



# Investigation Report

**FILE NUMBER** 2017-3257

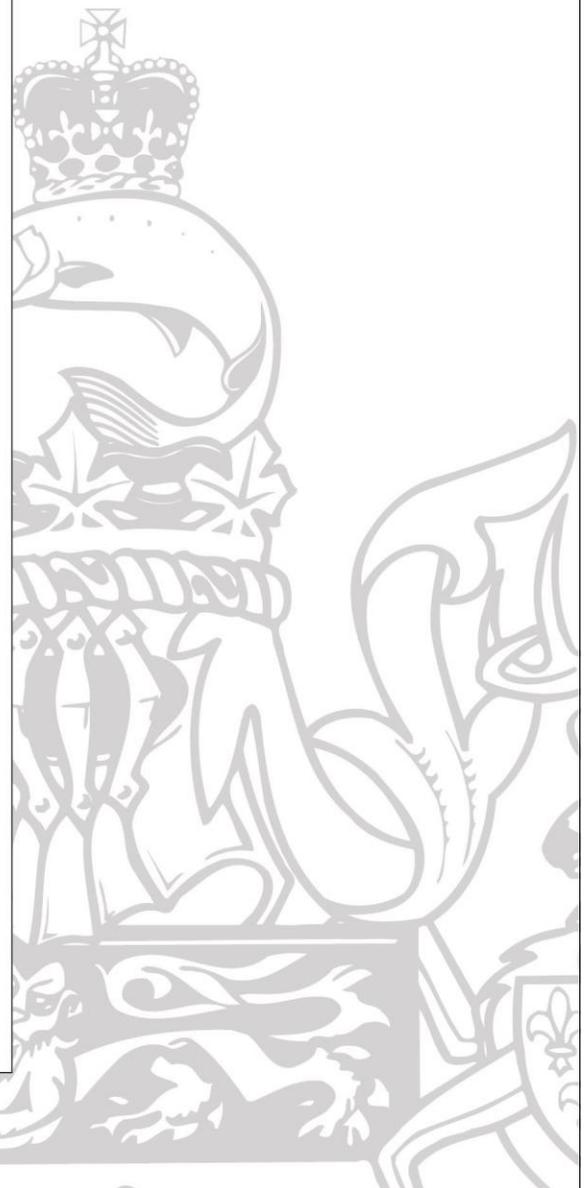
**INSTITUTION IN QUESTION** City of Fredericton Police Force

**SUBJECT** Alleged deficiencies in the provision  
of services in French

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**REPORT DISTRIBUTED TO THE  
FOLLOWING PERSONS:** Premier  
Chief Administrative Officer of the  
City of Fredericton  
Clerk of the Executive Council Office  
Minister of Justice and Public Safety  
Deputy Minister of Justice and Public  
Safety  
The complainant

**DATE OF DISTRIBUTION OF THE  
REPORT** April 2018



# Summary

The complainant went to the police station on Queen Street in Fredericton to report a theft. She did not receive an active offer of service and she communicated with two officers in English, although her language of preference is French.

At the end of its investigation, the Office of the Commissioner concluded that the Fredericton Police Force violated the complainant's language rights. This decision is based primarily on the following:

- The institution did not contest the facts of the interactions between the complainant and the officers present at the police station;
- The institution does not have mechanisms to verify whether it can provide an active offer of service in both official languages and service of equal quality in French and English.

In this file, the Office of the Commissioner recognizes that the responses given by the institution indicate that it is not fully committed to the process of complying with the *Official Languages Act* (OLA). As such, it appears that the institution did not follow up on the recommendations made by the Commissioner in a previous investigation report (2016-3013 and 2016-3017). Therefore, the Commissioner is making three recommendations, similar to those issued in the previous report:

- THAT the institution immediately carry out a study to determine the required number of bilingual officers within the City of Fredericton Police Force, to ensure that service of equal quality is provided at all times;
- THAT after determining the required number of bilingual officers within the City of Fredericton Police Force that will enable it to provide service of equal quality at all times, the institution undertake to comply with that requirement by hiring bilingual employees as soon as the next round of hiring takes place;
- THAT the institution intensify officer training to ensure that they understand the linguistic rights of citizens.

