

Towards a Generous VISION of Official Languages

STRONG LEADERSHIP

REAL EQUALITY

SHARED VALUES

SPIRIT OF THE ACT

POSITIVE ATTITUDE

Annual Report 2008 - 2009

COMMISSIONER OF
OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSAIRE AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

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Office of the Commissioner of Official Languages for New Brunswick
440 King Street
King Tower, Suite 646
Fredericton, New Brunswick E3B 5H8
CANADA

Telephone: (506) 444-4229
Toll free: 1 888 651-6444
www.officiallanguages.nb.ca

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**COMMISSIONER OF
OFFICIAL LANGUAGES
FOR NEW BRUNSWICK**



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

September 2009

The Honourable Roy Boudreau
Speaker of the Legislative Assembly of New Brunswick
Legislative Building
P.O. Box 6000
Fredericton (New Brunswick) E3B 5H1

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, 2008 to March 31, 2009.

Respectfully submitted,

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

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

Background

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 provincial government institutions to offer and provide their services in both official languages.

The institutions bound by the Act are as follows:

- provincial departments,
- regional health authorities,
- Crown corporations,
- any agency that offers services on behalf of the provincial government,
- the province's courts and tribunals,
- policing services,
- cities (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, Saint John),
- municipalities with an official language minority of at least 20 % of the population,
- 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

One of the distinctive features of the OLA is active offer, which means that institutions must inform citizens that their services are available in both official languages, from the moment of first contact. In other words, citizens are not responsible for requesting 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 languages.

Commissioner of Official Languages

The *Official Languages Act* establishes the position of Commissioner of Official Languages. The Commissioner has a dual role: 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 *Official Languages Act* provides that the Commissioner must report on his or her activities each year.

This sixth Annual Report presents a description of the activities carried out between April 1, 2008 and March 31, 2009.

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From the Commissioner



Michel A. Carrier

This sixth report of activities paints a picture of a very special year for official languages in New Brunswick. It was a year of progress, particularly in terms of language of work in the provincial civil service. It was also a year marked by three government reforms that generated a great many questions and concerns about what had been achieved in the area of language rights. Lastly, the past year was one of reflection, with the approach of the 40th anniversary of the passage of the first Official Languages Act. One finding emerges: we need a more generous vision of official languages.

Progress

The provincial government followed up on two major recommendations that we had made in recent years: firstly, the revision of the language of work policy, and secondly, better planning of the implementation of the *Official Languages Act* (OLA).

On April 1, 2009, the new language of work policy came into force. During the preceding months, we had the opportunity to review the document and propose some changes. Although this new policy does not reflect all of our comments and recommendations, I am pleased that the provincial government agreed that its employees should be able to be supervised in the language of their choice. What is needed now is strong leadership on the part of senior civil service to ensure that this new policy has the desired results.

In March 2009, Premier Shawn Graham announced the setting up of a committee responsible for developing a strategy by March 31, 2010 to ensure a better implementation of the *Official Languages Act*. There is every reason to celebrate that initiative, which could lead to substantial progress with regard to the provision of bilingual services. We will be following these issues very closely.

Reforms giving rise to questions and concerns

The reform of French second-language education generated a lively controversy owing to the disappearance of the early immersion program. We tried in vain to convince the Minister of Education not to abolish that program, because we believe it is a key element in bringing the two linguistic communities closer together. Ultimately, after a court decision and new consultations, the government opted for a compromise: the return of early immersion, but in Grade 3 rather than Grade 1. Like many parents and groups, I am delighted with that decision. However, I am not certain that this reform can ensure the future of early immersion. In fact, several factors undermining this program's effectiveness were not resolved by the reform.

Another reform, that of post-secondary education, raised many concerns regarding respect of the principle of duality in education. The Working Group on Post-Secondary Education in New Brunswick mentions eight times in its report that any post-secondary education reform must respect the principle of linguistic duality in education. Yet, that constitutional principle is absent from the government's Action Plan to Transform Post-Secondary Education. We shared our concerns with the Premier, and he publicly reaffirmed his commitment to that principle. However, it is difficult to understand why such a fundamental element does not appear in the government's Action Plan.

Implementation of the health reform continued during the year. We had recommended that the government officially designate each regional health authority on a linguistic basis. That suggestion was not accepted. In the fall, the group *Égalité santé en français* launched a lawsuit against the government and its reform. At the heart of that lawsuit is the principle of equality of the two linguistic communities and the right of each community to distinct institutions to promote its development. The decision of the courts in this matter should clarify the scope of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

The provincial government's commitment toward official languages and the principle of equality of the two linguistic communities was questioned by many in the wake of these three reforms, given the concerns to which they gave rise. The Premier felt the need to make adjustments by issuing repeated statements and setting up an advisory committee on francophone matters. It remains to be seen if that will succeed in dispelling the unease that these reforms have created.

“Forty years after the adoption of the first Act, the time has come for a much more generous vision of official languages.”

Michel A. Carrier

Forty years of official languages in New Brunswick

This annual report is being tabled as we celebrate the 40th anniversary of the adoption of the first Official Languages Act. On April 12, 1969, the members of the Legislative Assembly of New Brunswick unanimously passed the first official languages legislation, making our province the only officially bilingual province in Canada.

I believe we can be proud of what we have accomplished in 40 years. There has been noteworthy progress in several fields. One simple question will serve to illustrate my contention: Would it be possible to imagine the Mayor of Moncton refusing to allow the city's residents to speak French before the municipal council today? Yet, that is what happened in 1968, and that event left more of a mark on the popular imagination than did the passage of the first Official Languages Act.

Towards a generous vision of official languages

We have certainly made progress. Does that mean we have achieved real equality? Not yet. As evidence, witness the numerous complaints described in this report. In this regard, I believe that our advancement toward real equality requires a change of attitude, and even culture, with regard to official languages. Too often, the *Official Languages Act* is seen as a necessary evil rather than a symbol of respect and equality. Too often, the spirit of the Act is neglected in favour of a very specific, limited interpretation. Too often, people traffic in myths instead of going back to the facts and accepting publicly the necessary consequences of official bilingualism. Forty years after the adoption of the first Act, the time has come for a much more generous vision of official languages. This vision is based on real equality, rather than formal equality. It invites us to go beyond mere compliance with the OLA to fulfill its fundamental principles. It proposes that bilingualism and linguistic duality are becoming widely shared values within our province. It calls for a positive attitude and strong leadership. This generous vision of official languages will lead us to real equality.

Evolution of Rights

In this chapter, we review key court decisions having an impact on language rights in New Brunswick and in Canada.

Stay of Proceedings Owing to Failure to Respect Language Rights

Section 31(1) of New Brunswick's *Official Languages Act* states that all individuals have the right, when communicating with a peace officer, to receive service in the official language of their choice and to be informed of that right. In a decision handed down by the Provincial Court of New Brunswick on February 25, 2009, Judge Yvette Finn specifies that the peace officer must inform individuals of that right without delay.

On June 25, 2006, around 1:28 a.m., the vehicle being driven by Mr. Clarisse Gaudet was stopped by a police car near Sainte-Rose. The police officer communicated with Mr. Gaudet in French and went through the whole process of checking his blood alcohol level. However, it was not until 2:40 a.m., at the time of preparing the documents (certificate of analysis, notice, etc.), that the police officer offered Mr. Gaudet a choice to be served in either language. Mr. Gaudet then asked for the documents to be prepared in English.

The trial began on September 10, 2008. Mr. Gaudet was accused of impaired driving. Mr. Gaudet's lawyer, Mr. LeBouthillier, indicated at the time that his client admitted and accepted the essential elements of the offence and only wanted to raise an argument with regard to his language rights. In this case, Provincial Court judge Yvette Finn had to rule, among other things, on whether Mr. Gaudet's language rights had been respected.

According to the judge, the evidence in the case showed that it was only at the time of preparing the documents (certificate of analysis, notice, etc.) that the police officer offered Mr. Gaudet his choice of language. In her opinion, the officer did not discharge the duty imposed on him by section 31(1) of the *Official Languages Act*. In her decision, Ms. Finn wrote, "Logic dictates that to meet the requirements of s. 31(1), the peace officer must, at first contact, inform the person he is communicating with of his or her right to be served in the official language of his or her choice and to inquire as to that choice. Consequently, inquiring as to the accused's choice of language only as the documents were being prepared does not meet the requirements of s.31(1) of the *Official Languages Act*."

The judge also believes that there was a violation of s. 20(2) of the *Canadian Charter of Rights and Freedoms*.

Referring to an earlier decision, Judge Finn indicated, “As our Court of Appeal stated in McGraw, it is not within the discretion of the police officer to assume that because a person responds in the language chosen by him or because the person initiated the communication in a particular language that that is his or her language of choice. It may be, but then it may not.”

