you feel you belong when you’re spoken to in your mother tongue. I like my services in French!”



Did you know?

New Brunswick is Canada’s only officially bilingual province.



"It's something we should be proud of!"

Marianne Limpert

The name Marianne Limpert is well known in New Brunswick. In 1996, this New Brunswicker brought honour to the province when she won the silver medal in swimming at the Atlanta Olympic Games. What is less well known is that, in a way, her training was carried out in both official languages. Her coach, a Quebecker, spoke to her in English in order to improve his proficiency in that language. As for Marianne, she seized every opportunity to improve her French. She would often help her Francophone teammates who spoke little, if any, English. "I enjoy talking to people and making them feel comfortable with me," said the former Olympic swimmer. "I believe there is no better way of doing that than by communicating with them in their own language." In addition to English and French, Marianne speaks German, her parents' mother tongue.

After studying and working here and there across Canada, Marianne decided to come back to New Brunswick where she likes the pace of life. Working in communications, she greatly appreciates the province's bilingual status. "I'm happy to live in New Brunswick, the only officially bilingual province. It's something we should be proud of!"

Much more than just languages

Ryan Sullivan

Ryan Sullivan took French immersion. And it produced results, early on... When he was looking for a way to pay for his university degree, Ryan opened an ice cream parlor in the old train station in Sussex. A rule was established: bilingual services and signage. For Ryan Sullivan, it should not only be government agencies offering services in both official languages. It should be the whole community embracing that concept.

"For me, it's not only about languages; it's about culture, people. I think it's extremely important that we celebrate each other's culture, understand the challenges and opportunities that come with having two official languages and that we allow both linguistic communities to flourish. I think that is the way we are going to move forward and be successful as a province."



82%

Percentage of support for official bilingualism

In 2010, a survey done by Continuum Research showed that a large majority of New Brunswickers (82%) support the concept of an official languages act and bilingualism.

To flourish, any linguistic community needs places where its members can live fully in their language. Distinct institutions serve that objective.

Two linguistic communities living together in one Province

Linguistic Duality

Linguistic duality means that New Brunswick has two official language communities: one Anglophone, the other Francophone. The Canadian constitution states that these two communities have equal rights. One of these should be noted: the right of each community to its own cultural and educational institutions (schools for example). The goal of these distinct institutions is to ensure the preservation and promotion of each linguistic community.

Questions & Answers

Distinct institutions: Aren't they an obstacle to the province's unity?

Actually, they promote unity. Here's how. To flourish, any linguistic community needs places where its members can live fully in their language. Distinct cultural and educational institutions serve that objective. By ensuring the development of each community, distinct institutions promote equality, hence unity.

Distinct institutions don't prevent dialogue between the two groups. Members of both linguistic communities have regular contacts in all spheres of activity, both public and private.

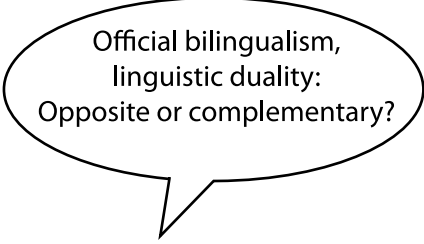
What does money invested in official bilingualism and duality give us?

Official bilingualism and distinct institutions allow our two linguistic communities to live together and flourish in an atmosphere of mutual respect.

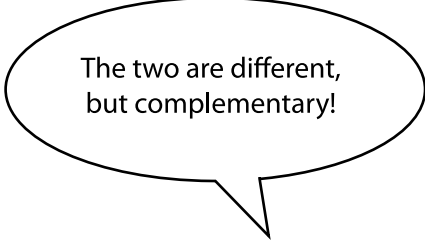
What's the difference between linguistic duality and official bilingualism?

Linguistic duality is the recognition of two linguistic communities. Both of them have equal rights, including the right to distinct cultural and educational institutions.

Official bilingualism is the term generally used to indicate that the government operates and serves the public in both official languages.



Official bilingualism,
linguistic duality:
Opposite or complementary?



The two are different,
but complementary!

Duality in Education

English and French have equal status in New Brunswick. However, their influence is not the same. Unlike English, French is a minority language in North America. The existence of two distinct public school systems - one Anglophone, the other Francophone - enables each community to control its development while preventing assimilation.



