



Investigation Report

FILE NUMBER 20-21-010

INSTITUTION IN QUESTION Office of the Premier

SUBJECT Allegations of deficiencies with respect to the offer of service in French

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REPORT DISTRIBUTED TO THE FOLLOWING PERSONS Premier
Clerk of the Executive Council Office
Complainant

ISSUE DATE September 2020



Summary

This report was drafted following an investigation of a complaint against the Office of the Premier (the institution). Specifically, the complainant alleges that she was unable to communicate with the institution in French during a media briefing.

Upon completion of the investigation, we concluded that the complaint was founded and that the institution did not meet its obligations under the OLA. We therefore make the following recommendations:

THAT the Government of New Brunswick have a Francophone or bilingual spokesperson at news conferences;

THAT all practices regarding the use of the two official languages during updates or news conferences given by the Government of New Brunswick be reviewed to ensure a balanced use of the official languages in view of the equal status of the two official languages and the two linguistic communities.

Complaint

The details of the complainant's allegations are as follows:

The incident occurred on March 25, 2020, during the daily media briefing of the Government of New Brunswick during the COVID-19 crisis.

The complainant, a reporter, asked the Premier a first question in French. The moderator of the media briefing asked her in French to repeat her question in English, in response to which the complainant asked if it would be possible for them (the staff in attendance) to translate her question. She was then asked in French to ask her question again (with no language specified). Believing this was to facilitate an eventual translation, the complainant asked her question again in French. When she finished asking her question in French the second time, the moderator asked her, again in French, to repeat her question in English.

Even though she wanted to communicate with the government in French, the complainant had no choice but to ask her question again in English, to which the Premier responded in English.

The complainant then asked a second question in French. The moderator asked her again, in French, to repeat the question in English. Once again, the complainant had to comply with this requirement, and the Premier answered her question in English.

The complainant wonders what would have happened had she been unable to communicate in English, since the staff who were there moderating the media briefing did not seem prepared to offer a translation of her question to the Premier, even though some of them could speak French.

The complainant informed us that her allegations could be confirmed by listening to the following link, starting at minute 53: <https://www.youtube.com/watch?v=U-O87gNEYw4&t=3158s>).

Investigation

Investigation under subsection 43(13) of the OLA

After the complaint was filed, we issued a notice of investigation to the Premier on May 29, 2020, pursuant to subsection 43(13) of New Brunswick's *Official Languages Act* (OLA). In that notice, we asked the institution to provide us with its assessment of the facts in relation to the complainant's allegations and to answer the following series of questions:

1. Why was the reporter asked to repeat her questions in English?
2. Last April, our Office sent you a letter dated March 31, 2020, informing you that, between March 23 and 29, 2020, the Office of the Commissioner had received 10 complaints about the media briefings held by your Office. What measures has your Office taken to ensure that, in the future, the OLA is complied with at all times during your media briefings?
3. Also in the letter of March 31, we reminded you of the need for balanced use of the two official languages. What measures has your Office taken to ensure balanced use of the official languages during the updates, news conferences, and public announcements made by the Government of New Brunswick?

Response from the institution

In his response dated June 10, 2020, the Premier advised us as follows:

Response to question 1:

[Translation] *This was done in error, and the new revised protocols in place will ensure that this does not happen again. The moderator on the conference call tells the reporters that they have the right to ask their questions in English or in French. This protocol was implemented shortly after the incident, and it will remain in effect going forward.*

Response to question 2:

Our new measures:

- *The moderator on the conference call informs reporters that they have the right to ask their questions in French or in English.*
- *Ear pieces are provided for participants who require them, which enables those wearing them to hear the question in English if it is asked in French.*
- *Two sign language interpreters are present at news conferences, along with voice interpreters or translators. One person interprets using American Sign Language (ASL) and the other interprets using Quebec sign language (LSQ).*

Response to question 3:

Measures in place to ensure balanced use of the official languages during updates, news conferences, and public announcements made by the Government of New Brunswick.

