

2020-2021 ANNUAL REPORT

Office of the Commissioner of Official Languages



OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

2020-2021 Annual Report

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**PROTECTING AND PROMOTING
NEW BRUNSWICKERS'
LANGUAGE RIGHTS**

OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

October 2021

Hon. Bill Oliver
Speaker of the Legislative Assembly

Mr. Speaker,

Pursuant to subsection 43(21) of the *Official Languages Act*, I am pleased to submit the report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick for the period from April 1, 2020, to March 31, 2021.

Should members of the Procedure, Privileges, and Legislative Officers Committee wish to have my Office appear before them to answer any questions related to our report, we would be pleased to accommodate them at their earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shirley C. MacLean".

Shirley C. MacLean, Q.C.

Commissioner of Official Languages for New Brunswick

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FOREWORD

New Brunswick: Canada's only officially bilingual province

The Constitution of Canada states that 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 the Government of New Brunswick.

The *Official Languages Act*

The *Official Languages Act* (OLA) of New Brunswick requires the following institutions and organizations to offer and provide their services in both official languages:

- institutions of the Legislative Assembly and the Government of New Brunswick;
- provincial departments;
- regional health authorities and hospitals;
- Crown corporations (e.g., NB Power, Service New Brunswick);
- the province's courts;
- policing services;
- any board, commission or council, or any other body or office established to perform a governmental function; and
- professional associations that regulate a profession in New Brunswick.

In addition, the OLA imposes linguistic obligations on the following:

- cities (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, and Saint John);
- municipalities with an official language minority of at least 20% of the population; and
- Regional Service Commissions 1, 2, 3, 5, 6, 7, 9, and 11.

Exceptions

It should be noted that the OLA does not apply to distinct educational institutions or distinct cultural institutions. School districts, public schools, community centres, community colleges, and universities do not have to offer services in both official languages. Moreover, the OLA does not apply to the English and French sections of the Department of Education and Early Childhood Development.

Private sector

The OLA does not apply to private sector enterprises, except in cases where they offer services to the public on behalf of a public body that has obligations under the OLA.

Active offer

Institutions and organizations with obligations under the OLA have an obligation to inform citizens that their services are available in both official languages. To do so, staff must greet members of the public and answer the telephone in both official languages. It is not up to citizens to request services in their language, it is the institution's obligation to make that offer. The active offer must also be provided through bilingual signage.

The position of the Commissioner of Official Languages

The OLA established the position of Commissioner of Official Languages in 2002.

In November 2019, Shirley MacLean was appointed to the position. Her mandate began in January 2020. She became the third person to hold the position.

The Commissioner has a dual mission: to investigate and make recommendations with respect to compliance with the *Act*, and to promote the advancement of both official languages in the province.

The Commissioner of Official Languages is an officer of the Legislative Assembly and is independent of government.

Annual report

The OLA provides that the Commissioner must prepare and submit to the Legislative Assembly an annual report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick. This report provides a description of the activities carried out between April 1, 2020, and March 31, 2021.

COMMISSIONER'S MESSAGE

Shirley C. MacLean, Q.C.

Commissioner of Official Languages for New Brunswick

The 2020-2021 Annual Report is our first annual report where I have been Commissioner of Official Languages for the full reporting period. Although I filed last year's report, it only covered a few months of my actual mandate. What a year it has been! Notwithstanding the many events and issues that arose this year, no matter how much we may wish otherwise, the COVID-19 pandemic has been the focus of our lives. Our report this year highlights the many and various impacts the COVID-19 pandemic has had on official languages in New Brunswick. The 2020-2021 reporting period also saw the beginning of the important process to review the *Official Languages Act* (OLA).



I like to think I am a positive person by nature and those who know me know that I am a "doer" - I like to get things done! As the still relatively new Commissioner of Official Languages, I want to ensure that I do everything I can to fulfil my mandate, part of which is to promote the advancement of both official languages in the Province of New Brunswick. The COVID-19 pandemic has made it difficult for all of us to visit family and friends, and to engage in normal everyday activities. Certainly, from my perspective, I have not been able to meet with as many people as I was hoping to when I was first appointed to this position.

The mandate of the Commissioner of Official Languages under the *Official Languages Act* is to investigate, report on and make recommendations with regard to compliance with the *Act* as well as to promote the advancement of both official languages.

Although we were still in the throes of a pandemic in 2020-2021, we were also sensing a light at the end of the tunnel, vaccines were on the way, and we were keeping each other safe by following public health guidelines and maintaining relatively low numbers of COVID-19 cases. When we had outbreaks, we worked collectively to stamp them out. We were advancing towards success. New Brunswickers were and are still proud of our success.

Review of the *Official Languages Act*

In 2021, the Government of New Brunswick was required to begin conducting its review of the *Official Languages Act*. This work must be completed by December 31, 2021. In February 2021, two commissioners were appointed to undertake this review of the *Act*. The commissioners have been mandated to review not only the *Official Languages Act*, but also to identify ways to improve access to both official languages for New Brunswickers, which does not fall under the jurisdiction of the *Official Languages Act*. What role does my office have in this process? I feel that, as the Office of the Commissioner of Official Languages works daily with this legislation, we are the best placed to make recommendations as to the workings of the OLA in order to advance both official languages in New Brunswick. We see daily what is working with the *Act* and where there may be areas for improvement or clarification.

It is always worth noting that the *Official Languages Act* takes precedence over nearly all the provinces' statutes and the OLA gives effect to obligations set out in the *Canadian Charter of Rights and Freedoms*. These are constitutional rights. This special status has been established by the Government of New Brunswick and it displays our collective commitment to language rights.

The OLA review process must ensure the advancement towards the equality of New Brunswick's two official languages and two linguistic communities. In my view, in reviewing the OLA, the government has an obligation to facilitate this advancement. Simply maintaining the status quo is not acceptable, and I certainly have an obligation to oppose any changes to the OLA that would undermine this equal status. This advancement obligation arises from *An Act Recognizing the Equality of the Two Linguistic Communities in New Brunswick* as well as the following provisions of the *Charter*:

| | |
|---|--|
| <p>Advancement of status and use 16. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.</p> | <p>Progression vers l'égalité 16. (3) La présente charte ne limite pas le pouvoir du Parlement et des législatures de favoriser la progression vers l'égalité de statut ou d'usage du français et de l'anglais.</p> |
| <p>Role of the legislature and government of New Brunswick 16.1 (2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.</p> | <p>Rôle de la législature et du gouvernement du Nouveau-Brunswick 16.1 (2) Le rôle de la législature et du gouvernement du Nouveau-Brunswick de protéger et de promouvoir le statut, les droits et les privilèges visés au paragraphe (1) est confirmé.</p> |

We must keep moving towards true equality of our two official languages. How do we advance towards equality? What does this mean? What is advancing towards success when we speak about official languages?

No one can deny that there has been progress since the adoption of the OLA in 1969. However, even in the short time I have been commissioner, I have noted that the provision of bilingual services in some government institutions is not assured. The desire is often there to “do better” but, in some cases, outcomes do not reflect this desire.

We must ensure that the recommendations of my office to ensure that the rights and obligations contained in the OLA are respected and are implemented. I have repeated the recommendation of my predecessors that an Official Languages Secretariat be created in New Brunswick, not to create another level of bureaucracy, but rather to centralize the work that is being done in relation to official languages in various government departments. Let us streamline this work to obtain more successful outcomes.