# Description of the Complaint

On February 9, 2017, at approximately 6:30 p.m., the complainant went to the Fredericton Police station located at 311 Queen Street to fill out a theft report. Since the office was closed, she had to wait at the entrance, where she contacted an officer over the telephone. The complainant notes that she started the conversation in French, and she continued to communicate in that language. She asked whether the agent could speak French, and the officer responded that she could not. The complainant says that she waited more than 45 minutes before an officer came to greet her, although that officer spoke only English.

The complainant says she had to wait another 20 minutes before being received by another officer, who also spoke only English. While checking the complainant's driver's license, the officer in question noticed that the complainant was Francophone and then asked her if she would like to be served in French. When the complainant said yes, the officer then indicated that she would need to wait a little bit longer so she could talk to a bilingual officer. Since the complainant had already been waiting for more than an hour, and she did not know how long she would have to wait before she could continue in French, she agreed to proceed in English. The complainant emphasizes that she agreed to proceed in that language only because there had already been a significant delay and she wanted to avoid having to spend the whole night at the police station. Lastly, the complainant also noted that she felt that the officers she interacted with were condescending towards her because she spoke French.

The complainant is unhappy that service in French was offered to her only one hour after she arrived at the City of Fredericton Police Force police station and that on two occasions her choice of language had already been ignored.

# Findings of the Investigation

## Investigation under subsection 43(13) of the OLA

On March 23, 2017, pursuant to subsection 43(13) of the *Official Languages Act* (OLA), a notice of investigation was sent to the Chief Administrative Officer of the institution to serve notice of the intention of the Office of the Commissioner to conduct an investigation into this matter.

In that letter, the Commissioner asked the institution to respond to the allegations made by the complainant. She also asked the institution the following questions:

### Questions

During the previous investigation, the Fredericton Police Force indicated that it would make all of its members aware of the institution's obligations under the OLA, and that they would receive a pocket translation aid containing expressions to help officers communicate with members of the public and inform them of their right to be served in the official language of their choice.

1. When a policy is in place, the institution must ensure that it is able to follow it. How does the institution ensure that members of its Police Service follow the internal policy in the Fredericton Police Force Operational Manual?
2. Does the institution carry out audits to ensure that Fredericton Police Force officers fully comply with their obligations under the internal policy?
  - i. If so, please provide us with the frequency of these audits or assessments for 2015 and 2016.
3. Is the obligation of Fredericton Police Force officers to provide service of equal quality to citizens a criterion taken into consideration during employees' yearly performance evaluations?
4. Please forward the content of the training on delivering services in both official languages that was offered to Police Force officers over the past two years, i.e., 2015 and 2016, as well as a description of the training scheduled on the calendar for 2017.
5. How does the institution explain the fact that, despite the training and reminders offered by the institution under its internal policy on official languages, the Office of the Commissioner notes that officers have not learned to reflexively provide an active offer of service to members of the public?
  - i. How does the institution explain the fact that certain officers are not using the tools that have been placed at their disposal, especially the pocket translation aid?

The most recent information obtained by the Office of the Commissioner from the Fredericton Police Force indicated that approximately 20% of its police force was bilingual as of May 2016. At that time, the institution informed us that no internal review had been carried out to assess the level of bilingualism required to be able to provide service of equal quality in both official languages.

6. In light of that information, what process does the Fredericton Police Force use to create teams able to offer equal service in both official languages on the ground at all times, day and night? Please forward details on this process.

When a member of the public communicates with the Fredericton Police Force for any reason, that person may be experiencing a high level of stress and confusion. These feelings may be exacerbated when the officer does not respect the member of the public's language preference or when there is an unreasonable delay in obtaining service from the institution.

7. Has the Fredericton Police Force established a maximum timeframe in which a member of the public:
  - i. Comes to the police station to report an incident and is able to meet an officer and communicate in the language of their choice (French)?
  - ii. Can communicate with the Fredericton Police Force by telephone?

If so, please forward any relevant information.

In the previous investigation, the institution stated that between March and April 2016, bilingual officers worked 315 hours of overtime, for a total of 1,337.5 hours. In addition, the institution stated that as of June 2016, bilingualism was not a condition of hire, but it was considered to be an asset.

8. Despite the fact that the institution must continuously pay overtime hours worked by bilingual officers, why does it not consider bilingualism to be a requirement for hire in order to ensure that there are enough team members to offer service to members of the public in the language of their choice at all times?

The institution must ensure that it fully complies with its obligations under the OLA, and not aspire to do only the minimum. It is therefore essential for the institution to carry out an assessment of its needs with the goal of achieving full compliance with the OLA, and to prioritize the recruitment of bilingual officers. In response to this investigation notice, the institution stated that during its last round of hiring, the Fredericton Police Force had recruited many officers from the École nationale de police du Québec.

