



Investigation Report

FILE NUMBERS: 2017-3357 and 2017-3362

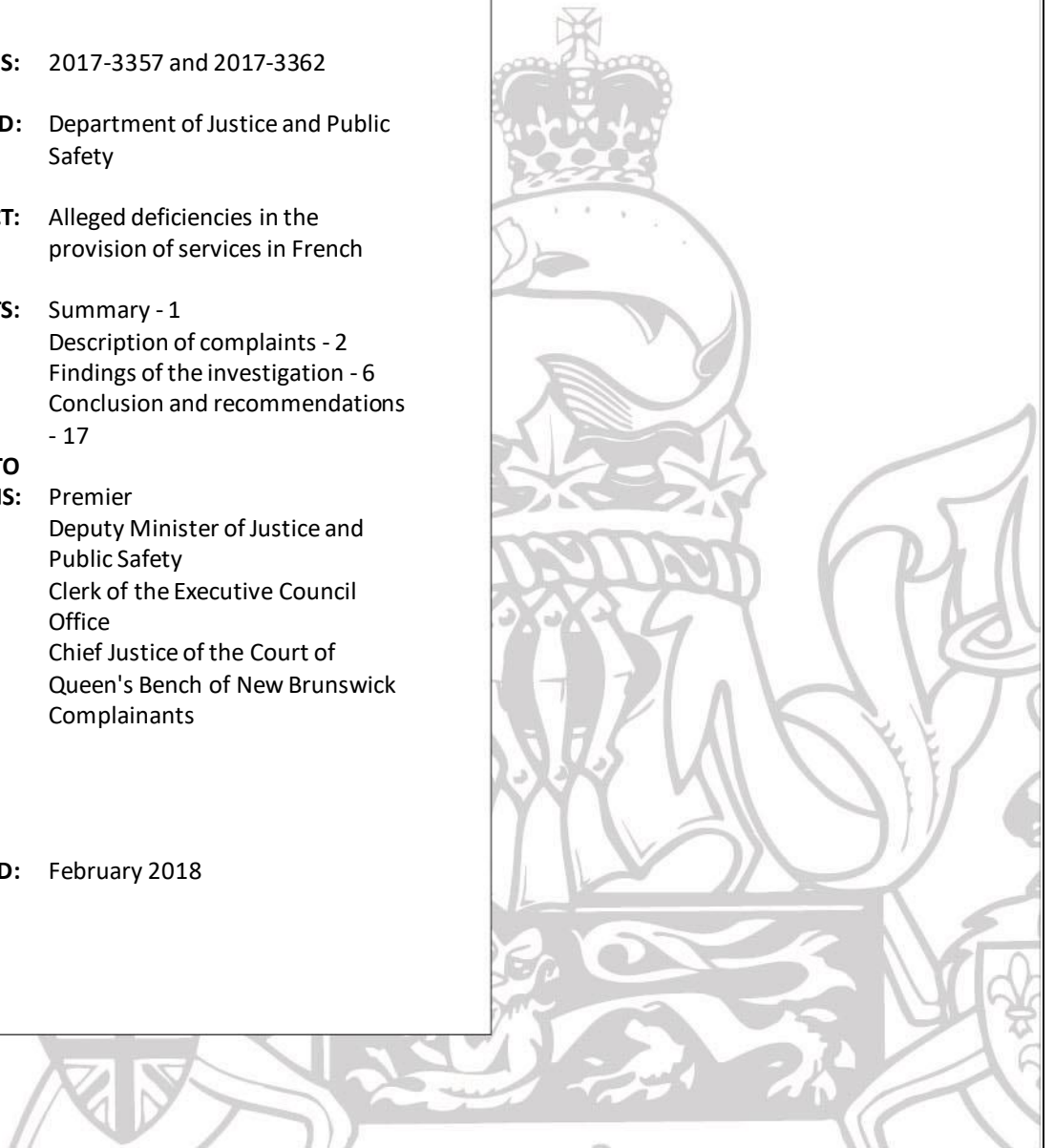
INSTITUTION CONCERNED: Department of Justice and Public Safety

SUBJECT: Alleged deficiencies in the provision of services in French

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REPORT DISTRIBUTED TO THE FOLLOWING PERSONS: Premier
Deputy Minister of Justice and Public Safety
Clerk of the Executive Council Office
Chief Justice of the Court of Queen's Bench of New Brunswick
Complainants

DATE REPORT ISSUED: February 2018



Summary

This investigation report was prepared as a result of two complaints regarding the Department of Justice and Public Safety (the institution).