Judge Finn concluded her decision by saying, “In the case at bar, the accused admitted and accepted the essential elements of the offence. As a result, I cannot exclude evidence which he has already accepted. However, taking into account the nature and the extent of the violation, and the fact that without the position adopted by the accused at the start of the trial, the evidence obtained would have been excluded, a stay of proceedings is the appropriate remedy in the circumstances. Therefore, I order a stay of proceedings.”

The Province of New Brunswick has appealed this decision.

Equal Services May Mean Different Services

The *Canadian Charter of Rights and Freedoms* and the federal *Official Languages Act* create a constitutional duty to make services of equal quality in both official languages available to the public. A recent Supreme Court decision sheds new light on the meaning of the principle of “equal services.”

On February 5, 2009, the Supreme Court made a major ruling concerning the equality of the country’s two linguistic communities. The highest court stated that the principle of linguistic equality in the provision of government services “must be defined in light of the nature and purpose of the service in question.” In other words, services of equal quality may mean that services must be adapted to the distinct needs of each linguistic community.

This Supreme Court decision was handed down in a case that pitted the Corporation de développement économique communautaire CALDECH against Industry Canada. CALDECH alleged that North Simcoe (an economic development organization established by Industry Canada) was unable to provide services for the francophone community of Penetanguishene, Ontario.

In his judgment, Justice Charron of the Supreme Court wrote as follows: “The principle of linguistic equality in the provision of government services involves a guarantee in relation to the services provided by the federal institution, and the content of this principle must be defined in light of the nature and purpose of the service in question. It is possible that substantive equality will not result from the development and implementation of identical services for each language community.”

In the specific case the Supreme Court was considering, the justice wrote, “It is difficult to imagine how the economic development services could be provided without the participation of the targeted communities in both the development and the implementation of programs, since that is the very nature of the services. The communities could therefore expect to have distinct content that varied from one community to another, depending on priorities established by the communities themselves. Insofar as North Simcoe, in accordance with the programs’ objectives, made efforts to reach the linguistic majority community and involve that community in program development and implementation, it had a duty to do the same for the linguistic minority community.”

The Supreme Court decision can be consulted at the following address:
<http://csc.lexum.umontreal.ca/en/2009/2009scc8/2009scc8.html>

Complaints

Role of the Commissioner as Regards Compliance with the *Official Languages Act* (OLA)

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 make 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, 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 or is not made in good faith, or if the subject matter of the complaint does not involve a contravention or failure to comply with the Act or 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.

Between April 1, 2008 and March 31, 2009, the Office of the Commissioner of Official Languages handled 148 complaints.

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 outside the framework of an official investigation. For example, a situation that does not directly contravene the *Official Languages Act* 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, 2008 and March 31, 2009

Between April 1, 2008 and March 31, 2009, the Office of the Commissioner of Official Languages handled 148 complaints. Of that total, 62 complaints were admissible, with 52 based on lack of service in French and 10 based on lack of service in English. Thirty-one 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. Also, 55 complaints were referred to other institutions for consideration. In most cases, these had to do with the French second-language program (the OLA does not apply to the public education system). Lastly, the Office of the Commissioner received 65 requests for information.

Most of the complaints were based on the failure to actively offer services in French or the lack or inadequacy of services in French, be it in person or over the telephone. Some complaints had to do with documentation such as forms, invoices, and other materials drafted in only one language or poorly translated and subsequently distributed to the public.

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

The Office of the Commissioner of Official Languages notes that the grounds for the complaints filed during the 2008-2009 year were virtually identical to those of previous years. The Commissioner remains convinced that the best way for the provincial government and its institutions to fulfill its linguistic obligations toward the public is for the province to adopt a strategic plan on implementation of the OLA that would apply to all of the institutions concerned.

TABLE 1 Complaints and requests for information

	French	English	Total
Admissible complaints ¹	52	10	62
Inadmissible complaints	18	13	31
Complaints referred elsewhere ²	15	40	55
Requests for information	25	40	65
TOTAL	110	103	213

1 One of these complaints was initiated by the Commissioner.
2 Complaints referred to : Ombudsman, Human Rights Commission, federal Commissioner of Official Languages, other.

TABLE 2 Admissible complaints by category

Category	French	English	Total
In person	15	2	17
Signage	1	2	3
Telephone communications	18	2	20
Web sites	7	0	7
Documentation	7	3	10
Other	4	1	5
TOTAL	52	10	62

TABLE 3 Status of admissible complaints

Status	French	English	Total
Complaint under investigation or completed	43	4	47
Investigation not initiated (pending additional information from the complainant and/or institution)	4	0	4
Complaint withdrawn (by the complainant or the Commissioner under subsection 43(11) of the OLA)	5	6	11
TOTAL	52	10	62

TABLE 4 Institutions targeted and status of complaint-handling

Institutions	Number of Complaints	Investigation under way	Investigation completed	Founded	Unfounded
Advisory Council on Youth	1	1	0	0	0
Election New Brunswick	2	0	2	2	0
Energy	1	0	1	1	0
Finance	1	1	0	0	0
Health ¹	11	2	9	6	3
Justice and Consumer Affairs	1	0	1	1	0
Local Government ²	1	1	0	0	0
Natural Resources	2	1	1	1	0
NB Liquor	1	0	1	1	0
NB Power	1	0	1	1	0
Office of the Premier	1	0	1	1	0
Post-Secondary Education Training and Labour	1	1	0	0	0
Public Safety	9	3	6	4	2
Service New Brunswick	5	0	5	3	2
Social Development	1	0	1	1	0
Tourism et Parks	3	0	3	3	0
Transportation	2	2	0	0	0
Worksafe NB	3	2	1	1	0
TOTAL	47	14	33	26	7

¹ One of these complaints is related to the services of the Department of Health and the other ten had to do with the services of certain Regional Health Authorities (Acadie-Bathurst, Miramichi, Restigouche, South-East, River Valley and the Atlantic Health Sciences Corporation).

² This complaint is related to the services of the City of Fredericton.

Selection of Complaints

Here is a selection of complaints resolved by the Office of the Commissioner of Official Languages over the past fiscal year. These complaints, founded, illustrate the wide range of situations brought to the Commissioner's attention.

Institution: River Valley Health – Dr. Everett Chalmers Regional Hospital

On January 24, 2008, following an injury to her ankle, the complainant went to the Dr. Everett Chalmers Regional Hospital for treatment. When she arrived at the emergency department, she asked to be served in French.

The triage nurse did not speak French and, from what the complainant can recall, did not make an active offer of service or suggest calling on another employee to serve her in French. The complainant got the feeling that the nurse was annoyed, which she attributed to the fact that she had asked to be served in French. Also, the documentation that she read and signed was in English only. The same situation occurred when the complainant was dealing with the patient registration clerk, even though that employee made an obvious effort to understand her responses in French.

On February 7, 2008, the complainant returned to the Dr. Everett Chalmers Regional Hospital for physiotherapy treatment. She first went to patient registration and took a number from the dispenser. When her turn came, she saw a sign at the registration counter indicating that bilingual services were available. She spoke in French to the clerk, who responded, drily, "I don't speak French, so..."

The complainant, offended by the poor service, continued to speak French, only repeating the information in English if it was obvious that the clerk did not understand what she was saying in French. The clerk never offered to get someone else who could serve the complainant in her language of choice, and the documentation she had to sign was once again in English only.

When she got to the physiotherapy department, the complainant noted that the receptionist was also a unilingual anglophone. No active offer of service was made, and the documentation (policy on missed or cancelled appointments, etc.) that she had to sign was in English only.

The clerk never offered to get someone else who could serve the complainant in her language of choice.

Corrective actions taken by the institution

- After the incident of February 7, 2008, the nurse manager responsible for outpatient services reminded the employee concerned of the appropriate procedures to be followed (importance of making an active offer and then finding the designated staff member to serve the patient).
- In addition, the nurse manager put a letter of reprimand in the employee's file for failing to comply with the OLA requirements.
- The manager of the physiotherapy department reminded the staff members of the appropriate procedures to be followed when greeting a patient or a member of the public. As for the policy on cancelled or missed appointments, a new bilingual document was distributed in all River Valley Health institutions.
- Following these complaints, the Executive Director called the employees of the departments concerned, as well as the managers, regional directors, and vice-presidents, to a meeting where various important points were made concerning official language obligations, including the consequences of subsequent violations (progressive disciplinary measures, if necessary).
- A plan for setting up working groups to improve the capacity of River Valley Health employees to learn French as a second language and to maintain their linguistic knowledge was adopted.

Institution: Department of Public Safety – New Brunswick Youth Centre

On November 22, 2007, the complainant tried to phone his son, who at the time was being held at the New Brunswick Youth Centre in Miramichi. The complainant was worried about his child's psychological state because he had threatened to commit suicide. An automated telephone system asked the complainant to select his language of preference. Opting for French, he was surprised to get a person who did not understand what he was saying. The employee responded "One minute, please" before putting him through to another person, who, after asking him to speak more slowly, told him that someone else would call him back as soon as possible. According to the complainant, an employee of the Department of Family and Community Services (Bathurst office) had also contacted the institution to inquire about the complainant's son. Since she spoke in English, that employee had been able to get some information.