Public servants should be able to work and have their performance reviewed in the official language of their choice and this right should be included in our OLA. This exists today in a government policy but enshrining it in law would give Francophone and Francophile public servants legal recourse should they feel that they cannot work and be supervised in French. It would also serve to advance us towards an inclusive language environment in which first-language employees would genuinely feel comfortable to use their language at work and second-language speakers, like me, would perhaps be encouraged to use their second language a bit more!

I have also recommended changes to the OLA that would give some “teeth” to the recommendations my office makes following complaints. When I make recommendations and they are not responded to or acted upon, this sends a message to complainants and my office that there is a lack of respect for language rights.

Any amendments to the OLA must advance linguistic rights. As Justice Lavigne stated in *R v. Gaudet* 2010 NBQB 27 (CANLII):

An analysis of the history of linguistic rights in Canada, and more specifically New Brunswick, reveals a subtle but steady development of language rights in New Brunswick. Language rights in New Brunswick are constantly changing and gains made by today’s linguistic minority are the result of a long evolution.

At paragraph 24 of that decision, Justice Lavigne also pointed out: “It is not enough for a linguistic guarantee to be offered on paper; it must be applied or put into practice in order to have meaning.”

We will be examining any proposed amendments to the *Official Languages Act* closely to ensure that there is continued progress. Maintaining the status quo is not progress.

COVID-19

Our report again highlights a number of complaints this year, many relating to COVID-19 and the failure of some government institutions to provide services in the official language of the public’s choice.

COVID-19 imposed additional requirements on several government institutions to undertake screening, testing, and monitoring of the public to, as much as possible, control the spread of the virus. This often resulted in hiring third-party organizations such as security companies and screeners, as well as the redeployment of several government employees. In some situations, there was failure to meet official language service obligations. Many of these cases could be resolved through our alternative resolution process to quickly address the concerns raised by members of the public. I continue to be encouraged by the engagement and dedication of public servants at all levels.

The pandemic certainly highlighted the importance of planning with respect to the prompt delivery of services in both official languages. This planning is crucial during a time of crisis, but we must not forget that this linguistic planning is an ongoing obligation for government institutions.

However, there continues to be repetitive complaints relating to the provision of bilingual services in many of our province's institutions, such as our healthcare facilities, and more work needs to be done to address the issue. We are all aware of the pressures currently facing our healthcare system, but these pressures can in no way affect the constitutional rights of New Brunswickers to be served in the official language of their choice.

I remain an optimist. We know now more than ever that we are incredibly lucky to live in New Brunswick. I am convinced that we will collectively continue to advance towards success in all that we do, including official languages.

LANGUAGE MATTERS

COVID-19 AND OFFICIAL LANGUAGES

More than a year after the start of the COVID-19 pandemic, it is clear that this virus has impacted the vast majority of activity sectors in our society. It is hard to imagine a service or activity that has not changed since March 2020.

From the start of the pandemic, on a global scale, government institutions had to rapidly deploy emergency plans in order to protect the population. Since that time, governments have had to communicate with their citizens at a pace never seen before. Nationally and provincially, Canada and New Brunswick were no exception.

While we know that emergency preparedness plans existed for the spread of respiratory viruses such as coronaviruses, especially after the Severe Acute Respiratory Syndrome (SARS) outbreak that hit the city of Toronto in 2003, it soon became clear that official languages were too often an afterthought in these plans.

We recognize the herculean task that the COVID-19 pandemic presents for the Government of New Brunswick. Particularly during the first months of the arrival of the virus in the province, the government was trying to adapt its services and communicate public health instructions to residents of the province, all without having a full picture of the situation.

But when it comes to health, the importance of receiving accurate and reliable information in a timely manner is all the more evident. New Brunswickers, both in the Anglophone community and in the Francophone community, have the right to receive the services of their government in the official language of their choice. This right is enshrined in New Brunswick's *Official Languages Act* (OLA) as well as in the *Canadian Charter of Rights and Freedoms*.

In October 2020, the Office of the Commissioner of Official Languages of Canada published a report entitled *A Matter of Respect and Safety: The Impact of Emergency Situations on Official Languages*. The report analyzed emergency situations that arose between 2010 and 2020 and painted a portrait of the official languages experience of the Canadian population during these situations.

In his report, the Commissioner of Official Languages of Canada, Raymond Th  berge, notes that the non-equivalent use of official languages during emergency situations can have disastrous and regrettable consequences. He believes that it is imperative that institutions equip themselves with mechanisms, internal procedures, and work tools in matters of communications and official languages in order to comply with the OLA of Canada.

The report presents three main recommendations:

- the development of an action plan to ensure the simultaneous dissemination of communications in both official languages;
- the implementation of a strategy to ensure that communications are integrated into emergency planning; and
- the development of a strategy to support the various levels of government to integrate the two official languages in communications during emergency or crisis situations.

Published as Canada entered the second wave of the COVID-19 pandemic, this report was timely, and confirmed many of our findings during the first wave of the pandemic in New Brunswick.

From the start of the COVID-19 pandemic in New Brunswick, the Office of the Commissioner of Official Languages for New Brunswick noted that, unfortunately, official languages were often relegated to the background when communicating in times of crisis.

During the 2020-2021 fiscal year, the Office of the Commissioner received 56 complaints or inquiries related to COVID-19. These communications most often involved health services, the Premier's Office, government communications from the Executive Council Office, the Department of Justice and Public Safety, and Service New Brunswick. Summaries of some of the actions taken in response to these complaints can be found later in this report, on pages 32-40.

Under subsection 43(10.1) of the OLA, the Commissioner may attempt to resolve a complaint before proceeding with an investigation. This provision simplifies the complaint resolution process by making it quicker and more efficient. This approach has been used in most pandemic-related complaints due to the urgent nature of the situation.

The measures most often implemented to resolve the problems related to the COVID-19 pandemic brought to our attention are summarized as follows:

- Ensure that signage and information documents are available in both official languages.
- Remind employees of the institution's obligations and the public's rights under the OLA, including the active offer of service.
- Provide reference documents and language tools to unilingual employees as part of a contingency plan.
- Reassign staff as needed to ensure the delivery of services in both official languages in a team context.
- Implement random quality assurance checks aimed at complying with linguistic obligations.
- Ensure that third parties hired to provide services on behalf of an institution have the same linguistic obligations as the institution in question.

In addition to the 56 complaints or inquiries mentioned above, many of the other complaints dealt with during the fiscal year reviewed in this report were not directly related to the COVID-19 pandemic but were related indirectly to the crisis situation. For example, in file 20-21-211, shown on page 43, the complainant wanted to make an appointment for a health service unrelated to COVID-19, but because of the staffing challenges caused by the pandemic, no one was available to serve her in French. This is just one example of many.

Although the number of complaints concerning the public health crisis was obviously high, the Office of the Commissioner still wishes to underline the cooperation and dedication of the institutions concerned. Our correspondence, e-mails, or phone calls have never been ignored. We have seen that even under enormous stress, institutions have continued to recognize their linguistic obligations under the OLA. They recognized their mistakes and quickly committed to doing better.

As of this writing, the COVID-19 pandemic is still with us and shows no signs of ending anytime soon. The Office of the Commissioner continues to receive complaints related to COVID-19 and the various changes that the pandemic has brought about in provincial government institutions. We continue to work with the institutions affected by these complaints to ensure that they provide their services and communicate in both official languages without delay, and that their services and communications are of equal quality regardless of the official language chosen by the public.