The two complaints deal with the same situation: procedural deadlines in a child custody case that must be heard by a bilingual judge in the Woodstock Courthouse. According to the complainants, the use of French in this matter led to delays in the proceedings contrary to the *Official Languages Act* (OLA).

In the light of information gathered during the investigation, the Office of the Commissioner concluded that the two complaints are **founded** and that there was a violation of the OLA.

The institution explained the delay in this matter by administrative deficiencies unrelated to the language issue. The Office of the Commissioner believes that this situation shows a lack of judgment on the part of the institution's staff with respect to its official languages obligations and the importance of the rights recognized by the OLA.

Having completed the investigation, the Commissioner made the following recommendations:

- THAT** the institution review its protocol to ensure that requests for a trial in either official language are processed without delay in all judicial districts and before all courts in the province;
- THAT** the government undertake an assessment of each judicial district in the province and all courts to ensure that the necessary resources are in place to offer equal service and equal access to courts in both official languages;
- THAT** training sessions on the obligations arising from the OLA are given to the employees of the institution and staff of New Brunswick courts;
- THAT** the institution report to the Office of the Commissioner of Official Languages on the follow-up to these recommendations by February 1, 2019.

Description of complaints

FILE: 2017-3357

The complainant alleges that he was at a disadvantage because he was using French in a matter before the Court of Queen's Bench at the Woodstock Courthouse (the courthouse).

The matter was brought to the Woodstock Courthouse through the filing of documents related to his case on May 20, 2016. The documents submitted indicated that the complainant would be using the French language during the proceedings. The other party to the matter had indicated that she would be using English during the proceedings. Consequently, because the parties were proceeding in both official languages, the hearing should have been held before a bilingual judge. The interim hearing took place on December 14, 2016, and an interim judgment received on February 22, 2017, provided for an agreement between the parties until the end of August 2017. On the date the complaint was filed, i.e. May 12, 2017, no hearing date had yet been set.

The critical element in this case, as identified by the complainant, is that the child custody arrangements between the complainant and his ex-wife remain to be determined. Owing to the slowness of the proceedings, the complainant informed the Chief Justice of the Court of Queen's Bench of the situation because he believed it was very important for him to be able to maintain a bond with his young child, without there being a forced separation between the complainant and his son due to delays in the legal proceedings, since the ex-wife has custody¹.

In response to his letter, the complainant received a letter dated May 9, 2017, from the Clerk of the Court of Queen's Bench, Moncton Courthouse, advising him that his letter was inappropriate, but without offering any more details about the unfair situation in which the complainant found himself.

The complainant says that his right to access to justice in the official language of his choice is not being upheld because, more than one year after the notice of proceeding was filed, no hearing date has yet been set. The complainant alleges that the lack of access to a judge with second-language capacity is causing an unreasonable delay and is equivalent to a denial of justice.

FILE: 2017-3362

The Association des juristes d'expression française du Nouveau-Brunswick (AJEFNB) denounces the slowness of the proceedings in a case where a solicitor represents a client who is seeking the resolution of questions in a separation case such as the details of the custody of their five-year-old child, contact with the child, and place of residence.

In this case, the client, through his lawyer, is proceeding in French, while the mother of the child is proceeding in English in the Judicial District of Woodstock. The proceedings were introduced in May

¹ APPENDIX A –Letter sent by the complainant to the Chief Justice of the Court of Queen's Bench of New Brunswick.

2016, and as of June 2017, no judgment has yet been given. It should be noted that the parties have been separated for four years and that, while the situation was meant to be only temporary, the mother of the child has settled since that time (four years) in the town of Woodstock, New Brunswick. In May 2016, the mother of the child served notices of application on the father requesting a significant reduction in contact with the child.

The Notice of Motion was scheduled to be heard on August 5, 2016, but had to be postponed because the lawyer was unavailable. Judge Blais issued an order on December 14, 2016, i.e. more than seven (7) months following the introduction of the proceedings.

On February 23, 2017, counsel for the father indicated that she had received an e-mail from the Administrator of the Woodstock Courthouse with a copy of the attached order. In that e-mail, the Administrator asked if the parties required a bilingual judge for the follow-up hearing. On February 27, 2017, by forwarding a signed copy of the order, the lawyer confirmed the need to proceed before a bilingual judge. The judge's decision allowed the father of the child to maintain regular contact with his child and even increase the frequency for the 2017 summer season. However, the interim decision does not provide for contact between the father and the child after August 24, 2017, his rights and those of the child are at risk of being violated, and this may cause significant adverse effects on their relationship, which is certainly not in the best interests of the child.