Later the same day, the complainant's son phoned his father. According to the complainant, no one had told the youth about his call. It was during that conversation that the complainant learned his son had never received services in French during his detention. He alleged that, every time his son spoke French, the centre's staff had replied, "Speak English, please."

It was during that conversation that the complainant learned his son had never received services in French during his detention.

On the morning of the next day, November 23, 2007, the complainant and his son went to court. The complainant mentioned the lack of services in French at the institution but was told that "that was not important in this case." However, the trial was held in French. That evening, around 8 o'clock, an employee of the centre contacted the complainant about his call of the day before. He provided him with an account of the youth's stay at the centre. This conversation took place in English only.

Corrective actions taken by the institution

- The Department of Public Safety immediately acknowledged the need for all employees to be better informed of their obligations under the OLA.
- The Department said it would continue to review the linguistic profiles of its teams to ensure that they meet the linguistic needs of their clients.

Recommendations of the Commissioner

- That the Department of Public Safety make mandatory successful completion of the course on official languages and language of service offered by the Office of Human Resources and that it implement appropriate accountability mechanisms to ensure rigorous application of all provisions of the *Official Languages Act*.
- That, within six months of the issuing of the investigation report, the institution inform the Commissioner's office of all initiatives implemented to address any systemic or individual problem hindering the effective application of the *Official Languages Act* in its areas of activity.

N.B. The Commissioner's office received several complaints concerning the New Brunswick Youth Centre. To simplify their handling, they were combined into a single file.

Institution: South-East Regional Health Authority – The Moncton Hospital

On June 28, 2008, the complainant, a resident of Moncton, received a call from her sister who lives in Campbellton. Her sister told her that her son had been in a car accident and was being transported by air to The Moncton Hospital. Since it would take the victim's parents about three hours to get to Moncton, the complainant's sister asked her to go that hospital to sign the documents required for the patient's admission.

When the complainant arrived at the reception desk in the emergency department, she asked the intake nurse if she spoke French. The nurse said "no" in a dry tone, without deigning to offer to get a bilingual employee. The complainant then asked another nurse the same question and received the same answer. At that point, the complainant, who says she can get by in English, said the following to the second nurse: "Isn't it supposed to be bilingual here?" and was told "Not at this department." The complainant then went over to another employee and asked her, in English, if she spoke French. She replied "A little bit" and asked the complainant to spell her nephew's name, which the complaint found difficult to do in English. That provoked a sigh from the employee. Lastly, the complainant noted that wanting to be served in French led to obvious signs of discomfort and nervousness among the staff.

A few weeks later, the complainant went back to the hospital to file a complaint about the lack of French-language services. Since the person in charge of complaints was a unilingual anglophone, the administrative secretary, a francophone, agreed to serve as interpreter. The complainant was told that the nurses' attitude was against hospital policy.

Corrective actions taken by the institution

- A reminder was issued to all emergency department staff of the need to always make an active offer and to respond without undue delay.
- An information kit was distributed to staff members on October 1, 2008, informing them of their responsibility for making an active offer and providing services in patients' and visitors' preferred language. This kit is available through the institution's intranet site.
- The institution will continue to offer its staff education sessions to prevent other incidents of the kind.

- As of May 1, 2008, ID bracelets in the emergency department indicate patients' language of choice.
- Bilingual employees wear name tags indicating clearly that they speak both official languages.
- The institution says that the patient reception desk has a sign concerning active offer to remind patients and visitors that they can be served in their language of choice.
- Staff were reminded that they are responsible for making an active offer and for providing service in the preferred language of patients and visitors. Emphasis was also placed on the importance of offering services in a polite and respectful manner.
- In order to continue to meet patients' linguistic needs, the nurse manager of this unit plans to recruit some bilingual staff.

The complainant noted that wanting to be served in French led to obvious signs of discomfort and nervousness among the staff.

Recommendations of the Commissioner

- That the institution conduct periodic checks of services and communications to ensure their compliance with the OLA, as well as with the government's language of service policy and the official languages guidelines given to its employees.
- That the institution ensure that it has teams whose linguistic composition makes it possible to comply with the requirements of the OLA at all times.
- That the institution ensure that signs are put up informing the members of the public of their right to be served in the official language of their choice.

All of the voting instructions were given in English only, even though the complainant always expressed himself clearly in French.

Institution: Elections New Brunswick

During the municipal election of May 12, 2008, the complainant went to the Kinsmen Centre on School Street in Fredericton to vote. Although there were signs stating that services were available in both official languages and an employee was wearing a button indicating that he was bilingual, no active offer of service was made. In addition, all of the voting instructions were given in English only, even though the complainant always expressed himself clearly in French. The same employee directed the complainant to someone who spoke only English without offering him service in his language of choice. According to the complainant, Elections NB had the human and physical resources necessary to fulfill its mandate in both official languages, but unfortunately, there was a deficiency with regard to active offer and the services themselves.

Corrective actions taken by the institution

- Elections NB made a certain number of changes in its staffing provisions, including the abolition of territorial restrictions and access to poll worker positions by non-citizens or those not old enough to vote. The purpose of those measures is to broaden the pool of bilingual workers.
- According to the institution, those changes helped to improve the quality of services in both official languages, but not enough. The Department of Education offered its full cooperation with regard to the presence of students at polling stations, but legislative restrictions on student work during class hours mitigated the impact of that initiative. The institution proposes to work together with the Department of Education between now and the next provincial election in 2010 on developing school guidelines for authorizing a greater number of students to work during elections.
- In addition, the institution will try to find some way of dissipating the fear of using a second language among staff who have the required language proficiency level but refrain from speaking their second language out of embarrassment or an unreasonable fear of ridicule.

Recommendations of the Commissioner

- That the institution consider the possibility of starting to recruit bilingual workers long enough before the elections to compile a list of qualified candidates and allow for the strategic deployment of the available resources at key locations.

- That the institution consider the possibility of maintaining a permanent register of its bilingual workers and update it as needed.
- That one component of the partnership with the Department of Education be the development of marketing strategies aimed at students in order to stimulate their interest in working in this ultimate democratic exercise which are the elections.
- Given the identified shortage of temporary bilingual workers, that the institution consider financial or other incentives to recognize the value added brought by bilingual workers in order to encourage greater participation.
- Since the fact of receiving complaints does not paint an accurate picture of the situation, that the institution inform us of the results of the debriefing session of June 29, 2008, and automatically do the same for the debriefing sessions that will be held following the next election.

Institution: Department of Health – Ambulance New Brunswick (ANB)

On July 4, 2007, the complainant's wife had to be transported by ambulance to the Campbellton Regional Hospital. The emergency call to Ambulance Services was made by the staff at the St. Joseph clinic in Dalhousie where the complainant's wife went first. The situation was so critical that the clinic's staff thought it necessary to call 9-1-1 to obtain an immediate transfer to the Campbellton Regional Hospital. Neither of the two ambulance attendants could communicate with the patient or the patient's spouse in French.

Neither of the two ambulance attendants could communicate with the patient or the patient's spouse in French.

Corrective actions taken by the institution

The Department of Health requires that ANB offer bilingual services at all times and that there be at least one person capable of communicating in both official languages within each ambulance team. In addition, the Department says that it is making every effort necessary to ensure that ANB complies with its linguistic profile after hiring paramedics.

- ANB will pursue its training efforts and continue to use innovative strategies to ensure quality service for both linguistic communities.

- ANB will provide a position for new paramedics who agree to be assigned to a region where there is a shortage of competent bilingual personnel.
- Bursaries will be offered to bilingual candidates who wish to enrol in paramedic training.
- Training will be offered in French in one francophone region.
- New candidates were being trained in French in Tracadie-Sheila and were expected to receive their diplomas in October 2008.

Recommendations of the Commissioner

- That the Department of Health ensure that all paramedics employed by Ambulance New Brunswick receive training on the obligations arising from the *Official Languages Act*. Since organizing lecture-type courses might be difficult given the operational requirements of their work, the Commissioner's office recommends that the institution take the necessary steps to make the interactive training modules on official languages accessible online through the iLearn Knowledge Centre of the Office of Human Resources available to paramedics. In addition, the institution should require all employees to complete the training at their own pace but within a reasonable time frame.
- That the Department develop an annual accountability mechanism for Ambulance New Brunswick such that all service requests in an official language other than the one spoken by the paramedics who responded to the call and the actions taken as alternative solutions be kept in a log that will be presented to the appropriate authorities, particularly in cases where the situation did not give rise to a complaint to the Commissioner of Official Languages.
- That one of the elements covered by this annual accountability mechanism concern the results of efforts made during the year to popularize the profession, including advertising campaigns, promotion, awareness raising in schools, and any other measure that Ambulance New Brunswick may take to make up for its shortage of bilingual staff.

