



# Investigation Report

**FILE NUMBER** 2020-013

**INSTITUTION CONCERNED** Edmundston Police Force

**SUBJECT** Allegations of deficiencies with respect to the delivery of service in English

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**REPORT DISTRIBUTED TO THE FOLLOWING PERSONS** Premier  
Chief Administrative Officer of the City of Edmundston  
Chief of the Edmundston Police Force  
Clerk of the Executive Council Office

**ISSUE DATE** October 2020

## Summary

This report was written following an investigation into how the Edmundston Police Force complies with the New Brunswick *Official Languages Act* (OLA) when executing a search warrant.

At the end of this investigation, we concluded that the procedures of the Edmundston Police Force, while serving a search warrant, did not comply with section 31 of the OLA; we therefore make the following recommendation:

**THAT the Edmundston Police Force take the necessary measures to ensure full compliance with section 31 of New Brunswick's *Official Languages Act*.**

## **Complaint**

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

In the fall of 2019, the Edmundston Police Force (EPF) executed a search warrant, completed in French only, on a member of the public at their residence. As this person wanted service in English, they requested a copy of the warrant in that language, but the request was refused.

Following receipt of the complaint, our efforts to communicate with the complainant were unsuccessful. Consequently, we were unable to obtain essential information relating to this case. Although we were unable to obtain certain information, I believe this matter to be of public importance. I therefore launched an investigation on my own initiative.

## **Investigation**

### **Investigation pursuant to subsection 43(13) of the OLA**

On January 14, 2020, the Office of the Commissioner issued a notice of investigation to the Chief Administrative Officer of the City of Edmundston under subsection 43(13) of the OLA. In that notice, we asked the latter to answer the following series of questions:

1. Are all warrants completed in both official languages?

If the answer to question No. 1 is “no,” please answer the following questions:

2. How does the Edmundston Police Force ensure that warrants served on members of the public are in the official language of their choice? Please provide any relevant policy documents.
3. In the last 12 months, have there been occasions where, after serving a warrant filled out in only one official language, the member of the public in receipt of that warrant chose the other official language to receive service?
4. If the answer to question 3 is “Yes”, please describe the steps taken by the Edmundston Police Force, in regard to each incident, in order to provide the member of the public with service in their official language of choice.
5. If the answer to question 3 is “Yes”, please provide us with the safeguards put in place by the Edmundston Police Force to ensure such a situation does not occur in the future.

### **City of Edmundston’s response**

In his response dated January 20, 2020, the Chief Administrative Officer of the City of Edmundston told us the following:

All warrants prepared by the Edmundston Police Force are completed in New Brunswick’s two official languages.

As this response contradicted the documents provided to us by the complainant, staff in our office contacted the Chief Administrative Officer. During a February 4, 2020 phone call with the latter and the head of the EPF, the Chief Administrative Officer informed my staff that all warrants are “completed” in both official languages, but that the “wording” is in French only.

On February 19, 2020, I sent a second letter to the CAO, which contained the following questions:

[Translation]

1. Is all the information in the warrants in both official languages?

If the answer to question No. 1 is “no,” please answer the following questions:

2. Why is all of the information on the warrants not completely in both official languages?
3. How does the Edmundston Police Force ensure that all information in warrants served on any person is in the official language of their choice? Please provide any policy document.
4. In the last 12 months, have there been any situations where a citizen, after receiving a warrant containing certain information in only one official language, requested to obtain that document and/or a service in the other official language?
5. If the answer to question number 4 is “yes,” please describe the measures taken by the Edmundston Police Force, in each incident, to provide members of the public with service in the official language of their choice.
6. Please indicate the protection mechanisms that the Edmundston Police Force plans to put in place to ensure, in the future, that everyone will receive, at all times, a warrant in the official language of their choice.