It was only on May 30, 2017, three (3) months after the lawyer had advised the Administrator of the Court of wanting to proceed with a bilingual judge, that the dates for the hearing of December 14 and 15, 2017, were proposed.

The law

The AJEFNB points out that under section 16 of the *Official Languages Act*:

"English and French are the official languages of the courts."

Accordingly, section 17 provides that either of the official languages may be used:

"in any matter before the courts, including all proceedings, or in any pleading or process issuing from a court";

and, under section 18 :

"No person shall be placed at a disadvantage by reason of the choice made under section 17."

Moreover, subsections 19(1) and 19(2) of the *Official Languages Act* provide that the Court must understand the official language chosen:

"without the aid of an interpreter or any type of simultaneous translation or consecutive interpretation;"

or must understand both languages:

"without the aid of an interpreter or any type of simultaneous translation or consecutive interpretation."

if:

"both English and French are the languages chosen by the parties to the proceedings."

As is the case with the parties in this matter, the AJEFNB argues that there is no doubt that the father represented by the lawyer who is a member of the Association is disadvantaged by the choice of the French language since he must wait much longer for a hearing with a bilingual judge than the average wait time for English-speaking people in the region.

To this end, the AJEFNB indicates, without wanting to involve the lawyer representing the father, that the latter in another similar case represents an Anglophone client and submitted a request for a change of date after that of the father in the case at hand; the lawyer has, however, already been assigned a new hearing date for the case in which all parties are proceeding in English.

In this case, the father's choice to proceed in French, while he is fully entitled to do that, and that right is set out clearly in the *Official Languages Act*, in addition to giving rise to delays and wait times significantly higher than those faced by English speakers, risks depriving him of any contact with his son for a certain period of time.

Judge Richard Petrie is the judge in the Court of Queen's Bench in the Judicial District of Woodstock, and it must be concluded that he does not meet the requirements of subsection 19(2). That said, subsection 19(2) refers to the Court and not to the judge. In order to satisfy the requirements of section 19, it would seem that the Government of New Brunswick ensures the institutional bilingualism of New Brunswick courts by asking bilingual judges from other jurisdictions to travel to hear bilingual cases when the judge in residence is not bilingual.

To the extent that there are no delays, there is probably no violation of section 18 of the *Official Languages Act*, and the methodology used by the government to fulfill its obligations is adequate and within its discretion. However, where the exchange of judges causes undue delay and disadvantages an individual because of his or her choice of official language, there appears to be a violation of sections 18 and 19 of the *Official Languages Act*.

In short, the judicial system in the Woodstock area of New Brunswick, owing to the choice of the French language – an official language of the province and the courts of New Brunswick – results in wait times and delays that exceed those faced by Anglophones in the district.

The inequalities faced by those affected, caused by the choice of the French official language, are unacceptable and give rise to a system of justice that could be described as a two-tiered system. If so, there would also be a violation of subsection 16(2) of the *Canadian Charter of Rights and Freedoms*, which reads as follows:

"English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick."

[our emphasis]

The AJEFNB asks, how can one claim equality of status when Anglophones have much faster access to one of the most important institutions of our society and Francophones have to wait before settling a dispute to which they are parties? As pointed out by the Supreme Court of Canada in *R. v. Beaulac* [1999] 1 SCR 768 at paragraph 24, section 16:

" provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State."

[our emphasis]

The government's measures on institutional bilingualism in this case are inadequate because they do not allow the government to fulfill its obligations, which are set out clearly in the *Official Languages Act*. The recognition of two official languages within a State and within an institution such as the courts of New Brunswick is necessarily accompanied by obligations that must be met equally, throughout New Brunswick, regardless of the choice of official language.

The Association des juristes d'expression française du Nouveau-Brunswick, whose mandate includes serving as a spokesperson with legislative and government authorities to expand and improve French-language legal services, wishes to lend its voice and support to the complainant in file number 2017-3357. There seem to be too many of these kinds of situations in various parts of the province, and the Francophone minority, which is an official language community, always pays the price.

In short, since the guiding principle of official languages is equality, the AJEFNB is of the opinion that there is a violation of sections 16, 18, and 19 of the *Official Languages Act* of New Brunswick and that, consequently, the government is not complying with its obligations under the *Official Languages Act* with respect to access to justice in French.