The Office of the Commissioner is optimistic that the public health crisis caused by the COVID-19 virus will, in the long term, have positive impacts on respect for language rights in New Brunswick. With rigorous planning that takes official languages obligations into account, our province's institutions can do better and ensure that New Brunswickers can obtain the information and services they need in the official language of their choice, even during an unprecedented event like the COVID-19 pandemic.

REVIEW OF THE *OFFICIAL LANGUAGES ACT*

Since the major overhaul of the *Official Languages Act* (OLA) of 2002, the Act includes a section that provides for a new review of the Act every 10 years. This first such review was carried out between 2011 and 2013 by the Legislative Assembly's Select Committee on the Revision of the *Official Languages Act*. The Committee met 23 times during its mandate, and its report was tabled in June 2013. The Bill received royal assent on June 21, 2013.

Under subsection 42(1) of the OLA currently in force, the Premier is required to undertake a new review of the Act and it must be completed no later than December 31, 2021.

On February 26, 2021, the Premier appointed two commissioners to oversee this new review of the OLA: Judge Yvette Finn and Mr. John McLaughlin.

The commissioners have two mandates. The first is to oversee the review process, to consult with the public and key stakeholders, to review suggestions and recommendations submitted during the process, and to present a final report with recommendations to the government. In addition to the formal review of the *Official Languages Act*, the commissioners have been asked to identify ways to improve access to both official languages for all New Brunswickers.

The Office of the Commissioner of Official Languages applauded the appointment of these two commissioners and believes that their professional backgrounds will be a considerable asset for the OLA review process.

The addition of the second aspect to the mandate of the commissioners is nevertheless worrying. Although official language learning is certainly an important issue for our province, it is an issue that does not fall under the OLA. We know that there is already some confusion regarding the OLA and its obligations and fear that by including a wide range of subjects in the consultation, the province may create more confusion than there is currently with respect to the OLA and its objectives.

Language rights in New Brunswick are enshrined in the *Canadian Charter of Rights and Freedoms*. The provincial government cannot weaken these *Charter* protections. The ultimate goal of the review of the OLA must be to ensure continued progress towards the equality of our two official languages. We look forward to the results of this new review.

POLICY ON SIGNAGE AND OFFICIAL LANGUAGES

On October 29, 2020, the Commissioner received an inter-office memo from the Acting Deputy Minister of the Department of Transportation and Infrastructure (DTI) concerning a new provincial government policy on signage and official languages. The memo explained the following:

DTI's policy responds specifically to a 2013 amendment to the OLA that essentially obliged the province to develop and implement a language on public sign policy that reflects each region's linguistic composition.

The key elements of the new policy include the following:

- The policy applies to government signs inside, on, or near provincial government facilities.
- It is applicable to parts 1 and 4 of the civil service.
- While all signs remain bilingual, the placement of official languages on signs is to reflect the predominant language of the region. That is, the predominant language is to appear on the left or top of the sign and the secondary language is to appear on the right or below.
- The predominant language is defined as the language that is the mother tongue of over 50% of the residents in the county as determined by Statistics Canada, except for Westmorland, Northumberland, Kent, and Victoria counties where census subdivisions will be used to determine the predominant language.

Tourist-oriented signs (blue tourism signs along the highway) will reflect the predominant language of the area where the attraction is located, not the predominant language of the county or census subdivision where the tourist-oriented sign appears.

The policy does not apply to signs under the responsibility of the New Brunswick Community College, Collège communautaire du Nouveau-Brunswick, and Centre communautaire Sainte-Anne. DTI's guide, regulatory, warning, and construction signs, the directional text on all highway signs, and approved governmental images and logos are also exempt from this new policy.

This policy came into force immediately for any new public signs. For existing signs, the new policy will apply when signs have reached the end of their life cycle and require replacement.

This is a file of long standing for the Office of the Commissioner. Initially, it should be noted that in general, government signage complies with the OLA. At the root of the problem is the fact that the order of presentation generally favours English, even in Francophone majority areas: English is on the left or on top; French is on the right or below. Knowing that we generally read from left to right and from top to bottom, the normal order of presentation was not helping to promote the French language.

In his 2009-2010 annual report, Commissioner Carrier had recommended to the then Premier that the province adopt a balanced policy on government signage that fully respects the principle of equality of the two official languages, taking the linguistic reality of the regions into account.

In the context of the review of the OLA initiated in 2011, Commissioner Carrier again recommended including provisions in the *Act* about government signage to ensure equal treatment of the two official languages and to reflect the linguistic reality of the regions.

When the OLA was last amended in 2013, the following subsection and paragraph were added to the *Act*:

5.1(1) The Province shall prepare a plan setting out how it will meet its obligations under this Act, and the plan shall include the following: [...]

(f) measures to provide for the review and the improvement, when necessary, of the public signage policies of the Province, which policies shall include consideration of the two linguistic communities and of the linguistic composition of a region;

In her 2015-2016 annual report, Commissioner d'Entremont had recommended that the provincial government's *Plan on Official Languages* clarify the public signage obligation in order to meet the requirements of paragraph 5.1(1)(f) of the OLA.

In 2017-2018, in the context of an investigation on the OLA's implementation plan, the Office of the Commissioner learned that no progress had been made on the signage file for about a year and Commissioner d'Entremont had noted the situation.

In 2018-2019, the Office of the Commissioner received a complaint from a Miscou resident concerning a new bilingual sign for Gallien Beach. On the sign, the English was on the left and the French was on the right. Although the sign complied with the provisions of the OLA, Commissioner Carrier chose to write to the Clerk of the Executive Council under his promotional mandate to once and for all obtain a commitment on a signage policy that reflects the linguistic composition of all regions where there is clearly a Francophone majority.

The Office of the Commissioner is pleased to note that after more than a decade of action, the provincial government has finally developed and adopted a policy that reflects the linguistic reality of the regions of our province. We wish to highlight the work of the Executive Council Office and the Department of Transportation and Infrastructure in this matter and will obviously continue to follow developments closely and will not hesitate to act again if we consider it necessary.

IMMIGRATION AND OFFICIAL LANGUAGES

One of the responsibilities of the Commissioner of Official Languages for New Brunswick is to promote the advancement of English and French in the province. In this regard, immigration plays an important role in the vitality of the two official languages. The Commissioner's interventions with respect to immigration are therefore aligned with this promotional role. Also, it should be noted that the *Canadian Charter of Rights and Freedoms* affirms that New Brunswick's Anglophone and Francophone linguistic communities have equality of status. Government immigration policies and programs must therefore benefit both communities equally.

Provincial immigration results

On July 3, 2014, the provincial government released its first *New Brunswick Francophone Immigration Action Plan 2014-2017*. The aim of the plan is for immigration to better reflect the linguistic makeup of the province. New Brunswick committed to try to ensure that 33% of newcomers under the New Brunswick Provincial Nominee Program (NBPNP) are Francophones or Francophiles by 2020. To do this, an annual increase of 3% is planned, with an intermediate target of 23% for 2017.

The NBPNP is the main provincial immigration program. It is made possible through an agreement with the Government of Canada. Through the NBPNP, New Brunswick can select qualified businesspeople and skilled workers from around the world who want to live in New Brunswick and contribute to the provincial economy.

In March 2017, the provincial government signed the Canada-New Brunswick Immigration Agreement. This agreement includes an annex directed at increasing the number of French-speaking immigrants destined to New Brunswick.