In an e-mail dated April 16, 2020, the CAO forwarded to us a letter dated April 7, 2020, prepared by the Chief of the EPF, containing answers to our questions:

[Translation]

Answer to question 1:

*All generic information is in both official languages, however the indictment, things searched, location searched, and time of execution are in the language chosen by the police officer.*

Answer to question 2:

*The Official Languages Act does not stipulate that all written communications be bilingual. Communications must be in the official language chosen and this choice cannot be determined before communicating directly with the client to obtain their choice of language. In addition, the Government of New Brunswick's official languages plan establishes strategic objectives on the language of work of choice for all employees, particularly with regard to the drafting of documents. So the reason why all the information in the warrants is not completely in both official languages is simple; first, the Official Languages Act does not require it, and second, the EPF respects the strategic objectives of the official languages plan by allowing each employee of the EPF to work in the official language of their choice.*

Answer to question 3:

*The Police Force complies with provincial/federal laws regarding official languages, and has no internal policies. When we write a warrant, we do not contact the person who is the subject of the warrant beforehand so as not to let them know that a search will be carried out at their residence. During the execution of the warrant, we offer, at that time, the choice of language to the person and provide service in the language of their choice. If that person decides to be served in the language opposite to the one in which the warrant is written, we translate the information to them verbally and later they may receive a translated copy of the warrant upon receipt of disclosure. In addition, search warrants are secret and confidential before any execution and it would be dangerous to ask people in what official language they would like to be served. This procedure would endanger the safety of the police officers and also remove any evidence that the police officers might be looking for.*

Answer to question 4:

*To my knowledge, for search warrants, the answer is no, but for any other document related to the charges that are laid in court the answer is yes; those charged with offenses have the right to obtain the process in one of the two official languages. At that time, all documentation/reports that are not in the official language requested in court, will be translated.*

Answer to question 5:

*Once the search warrant has been executed, it is then explained to the person concerned in his or her official language of choice. Once the choice has been determined, the police officer in question explains and reads the warrant in the language he/she has chosen. In the explanation, the police officer reads and translates the paragraphs into the language chosen by the person concerned. Once the warrant has been read and explained, the person concerned is asked if he/she understood correctly.*

Answer to question 6:

*The Edmundston Police Force continues to promote bilingual service to citizens. For our police officers, all oral communications with citizens begins with the offer of service in the language of their choice. That is the law, and the members must comply with it. The vast majority of warrants are written in both official languages, but with regard to the information that the police officer adds, they will write in the language of their choice when conducting the investigation. If the information in a warrant served on him/her is not in the language of his choice, the first protection mechanism will be to notify the client that the translation of the information can be obtained on request.*

The conclusion of the letter of April 7, 2020, reads as follows:

*This explains the procedures that have been put in place by the Police Force to comply with the Official Languages Act. When obtaining a search warrant, we cannot inform the person concerned and especially not give them the opportunity to choose the language in which he/she would like to be served! We still have a system in place to ensure that the rights of those affected are respected, as stipulated in the Act.*

*The New Brunswick Official Languages Act is clear on this point:*

*31(1) Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.*

*31(2) If a peace officer is unable to provide service in the language chosen under subsection (1), the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made under subsection (1).*

## **Analysis**

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

### **Policing services**

#### **Services provided by a peace officer**

31(1) Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.

31(2) If a peace officer is unable to provide service in the language chosen under subsection (1), the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made under subsection (1).

31(3) A police force or agency, as the case may be, shall ensure the availability of the means necessary to respond to the choice made by a member of the public under subsection (1) and to support the obligation placed on a peace officer under subsection (2).

### **Services de police**

#### **Prestation de services par un agent de la paix**

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) 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) 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).

Is the issuance of a search warrant to a member of the public considered a “service” by a peace officer?

The search warrant provided to us by the complainant in the fall of 2019 was signed by a Provincial Court judge and gave New Brunswick peace officers the power to enter a specific location. Moreover, the warrant was addressed as follows:

*To the Peace Officers in the  
Province of:  
New Brunswick*

*Aux agents de la paix dans la  
province du :  
Nouveau-Brunswick*

Furthermore, the complainant informed our office that the police officer gave them a copy of the warrant when he arrived at their home.