Findings of the investigation

Investigation under subsection 43(13) of the OLA

FILE: 2017-3357

On July 18, 2017, pursuant to subsection 43(13) of the *Official Languages Act* (OLA), a Notice of Investigation was sent to the Deputy Minister of Justice and Public Safety (the institution) to signify the intention of the Office of the Commissioner of Official Languages to conduct an investigation into this matter.

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

1. In view of the facts as stated by the complainant, does the institution consider a delay of more than one year in setting a hearing date in a family matter to be non-prejudicial?
2. For the province as a whole, what is the percentage of judges of the Court of Queen’s Bench, Family Division, who have second-language capacity?

Number of judges, Family Division, with
second-language capacity

Total number of judges, Family Division

3. For the Judicial District of Carleton County and Victoria County, what is the percentage of judges of the Court of Queen’s Bench, Family Division, who have second-language capacity?

Number of judges, Family Division, with
second-language capacity

Total number of judges, Family Division

4. In the judicial districts as a whole, how does the Court of Queen’s Bench ensure that it complies with procedural deadlines?
5. For the Woodstock Courthouse, please provide the average wait time for separation matters when all of the parties involved are proceeding in English only.
6. In the light of this excerpt from the response sent to the complainant by the Clerk of the Moncton Courthouse in response to his letter to the Chief Justice of the Court of Queen’s Bench:

“Rest assured that family matters are put on the docket on a priority basis, with consideration given to the availability of counsel and the parties and in the light of existing judicial resources.”

Please provide details about the meaning of existing judicial “resources” and explain the reasons, if any, justifying the fact that the complainant is subjected to the restrictions of these existing judicial “resources”.

7. What means are available to members of the public for inquiring about or questioning delays that, in their view, become prejudicial to their case when they suspect that their choice of language to be used during the proceeding is the cause of the delays?
8. To what body should members of the public in such a situation turn when they believe that they are at a disadvantage and that their right to access justice in the official language of their choice is not being upheld?

FILE: 2017-3362

On July 18, 2017, pursuant to subsection 43(13) of the *Official Languages Act* (OLA), a Notice of Investigation was sent to the Deputy Minister of Justice and Public Safety (the institution) to signify the intention of the Office of the Commissioner of Official Languages to conduct an investigation into this matter.

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

1. In view of the facts as stated by the complainant, does the institution consider a delay of more than one year in setting a hearing date in a family matter to be non-prejudicial?
2. For the province as a whole, what is the percentage of judges who sit on the Court of Queen’s Bench Family Division, and who have second-language capacity?

Number of judges, Family Division, with
second-language capacity

Total number of judges, Family Division

3. In the judicial districts as a whole, how does the Court of Queen’s Bench ensure that it complies with procedural deadlines?
4. What means are available to members of the public to challenge or inquire about deadlines when they believe that their choice of language to be used during the proceedings is the cause of delays? Who should they contact?
5. For the Woodstock Courthouse, please forward the data for 2016 showing the average wait time before a hearing date is obtained for separation cases when all of the parties involved are proceeding in English only.

6. For the Woodstock Courthouse, please forward the data for 2016 showing the average wait time before a hearing date is obtained for separation cases when all of the parties involved are proceeding in English and in French.

The institution's responses

Files 2017-3357 and 2017-3362

In its responses dated December 15, 2017, the institution wrote the following:

In response to your letters dated July 18, 2017, I would like to take this opportunity to thank you for bringing this matter to my attention.

I have reviewed this matter with the Acting Director of Court Services, Don Higgins.

The delay in this matter stemmed from operational processes which were independent of language. When a judge is not able to hear a matter due to any number of factors (language, conflicts of interest, scheduling conflicts, etc.), accommodations are made by exchanging judges with another region. The Chief Justice of the Court of Queen's Bench selects the replacement judge. Client Services employees across the two districts then communicate with one another (as well as the justices) via email and phone to adjust the schedules of their respective justices and courts. There are often a lengthy number of exchanges, but the process is typically measured in days, rather than weeks.

In this case, arrangements were being made between Woodstock and Saint John. The Woodstock Client Services admin reached out to her regular contact in Saint John, unaware that her Saint John counterpart was on an unplanned extended leave.

On the Saint John end, there was an administrative failure to properly reassign the absent employee's tasks, or to adequately review that person's emails.