Since 2017, the provincial government also administers the Atlantic Immigration Pilot (AIP). This pilot program helps employers in New Brunswick hire foreign skilled workers who want to immigrate to the province and international graduates who want to stay in the region after completing their post-secondary education.

In August 2019, the provincial government launched *New Beginnings: A Population Growth Strategy for New Brunswick 2019-2024*, which includes, among other measures, a continued target of 2% annual increase in its French-speaking nominations (to reach 33% by 2024).

The table below shows the percentage of nominee certificates delivered through the NBPNP and AIP, broken down according to the official language(s) spoken by candidates. It should be noted that the provincial government has aligned its immigration-related reporting to the federal practice of following the calendar year, which explains the reporting differences that can be seen in the table below.

| New Brunswick Provincial Nominee Program (by fiscal year) | | |
|---|--|------------------------------------|
| French-speaking nominees | Bilingual nominees (English and French) | English-speaking nominees |
| 2013-2014: 1.3% | 2013-2014: 6.9% | 2013-2014: 91.8% |
| 2014-2015: 7.4% | 2014-2015: 5.3% | 2014-2015: 87.3% |
| 2015-2016: 18% | 2015-2016: 2% | 2015-2016: 80% |
| 2016-2017: 11% | 2016-2017: 6% | 2016-2017: 81% |
| 2017-2018: 8.1% | 2017-2018: 12.8% | 2017-2018: 79.1% |
| Atlantic Immigration Pilot and New Brunswick Provincial Nominee Program (by calendar year) | | |
| French-speaking candidates | | English-speaking candidates |
| 2018: 19% | | 2018: 81% |
| 2019: 24% | | 2019: 76% |
| 2020: 27% | | 2020: 73% |

The Office of the Commissioner notes the upward trend in the rate of Francophone immigration in recent years and wishes to highlight the provincial government's efforts in this important area to continue to advance the equality of our two official languages and our two linguistic communities.

**COMPLIANCE WITH THE
*OFFICIAL LANGUAGES ACT***

ROLE OF THE COMMISSIONER WITH REGARD TO COMPLIANCE WITH THE OLA

The Commissioner conducts investigations concerning the application of the *Official Languages Act* (OLA), either pursuant to a complaint made to the Commissioner or on the Commissioner's own initiative. If the Commissioner determines that a complaint is founded, recommendations may be made in the investigation report to improve compliance with the OLA. The Commissioner makes every effort to follow up on complaints as soon as possible by first determining the admissibility of each complaint and then, when appropriate, by intervening with the institutions concerned. The Commissioner works discreetly and in a spirit of co-operation with the institutions concerned and favours a supportive and collaborative approach. However, the Commissioner will not, if confronted by a blatant lack of co-operation on the part of an institution, shy away from publicly denouncing such resistance.

Filing of complaints

Anyone wishing to file a complaint may do so either in person, in writing, or by phone. The Office of the Commissioner's website describes the procedure for filing a complaint. All complaints received are considered confidential, and the Office of the Commissioner takes all necessary steps to safeguard the anonymity of complainants.

Under subsection 43(11) of the OLA, the Commissioner may refuse to investigate or cease to investigate any complaint if, in the Commissioner's opinion, the complaint:

- is trivial, frivolous, or vexatious;
- is not made in good faith;
- does not involve a contravention or failure to comply with the *Act*;
- does not come within the authority of the Commissioner.

In such cases, the Commissioner must provide the complainant with reasons for such a decision.

If the complainant is not satisfied with the Commissioner's findings after carrying out an investigation, they may seek a remedy before the Court of Queen's Bench of New Brunswick. A judge may decide on the remedy that is deemed fair and appropriate in the circumstances. It should be noted that nothing in the OLA precludes a complainant from applying directly to the Court of Queen's Bench instead of filing a complaint with the Office of the Commissioner. However, such a process entails costs for the person initiating it.

COMPLAINTS RECEIVED BETWEEN APRIL 1, 2020, AND MARCH 31, 2021

Between April 1, 2020, and March 31, 2021, the Office of the Commissioner received **230** complaints.

Of that number, **127** were admissible, with **14** based on lack of service in English and **113** on lack of service in French.

A total of **103** complaints were deemed inadmissible on the grounds that they did not come under the Commissioner's authority or did not concern an institution within the meaning of the OLA.

In addition, the Office of the Commissioner received **81** requests for information.

Main steps in the complaint-handling process

- The Office of the Commissioner receives the complaint and determines if it is admissible for investigation.
- If the complaint is admissible for investigation, the Commissioner notifies the institution concerned of the intention to investigate. It should be noted that the Commissioner may, when considered appropriate, attempt to resolve a complaint without conducting an investigation (see the alternative resolution process on the next page).
- The investigation is carried out.
- At the end of the investigation, the Commissioner forwards her report to the Premier, the administrative head of the institution concerned, and the complainant. The Commissioner may include in the report any recommendations deemed appropriate as well as any opinion or reasons supporting the recommendations.
- If the Commissioner considers it to be in the public interest, the Commissioner may publish an investigation report.

THE ALTERNATIVE RESOLUTION PROCESS

The Commissioner may attempt to resolve a complaint without conducting an investigation. Various situations may lend themselves to such an approach.

For example, this process can be used in cases that have already been investigated by the Office of the Commissioner and resulted in the institution taking corrective action. This approach can also be used in cases when typical investigation timelines might be prejudicial to complainants.

The decision to settle a complaint without an investigation is made on a case-by-case basis. It is heavily contingent on the cooperation of the targeted institution and the institution's willingness to take corrective action.

If an alternative resolution fails, the Commissioner will not hesitate to initiate an investigation to decide if a complaint is founded or not.

INADMISSIBLE COMPLAINTS

Each year, the Office of the Commissioner of Official Languages receives a number of complaints that are not admissible for investigation because they do not involve a contravention or failure to comply with the OLA or do not come within the authority of the Commissioner. These complaints are grouped in the following categories:

General comments and complaints not within mandate

These complaints are not admissible on the basis that the subject matter of the complaint does not involve a contravention or failure to comply with the OLA or does not come within the authority of the Commissioner.

Human resources management in the public service

Complaints reported in this category are deemed inadmissible on the basis that the Commissioner's mandate does not include the management of human resources in the public service.

Private sector

The OLA does not apply to private sector enterprises, except in cases where they offer services to the public on behalf of a body which has obligations under the OLA. Therefore, it is not within the authority of the Commissioner to conduct an investigation targeting a private enterprise that, for example, distributes flyers or displays signs in only one official language.

Education sector

The OLA does not apply to distinct educational institutions. Therefore, school districts, public schools, community centres, community colleges, and universities do not have to offer services in both official languages. Moreover, the OLA does not apply to the English and French sections of the Department of Education and Early Childhood Development.

Excluded municipalities

Under the OLA, only the eight cities in the province (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton and Saint John) and municipalities with an official language minority of at least 20% of the population have language obligations. Thus, complaints targeting municipalities without obligations under the OLA are not deemed admissible.

Federal institutions

Federal institutions are subject to the *Official Languages Act* of Canada; it is not within the mandate of the Commissioner of Official Languages for New Brunswick to investigate complaints with respect to those institutions.