Institution: Department of Public Safety

On May 6, 2008, the complainant called 9-1-1 from her home in New Maryland. She wanted someone to go and help her mother-in-law in Edmundston who was having a hypertensive crisis. Although the person who answered her call did not make an active offer of service, the complainant started the conversation in French. The operator then asked the complainant if she spoke English. Since it was an emergency, the complainant continued in English. According to the complainant, the operator transferred her call to an ambulance attendant who asked questions in English about her mother-in-law's state of health. The call was then disconnected for no apparent reason. The complainant called 9-1-1 again. The operator again failed to make an active offer, and the conversation took place entirely in English.

The complainant started the conversation in French. The operator then asked the complainant if she spoke English.

Corrective actions taken by the institution

The Department of Public Safety sent the following information to the Commissioner's office:

- With regard to the first call, the management of this Public Safety Answering Point (PSAP) was notified of the incident and met with the operator to give her instructions on how to handle similar situations in the future. The operator explained that she had made the decision to continue the call in English as the bilingual 9-1-1 operator was busy taking another call. Given the nature of emergency 9-1-1 calls, she did not want to put the complainant on hold while she transferred her call to another operator or PSAP if the caller was willing to continue the call in English. It was explained that she should have made the complainant aware of the situation and given her the choice to either wait while she was being transferred or proceed in English.
- As for the second call, the Department said that the complainant immediately addressed the bilingual operator in English, which was then determined to be her language of choice.

Recommendations of the Commissioner

- That the institution offer training and education sessions for all of its staff, especially those who deal extensively with the public. In addition, the institution must assess and verify in a timely manner the effectiveness of these programs on the provision of equal services in both official languages and adjust the content or increase the number of sessions accordingly.
- That the institution make sure that an active offer of service is made at all times and that it have in place the staff complement required to follow up on that commitment effectively and in accordance with the requirements of the *Official Languages Act*, in both form and spirit.
- That the institution, in collaboration with the six public safety answering points, adopt a strategic plan for the provision of services in both official languages, and that it define the steps for implementing this plan, with the associated time frames, as soon as possible.

Institution: Department of Energy

On March 6, 2008, the complainant phoned the person responsible for media relations at the Department of Energy. This employee did not make an active offer, and the complainant then asked him if he spoke French. He answered, in English, that he did not.

Corrective actions taken by the institution

- It turned out that the employee in question was not familiar with the official languages policy and the resulting obligations. Consequently, a copy of the *Official Languages Act* and various tools were given to him so that he would be aware of his OLA-related obligations and could provide members of the public with access to public services in their language of choice.

Recommendations of the Commissioner

- That the institution offer training and education sessions for all of its staff. Also, the institution must assess and verify in a timely manner the effectiveness of these programs on the provision of equal services in both official languages and adjust the content or increase the number of sessions accordingly.
- That the institution adopt a strategic plan for the provision of services in both official languages, and that it define the steps for implementing this plan, with the associated time frames, as soon as possible.

Institution: Department of Tourism and Parks

During a visit to the campground at Mactaquac Provincial Park, the complainant noted that some of the signs giving directions to users were in English only. She also noted the absence of any signs indicating the availability of services in both official languages. When she spoke to the park staff in French, her choice of language was ignored every time, and she was answered in English only.

When she spoke to the park staff in French, her choice of language was ignored every time, and she was answered in English only.

Corrective action taken by the institution

- The deficient signage has been translated and is being replaced at Mactaquac Provincial Park.
- A review of the signage in all provincial parks will be done to ensure compliance with the OLA.
- The contractual agreements between the Department of Tourism and Parks and private enterprises contain a clause providing for delivery of bilingual services, both written and spoken.
- All front-line employees must be aware of the Official Languages Policy and their responsibilities relating thereto.
- In the future, the Department will use the iLearn Knowledge Centre module on official languages and language of service offered by the Office of Human Resources, or will incorporate components of the module into its training.
- Starting in 2009, the Department will offer information sessions on the language of service and language of work policies for all employees.

Recommendations of the Commissioner

- That the institution, with the help of the Office of Human Resources, undertake a review of the linguistic requirements at Mactaquac Provincial Park and the other parks in the network as soon as possible, so that the requirements can be upgraded if necessary.
- That the institution establish a minimum threshold for bilingual casual employees and target its recruitment efforts to educational institutions and other sources most likely to provide it with a complement of potential applicants sufficient for the attainment of its objectives.
- That the institution acknowledge the advantage of having bilingual employees and make an effort to implement the required incentives to recognize that additional skill, which have the effect of encouraging employees to use that skill for the benefit of the institution and the population they serve.
- That the institution adopt measures to visually identify the bilingual employees who are called on to interact with visitors in either of the two official languages.
- That, at the start of each shift, the identity of the bilingual employees on duty be clearly communicated to all staff on that shift and that all staff be clearly informed of their responsibility for providing services in both official languages.
- That the institution obtain appropriate language tools and make them readily accessible to front-line employees unable to serve clients in their language of choice such that clients can be informed, in their language of choice, that an employee with the required language skills will look after them as soon as possible.
- That employees have at their disposal effective means of communication enabling them to immediately seek the support of bilingual employees able to serve the public in their language of choice.
- That the institution conduct periodic random audits of the quality of services in both official languages provided by its front-line employees and inform all staff of the existence of this initiative.
- That periodic random audits of private concessionaires operating in Mactaquac Provincial Park be conducted in order to ensure that their contractual obligations relating to official languages are actually being fulfilled.

- That the institution develop an official means of noting the language of choice of campground users in the registration document and that it come up with a way of rating the satisfaction of its target clientele with regard to service in their official language of choice following a stay in a provincial park.
- That the institution establish a formal accountability mechanism for the managers of its provincial parks and set out, in its annual report, challenges encountered, corrective actions taken, and results obtained with regard to serving the public in their official language of choice.

Institution: Alcool New Brunswick Liquor (ANBL)

The complainant alleged a lack of French-language services on the part of the staff (particularly cashiers) at the NB Liquor stores in Dalhousie and Moncton. The complainant said that, many times during transactions at those stores, he received neither an active offer nor service in French. Also, the few times he insisted on being served in French, he had to wait several minutes for another employee to come and serve him in his official language of choice.

The few times he insisted on being served in French, he had to wait several minutes.

Corrective actions taken by the institution

In its response, ANBL presented a summary of the initiatives adopted so far and the measures taken in response to the recommendations issued in an earlier case:

- Presentations were made at a meeting of ANBL managers to acquaint them with the new language of service policy, clarify expectations and provide them with the tools required to fulfill their obligations under the OLA.
- As of January 2007, in connection with their annual evaluation and confirmation of having read the essential policies, all employees must review the Official Languages Policy.
- In consultation with the ANBL services concerned, a strategic plan was developed by senior management, and action plans were implemented.
- A consultant was hired to develop an in-house second-language training program relating to customer service. This training is offered to employees in the Fredericton and Saint John areas.

- Information sheets were provided at all locations to help employees make an active offer of service in person and over the phone.
- With the help of its in-house auditors, ANBL established a procedure for ensuring that appropriate signage is in place during their store visits and for monitoring the active offer made by store employees. The store manager and the regional manager then receive a copy of the audit report.
- Guidelines were distributed to all employees concerning how to deal with customers in person, answer calls, and leave e-mail messages.

Recommendations of the Commissioner

- That the institution ensure that its work schedules reflect the linguistic abilities of the on-duty teams at all times and that these linguistic abilities are not degraded by the addition of casual staff to fill in any gaps in the work schedule.
- That the institution adopt a system of visual reminders strategically placed at its sales points, primarily cash registers, in order to avoid staff oversights when it comes to customers' language rights.
- That the institution make sure to emphasize the legal and constitutional context of the *Official Languages Act* in the training for permanent and casual employees and reiterate that the scope of those obligations goes well beyond the ANBL's customer service policy.
- That the institution adopt effective strategies for providing bilingual services at all service points and in particular, at sales points where its pool of bilingual employees is insufficient and where the attrition factor would not allow the institution to build this capacity within a reasonable time frame. Advanced communication technologies could no doubt be enlisted.
- That the institution reflect upon this matter and develop as soon as possible a policy that takes into account the linguistic obligations of its agents operating franchise stores and that it come up with measures to deal with the challenges inherent in the fact that these stores have a limited work force and that it is the owners who cover the operating costs.