- *The moderator is bilingual and ensures that all information communicated to reporters is in both French and English.*
- *Simultaneous interpretation is available at each news conference.*
- *The news conferences are live streamed on YouTube. There are separate French and English feeds, which ensure that New Brunswickers can listen to conferences in the language of their choice.*

Analysis

The relevant provisions of the OLA in this matter are as follows:

27. Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.	27. Le public a le droit de communiquer avec toute institution et d'en recevoir les services dans la langue officielle de son choix.
28. An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.	28. Il incombe aux institutions de veiller à ce que le public puisse communiquer avec elles et en recevoir les services dans la langue officielle de son choix.
28.1. An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.	28.1. Il incombe aux institutions de veiller à ce que les mesures voulues soient prises pour informer le public que leurs services lui sont offerts dans la langue officielle de son choix.

YouTube video

To support her allegations, the complainant provided, on the complaint form, a YouTube hyperlink to the Premier's media briefing on March 25, 2020. As she claims, the video, found at <https://www.youtube.com/watch?v=U-O87gNEYw4&t=3158s>, enabled the staff of the Office of the Commissioner of Official Languages to see that, in minute 54, after the complainant asked her first question, the moderator asked her to repeat it in English. The complainant then asked if she could translate the question, in response to which the moderator replied that the question would need to be repeated.

In accordance with the moderator's request, the complainant repeated her question. The moderator then told her again to repeat her question in English. The complainant replied that she thought New Brunswick was a bilingual province, and she asked her question again in English. The Premier answered her question in English, although the complainant clearly wanted to communicate with the institution in French.

At minute 55 of the video, the complainant asked a second question in French. Again, the moderator asked her to repeat her question in English, which the complainant did. Once again, the Premier answered her question in English.

Response to the notice of investigation from the Office of the Commissioner for Official Languages

In response to question 1 in our notice of investigation, the Premier informed us that the reporter had been asked to repeat her questions in English

in error and the new revised protocols in place will ensure that this does not happen again. The moderator on the conference call tells the reporters that they have the right to ask their questions in English or in French. This protocol was implemented shortly after the incident, and it will remain in effect going forward.

Then, in response to question 2, the Premier explained the new measures as follows:

- *The moderator on the conference call informs reporters that they have the right to ask their questions in French or English.*
- *Ear pieces are provided for participants who require them, which enables those wearing them to hear the question in English if it is asked in French.*
- *Two sign language interpreters are present at news conferences, along with voice interpreters or translators. One person interprets using American Sign Language (ASL) and another interprets using Quebec sign language (LSQ).*

Last of all, in his response to question 3, the Premier stated as follows:

Measures in place to ensure balanced use of the official languages during updates, news conferences, and public announcements made by the Government of New Brunswick.

- *The moderator is bilingual and ensures that all information communicated to reporters is in both French and English.*
- *Simultaneous interpretation is available at each news conference.*
- *The news conferences are live streamed on YouTube. There are separate French and English feeds, which ensure that New Brunswickers can listen to conferences in the language of their choice.*

Response to question 1

On the basis of the response to our first question, the Office of the Commissioner is convinced that the new measures in place will make it possible to prevent situations where people who ask a question in one of the official languages of New Brunswick will be asked to repeat it in the other official language.

We thank the Office of the Premier for having so quickly implemented the protocol to the effect that the moderator must inform reporters that they may ask questions in the official language of their choice. However, it is surprising that such a request was made in the first place,

particularly if we consider that the Premier himself is responsible for the administration of the OLA. After more than 50 years of official languages in the province, the Premier must set an example when it comes to the treatment of language rights at his media briefings. Yet we have here a flagrant example of a violation of the OLA, which should never have occurred.

Response to question 2

We are concerned by response 2, which indicated that ear pieces “enable those wearing them to hear the question in English if it is asked in French.” The Office of the Commissioner hopes that this is just a typo and that the ear pieces also function in the other official language, i.e., that a person who wears them can hear in French a question that is asked in English.

Many people in the province clearly understand French better than English, and there are also people who do not understand English at all. These people may wish for or need ear pieces to receive interpretation in French. That said, even if the ear pieces do work in both directions, the Premier’s response is worded in such a way as to indicate the very real possibility that English is treated as the primary language and that the provision of services and communication in French is instead an accommodation.