On the Woodstock end, there was a failure to follow up through other means of communication when the emails were not being responded to.

Supervisors have since been instructed to ensure the immediate cut-over of responsibilities upon an employee's leave for any reason, and to ensure that out-of-office notifications and alternative contact details are in place.

Employees are also encouraged to follow up through other communication channels when responses are not received within the usual parameters.

1. *In view of the facts as stated by the complainant, does the institution consider a delay of more than one year in setting a hearing date in a family matter to be non-prejudicial?*

While there is no fixed period which is deemed to be 'prejudicial', it is generally recognized that matters in dispute are best dealt with promptly following the collection of the parties supporting materials and the preparation arguments. Court Services works to limit the wait times in the context of the nature of the matters in dispute, the availability of court resources and the availability of the parties, their counsel, and other third party participants.

For the province as a whole, what is the percentage of judges of the Court of Queen's Bench, Family Division, who are bilingual? Number of judges in Family Division who have second language capacity compared with total number of judges in Family Division?

There are 12 judges who hear Family Cases, and of those 12 judges, 7 are bilingual.

- 2. For the Judicial District of Carleton County and Victoria County, what is the percentage of bilingual judges of the Court of Queen's Bench, Family Division?*

There is only one judge in the Judicial District of Woodstock and the incumbent is not bilingual. If a matter requires a bilingual judge, an exchange is arranged with another judicial district having bilingual capacity.

- 3. In the judicial districts as a whole, how does the Court of Queen's Bench ensure that it complies with procedural deadlines?*

Court Services and in particular the Clerk works to limit the wait times in the context of the nature of the matters in dispute, the availability of court resources, and the availability of the parties, their counsel, and other third party participants. The Clerk and other members of the Court Services team regularly consult with the judiciary, counsel, and self-represented parties throughout the life cycle of a matter. By actively managing cases in a coordinated fashion, the Clerk attempts to utilize all opportunities to advance the hearings to the earliest practical date.

- 4. For the Woodstock Courthouse, please provide the average wait time for separation matters when all of the parties involved are proceeding in English only.*

When filing a Record on Application for setting down an application, the current typical wait period is 6-7 months.

In the case of a motion for an Interim Order, the Clerk consults with the sitting Judge to attempt to schedule within 3 to 4 months.

When filing a Trial Record for Divorce and requesting one day or more, the current wait time is typically 7 months.

- 5. In the light of this excerpt from the response sent to the complainant by the Clerk of the Moncton Courthouse in response to his letters to the Chief Justice of the Court of Queen's Bench:*

Rest assured that family matters are put on the docket on a priority basis, with consideration given to the availability of counsel and the parties and in the light of existing judicial resources.

Please provide details about the meaning of "existing judicial resources" and explain the reasons, if any, justifying the fact that the complainant is subjected to the restrictions of these "existing judicial resources".

"Existing judicial resources" simply refers to a limiting factor that must be taken into account for scheduling. It refers to the availability of judicial resources taking into account their existing bookings, conflicts, vacation/professional development schedules, leaves, vacancies, and the like. Likewise, the availability of courtroom and supporting staff must be taken into account.

6. *(And question 4 of Notice of Investigation 2017-3362) What means are available to members of the public for inquiring about or questioning delays that, in their view, become prejudicial to their case when they suspect that their choice of language to be used during the proceedings is the cause of the delays?*

If a person is unsatisfied with the quality of service they are receiving through Court Services, they are encouraged to first escalate it informally through the chain of authority, by requesting to speak to a 'supervisor'. More formal routes include the Ombudsman or the Office of the Official Language Commissioner.

7. *To what body should members of the public in such a situation turn when they believe that they are at a disadvantage and that their right to access justice in the official language of their choice is not being upheld?*

If a person is unsatisfied with the quality of service they are receiving through Court Services, they are encouraged to first escalate it informally through the chain of authority, by requesting to speak to a 'supervisor'. More formal routes include the Ombudsman or the Office of the Official Languages Commissioner.

(Question 6 in Notice of Investigation 2017-3362) For the Woodstock Courthouse, please forward the data for 2016 showing the average wait time before a hearing date is obtained for separation cases when all of the parties involved are proceeding in English and in French.

The wait period is no different whether the matter is proceeding in English or French.

The provision of service in both official languages is of the utmost importance to the Department of Justice and Public Safety and such matters are taken very seriously. I would like to thank you again for bringing this matter to my attention.