Institution: South-East Regional Health Authority – The Moncton Hospital

In early June 2008, the complainant phoned the Dermatology Clinic at The Moncton Hospital. Her call was answered by a voice mail system whose message was in English only. On July 9, 2008, the complainant called that number again and reached a unilingual anglophone receptionist who did not make an active offer of service. When the complainant said that she wished to be served in French, the receptionist put her on hold. After waiting for about three minutes, the complainant hung up since it was a long-distance call. The complainant, who had been going to that hospital for about 10 years, said that not much progress had been made with regard to official languages among the front-line personnel. She alleged that the radiology and oncology departments also had reception-related deficiencies (unilingual anglophone receptionists). As for blood testing services, the complainant alleged that only one triage employee was bilingual. Since patients are taken in the order in which they arrive, being served by that employee was therefore by chance.

Her call was answered by a voice mail system whose message was in English only.

Corrective actions taken by the institution**Dermatology Clinic**

- The institution confirmed that the recorded phone message of the Dermatology Clinic at The Moncton Hospital was unilingual.
- The recorded phone message was immediately changed to a bilingual format.
- All staff were reminded of the need to always make an active offer of service in both official languages, including in phone messages.
- A sign informing patients that they can receive services in their official language of choice was put up at the reception desk.

Further actions reported by the institution:

- The director of ambulatory care clinics impressed upon the ambulatory care clinic coordinators the importance of making an active offer of bilingual service.
- The coordinator of the ambulatory care project contacted all of the clinics' administrative staff to remind them of the need to make an active offer of service in both official languages in person and on the phone, as well as to ensure that all clinics record their phone messages in both official languages.

- The members of the staff of the Oncology Clinic and the Radiology Department were instructed to make an active offer of bilingual service and to follow through accordingly.
- Documentation intended for patients is available in both official languages.
- A registered nurse (RN) assigned to this clinic is able to provide patients with instructions in French.
- Patients' appointment sheets are now bilingual, as is the clinic's recorded phone message.
- Signs were put up in the clinic informing patients that they may receive service in their language of choice.
- Lastly, the institution indicated that it was almost finished preparing a kit on active offer of service in both official languages, which will be distributed and presented to senior management, all directors, and all managers, who will pass along this information to their staff as a reminder. The kit was also to be presented to all clinic coordinators as part of the training offered in connection with the opening of the new Ambulatory Care Centre.

Recommendation of the Commissioner

- That the institution carry out periodic checks of services and communications to ensure their compliance with the OLA, as well as with the government's language of service policy and the official languages guidelines given to its employees.

N.B. After the tabling of our report, Regional Health Authority B assured the Office of the Commissioner of Official Languages that it would implement the recommendation made following this complaint.

Institution: Service New Brunswick (SNB)

On June 25, 2008, the complainant tried to reach an SNB employee by calling her telephone number. The complainant's call was directed to the voice mail of the employee in question. The complainant took issue with the fact that the message was mostly in French.

Corrective action taken by the institution

- The institution informed us that the employee's message had been corrected so as to fully comply with the requirements of the OLA and that it was in the process of trying to resolve the situation with respect to the automated portion of voice mail messaging.
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Institution: Department of Tourism and Parks

On August 11, 2008, the complainant phoned the organization New Brunswick Tourism Grading Inc. Following the instructions of the automated answering system, the complainant pressed "2" for service in French. An employee answered without making an active offer of service. When the complainant indicated that she wanted to be served in French, the employee transferred her call to the voice mail of another employee. The complainant noted that the voice mail greeting was in English only. About an hour later, the complainant received a call from that other employee. The conversation took place in French, although the complainant had to repeat the information to make herself better understood. Lastly, the complainant pointed out the poor quality of the French in the update form that she obtained from the service in question but which, according to her, comes from the Department of Tourism and Parks.

Corrective actions taken by the institution

- The automated telephone system was reprogrammed with a simpler menu.
- Restrictions were placed on incoming calls to prevent (block) a francophone caller from being directed to a unilingual anglophone employee and vice versa.

In addition, New Brunswick Tourism Grading Inc. agrees to do the following:

- See that all changes made to employee voice mails are checked for accuracy to ensure they are working properly immediately after the change is made.
- Ensure that telephone system menus and messages are checked on a regularly scheduled basis to ensure that the information is correct and the system is working properly.
- Continue its policy of providing ongoing language training support and testing for all employees.

Recommendations of the Commissioner

- That the Department of Tourism and Parks make New Brunswick Tourism Grading Inc. aware of the importance of always making an active offer of service, and that it provide NBTGI with the information contained in the toolkit designed by the Office of Human Resources.
- That the Department of Tourism and Parks undertake a general review of the forms and other documents distributed to members of the public with a view to meeting the requirements of the OLA.

Institution: Atlantic Health Sciences Corporation – St. Joseph’s Hospital

On January 24, 2008, the complainant phoned St. Joseph’s Hospital in Saint John to obtain a document certifying that his wife had been hospitalized at that institution the year before. This document was required for tax purposes. When the complainant asked in French to be put in contact with the Medical Records Department, the person he was speaking to said, “Pas parler français. I’m gonna put you off and this lady will come back to you.” The complainant responded, “Pardon madame?,” and the call was disconnected. The complainant tried numerous times to call that number again, but his calls were always answered by a voice mail message that was in English only. About an hour later, an employee called the complainant back.

The complainant presented his request in French. Communication was difficult, however, because the employee spoke very little French. The complainant received the required document by fax and was surprised to see that it was in English only.

The information on the cover page confirmed that the fax was from the Medical Records Department of St. Joseph's Hospital.

Corrective actions taken by the institution

- The answering machine messages in the Medical Records Department at St. Joseph's Hospital and the Saint John Regional Hospital will now be bilingual.
- The cover pages of faxes and correspondence intended for the public and patients will be translated so that they are bilingual. All documents, except medical charts, will be bilingual. In addition, staff must review the information to be sent for translation.
- Staff members must make an active offer on the phone and in person. The official languages coordinator will make a presentation on active offer and ensure that staff understand what is expected of them.
- The department's response plan and linguistic profile will be revised by the end of March 2008.

The Commissioner's office reminded the institution that it must be vigilant when implementing its various programs and services in order to provide client services that comply with the provisions of *Official Languages Act*.

The complainant received the required document by fax and was surprised to see that it was in English only.

Institution: Department of Justice and Consumer Affairs

On November 26, 2007, the complainant phoned the Divorce Section of Registrar Services. The person who answered the phone gave the name of the office in both official languages, followed by "bonjour." The employee's pronunciation made the complainant think that French was that person's mother tongue. He therefore spoke to her in French, giving his name. She asked him to repeat it, which he did (still in French), thinking that he had spoken too fast. She replied, "Could you speak in English please?" The complainant was surprised and answered, "That's not the type of question you can ask." She then said, "One moment" and transferred his call to a co-worker who could serve him in French.

Corrective actions taken by the institution

The Registrar and the Deputy Registrar reminded their staff of their obligations under the *Official Languages Act* and of the fact that they must always communicate with clients in their language of choice.

- They reviewed the procedure to be followed when a client calls and they cannot serve that client in his or her language of choice.
- To avoid such a situation from recurring, they asked the staff to take the online course on language of service offered by the learning centre of the Office of Human Resources.
- In addition, the official languages coordinator discussed the incident with the manager of the office that received the calls to ensure that the staff fulfill their obligations.

Recommendation of the Commissioner

- That the institution carry out periodic checks of services and communications to ensure that they comply with the OLA, as well as with the government's policy on language of service and the official languages guidelines given to its employees.

Institution: Service New Brunswick (SNB)

This complaint concerns the Land Registry and Mapping Services of Service New Brunswick, which are grouped together in a software program called Planet, accessible through SNB's Internet site.

The complainant made three allegations.

First, the complainant alleged that, while searching using the Planet application, he had submitted a request for information in response to which he received a document in English only, faxed to him by an employee of the Department of the Environment. It should be noted that the complainant always surfed the francophone pages of Planet.

The second part of the complaint concerned an error message that appeared on the complainant's computer screen while he was doing a title search using that same application. A message in French, the complainant's language of choice, appeared, but its title and the buttons that are supposed to direct the Internet user to other pages were in English. In addition, "Service New Brunswick" and "Developed by Car..." appear on the page in question.

Lastly, in his letter, the complainant criticized the fact that the name Planet given to the application had not been translated into French.

Corrective actions taken by the institution

- Faxes, letters, and e-mails are sent in the language used in the request unless requested otherwise. The staff responsible for responding to requests were made aware of this situation.
- The error message that appeared on the complainant's screen was due to a deficiency that had not been detected during the testing phase prior to the system implementation. SNB said it was working with the system administrator to find the cause of the error so it could be corrected.
- As for the name of the Planet application, according to SNB, this is a brand name, just as Word and Outlook are. It therefore cannot be translated.



Language Issues

Language of Work within the Provincial Civil Service: Mobilizing the Success Factors

The year 2008-2009 was marked by the adoption of a new policy on language of work. That policy contains some significant improvements. For example, government employees must now be supervised in the official language that they choose. The Commissioner believes that the success of this policy rests on three factors:

- strong, ongoing leadership on the part of the senior civil service;
- implementation of a comprehensive strategy for promoting official languages in the workplace;
- improved access to language training.