Regarding this idea of accommodation, the Supreme Court of Canada, in *DesRochers*, said that “substantive equality, as opposed to formal equality, is to be the norm, and the exercise of language rights is not to be considered a request for accommodation.” Also, as the Supreme Court puts it so aptly in *Beaulac* “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.” We therefore remind the Premier that he must ensure, at all times and throughout the province, that requests for service in one official language are treated equally to requests for service in the other official language.

Response to question 3

We are concerned as well by response 3. The Office of the Commissioner asked question 3 because it wanted to know what measures were in place to ensure a balanced use of the official languages during updates, news conferences, and public announcements made by the Government of New Brunswick. However, we believe that the Office of the Premier did not understand what was meant by “balanced use.” Nothing in this response leads us to believe that the proposed measures will ensure a balanced use of the official languages during updates, news conferences, and public announcements.

Earlier this year, we wrote to the institution and spoke with the Chief of Staff of the Office of the Premier about a balanced use of the two official languages. In a letter to the institution dated March 31, 2020, I wrote:

[Translation] *I should nonetheless remind you that, because of the equal status of the two official languages in our province, institutions must make a balanced use of French and English at news conferences and in public announcements.*

Indeed, the purpose of the Official Languages Act is to ensure equal treatment of the province's two official languages. Consequently, a language that is available only through translation is not being treated equally to the other.

I would remind you that a balanced use of the two official languages in a government announcement, whether made through traditional means, social media, or new tools like Facebook Live, is very important, because this use influences the perceptions that the members of each official community have of their own language.

We realize that all stakeholders cannot necessarily be bilingual, and there is nothing forcing them to use both official languages during public announcements or at news conferences. However, it would be important to ask speakers who have the ability to do so to express themselves more often in French to ensure balanced use of the two official languages at such events.

Furthermore, Investigation Report 2018-3541, which refers to the Executive Council Office and can be consulted on the website of the Office of the Commissioner of Official Languages, looks at the need for a balanced use of the two official languages. That report states as follows:

Even if all the presentations given that day had been translated into French, that would still not have been acceptable. The purpose of the Official Languages Act is to ensure equal treatment of the province's two official languages. Making one language available through translation only would therefore not be equal treatment of this language compared to the other.

[...]

Therefore, it is crucial that, during public announcements such as the one in this case that took place on January 11, 2018, the Premier pay more attention to ensuring that both official languages are used fairly in his presentations, wherever they take place.

As the minister responsible for the administration of the OLA, the Premier must understand and be aware of the need for a balanced use of French and English in order to respect the equal status of the two official languages. New Brunswick's French and English linguistic communities have equal status and equal rights and privileges, which must be reflected through the equal importance given to the two official languages during media briefings.

Two questions for your consideration

In conclusion, we wonder what would have happened on March 25, 2020, if the complainant had not been bilingual and had not been able to repeat her question in English. Would the moderator have simply moved on to another reporter?

We also ask that the institution consider a similar complaint, but in English rather than in French. Imagine an English-speaking reporter attending a government news conference in Fredericton. He asks a long, complicated question in English, and the moderator asks him to repeat his question in French. Would that be acceptable?

Conclusion and Recommendations

Our investigation made it possible to establish that, for the reasons stated in this report, the complaint was **founded** and that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick. We therefore make the following recommendations:

THAT the Government of New Brunswick have a Francophone or bilingual spokesperson at news conferences;

THAT all practices regarding the use of the two official languages during updates or news conferences given by the Government of New Brunswick be reviewed to ensure a balanced use of the official languages in view of the equal status of the two official languages and the two linguistic communities.

In accordance with subsection 43(16) of the OLA, we are sending this report to the Premier, the Clerk of the Executive Council, and the complainant.

Pursuant to subsection 43(18) of the OLA, if the complainant is not satisfied with the conclusions of this investigation, she may apply to The Court of Queen's Bench of New Brunswick for a remedy.

Yours truly,

Shirley C. MacLean, Q.C.
Commissioner of Official Languages for New Brunswick

Dated at the City of Fredericton,
Province of New Brunswick,
this 30th day of September 2020