In the early 1980s, the provincial government reorganized the school districts on a linguistic basis. Two public school systems were set up: one Anglophone, one Francophone.

At that time, Armand Saintonge was the Deputy Minister of the Francophone sector of the New Brunswick Department of Education. He was not surprised by the government's decision because bilingual schools were centres of assimilation. And he knows what he is talking about.

"Before starting college, I had to go to a bilingual school in Edmundston for three years," said Saintonge. "Most of the instruction at those schools, even though they were bilingual, was in English. As a result, at the end of that period, the quality of my written French had suffered considerably."

Duality was first established within the Department of Education in 1974. In response to the recommendations of the Elliot-Finn committee, it was extended to the school districts and schools in 1981.

"Richard Hatfield, the Premier at the time, understood very well that duality in education was necessary to protect the French language," concludes Armand Saintonge.

"Bilingual schools will work for the Anglophones, but it will not work for the Francophones. English is the dominant language and it will take over in these schools. We are not going to lose our English. But you could lose your French in North America unless you are quite vigilant."

Reid Manore
Former Director of Planning
New Brunswick Department of Education





Taking positive measures

"Societies cannot ensure the equality of linguistic communities passively, because it is rare that such communities will be equal in strength and power. Minorities are always at risk, for no other reason than the fact that majorities have such an overwhelming impact on culture and shared experience. This is why liberal-democratic societies, through the State, take measures to protect such communities. In turn, this includes taking positive measures to ensure that minority communities have the educational and other cultural resources necessary for their survival and prosperity. In New Brunswick, that means providing resources such as separate schools for the province's Francophone community. Canada's *Constitution Act, 1982* (section 16.1) makes this clear. While it states that the "English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges," it adds that this "includes the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities"."

Don A. Desserud, PhD
Director of the Urban and Community Studies Institute and Professor of Political Science University of New Brunswick at Saint John

Building Bridges: Learning the Other Official Language

In a province with two linguistic communities, learning the other official language is the best way to forge ties. Within the two public school systems, teaching the other official language is mandatory. Also, a French immersion program is offered to students in the Anglophone sector.

Number* of New Brunswick students by language of instruction (2010-2011 school year)

- English: 57,125
- French immersion: 17,454
- French: 29,842

* Source: New Brunswick Department of Education and Early Childhood Development

The Commissioner of Official Languages for New Brunswick: At Your Service

The *Official Languages Act* of New Brunswick created the position of Commissioner of Official Languages.

The Commissioner has two responsibilities. The first is to ensure compliance with the *Official Languages Act*. To do that, the Commissioner receives complaints from the public, conducts investigations, and if necessary, makes recommendations. The second is to promote the advancement of both official languages in the province.

Questions & Answers

What complaints can the Commissioner receive?

Complaints concerning:

- an institution of the Legislative Assembly or the New Brunswick government (departments, Crown corporations, government agencies, hospitals, etc.) (See page 3);
- private or other bodies that provide services on behalf of the provincial government;
- cities as well as any municipality with an official language minority of at least 20% of its total population;
- Planning Commissions and Solid Waste Commissions covering a geographical area with an official language minority population of at least 20% of their total population.

Can the Commissioner conduct investigations concerning businesses in the private sector?

No. However, the Commissioner can receive complaints and investigate cases involving businesses in the private sector that provide services on behalf of the provincial government.

Can the Commissioner impose sanctions?

No. But, at the end of an investigation, the Commissioner can recommend that corrective actions be taken.

If the organization at fault does not agree to make the necessary changes or does not comply with the recommendations, the Commissioner may denounce it in the annual report that he presents to the Legislative Assembly.

If I file a complaint, will my name be revealed or can I remain anonymous?

All complaints received are considered confidential. Every effort is made to keep the complainant's identity confidential.

How do I file a complaint with the Commissioner of Official Languages for New Brunswick?

- In person (the complainant goes to the office with or without an appointment)
- In writing: 440 King Street, King Tower, Suite 646, Fredericton, N.B. E3B 5H8
- By phone: 1-888-651-6444 (toll free) or 506-444-4229
- By fax: 506-444-4456
- By e-mail: complaints@officiallanguages.nb.ca