Medical records

Legislative provisions regarding the language used in medical records are included in section 9 of the *Personal Health Information Privacy and Access Act*. The Commissioner of Official Languages does not have jurisdiction with respect to section 9 of this *Act*. A person who feels that their rights have not been respected under this *Act* can file a complaint with the New Brunswick Ombud.

Statistics 2020-2021

311
communications
in total



230 complaints
127 admissible, 103 inadmissible



81 information requests

127 admissible complaints

11% for lack of service in English
→ 14 complaints

89% for lack of service in French
→ 113 complaints



Complaints by region (%)

| | |
|--|-----|
| 1 Moncton and Southeast | 33% |
| 2 Fundy and Saint John | 5% |
| 3 Fredericton and River Valley (total) | 46% |
| (regional services 11%) | |
| (central services 35%) | |
| 4 Madawaska and Northwest | 4% |
| 5 Restigouche | 2% |
| 6 Bathurst and Acadian Peninsula | 6% |
| 7 Miramichi | 3% |

Admissible complaints by service type



31% In person



0.8% Signage



21% By phone



9% Written documents



17% Online services,
social media



22% Other

Inadmissible complaints by category of elements excluded from the OLA



STATUS OF ADMISSIBLE COMPLAINTS FROM APRIL 1, 2020, TO MARCH 31, 2021

| Status | Service in French | Service in English | Total |
|---|-------------------|--------------------|------------|
| Complaints under investigation, completed, or resolved informally | 82 | 14 | 96 |
| Investigations not initiated (pending additional information from the complainant or the institution) | 29 | 0 | 29 |
| Complaints withdrawn by the complainant | 1 | 0 | 1 |
| Cessation of the investigation (pursuant to subsection 43(11) of the OLA) | 1 | 0 | 1 |
| Total | 113 | 14 | 127 |

STATUS OF ADMISSIBLE COMPLAINTS HANDLED FROM APRIL 1, 2020, TO MARCH 31, 2021

| Institutions | Number of admissible complaints | | Status of admissible complaints | | | Conclusion | |
|---|----------------------------------|--|---------------------------------|--------------------------|-----------------------|--------------------|----------------------|
| | Complaints received in 2020-2021 | Complaints carried over from the previous year | Investigations underway | Completed investigations | * Resolved informally | Founded complaints | Unfounded complaints |
| College of Massage Therapists of NB | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Edmundston (City) | 0 | 1 | 0 | 1 | 0 | 1 | 0 |
| Elections NB | 3 | 0 | 0 | 0 | 3 | 0 | 0 |
| Executive Council Office | 4 | 3 | 0 | 0 | 7 | 0 | 0 |
| Finance and Treasury Board | 2 | 0 | 0 | 0 | 2 | 0 | 0 |
| Fredericton (City) | 2 | 0 | 0 | 0 | 2 | 0 | 0 |
| Health | 6 | 0 | 3 | 0 | 3 | 0 | 0 |
| Horizon Health Network | 24 | 1 | 17 | 1 | 7 | 1 | 0 |
| Justice | 1 | 2 | 0 | 1 | 2 | 0 | 1 |
| Law Society of NB | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Legislative Assembly | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Medavie Health Services NB | 0 | 2 | 0 | 0 | 2 | 0 | 0 |
| Natural Resources and Energy Development | 1 | 1 | 0 | 0 | 2 | 0 | 0 |
| NB Liquor (includes Cannabis NB) | 3 | 2 | 0 | 1 | 4 | 1 | 0 |
| NB Power | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| New Brunswick Energy and Utilities Board | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| New Brunswick Human Rights Commission | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Nurses Association of NB | 1 | 1 | 2 | 0 | 0 | 0 | 0 |
| Office of the Premier | 9 | 1 | 6 | 1 | 3 | 1 | 0 |
| Post-Secondary Education, Training and Labour | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Public Safety | 12 | 1 | 1 | 1 | 11 | 1 | 0 |
| Richibucto (Town of) | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Service New Brunswick | 6 | 1 | 0 | 1 | 6 | 1 | 0 |
| Social Development | 6 | 1 | 0 | 2 | 5 | 2 | 0 |
| Tourism, Heritage and Culture | 3 | 0 | 0 | 0 | 3 | 0 | 0 |
| Transportation and Infrastructure | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Vitalité Health Network | 5 | 2 | 0 | 1 | 6 | 1 | 0 |
| WorkSafe NB | 2 | 0 | 1 | 0 | 1 | 0 | 0 |
| Total | 96 | 22 | 31 | 10 | 77 | 9 | 1 |
| | 118 | | 118 | | | 10 | |

* When the alternative resolution process is used, the Office of the Commissioner does not seek to determine whether the complaint is founded or not but directs all its efforts towards preventing an incident similar to the one that was brought to its attention. The Commissioner will determine if a complaint is founded only if an investigation is undertaken.

**SUMMARY OF ACTIONS TAKEN
IN RESPONSE TO COMPLAINTS**



COVID-19

INTERPROVINCIAL BORDERS

Institution concerned: Department of Justice and Public Safety

File numbers: 20-21-071, 20-21-085, 20-21-104, 20-21-141

Brief summary of the complaints: Between July 20 and September 24, 2020, the Office of the Commissioner received four complaints about deficiencies in service in French in person at the interprovincial borders at Aulac, Saint-Jacques (two instances), and Cape Jourimain (Confederation Bridge). In the four cases, the complainants requested service in French and the employees on site could not speak French. The complainants therefore had to continue the conversations in English.

Key issue: Because of the COVID-19 pandemic and travel monitoring requirements, the government had to set up border crossings to monitor interprovincial movements. The provincial government needed to redeploy many of its employees to staff these crossings. The employees monitoring the borders came from various teams within government, including, but not limited to, Correctional Services, Sheriff Services, Inspection and Enforcement Section, and the Department of Natural Resources and Energy Development (forest rangers).

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institution that is the subject of these complaints has implemented the following measures to ensure compliance with the *Official Languages Act*:

- Communicate with all employees concerned to explain the government's official languages policy.
- Provide reference documents and language tools, including checklists, for employees monitoring border crossings.
- Add bilingual staff to border crossings in the northern part of the province.
- Present information sessions before employees' work shifts begin to emphasise the importance of respecting the public's choice of official language.
- Implement a quality assurance mechanism.



COVID-19

TRAVEL REGISTRATION

Institution concerned: Department of Justice and Public Safety

File number: 20-21-184

Brief summary of the complaint: On November 19, 2020, the Office of the Commissioner received a complaint about deficiencies in service in French in relation to the New Brunswick Travel Registration Program. This complaint in particular was about automated verification calls received once the complainant had returned to New Brunswick following a trip to Quebec. The complainant did not preregister before he returned to the province, he registered with the official at the Edmundston border crossing upon his arrival. The automated calls he received to check if he was following the quarantine guidelines were in English only.

Key issue: Because of the COVID-19 pandemic and border control requirements, the provincial government set up a Travel Registration Program, which involved the registration and follow-up of travellers entering New Brunswick from outside Atlantic Canada, by land, air, or sea.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The Department of Justice and Public Safety confirmed that travellers received automated calls in the language in which they had been registered and that it was likely that the border official had registered the complainant in English by mistake. To prevent a similar situation from reoccurring, the institution has agreed to:

- Provide training on the active offer to border officials.
- Remind border officials about the importance of registering travellers in the official language of their choice to ensure that automated follow-up calls will also be done in that language.
- Update the Travel Registration Program webpage to inform travellers that they can change the language of their automated calls at any time by contacting the program by telephone.