Analysis by the Office of the Commissioner

In file 2017-3357, the complainant alleged that he was at a disadvantage owing to the fact that he chose to use French in a matter before the Court of Queen's Bench of New Brunswick in the Judicial District of Woodstock. The matter before the court deals with the terms and conditions of the custody of a young child.

The complainant indicated in his proceedings that he intended to use French, whereas the other party indicated that she would use English. Hence, pursuant to the OLA, since the parties chose to proceed in both official languages, the hearing should be held before a judge who can understand these two languages without the assistance of an interpreter or simultaneous translation.

The proceedings were initiated in May 2016. The matter was to be heard on August 5, 2016, but it had to be postponed to a later date because the counsel for the complainant was not available. An interim hearing was held on December 14, 2016, and an interim order was issued on February 22, 2017. The order provided for a custody agreement until the end of August 2017. In the email accompanying the interim order, the court administrator asked the parties if they were still going to proceed in both official languages. The Office of the Commissioner wishes to specify that it considers this request inappropriate. The complainant had already indicated in his proceedings that he was going to proceed in French, so there was no reason for the court administrator to raise this issue again.

On February 27, 2017, counsel for the complainant indicated that her client still wanted to proceed in French. It was not until May 30, 2017, or three (3) months after counsel for the complainant indicated that she wanted to proceed before a bilingual judge, that the dates of December 14 and 15, 2017 were set for holding the hearing.

The complainant indicated that the delay in this matter was owing to the fact that in the District of Woodstock, there was no judge able to hear a case in both official languages and that this situation contravenes his right to access to justice in the official language of his choice. The absence of a bilingual judge brings an unreasonable delay and is equivalent to a denial of justice.

In file 2017-3362, the complainant, the Association des juristes d'expression française du Nouveau-Brunswick (AJEFNB) also criticizes the slowness of the proceedings in the matter mentioned above. It maintains that the complainant, in file 2017-3357, was at a disadvantage because of his choice of the French language since he had to wait a lot longer for a hearing than a citizen who had decided to proceed in the English language.

The AJEFNB maintains that the Judge of the Court of Queen's Bench assigned to the Judicial District of Woodstock is not bilingual and therefore could not hear the case. A bilingual judge from another judicial district therefore had to travel to Woodstock to hear the matter. The AJEFNB adds that, insofar as this does not lead to a delay, there is no violation of the OLA. However, if that is not the case, it follows, according to the AJEFNB, that the right of access to a trial in French is not respected.

The AJEFNB maintains that, in this case, the choice of the French language resulted in a delay, and this situation is, in its view, unacceptable because it does not respect the principle of equality inherent in the language rights recognized in the OLA.

For its part, the Department of Justice and Public Safety, which is responsible for the administration of the province's courts, answered that the delay in this matter in the complaints was caused by administrative processes independent of language.

The Department explained that when a judge is unable to hold a hearing owing to certain factors, accommodations are made by exchanging judges with another region. The Department says that the Chief Justice of the Court of Queen's Bench selects the replacement judge. When the choice of the "replacement" judge is determined, the Client Services employees in the two judicial districts affected communicate with one another to adjust the schedules of the respective justices and courts. The Department adds that in these cases, the process is typically measured in days, not in weeks.

In this case, the Department explains that provisions were made between the judicial districts of Woodstock and Saint John. The Client Services Administrator of the Judicial District of Woodstock emailed her regular contact in Saint John, unaware that she was on an extended leave. The Department admitted that, on the Saint John end, there was an administrative failure to reassign the duties of the absent employee or to check that person's emails, and that no follow-up was done on the Woodstock end when the emails sent were not being answered.

Official languages and the administration of justice

The relevant provisions of the OLA with respect to the administration of justice are as follows:

16. English and French are the official languages of the courts.	16. Le français et l'anglais sont les langues officielles des tribunaux.
17. Every person has the right to use the official language of his or her choice in any matter before the courts, including all proceedings, or in any pleading or process issuing from a court.	17. Chacun a le droit d'employer la langue officielle de son choix dans toutes les affaires dont sont saisis les tribunaux, y compris toute procédure, pour les plaidoiries et dans les actes de procédure qui en découlent.
18. No person shall be placed at a disadvantage by reason of the choice made under section 17.	18. Nul ne peut être défavorisé en raison du choix fait en vertu de l'article 17.
19(1). A court before which a matter is pending must understand, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, the official language chosen under section 17 by a party to the matter.	19(1). Il incombe au tribunal saisi d'une affaire de comprendre, sans l'aide d'un interprète ou de toute technique de traduction simultanée ou d'interprétation consécutive, la langue officielle choisie en vertu de l'article 17 par une partie à cette affaire.
19(2). A court before which a matter is pending must understand both official languages, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, if both English and French are the languages chosen by the parties to the proceedings.	19(2). Il incombe également au tribunal saisi d'une affaire de comprendre, sans l'aide d'un interprète ou de toute technique de traduction simultanée ou d'interprétation consécutive, les deux langues officielles lorsque les parties ont opté pour que l'affaire soit entendue dans les deux langues officielles.