In determining whether the issuance of a search warrant to the public constitutes a “service” under subsection 31(1) of the OLA, our office followed the reasoning set out in paragraph 85 of *R. v. Lavoie*, where Justice Cloutier stated that:

*The prosecution contends that since the entry warrant was addressed only to the peace officers, they had no obligation to fill it out either in French or in both official languages. I consider that argument to be without merit. It bears repeating, once again, that the defendant was, in fact, the recipient of the entry warrant. He was also the owner of the premises mentioned in the warrant and, ultimately, the “member of the public” who was “receiving” the “services” of the peace officers. It also comes as no surprise that the defendant is identified in the entry warrant. Even more importantly, the defendant had advised the SPCA officers two days earlier that he wished to receive the services in French. It goes without saying that serving an entry warrant on a “member of the public” is a “service” falling within s. 31(1) of the New Brunswick Official Languages Act and s. 20(2) of the Charter.*

Therefore, following the decision in this case, I conclude that the recipient of a search warrant by a peace officer receives a service under subsection 31(1) of the OLA, and is therefore entitled to this service in the language of their choice.

## Language of work

The answer to question 2 reads as follows:

*In addition, the Government of New Brunswick's official languages plan establishes strategic objectives on the language of work of choice for all employees, particularly with regard to the drafting of documents. So the reason why all the information in the warrants is not completely in both official languages is simple; first, the Official Languages Act does not require it, and second, the EPF respects the strategic objectives of the official languages plan by allowing each employee of the EPF to work in the official language of their choice.*

First of all, we are pleased to learn that the EPF promotes a work environment where its employees can work in the official language of their choice. However, we remind the EPF that, although important, the strategic objectives cannot take precedence over the obligations of peace officers in terms of language of service, which are specifically provided for in the OLA, a quasi-constitutional law. A policy or a strategic directive is only a directive issued by an institution and is intended for its employees, and as such, has no enforceable legal value, in contrast to the OLA. Consequently, in the event of a conflict, the OLA prevails over any institutional directive.

## The procedures followed by the EPF when executing a search warrant

The answer to question 5 reads as follows:

*Once the search warrant has been executed, it is then explained to the person concerned in his or her choice of official language. Once the choice has been determined, the police officer in question explains and reads the warrant in the language he/she has chosen. In the explanation, the police officer reads and translates the paragraphs into the language chosen by the person concerned. Once the warrant has been read and explained, the person concerned is asked if he/she understood correctly.*

So, based on the above answer, some members of the public are given a warrant in the language of their choice, a document that they are able to read and understand, while others receive only a verbal translation of the information contained in the warrant. This way of proceeding treats one official linguistic community differently from the other. As the Supreme Court put it so well in *R. v. 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.”<sup>1</sup>

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<sup>1</sup>1999 CanLII 684 (SCC)

In addition, the answer to question 3 is about the reasons that the EPF cannot ask members of the public in which language they would like to be served:

*In addition, search warrants are secret and confidential before any execution and it would be dangerous to ask people in what official language they would like to be served. This procedure would endanger the safety of the police officers and also remove any evidence that the police officers might be looking for.*

Our office recognizes that there may be adverse consequences in asking the recipient of a search warrant in advance in which official language they wish to receive service. However, as indicated in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*<sup>2</sup>, “[t]herefore, administrative barriers cannot be used as an excuse to justify the failure to provide services in the minority language.” Consequently, rather than not providing service of equal quality to the two official linguistic communities, it is up to the EPF to find solutions that allow it to comply with the OLA at all times. This would involve, for example, preparing all search warrants in both official languages before serving them on members of the public.

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<sup>2</sup> 2018 FC 530 (CanLII)

## Conclusion and recommendation

For the aforementioned reasons, the Office of the Commissioner of Official Languages concludes that the procedures of the Edmundston Police Force, when serving a search warrant, do not comply with section 31 of the OLA, and we therefore make the following recommendation:

**THAT the Edmundston Police Force take the necessary measures to ensure full compliance with section 31 of New Brunswick's *Official Languages Act*.**

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 Edmundston, the Chief of the Edmundston Police Force, and to the Clerk of the Executive Council Office.



Shirley C. MacLean, Q.C.

Commissioner of Official Languages for New Brunswick  
Dated at the City of Fredericton,  
Province of New Brunswick,  
This 16th day of October, 2020