COVID-19

SECURITY GUARDS - NB LIQUOR

Institution concerned: New Brunswick Liquor Corporation

File number: 20-21-073

Brief summary of the complaint: On July 21, 2020, the complainant brought to our attention an article by Radio-Canada concerning a unilingual Anglophone security guard posted at the NB Liquor store in Caraquet. According to the article, the employee “greeted customers at the Caraquet store for two days, on June 23 and July 14,” and that he “was not able to communicate in French, which raised the ire of many people.” In addition, the complainant provided us with screen shots of comments on social media by users who noted similar situations in other parts of the province, that is, Dieppe, Dalhousie, Fredericton, Saint John, and Tracadie.

Key issue: In March 2020, the institution began to use the services of a private company to hire security guards to control access into its stores, owing to the COVID-19 pandemic. Since this was an urgent need during an unprecedented period, the institution called on these services without a formal contract. Subsequently, as of November 2020, the institution entered into an agreement with a new company through its tendering process. The signed contract contains provisions on the official languages.

Resolution method adopted in this case: Investigation

Results: Our investigation was able to establish that the complaint was founded. We therefore made the following recommendations:

- That provisions regarding language obligations be included in all contracts between the institution and the third parties engaged to provide services on its behalf.
- That the institution continue to perform unannounced audits to ensure that the third parties it engages comply with sections 27 to 29 of the OLA.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-073EN.



COVID-19

SECURITY GUARDS - SNB

Institution concerned: Service New Brunswick (SNB)

File numbers: 20-21-135, 20-21-145

Brief summary of the complaints: On September 15 and 28, 2020, the Office of the Commissioner received two complaints about security guards at the entrances to SNB service centres. The complainants alleged that they did not receive service in French from the security guards working at the entrance of the service centres in Dieppe and Bouctouche.

Key issue: From the beginning of the COVID-19 pandemic in New Brunswick, SNB service centres were closed except for some essential services. When they fully reopened in July 2020, Service New Brunswick, like many other government institutions, had to use Commissionaires or private companies to monitor members of the public at the entrance to its service centres. Because of the urgent nature of the situation, bilingualism was not a set requirement when requesting these security services.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: Service New Brunswick acknowledged its breach of the *Official Languages Act*. The institution agreed to:

- Replace the unilingual security guard in Bouctouche.
- Communicate regularly with its security guards to remind them of the need to make an active offer of service to members of the public.
- Provide the screening questions in both official languages.
- See that a member of the service centre is accessible to provide support for security guards who are unable to ask screening questions in one or the other of the two official languages.



COVID-19

NEWS CONFERENCE

Institution concerned: Office of the Premier

File number: 20-21-010

Brief summary of the complaint: On March 25, 2020, during a government news conference, the complainant asked the Premier a question in French. The moderator asked her in French to repeat the question in English. The complainant had no choice but to ask her question again in English, to which the Premier replied in English. The complainant then asked a second question, which she also had to ask in English.

Key issue: From the beginning of the COVID-19 pandemic, the provincial government began giving regular news conferences to keep New Brunswickers informed of the latest developments on the pandemic. On March 25 in particular, the Premier's Office informed us that asking the reporter to repeat her questions in English was done in error and that new revised protocols were implemented shortly after the incident to ensure that such a scenario did not reoccur. The moderator of the news conference now informs reporters that they have the right to ask their questions in English or French. The Premier listens to the simultaneous interpretation of questions posed in French and gives his answers in English.

Resolution method adopted in this case: Investigation

Results: Our investigation made it possible to establish that the complaint was founded. We therefore made 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.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-010EN.



COVID-19 TESTING CLINICS

Institutions concerned: Vitalité Health Network, Horizon Health Network

File numbers: 20-21-113, 20-21-159, 20-21-243

Brief summary of the complaints: Between August 20, 2020, and January 24, 2021, the Office of the Commissioner received three complaints concerning deficiencies in relation to official languages at COVID-19 testing clinics. These complaints targeted the testing clinics at the Bathurst Regional Hospital (deficiencies in the delivery of services in English), and at the Moncton Coliseum (deficiencies in the delivery of services in French). The complaints concerned the following aspects of interactions between the testing clinic and the complainants: the phone calls to schedule appointments, the security guards at the entrance, the medical staff in charge of the swab test, and the documents handed out to patients.

Key issues: From the beginning of the pandemic in New Brunswick, the regional health authorities had to set up COVID-19 testing clinics. Considerable reassignment and recruitment efforts were undertaken to ensure staffing of these clinics. That being said, all testing clinics around the province, whether they are operated by the Vitalité Health Network or the Horizon Health Network, must ensure that there is a sufficient number of employees to guarantee delivery of services in both official languages at all times from the beginning to the end of the testing process.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institutions that were the subject of these complaints implemented the following measures to ensure compliance with the *Official Languages Act* in the future:

- Make bilingual copies (double sided) of information documents intended for patients.
- Indicate the patient's language of choice on the service request form.
- Implement mechanisms requiring that appointment clerks check the service request form in order to verify every patient's language of choice before calling the patient to book an appointment.
- Make every effort to have bilingual employees available throughout the hours of operation.



COVID-19

SIGNAGE - MONCTON HOSPITAL

Institution concerned: Horizon Health Network

File number: 20-21-055

Brief summary of the complaint: On June 27, 2020, the Office of the Commissioner received a complaint about COVID-19 safety signage in English only in the changing rooms and before the entrance to the secure area of the MRI (magnetic resonance imaging) unit at the Moncton Hospital. In fact, the complainant had already made a complaint the previous year concerning unilingual safety signage in the same changing rooms.

Key issue: Under section 29 of the *Official Languages Act* of New Brunswick, all institutions shall post signage for the general public in both official languages. Although, due to the COVID-19 pandemic, institutions have had to adapt quickly to an ever-changing environment, the requirement for bilingual signage is nothing new, and this type of situation should not have occurred.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution that is the subject of this complaint implemented the following measures, among others, to ensure its compliance with the *Official Languages Act* in the future:

- Visit the entire MRI department to check whether all signage is in both official languages.
- Designate a technologist on the team to do a monthly audit of signage in the department.
- Meet with the department's management team and reiterate that all public signage must go through the communication and translation services before being posted.



COVID-19

VIRTUAL TEAMS MEETING

Institution concerned: Department of Health

File number: 20-21-233

Brief summary of the complaint: On January 18, 2021, the Office of the Commissioner received a complaint concerning a meeting with Members of the Legislative Assembly (MLA) and municipal elected officials in Zone 1, which was held on Microsoft Teams. The meeting had been convened to discuss the COVID-19 pandemic situation in the region. The complainant reported deficiencies in the delivery of services in French during the meeting. On January 29, 2021, the complainant contacted the Office of the Commissioner again to report that, during another similar meeting, the visual material used was once again available in English only.

Key issue: In order to update the epidemiology of active COVID-19 cases in Zone 1 in the province, the Deputy Minister of Health, the Chief Medical Officer of Health, and the Assistant Deputy Minister of Public Health participated in a virtual meeting with provincial and municipal elected officials from the region. During the meeting, the stakeholders from the Department of Health switched from English to French and there was no simultaneous interpretation. The answers to the questions asked in English were in English only and the answers to the questions asked in French were mostly in French and sometimes translated into English. The complainant added that the PowerPoint document and statistical data presented during the meeting were in English only.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution that is the subject of this complaint implemented the following measures to prevent this type of incident from reoccurring:

- Ensure that all presentations made to MLAs, municipal elected officials, or the general public are in both official languages, regardless of the platform used.
- See to it that the documentation related to presentations is always available in both official languages.