The right to use the official language of one's choice in a legal proceeding is a fundamental right recognized in the *Canadian Charter of Rights and Freedoms*. This right is also recognized in the OLA. Section 16 of the OLA states that English and French are the official languages of the courts of the province. Section 17 sets out that every person has the right to use the official language of his or her choice in any matter before the courts. Section 18 says that no person shall be placed at a disadvantage by reason of his or her choice of language.

As for the other provisions of the OLA, the guiding principle underlying language rights in such a case is that of equality. Practically speaking, this requires the province's courts and the institutions responsible for administering them to respect this principle and provide service in both official languages without delay at all times.

In its response, the institution noted that the delay in this matter had been caused by deficiencies in the operational processes independent of language. Among other things, it explained that a breakdown in the communication process between Client Services in both judicial districts concerned would explain this delay. The Office of the Commissioner does not accept this response as a possible justification for a breach of the obligations set out in the OLA. Instead, it shows a lack of judgment on the part of the staff of the institution with respect to its official languages obligations and the importance of the rights recognized by the OLA. The "operational processes" applied by the institution must therefore be changed to ensure that such a situation does not occur again. We also believe that awareness training on the obligations arising from the OLA should be offered to the employees concerned.

In its response, the institution explained that Court Services works to limit the wait times in the context of the nature of the matters in dispute, the availability of court resources, and the availability of the parties, their counsel, and the other participants. The Office of the Commissioner recognizes that these are legitimate factors and that they can influence the wait times for a trial, whether in English or in French. However, we wish to specify that a request for a trial in either official language cannot in any case justify a delay in proceedings. To use the wording of the Supreme Court of Canada in the decision *R. v. Beaulac* [1999] 1 SCR 768, we recall that administrative inconvenience, including the availability of court resources, bilingual judges, or the additional financial costs of changing the schedule are not relevant because the existence of language rights requires the government to satisfy the provisions of the OLA by maintaining an adequate institutional infrastructure that is able to provide services in both official languages at all times and without delay. As the Supreme Court of Canada wrote in the *Beaulac* decision, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of the official languages.

The institution's response is symptomatic of a lack of understanding of the obligations arising from a request for a trial in French. It leaves the impression that the institution considers this request a simple administrative matter. On the contrary, such a request requires proper judicial resources to be put in place with an immediate response to ensure that obligations are met. If the "existing judicial resources" are not adequate to offer the two official language communities service of equal quality, the government must correct the situation. It is not enough to answer that the public can submit a complaint "through the chain of authority, requesting to speak to a 'supervisor'." Nor can the institution hide behind the complaint process set out in the OLA to justify breaches of the act. It must immediately take the necessary positive measures to correct the situation and ensure that these semi-constitutional rights are respected.

Conclusion and recommendations

The investigation by the Office of the Commissioner established that the complaints are founded and that there was a violation of the *Official Languages Act*. This conclusion is mainly based on the fact that the institution's response shows a lack of judgment on the part of the institution's staff concerning its official languages obligations and the importance of the rights recognized by the OLA.

The Commissioner believes that action must be taken to provide equal service and access to the courts in both official languages at all times throughout the province, as imposed by the *Official Languages Act*.

Having completed this investigation, the Commissioner makes the following recommendations:

- THAT** the institution review its protocol to ensure that requests for a trial in either official language are processed without delay in all judicial districts before all courts in the province;
- THAT** the government undertake an assessment of each judicial district in the province and all courts to ensure that the necessary resources are in place to provide equal service and equal access to the courts in both official languages;
- THAT** training sessions on the obligations arising from the OLA be given to the employees of the institution and staff of the New Brunswick courts;
- THAT** the institution report to the Office of the Commissioner of Official Languages on the follow-up to these recommendations by February 1, 2019.