Language of Service and Language of Work: The Two Components of the Language Policy

New Brunswick's Official Languages Policy, adopted in 1988, dealt mainly with two aspects, language of service and language of work. Unfortunately, the language of work provisions were so general and non-restrictive that they never led to any significant advancement within government. Back in December 1996, in her report to government entitled *Government of New Brunswick, Bonjour*, Madeleine Delaney-LeBlanc said that "the results of the study show that in government, it is much more difficult to work in French than in English. The report notes a discrepancy between the stated intent of the Policy and the reality regarding language of work."

A unilingual work environment has several negative repercussions. First, it could cause government employees to lose their fluency in their mother tongue or their second language, thus compromising the provision of quality bilingual services. Second, a unilingual environment detracts from the vitality of the other official language while promoting assimilation, the other language being presented or perceived as irrelevant. Last of all, the resources allocated to second-language training are wasted in a way because the employees are unable to practise their new language skills and lose what they have learned.

Over the past few years, the Commissioner of Official Languages has mentioned a number of times the need to improve the language of work policy. In his 2004-2005 annual report, he recommended that the provincial government update the policy. In addition, he stated the following in that same report: “In keeping with the spirit of the OLA as regards advancement of the equality of status and equal use of French and English, the government should establish clear guidelines allowing government employees to work in their first language and to pursue their careers in that language, in accordance with the Official Languages Policy.”

Initial Revised Policy

In September 2008, the Commissioner of Official Languages received a copy of the revised language of work policy, which he then proceeded to analyze. He concluded that the policy offered significant improvements but did not contain all of the elements required to ensure its success.

In a document that he sent to the Minister of Human Resources, the Commissioner made a series of comments and recommendations aimed at improving the policy. The topics raised included the supervision of employees, the drafting of documents, and the factors required for the policy’s success.

Second Revised Policy

On March 24, 2009, the provincial government sent the Commissioner a second version of the revised policy. This version incorporates some important changes that reflect several comments and recommendations set out in the Commissioner’s analysis. For example, it states that day-to-day communications between a supervisor and an employee must be in the official language chosen by the employee. This 2nd version became the new language of work policy and took effect on April 1, 2009.

Mobilizing the Success Factors

The Commissioner is pleased with the changes made to the language of work policy and feels that this policy could bring about real progress. However, he believes that the government must mobilize three factors to ensure the success of this policy.

“It is not enough to tell public servants that they may speak French if they wish; the whole milieu will have to be changed if the public service is to become a bilingual institution.”

Royal Commission on Bilingualism and Biculturalism
Book III: The Work World,
Ottawa, 1969, p. 204.

Employees will choose to work in their language of choice if they clearly feel they are being encouraged to do so.

1. Strong, ongoing leadership on the part of the senior civil service with respect to language of work

The Commissioner believes that true progress in terms of language of work depends first and foremost on strong, ongoing leadership on the part of deputy ministers and managers. In fact, employees will choose to work in their language of choice if they clearly feel they are being encouraged to do so. Otherwise, they will not dare or will be very hesitant to make that choice. The responsibility for creating that favourable environment falls first and foremost to the organization's leaders.

Some people will wonder how a unilingual manager or deputy minister can promote the use of both official languages at work. This is a pertinent question that has too often been ignored. Senior officials play a leadership role in the eyes of their employees, and, as a result, they must set an example when it comes to official languages. We believe that the time has come for the provincial government to clearly announce its intention to move towards a bilingual senior civil service. This would be a statement of principle, of course, but it would have the advantage of preparing minds for much stricter requirements in the medium term. It should be noted that this bilingualism requirement already exists in the federal senior civil service.

2. Implementation of a comprehensive strategy for promoting official languages in the workplace

A question of attitude

In her report *Government of New Brunswick, Bonjour*, Ms. Delaney-LeBlanc states, "It came out of focus groups with Francophone civil servants that when bilingual Francophones speak French during meetings or with their Anglophone supervisor, they are perceived as troublemakers. Also, focus group participants said that on several occasions their unilingual Anglophone coworkers have told them that they were hired because they were bilingual, seemingly inferring that is their only skill."

There is every reason to believe that such attitudes persist.

The strategy for promoting both official languages at work would include awareness sessions on respect for both official languages and the benefits of working in one's first language. These sessions would be offered to all managers and staff.

Discovering and using language of work best practices

In his 2004-2005 annual report, the Commissioner of Official Languages made some recommendations for improving the use of both official languages in the workplace. They still seem very relevant to us, and we believe they should be implemented as part of the development and application of a strategy for official languages promotion in the workplace. These recommendations are as follows:

- That a study be conducted in order to identify and implement the best ways of promoting, among Francophone civil servants, the use of French in the workplace in the Fredericton area, in regions where English is predominantly used, and in bilingual areas;
- That this study include an examination of the best ways of promoting, among bilingual civil servants whose first official language is English, the use of French in their workplaces; and
- That the government include among its preferred options the opportunity for employees to take part in exchange programs that would allow them to work for limited periods of time in settings in which the language of work is not their first official language.

Evaluating progress

Has there been forward or backward movement with regard to the use of both official languages at work? What are the contributing factors? What are the hindering factors?

The strategy for promoting both official languages should include a series of indicators enabling the provincial government to measure progress and improve its promotion methods.

3. Improved access to language training

Language training must be at the heart of any strategy for promoting the advancement of both official languages at work. However, that conclusion cannot be drawn from a reading of the new policy.

The new language of work policy provides that access to language training will be determined so as to ensure that services offered to the public in French and English are of equal quality, that organizations are able to offer services to the public in both official languages, and that employees for whom language training is an

integral part of their professional development have the opportunity to receive such training. No relationship is established between language training and the creation of a workplace that is respectful of both official languages, particularly in terms of employee supervision. That is surprising, to say the least.

In his 2007-2008 annual report, the Commissioner of Official Languages noted the drop in the number of civil servants enrolled in second-language training. While 815 persons took training in 2004-2005, only 262 civil servants did so in 2007-2008.

The Commissioner wrote the following in his report:

“These numbers are abysmal when one considers that of the possible 6,500 unilingual civil servants working in front-line departments, only 262 took second-language training during the 2007-2008 fiscal year.”

The Commissioner therefore reiterates the recommendation he made in his annual report:

- That the provincial government undertake an exhaustive study of its second-language training program with a specific examination of the possible reasons why the number of participants is so low as well as whether the program is achieving the desired results and come up with a plan to implement any needed improvements.

Language of Work: Looking Toward 2012

New Brunswick will have to undertake a review of the *Official Languages Act* (OLA) by December 31, 2012. That review would be an appropriate time to add to the OLA the right of provincial civil servants to work in the language of their choice, as is the case with the federal legislation. That right appears fundamental given the status of equality of the two linguistic communities of New Brunswick, which status is enshrined in the *Canadian Charter of Rights and Freedoms*. In that regard, the new language of work policy and implementation of the three success factors will make it possible to prepare the work environment for the introduction and full exercise of this right.

OLA Implementation Strategy: The Wind Is Turning

The application of the OLA involves challenges, as shown by the many complaints that the Office of the Commissioner receives each year. Furthermore, those complaints represent only part of the breaches of the OLA. In fact, for various reasons, some citizens choose not to file a complaint when their language rights are not respected. Nearly 40 years after the enactment of the first Official Languages Act, what accounts for such a situation? The Commissioner feels that these breaches can be explained by the lack of a comprehensive OLA implementation strategy.

Providing quality bilingual government services while actively advancing the equality of the two official languages is a complex mission. Achieving that mission appears unthinkable without a comprehensive strategy based on planning of needs, determination of objectives, establishment of appropriate enforcement and monitoring mechanisms, and employee training. Yet, such a strategy does not exist. That is why, for several years now, the Commissioner has recommended that the provincial government develop an official languages master plan for the entire government. Until just recently, the provincial government showed little interest in that recommendation. However, the wind seems to be turning.

In a letter dated March 30, 2009, Premier Shawn Graham informed the Commissioner of the creation of an official languages coordinating committee. According to the Premier, that committee is designed to [Translation] “coordinate all New Brunswick government activities with regard to official languages.” The Premier went on to say [Translation], “The committee, under my responsibility, will also be responsible for developing an implementation strategy for the *Official Languages Act* by March 31, 2010. That strategy will make it possible to identify the measures necessary to ensure that all departments meet their obligations under the *Official Languages Act* and to 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*.”

The Commissioner is pleased with this commitment by the Premier and will closely monitor future developments. He also reminds the government that his annual report for 2004-2005 presents several elements that should be included in an OLA master plan and very much hopes that those elements will be accepted by the coordinating committee.