COVID-19

EMERGENCY INCOME BENEFIT

Institution concerned: Department of Post-Secondary Education, Training and Labour

File number: 20-21-002

Brief summary of the complaint: On April 2, 2020, the Office of the Commissioner read an article in *L'Acadie Nouvelle* alleging that the workers who were seeking information about the emergency benefit of \$900 administered by the Red Cross for the provincial government were not able to obtain answers to their questions by phone in French. Because this new emergency benefit affected a large percentage of the New Brunswick population and impacted their livelihood, the Office of the Commissioner deemed it advisable to investigate the matter on its own initiative.

Key issue: In March 2020, the provincial government announced that it was going to grant a single income supplement to employees and self-employed workers in New Brunswick who had lost their job because of the state of emergency caused by the COVID-19 pandemic. The benefit was designed to fill the gap between the time when people had lost their job or closed their business and would receive their federal benefits. The administration of this single benefit of \$900 was entrusted to the Red Cross. The application forms for this emergency benefit were made available as of noon on Monday, March 30, 2020.

Resolution method adopted in this case: Alternative complaint resolution process

Results: Deeming the situation urgent, the Commissioner immediately contacted the Deputy Minister of the institution to discuss her concerns. The Deputy Minister confirmed that the problem seemed to have already been resolved. The institution then communicated the outcome of the internal investigation by the Red Cross on the matter to the Office of the Commissioner: it had concluded that there was no interruption of its service on the day in question. However, the Red Cross said it had been informed that the Bell Aliant network had experienced a temporary technical problem that morning, which could have led to an interruption in telephone service for clients living in certain areas of the province. The Red Cross confirmed that its call centre provides service in both official languages at all times. Since the interruptions seemed to have been caused by a technical problem on the Bell Aliant system, a private-sector company that has no linguistic obligation under the *Official Languages Act*, the Office of the Commissioner concluded that neither the institution nor the organization that offered the service on its behalf had violated the Act in this matter.



HEALTH

DR. EVERETT CHALMERS REGIONAL HOSPITAL

Institution concerned: Horizon Health Network

File number: 20-21-081

Brief summary of the complaint: On July 31, 2020, the complainant was scheduled to have blood drawn at the Dr. Everett Chalmers Regional Hospital in Fredericton, where she had to have contact with five employees. The first contact was at the entrance, where the screening for COVID-19 was done in English only. In the waiting room, the complainant did not receive an offer of service in French. The only offer of service in French was made by the clerk who took contact information and printed the labels and the order for the blood test. At the blood collection site, no offer of service in French was made, but the employees eventually went to find a French-speaking employee to help them. Lastly, payment at the parking lot exit had to be made in English as well.

Key issue: Although the Horizon Health Network has English as its working language, all of its establishments have to offer their services in both official languages. Units with unilingual employees must use a team approach and have contingency plans in place to ensure service of equal quality, regardless of the official language in which clients choose to receive service.

Resolution method adopted in this case: Investigation

Results: Our investigation made it possible to establish that the complaint was founded. We therefore made the following recommendations, among others:

- That the institution periodically give its parking lot attendants information sessions on the institution's linguistic obligations.
- That the Official Languages Department continue to provide training and support for managers and team leaders in the development of contingency plans.
- That administrative directors report to the institution twice a year on staff member compliance with the active offer and the provision of services in both official languages.
- That the institution develop a rigorous plan for the recruitment of bilingual staff to identify new pools of workers.
- That the institution periodically conduct unannounced audits in all departments and units, including parking lots.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-081EN.



Institution concerned: Horizon Health Network

File number: 20-21-217

Brief summary of the complaint: On December 21, 2020, the Office of the Commissioner received a complaint concerning deficiencies in service in French at the Miramichi Regional Hospital. A member of the complainant's family, who is unilingual Francophone, was admitted to this hospital. However, since the person treating this patient could not speak French, another family member had to act as an interpreter. During the patient's hospitalization, other members of the complainant's family received calls from hospital staff in English only and were told that there were no bilingual employees to assist them. The family had to manage as best they could to speak English. When the family called the hospital to inquire about the patient's condition, they did not get an active offer of service and when they asked to be served in French, they were told, "Sorry, I don't speak French."

Key issue: Although Horizon Health Network has English as its working language, all of its establishments have to offer their services in both official languages. The complainant seriously wondered whether their unilingual Francophone family member was receiving the necessary care, given that the nurses and doctors who were responsible for treating him were not bilingual and simply did not understand French.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution targeted by this complaint has implemented, among others, the following measures to ensure its future compliance with the *Official Languages Act*:

- Verify and review linguistic contingency plans.
- Make an inventory of the linguistic resources offered by the institution.
- Hold an information session on the importance of providing services in the official language of preference for patients and members of the public.
- Organize working sessions with hospital managers to remind them of:
 - the importance of organizing work rotations in order to ensure a bilingual presence;
 - the consideration of the language skills of teams when recruiting;
 - the development of emergency plans in the absence of bilingual staff; and
 - the last resort use of the interpretation services that are available at all times.



Institution concerned: Horizon Health Network

File number: 20-21-211

Brief summary of the complaint: On December 18, 2020, the Office of the Commissioner received a complaint concerning a lack of service in French at the Oromocto Public Hospital, more specifically the breast cancer screening service at this establishment. The complainant called this service to make an appointment for a mammogram. The employee on the other end of the line was unable to conduct a conversation in French. To make herself understood, the employee had to use English, and the complainant also had to use English to confirm what the employee was saying to her.

Key issue: Although Horizon Health Network has English as its working language, all of its establishments have to offer their services in both official languages. The employee in question apologized to the complainant and explained that there was no one at the screening service who could serve her in French at the time due to the staffing challenges caused by the COVID-19 pandemic.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution targeted by this complaint has implemented, among others, the following measures to ensure its future compliance with the *Official Languages Act*:

- Provide employees and managers of the Breast Cancer Screening Service instructions on the active offer, including reminders on understanding culture and language rights as well as on the importance of having a linguistic contingency plan.
- Provide linguistic support resources to service representatives.
- Remind all employees of the service of the obligation to follow the online learning module on the active offer.
- Share information with managers on updated policies and tools available on the Horizon Official Languages Service intranet page.



HEALTH

TWO VITALITÉ HEALTH NETWORK HOSPITALS

Institution concerned: Vitalité Health Network

File numbers: 20-21-186, 20-21-201

Brief summary of the complaints: Between November 23 and December 4, 2020, the Office of the Commissioner received two complaints concerning deficiencies in the provision of service in English at two establishments of the Vitalité Health Network. The first complainant did not receive an active offer of service during the screening for COVID-19 at the oncology clinic of the Dr. Georges-L.-Dumont University Hospital Centre. She did not even get a chance to say she needed instructions in English. After she did not respond or act, the employee spoke to her in English. The second complainant called the Campbellton Regional Hospital to make an appointment. The employee responded in French only. The complainant waited for the receptionist to offer her service in English, but it was never offered.