In accordance with subsection 43(16) of the OLA, this report is submitted to the Premier, to the Deputy Minister of Justice and Public Safety, to the Clerk of the Executive Council Office, to the Chief Justice of the Court of Queen's Bench of New Brunswick, and to the complainants.

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

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

Dated at Fredericton,
Province of New Brunswick
February 22, 2018

APPENDIX A

Correspondence sent by the complainant to the Chief Justice of the Court of Queen's Bench of New Brunswick

De : [REDACTED]
Envoyé : 9 mai 2017 09:17
À : Richard, Anne (JPS/JSP)
Objet : RE: court file no; [REDACTED] District of Woodstock

Sachez, Mme la greffière, que je considère votre réponse vague et insuffisante. Si je ne peux m'adresser de cette façon au juge en chef afin de faire valoir mes droits, je voudrait bien trouver le bon forum où m'adresser.

Votre réponse devrait m'aider à me diriger vers le bon forum...

Désolé que ma demande soit inappropriée.

De : Richard, Anne (JPS/JSP) <Anne.M.Richard@qnb.ca>
Envoyé : 9 mai 2017 09:01
À : [REDACTED]
Objet : RE: court file no; [REDACTED] District of Woodstock

Monsieur,

Votre communication écrite ici-bas adressée au Juge en chef de la Cour du Banc de la Reine du Nouveau-Brunswick m'est dirigé pour suivi. Sachez qu'il est inapproprié de communiquer de cette façon auprès d'un membre de la magistrature à l'extérieur de la salle d'audience et en l'absence de toutes les parties et leur(s) avocat(s).

Soyez rassurés que les causes familiales sont fixées sur le rôle en priorité tout en tenant compte des disponibilités des plaideurs et des parties et à la lumière des ressources judiciaires existantes. Pour toute information additionnelle concernant votre dossier, veuillez-vous adresser à votre avocate, Maître [REDACTED]

Recevez, Monsieur, l'expression de mes sentiments les plus distingués.

Anne M Richard

Greffière de la Cour du Banc de la Reine du N.-B. – Administratrice de la cour /

Clerk of the Court of Queen's Bench of N. B. – Court Administrator

Circonscription judiciaire de Moncton / Judicial District of Moncton
Services aux tribunaux / Court Services

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From: [REDACTED]

Sent: Tuesday, May 9, 2017 00:38

To: Smith, David (JPS/JSP)

Subject: court file no; [REDACTED] District of Woodstock

Votre Honneur,

Je me permet de vous écrire afin d'attirer votre attention sur une situation qui me semble inacceptable.

Je suis le père de [REDACTED] qui aura 5 ans le 16 mai. Sa mère [REDACTED] et moi sommes séparés depuis 4 ans. Nous avons eu de nombreux désaccords notamment sur le lieu de résidence, la garde, les contacts etc.. Toutefois nous n'avions pas obtenu de jugement concernant la situation de [REDACTED]

La mère et [REDACTED] vivent au Nouveau-Brunswick depuis 4ans. Cette situation devait être temporaire.. Malgré la distance et les réticences de Mme [REDACTED] j'ai réussi à développer une bonne relation avec mon fils et à lui apprendre le français.

En mai 2016 Mme [REDACTED] m'a signifié des avis de requête et de motion. Les demandes formulées réduisaient de façon importante les contacts avec mon fils. L'avis de motion devait être entendue le 5 aout, toutefois il y a eu une remise puisque mon avocate n'était pas disponible. Ce n'est que 4 mois plus tard, soit le 14 décembre 2016, que l'avis de motion a finalement été entendu par la juge Marie-Claude Blais.

La décision de la juge m'a permis de maintenir mes contacts réguliers avec mon fils et même de les augmenter pour l'été 2017. La décision intérimaires couvre les contacts jusqu'au mois d'aout 2017.

Il a fallu attendre 2 mois pour recevoir jugement intérimaire.. Je n'ai toujours pas la date d'audition de la requête.. Je vous rappelle que la décision intérimaire ne prévoit pas de contacts entre mon fils et moi après le 24 aout 2017..

Les délais menacent de léser mes droits et ceux de mon fils en causant des impacts négatifs importants sur notre relation, ce qui n'est certainement pas dans son intérêt.

Je suis stupéfait par la lenteur du processus judiciaire de la Cour, particulièrement dans des situations familiales impliquant de jeunes enfants.

Merci de votre attention

Bien à vous [REDACTED]