French Second-Language: All Is Not Resolved

The lively debate surrounding the elimination of the early French immersion program continued throughout the year. After numerous twists and turns, the debate ended in a compromise that seemed to satisfy most stakeholders. However, the Commissioner believes that the future of the program is not necessarily assured.

Unless the real problems are addressed, the Commissioner believes that immersion could once again be subject to government review, the outcome of which could once again compromise its future.

On March 14, 2008, Education Minister Kelly Lamrock introduced a major reform of French second-language instruction. One of the key elements of that reform was the gradual elimination of the early French immersion program in Grade 1 and its replacement by an immersion program starting in Grade 6. Those changes arose from recommendations made by commissioners Jim Croll and Patricia Lee in their review report released a few weeks earlier. It should be noted that the conclusions of that review had already been challenged by the Commissioner and by numerous parent groups.

The Commissioner tried to convince Minister Lamrock that getting rid of the early immersion program was not the right solution to the problem of streaming (the fact that few students with special needs take immersion). In particular, he alleged that French immersion was more than a teaching method; it was also an essential element in the interaction between anglophone and francophone New Brunswickers. The Commissioner pointed out that parents and children who opt for immersion are making a concrete statement that they are open to francophone culture and want to be closer to their French-speaking neighbours.

The government's decision to abolish early immersion led to strong opposition from many parents and groups. Legal action was taken, and, on June 11, 2008, Mr. Justice Hugh McLellan of the Court of Queen's Bench of New Brunswick quashed the government's decision. In his ruling, he said that the government's consultations preceding the Minister's decision had not allowed for a full debate as the Education Minister had promised.

A new round of public consultations was therefore held during the summer of 2008, with many persons taking part. Finally, on August 5, Minister Lamrock presented a new version of his reform. One aspect of it garnered a great deal of attention: early immersion was restored, but it would start in Grade 3 rather than in Grade 1.

Although the government's compromise seemed to win over most stakeholders, the Commissioner believes that the future of the early immersion program is not necessarily assured. The reform does not actually propose any solutions to the problems that have continued to undermine the effectiveness of the immersion program and are behind the phenomenon of streaming. These problems include the following:

- lack of qualified teachers to teach French second-language (FSL);
- lack of teachers' assistants to support students with special needs;
- lack of professional support for FSL teachers;
- lack of uniformity in the management and promotion of the immersion program.

Unless the real problems are addressed, the Commissioner believes that immersion could once again be subject to government review, the outcome of which could once again compromise its future.

However, one positive note did emerge from this whole debate: at the height of the challenge to the government's decision, leaders in both linguistic communities publically supported the immersion program. In their view, immersion is a special tool for promoting dialogue between anglophones and francophones. That message seems to have been heard by the government.

Action Plan to Transform Post-Secondary Education: Constitutional Principle Conspicuous by Its Absence

Section 16.1 of the *Canadian Charter of Rights and Freedoms* stipulates that each linguistic community in New Brunswick has the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities. Any plan to reform post-secondary education would therefore be expected to take that principle into account, yet it is totally absent from the government's action plan. The Commissioner lost no time in reacting.

In fall 2007, the provincial government set up the Working Group on Post-Secondary Education in New Brunswick. Composed of officials of various post-secondary institutions in the province, this committee was tasked with examining the recommendations of the Commission on Post-Secondary Education in New Brunswick and recommending the best model for New Brunswick's post-secondary education system. (The Commissioner's comments regarding the Commission's report can be found in his 2007-2008 annual report.)

On May 29, 2008, the Working Group presented its 29 recommendations to the provincial government. In the document, the Group's members stressed the importance of explicitly recognizing constitutional rights with respect to education in any reform.

One month later, the provincial government presented the Action Plan to Transform Post-Secondary Education. At that time, Premier Shawn Graham said the following: "This is a comprehensive, multi-year roadmap that we want all New Brunswickers to own. We feel these bold initiatives will position us as a leader in post-secondary education and training."

The Commissioner undertook to review the action plan and was very surprised to see the absence of any explicit mention of educational duality or the right to distinct educational institutions as recommended by the Working Group on Post-Secondary Education in its report.

The Commissioner sent a letter to Premier Graham regarding this: "We believe it is very important that you clarify your position on all points that could give rise to questions concerning the government's commitment to putting forward strategies consistent with its constitutional obligations and respectful of the achievements of

the Francophone minority community with regard to language rights as interpreted by the courts in various landmark decisions in recent years.”

A few weeks later, during a speech given in Caraquet, the Premier clarified his government’s position on the matter: “The post-secondary education reform undertaken by the government will respect the principles aimed at preserving and promoting the language and culture of each of the two official linguistic communities. In addition, that reform will respect the principle of linguistic duality and the legal framework with regard to official languages in New Brunswick. And it will respect the autonomy of New Brunswick’s universities.”

Those words were subsequently confirmed in a letter that the Premier sent to the Commissioner in October 2008. The new Minister of Post-Secondary Education, Training and Labour, Donald Arseneault, also reaffirmed the government’s commitment to duality.

Given that the provincial government publicly recognizes its constitutional obligations with regard to post-secondary education reform, it would be logical that the Action Plan to Transform Post-Secondary Education reflects that position. A change along those lines is appropriate.

Health Reform in New Brunswick: Half-Measures Yield Half-Results

Much has been written about the lawsuit launched by Égalité santé en français against the provincial government, and that may well continue. Especially since this type of case usually goes all the way to the Supreme Court. This debate is generating a great deal of interest, and rightly so. It has to do with constitutional rights, the equality of the two linguistic communities, and the interpretation of fundamental statutes. At this point in time, the Commissioner has two observations to offer: first, the ambiguity that prevails in this debate does not serve the public's interests, and second, a timid attitude in relation to fundamental legislation is detrimental to harmonious advancement towards real equality.

On March 11, 2008, the New Brunswick government announced a reform of its health care system. That reform was characterized by three main elements: reduction of the number of regional health authorities from eight to two; the establishment of FacilicorpNB, an agency responsible for non-clinical services; and the establishment of the New Brunswick Health Council.

Regional Health Authority A takes in the facilities serving a predominantly French-speaking clientele, whereas Regional Health Authority B takes in those serving a predominantly English-speaking clientele.

Giving the francophone community a say in the management of health care facilities seems to be the motivation for establishing two health authorities rather than just one. In fact, in an interview published in an anglophone daily newspaper on February 2, 2009, Premier Shawn Graham said that “our Acadian population would never accept a single bilingual health authority.” It should be noted, however, that the two new health authorities are not officially designated on a linguistic basis.

After examining the reform in detail, the Commissioner sent his comments and recommendations to the Minister of Health on March 31, 2008. In his letter, the Commissioner said he supported the recommendation of the Société des Acadiens et Acadiennes du Nouveau-Brunswick that Health Authority A be designated as francophone and Health Authority B as anglophone. The government chose not to act on that recommendation.

When ambiguity hinders the debate

The *Official Languages Act* and *An Act Recognizing the Equality of the Two Official Linguistic Communities* are fundamental pieces of legislation; they define our province and are therefore at the heart of our collective identity. That is why elements of those two statutes were enshrined in the *Canadian Charter of Rights and Freedoms*.

When the provincial government presented its defence in the case brought by *Égalité santé en français*, there were strong reactions on a number of fronts: some aspects of that defence were interpreted as a negation of the principle of equality of the two linguistic communities. Although, in reading the text of the defence, one finds statements that seem to recognize the equality of the two communities as well as constitutional rights, the provincial government preferred not to respond. A normal tactic in legal proceedings? Perhaps. But that silence fueled a level of confusion that certainly does not help citizens to understand the issues in this debate.

Our legal framework with respect to language rights

The system of language rights protection in Canada falls within a framework of international law that protects ethnic, religious, and linguistic minorities. That legal system reflects and confirms the deep belief of Canadians that a true democracy must ensure equality of opportunity for all of its citizens, including those belonging to minority groups. That belief has been the impetus for the changes to the law with respect to linguistic equality that have occurred over the last 40 years. Furthermore, it has long been recognized that real equality requires more than simply treating people the same way. In fact, specialized or different services will often be necessary in order to ensure real equality between the two linguistic groups.

The consequences of a timid attitude in interpreting rights

Despite their importance, *An Act Recognizing the Equality of the Two Official Linguistic Communities* and the *Official Languages Act* are not always applied rigorously. In fact, each year, the Commissioner's annual report details significant incidents and areas of non-compliance with the obligations imposed by the *Official Languages Act*. Moreover, to date, no department has adopted a comprehensive plan for implementing that statute. Yet, for several years now, the Commissioner has been recommending such a measure in order to achieve greater progress towards real equality of our two languages. How can such a situation be explained? The Commissioner sees it as a lack of government commitment as regards the obligation to apply, concretely and proactively, not only the content but also the spirit of these two fundamental statutes.

Certainly, there has been progress in terms of language rights in recent years. However, the Commissioner feels that the government too often interprets these rights in a timid or even limited fashion.