Furthermore, knowing that the Atlantic Police Academy reserves fifteen (15) spots for CCNB graduates on the condition that they successfully meet all the admission requirements for the police foundations program:

9. Has the Fredericton Police Force ever recruited bilingual officers from other provincially recognized educational institutions?
  - i. If so, please indicate the number of bilingual officers employed by the City of

Fredericton as of March 2017, along with the educational institution where they obtained their police training.

- 10.** Has the Fredericton Police Force developed an action plan for 2017 and 2018 to recruit bilingual officers?
  - i.** If so, please forward the details of this action plan.
  - ii.** If not, how do you justify that decision?

## The Institution's Responses

On June 2, 2017, the Office of the Commissioner received the institution's response to the notice of intention to investigate.

The Office of the Commissioner asked the institution how it ensures that its officers follow the institution's internal policy on official languages (**first question**). The institution provided a lengthy response with various aspects. However, only two aspects seemed to be related to the question: *"during the team inspections that took place in the spring and fall, we checked to make sure officers were carrying the cards"* (i.e., the pocket translation aid). The institution also stated that *"when these cards are not used or the active offer is not memorized, this is brought to the attention of management as part of public complaints."*

The Office of the Commissioner then asked the institution (**second question**) whether it had conducted compliance audits with its officers to ensure that they were following the internal policy on official languages. The institution responded that the Department of Public Safety conducts audits every year in accordance with provincial police standards. However, according to the institution's files, over the past few years *"no audit had been conducted specifically on the provision of services in French, either for the Department of Public Safety or the Fredericton Police Force."*

The **third question** asked whether meeting linguistic obligations was an aspect of employees' yearly performance evaluations. The institution's response is unclear and it is impossible to conclude that meeting linguistic obligations is part of an officer's yearly evaluation process.

The Office of the Commissioner asked the institution to describe the training given to police officers on delivering services in both official languages during the years 2015 and 2016, and to provide it with the schedule for that training in 2017 (**fourth question**). The institution provided a lengthy response, several aspects of which had nothing to do with the question. It appears that training on the active offer is provided only for new recruits: *"The training on the active offer of service in French provided in 2015 and 2016 was mainly for new recruits and was intended to ensure that they correctly understood the active offer, that they had received their translation aids, and that they had been given the opportunity to practice with their assigned training officer."*

The **fifth question** asked for the institution's point of view on the fact that not all officers reflexively provide the active offer of service, despite training and reminders. The institution responded that it would be impossible to determine the reasons for this situation, and stated that *"the guidelines and the policy are nevertheless clear."*

The **sixth question** asked how the Fredericton Police Force puts together teams that are able to offer service of equal quality in both official languages at all times. The institution used this question to clarify the complainant's allegations. The institution specified that *"the person who answers the telephone at the entrance to the Fredericton Police Force building outside business hours is not a police officer located in the building. Instead, the telephone is answered by staff members at the Communications Centre. It should be noted that the Communications Centre is not associated with the Fredericton Police Force. It is rather under the jurisdiction of the City of Fredericton's Municipal Strategy Directorate. Consequently, first contact is not with a police officer (as indicated in the complaint). Secondly, if someone is at the door*

*and uses the telephone located at the entrance after business hours, the person in charge of the Communications Centre will dispatch a police officer to the site (in this case, the Fredericton Police Force building). Thirdly, the Communications Centre supervisor confirmed that communications officers who work during the day and who were mentioned in the complaint were all bilingual. Lastly, the Communications Centre has not been able to find any record of the incident mentioned in the complaint for the date and time indicated.”*

For the **seventh question**, the Office of the Commissioner asked whether the institution had established a maximum timeframe for delivering services in the member of the public’s preferred official language (French in this case), in person, at the police station, and over the telephone. The institution responded that it had not set deadlines and that police officers are *“deployed based on the type of call, priorities, and staff availability.”* The institution added that *“deployments and responses to calls are managed by the Communications Centre and controlled by the road supervisor (non-commissioned officer).”*

The Office of the Commissioner then asked (**eighth question**) why the institution does not require bilingualism when hiring new officers. The institution’s response shows that several factors influence the recruitment of new officers. The institution specified that *“over the years, specific positions have been advertised to cover positions for bilingual candidates only, i.e. positions in schools or crisis and hostage negotiators, which require a set of specific skills in terms of service delivery. During the process, the best qualified candidate is hired for the position.”*

For the **ninth question**, the Office of the Commissioner sought to better understand the institution’s current and future recruitment practices for bilingual officers, and asked about the current number of bilingual staff members. The institution responded that it *“does not recruit mainly from the École nationale de police du Québec, as mentioned by the Commissioner of Official Languages.”* [**The Office of the Commissioner would like to emphasize that as part of a previous investigation<sup>1</sup> of the same institution, the Chief Administrative Officer of the City of Fredericton, Chris MacPherson, wrote: “The Fredericton Police Force determined the need to try to increase the number of bilingual police officers; also, during its last round of hiring, it recruited a large number of officers from the École nationale de police du Québec.”**] The institution notes that its recruitment efforts are directed toward that school as well as the Atlantic Police Academy. The institution then provided the following clarifications about its bilingual staff: *“As of March 1, 2017, 23 Fredericton Police Force police officers were bilingual. Furthermore, the Police Chief recommended that the level of French among police officers in the organization should be assessed. It should be noted that three (3) new police officers were recently hired; they began working on May 1, 2017, and one of them is Francophone.”*

Lastly, for the **tenth question**, the Office of the Commissioner asked the institution if it had developed an action plan for 2017 and 2018 to recruit bilingual officers. The institution responded by indicating that a Lean Sigma innovation and improvement project for recruitment and hiring, which is being conducted by the Fredericton Police Force and is almost finished, should improve a number of areas, *“including language skills.”*

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<sup>1</sup> 2016-3013 and 2016-3017

## Analysis of the Office of the Commissioner

This complaint relates to subsections 31(1), 31(2), and 31(3) of the *OLA*. These provisions read as follows:

Policing Services	Services de police
31(1) Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.	31(1) Tout membre du public a le droit, lorsqu'il communique avec un agent de la paix, de se faire servir dans la langue officielle de son choix et il doit être informé de ce choix.
31(2) If a peace officer is unable to provide service in the language chosen under subsection (1), the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made under subsection (1).	31(2) Lorsque l'agent de la paix n'est pas en mesure d'assurer la prestation des services dans la langue officielle choisie en vertu du paragraphe (1), il doit prendre les mesures nécessaires et ce dans un délai raisonnable pour lui permettre de répondre au choix fait par le membre du public au paragraphe (1).
31(3) A police force or agency, as the case may be, shall ensure the availability of the means necessary to respond to the choice made by a member of the public under subsection (1) and to support the obligation placed on a peace officer under subsection (2).	31(3) Il incombe aux agences responsables ou aux corps policiers, le cas échéant, de veiller à mettre en œuvre les mesures nécessaires pour répondre au choix fait par un membre du public en vertu du paragraphe (1) et pour appuyer l'obligation de l'agent de la paix au sens du paragraphe (2).

### First part of the complaint: communication over the telephone

In its response, the institution explained that the person who answers the telephone at the entrance to the Police Force building after business hours is not a police officer located inside the building. In fact they are a staff member at the Communications Centre, who is not associated with the Police Force, but instead falls under the responsibility of the City of Fredericton Municipal Strategy Directorate. Consequently, the institution noted that the initial contact was not with a police service officer, as indicated in the complaint. Furthermore, according to the institution, it received confirmation from the Communications Centre supervisor that all the communications officers who were working on the day mentioned in the complaint were bilingual, and the Centre has not been able to find a record of the event mentioned in the complaint for the date and time indicated.

Given that this first part of the complaint is contested by the institution, the Office of the Commissioner will not make a ruling on whether or not it is merited. However, the Office of the Commissioner would like to remind the Fredericton Police Force that using the Communications Centre to answer calls after business hours effectively makes the Centre subject to the same linguistic obligations that apply to the Police Force. The Office of the Commissioner is of the opinion that a broad and generous interpretation of the provisions of the *OLA*, as shown by the decisions of tribunals on linguistic rights, justifies an interpretation of section 31 that expands the definition of peace officer to all related services provided by the Police Force. At the very least, it would be inconsistent if a member of the public loses their right to receive services from the Police Force in the official language of their choice simply because they

need to communicate with a civilian employee of the Force. Such an interpretation would be contrary to the purpose of linguistic rights.

In this case, the complainant could not know whether the person on the other end of the line was a police officer or a member of administrative staff. In fact, that is irrelevant; she wanted to communicate with police services.