Certainly, there has been progress in terms of language rights in recent years. However, the Commissioner feels that the government too often interprets these rights in a timid or even limited fashion. It is therefore not surprising that its actions in this area take the form of half-measures that, naturally enough, yield half-results. Such an attitude sows doubt in the minds of people regarding the government's commitment to fundamental principles.

From the Commissioner's perspective, the debate and the ambiguity generated by the health reform are a consequence of this timid attitude on the part of the provincial government when it comes to the interpretation of its legal obligations. The provincial government should therefore not be surprised that people are turning to the courts to obtain the full range of their rights. That is what happens when there is a failure to assume rightful leadership.

Debates, including legal debates, are at the heart of our democratic system. Often, they have resulted in changes in the law, particularly with respect to official languages. The courts should be turned to only when all of the discussions have taken place and there no longer seems to be any basis for agreement. Is that the case in the health field? Perhaps. What matters now is that, throughout the legal debate, the public be adequately informed. That requires an effort at clarity on the part of all stakeholders.

Whatever the outcome of the lawsuit, the Commissioner must make sure that the services offered by the two health authorities, FacilicorpNB, and the New Brunswick Health Council comply fully with the *Official Languages Act*. That is why the Commissioner met with the senior management of the New Brunswick Health Council and FacilicorpNB during the past year. Meetings will also be held with the boards of directors of health authorities A and B.

Promotion

Commissioner's General Philosophy on Promotion

The Commissioner views his mandate to promote official languages as being comprised of three important components:

- promoting the *Official Languages Act* (OLA),
- celebrating achievements in the area of language,
- helping to advance the equality of status and use of English and French.

Lastly, the Commissioner believes that specific partnerships and projects with social, cultural and economic organizations will further the cause of official languages. He also advocates collaborative and productive relations between his office and government institutions for the purpose of introducing measures for implementing the OLA.

Promotion of Language Rights

During the year, the Commissioner continued his efforts to make citizens aware of their language rights and what they can do to secure them.

Radio ads

A series of ads, produced in partnership with the Association des radios communautaires acadiennes du Nouveau-Brunswick and CJPN 90.5 FM Radio Fredericton, were aired by New Brunswick's French-language community radio stations. These ads describe the obligations of government institutions under the *Official Languages Act* with respect to active offer and provision of services.

Radio interviews

On the occasion of Provincial French Pride Week, the Commissioner granted interviews to various radio stations in the province. Besides language rights, the Commissioner also talked about the status of official languages in the province on the eve of the 40th anniversary of the adoption of the first OLA.



General Promotion of Official Languages

Presentation at St. Thomas University and the University of New Brunswick

The Commissioner met with a group of francophile students from St. Thomas University to talk about the future of the French language. A few days later, he had the opportunity to give a presentation to students taking the course *Le français des affaires* at the University of New Brunswick. The Commissioner spoke in particular about the provisions of the *Official Languages Act* and bilingual signage.

Accros de la chanson

With a view to supporting appreciation of the French language, the Commissioner gave a financial contribution to *Accros de la Chanson*, a competition that seeks to discover and showcase young people's musical talents. In the past few years, this initiative has become an important vehicle for promoting the French language and francophone musical culture.

Conference on official languages in Canada and New Brunswick

The Law School at the Université de Moncton celebrated its 30th anniversary in 2008. To mark the occasion, it organized a conference on official languages and the protection of language rights, held in November. The Office of the Commissioner supported that event financially.

Heritage Fairs

Again this year, the Office of the Commissioner participated in the activities surrounding the Heritage Fairs by presenting the 2tongues! Award to students in the anglophone and francophone sectors.

Pins and table-top signs

The Office of the Commissioner distributed “English–Français” and “Français–English” pins to various organizations and groups interested in promoting bilingual services. It also produced “J’apprends le français” pins to encourage people learning French to speak the language without feeling self-conscious and also encourage those around them to provide them with opportunities to converse in French.

Promotion targeting young people

Spotlight on Max Mallard

Capitalizing on the success of its youth website www.2tongues.ca, the Office of the Commissioner created a comic book aimed at young people aged 9 to 14: *The Adventures of Max Mallard*.

Max Mallard is a bilingual teenager who has ducks... for hands. This rather unique characteristic equips him to experience some fantastic adventures that also serve as opportunities to promote a harmonious dialogue between the two linguistic communities. More than 20,000 copies of the first issue were distributed to young people throughout the province during summer 2008. Published in both official languages, the comic book was designed by Razor Creative of Moncton and illustrated by FatKat Animation of Miramichi. The Commissioner is grateful for the support his office has received for this project from the Department of Intergovernmental Affairs and the Canada/New Brunswick General Agreement on the Provision of French-Language Services. The adventures of Max and his friends are waiting to be discovered at the website www.2tongues.ca. Look for two little ducks to show the way.

Meetings

During the year, the Commissioner met with numerous groups and organizations. These meetings gave the Commissioner the chance to raise various issues associated with his mandate. Here are a few of the groups and organizations met with:

- New Brunswick Liquor
- New Brunswick Association of Chiefs of Police
- Association des enseignants et enseignantes francophones du Nouveau-Brunswick
- Canadian Parents for French
- Board of Directors of the Société de l'Acadie du Nouveau-Brunswick
- World Congress of the Fédération internationale des professeurs de français
- New Brunswick Senior Citizens' Federation
- French for the Future
- New Brunswick Department of Public Safety
- Service New Brunswick
- Atlantic Lottery Commission

Business and Bilingualism

The vitality of our two official languages extends to all sectors of activity, including the business world. Although the private sector is not obliged to serve the public in both official languages, many business people have opted to do so out of a sincere desire to provide better service for their clients.

During the year, the Commissioner continued his efforts to promote bilingualism in the private sector. In addition to meetings with various groups of merchants, his attention was captured by two matters in particular.

Wal-Mart of Canada

The Commissioner supported the efforts of the organization *Avantage Chaleur* and the *Société des Acadiens et Acadiennes du Nouveau-Brunswick* (Pointe-aux-Pères section) to have Wal-Mart Canada improve the quality of French-language services at its Bathurst store. He attended a meeting in which representatives from these organizations and Wal-Mart participated. The meeting unfolded in a very positive atmosphere and enabled the Commissioner to explain his views on the importance of quality services in both official languages. Wal-Mart agreed to improve the quality of its services in French.

CAA Maritimes

During the year, the Office of the Commissioner received a complaint regarding the lack of documentation in French for CAA Maritimes members. Given that the organization in question is not subject to the OLA, the Commissioner was unable to investigate that complaint. However, he used the opportunity to make the organization aware of the benefits of bilingualism in the business world. In his letter to CAA, he wrote as follows:

“The mindset which often prevails is that providing bilingual services represents a financial drain on the company while it should be looked at as an investment to increase sales by attracting more people to join. At the very least, it should form part of the advertising budget of the organization. More and more francophones understand the negative effects on the vitality of their language and culture when having to deal more often than not in the other language. They are therefore consciously gravitating, whenever they can, to businesses that are making efforts to serve them in their language. I can see CAA Maritimes wanting to attract that part of the New Brunswick population by demonstrating that it is making legitimate efforts to respond to their needs.”

Outlook for the future

Towards a Generous Vision of Official Languages

Under the *Official Language Act*, the Commissioner is required to report on his activities annually to the members of the Legislative Assembly. This annual report is the result of that obligation. However, year after year, the tabling of this document does not seem to generate much interest in the Legislature. Few or no questions are asked in the House about the Commissioner's findings. There is no debate over the Commissioner's recommendations. Yet linguistic duality defines our province. Is it possible that the subject is considered too delicate to be discussed publically? Or is it just lack of interest?

At the end of an investigation, the Commissioner gives a report to the complainant, the institution that is the subject of the complaint, and the Office of the Premier. Except in a few cases, institutions do not report on the implementation of measures arising from the Commissioner's recommendations. Furthermore, the Office of the Premier rarely issues a directive to departments following an investigation by the Commissioner even though the Act specifies that the Premier is responsible for the administration of the OLA. And that is precisely why he receives a copy of every investigation report. Should there not be a procedure to ensure that the Commissioner's reports are thoroughly reviewed and that departments report to the Premier on corrective measures taken following a complaint? Will the new committee responsible for the official languages strategy be given a clear mandate in this regard?

During the past year, the Commissioner noted the government's timid attitude with respect to official languages in connection with its health and education reforms. That attitude has raised many questions. After 40 years of official languages in New Brunswick, how can this hesitancy be explained?

These questions all point to the need to adopt a more generous vision of official languages in our province.

Over the past year, the provincial government has shown in some cases that it can adopt measures that reflect a somewhat broader view of official languages. The changes to the language of work policy and the establishment of a committee responsible for implementing the OLA are two examples. This trend must continue and grow. As the only officially bilingual province in the country, New Brunswick must adopt a generous vision of official languages.