The Office of the Commissioner would therefore like to remind the institution that it is important for Communications Centre staff who receive calls from the public to provide the active offer of service, and that the citizen's choice of language must be respected and communicated to the officer who will be following up on the call.

### **Second part of the complaint: interaction with officers at the police station**

The facts of this complaint clearly show that the institution was not able to provide service of equal quality to the complainant in the official language of her choice within a reasonable timeframe. At no time has the institution shown any evidence that the officers who interacted with the complainant provided an active offer of service. The institution goes on to say that it issues all police officers with a pocket-size translation aid containing expressions to help officers communicate with members of the public and to inform them of their right to be served in the official language of their choice. However, in this case the facts show that this aid was of no use. Nor does officer training on the active offer seem to have had the expected results, since no active offer of service was made.

As for what the Police Force considers a reasonable timeframe, the institution explained that it did not have "set timeframes" for providing services. It added that, regardless of the language of preference, police officers are deployed based on the type of call, priorities, and staff availability. As for this complaint, according to the Office of the Commissioner the wait time did not comply with the standard of what can normally be considered a reasonable timeframe. The fact that the complainant ultimately had to continue in English in order to avoid having to wait even longer is sufficient evidence to establish that the timeframe was unreasonable. A "reasonable timeframe" can in no case justify a member of the public giving up their right to receive services in the official language of their choice.

In February 2017, the Office of the Commissioner sent the institution an investigation report<sup>2</sup> following two complaints made against the Fredericton Police Force. Among other things, the report contained a series of recommendations to help the institution fully comply with its linguistic obligations.

The responses provided by the institution as part of this new investigation clearly show that it is not completely committed to taking steps to fully comply with its linguistic obligations. On the one hand, in terms of measures to ensure compliance, the Police Force does not have rigorous control mechanisms to ensure that all police officers comply with their linguistic obligations at all times.

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<sup>2</sup> 2016-3013 and 2016-3017

On the other hand, in terms of providing bilingual services to the public, the institution's response shows that the Fredericton Police Force does not have a detailed action plan to comply with its linguistic obligations at all times. The institution's responses concerning recruitment of bilingual staff members clearly indicate that the bilingual ability of the Police Force is only one factor among many others.

The Office of the Commissioner would like to remind the institution that respecting linguistic rights must go beyond appearances. As long as the institution does not treat this issue with the seriousness it deserves, Francophone citizens will continue to receive services of unequal quality and on an unpredictable timeframe, a situation that Anglophone members of the public do not have to deal with.

# Conclusion and Recommendations

At the end of this investigation, the Office of the Commissioner deemed that the second part of the complaint was **founded** and that there was a violation of the *Official Languages Act (OLA)* by the City of Fredericton Police Force. Among other things, the Office of the Commissioner concluded that the Police Force infringed subsections 31(1), 31(2), and 31(3) of the OLA.

This decision is based primarily on the following:

- The institution did not contest the facts of the interactions between the complainant and the officers present at the police station;
- The institution does not have mechanisms to verify whether the active offer of service was provided in both official languages and whether service of equal quality was provided in French and in English.

In this matter, the Office of the Commissioner notes that the responses provided by the institution indicate that it is not completely committed to taking steps to comply with the *Official Languages Act (OLA)*. As such, it appears that the institution has not followed up on the recommendations that the Commissioner made in a previous investigation report (2016-3013 and 2016-3017). Therefore, the Office of the Commissioner is making three recommendations similar to those issued in the previous report:

- THAT the institution immediately carry out a study to determine the required number of bilingual officers within the City of Fredericton Police Force, to ensure that service of equal quality is provided at all times;
- THAT after determining the required number of bilingual officers within the City of Fredericton Police Force that will enable it to provide service of equal quality at all times, the institution undertake to comply with that number by hiring bilingual employees as soon as the next round of hiring takes place;
- THAT the institution intensify officer training to ensure that they understand the linguistic rights of citizens.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Chief Administrative Officer of the City of Fredericton, the Clerk of the Executive Council, the Minister and Deputy Minister of Justice and Public Safety, as well as the complainant.

Pursuant to subsection 43(18) of the OLA, if the complainant is dissatisfied with the conclusions presented following this investigation, she may apply to the Court of Queen's Bench of New Brunswick for a remedy.

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

Dated at the City of Fredericton,  
Province of New Brunswick,  
April 25, 2018