Key issue: Although the Vitalité Health Network has French as its working language, all of its establishments have to offer their services in both official languages. Not only must they be able to serve members of the public in the official language of their choice, but under section 28.1 of the New Brunswick *Official Languages Act*, they must ensure that the appropriate measures are taken to inform members of the public that their services are available in the official language of their choice. In other words, the institution's establishments must make an active offer of service to members of the public when they communicate with or receive a service from the institution.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institution targeted by these complaints has implemented the following measures to ensure its future compliance with the *Official Languages Act*:

- Remind all its employees of the importance of making an active offer in both official languages and then continue the discussion in the language chosen by the member of the public.
- Meet with the employee implicated in one of the complaints in order to reaffirm obligations related to official languages, including the importance of the active offer.



LEGISLATIVE ASSEMBLY

LEGISLATIVE ADMINISTRATION

COMMITTEE

Institution concerned: New Brunswick Legislative Assembly

File number: 20-21-083

Brief summary of the complaint: On August 4, 2020, the Office of the Commissioner received a complaint concerning deficiencies in the provision of service in French during meetings of a Standing Committee of the Legislative Assembly. More specifically, when the complainant sat on the Legislative Administration Committee, no simultaneous interpretation was offered. When he spoke in his own language, he could not be understood by several members of this committee; he was therefore often “forced” to speak in English. In addition, as a member of the Committee, he could not have access to the conversation in the language of his choice, French. The complainant believed that the voice of the people he represents in Fredericton should carry as much weight during legislative deliberations as the voice of people elsewhere in the province.

Key issue: Under section 6 of the New Brunswick *Official Languages Act*, English and French are the official languages of the Legislature and everyone has the right to use the official language of their choice in debates and the work of the Legislative Assembly and its committees. Section 7 goes on to state that the Legislative Assembly shall provide simultaneous interpretation of its debates and other proceedings. Our office believes that the work of the Legislative Administration Committee is no exception to these legislative requirements.

Resolution method adopted in this case: Alternative complaint resolution process

Results: In a first attempt to settle this complaint without proceeding with an investigation, the Office of the Commissioner sought a firm commitment from the institution to say that it would provide simultaneous interpretation for the meetings of the Committee in question. However, in its first response, the institution simply committed to providing simultaneous interpretation “when necessary and appropriate to do so.” The Office of the Commissioner considered this first response incomplete. Following a second informal resolution attempt, the institution implemented the following measure to ensure future compliance with the *Official Languages Act*:

- Provide simultaneous interpretation in both official languages during public and in camera meetings of legislative committees made up of members of both linguistic communities.



FINANCE

PRE-BUDGET CONSULTATIONS

Institution concerned: Department of Finance and Treasury Board

File number: 20-21-241

Brief summary of the complaint: On January 20, 2021, the Office of the Commissioner received a complaint concerning deficiencies in the delivery of services in French during pre-budget consultations via teleconference by the Department of Finance and Treasury Board. More specifically, the interpretation service was unavailable, and participants had to listen to the consultations in English only. The invitation to these consultations sent by the Minister of Finance and Treasury Board read as follows: “Please note that this situation limits us with simultaneous translation services. Participants will be able to express themselves in their language of choice. However, the Minister will not be able to speak or respond in French.”

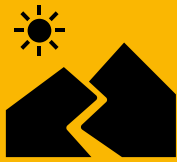
Key issue: The Minister of Finance holds public consultations annually to hear New Brunswickers’ views on the priorities for the next budget. In January 2021, due to restrictions caused by the COVID-19 pandemic, private consultations were held in the form of conference calls. All participants in these calls were encouraged to ask their questions in the official language of their choice. In the invitation sent by the institution, it was stated that interpretation services would be available, but on a limited basis. The complainant believes that the online interpretation services are easy to organize and that the pandemic is not a reason to abandon an official language.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution targeted by this complaint has implemented the following measures to ensure its compliance with the *Official Languages Act*:

- Provide the Minister with simultaneous interpretation services and make adjustments to be able to provide answers in French to participants through a certified interpreter.

In addition, the institution recognized that parties on the call may also wish to hear suggestions from other participants in the official language of their choice. The institution reassured the Office of the Commissioner that this complaint will be taken into consideration in the planning of any future consultation meetings.



TOURISM

NEW RIVER BEACH PROVINCIAL PARK

Institution concerned: Department of Tourism, Heritage and Culture

File numbers: 20-21-117, 20-21-123

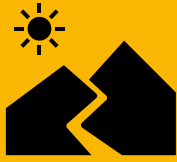
Brief summary of the complaints: Between August 26 and September 1, 2020, the Office of the Commissioner received two complaints about a lack of service in French in person at New River Beach Provincial Park. In the first case, the employee at first contact did not make an active offer of service and could not speak French. In the second case, the employee at the entrance to the beach parking lot did not make an active offer of service in both official languages. Despite the complainant saying “Bonjour” the employee did not respect his choice of language; therefore, the complainant had to speak to him in English.

Key issue: Provincial parks and other tourist attractions operated by the province have linguistic obligations under the *Official Languages Act*. Not only must they be able to serve members of the public in the official language of their choice, but under section 28.1 of the *Act*, they must also ensure that appropriate measures are taken to inform members of the public that their services are available to them in the official language of their choice.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institution targeted by these complaints has implemented, among others, the following measures to ensure its future compliance with the *Official Languages Act*:

- When hiring seasonal staff, ensure the linguistic capacity of candidates is assessed in order to have teams that can effectively provide service in both official languages.
- Remind park employees at the start of the season and mid-season to ensure that the active offer of service is made.
- Hand out language of service reminders to all new employees. These guides are incorporated into the department’s employee onboarding kit.
- Place help sheets for employees in strategic points of the park indicating: “Hello / Bonjour”, “How can I help you? / Comment puis-je vous aider?”, “Sorry, please wait for a moment for the service in English / Excusez-moi, veuillez patienter un moment pour le service en français”.
- Continue to perform random checks to ensure the bilingual nature of the active offer of service, both over the phone and in person, in signage, correspondence, and all electronic services.



TOURISM

MOUNT CARLETON PROVINCIAL PARK

Institution concerned: Department of Tourism, Heritage and Culture

File number: 20-21-089

Brief summary of the complaint: On August 11, 2020, the Office of the Commissioner received a complaint regarding deficiencies in the provision of service in English in person at Mount Carleton Provincial Park. The complainant claimed that the park reception staff had difficulty understanding and speaking English. The complainant believed that an Anglophone person who did not speak French would not have obtained much information or service by visiting this park at the same time he was there.

Key issue: Provincial parks and other tourist attractions operated by the province have linguistic obligations under the *Official Languages Act* throughout the province, regardless of the majority official language of the region in which they are located.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution targeted by this complaint has implemented the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Remind all teams of the importance of being able to respond to clients in the language of their choice, and that, if an employee is unable to provide service in English or French, they should ask a bilingual colleague for support.
- Ensure that these teams can provide quality service in English and French.
- Continue to regularly perform audits on the provision of service in English and French in all the parks in order to guarantee a good quality of customer service.



SOCIAL DEVELOPMENT

SOCIAL ASSISTANCE PROGRAM

Institution concerned: Department of Social Development

File number: 20-21-197

Brief summary of the complaint: On November 30, 2020, the Office of the Commissioner received a complaint about deficiencies in service in English, specifically concerning the social worker who had been assigned to the complainant. When he tried to contact the social worker by telephone, the complainant heard a message recorded in French only. Since he is a unilingual Anglophone, he was unable to understand the message. The complainant said that he urgently needed information from his social worker because he had to go to the hospital. The complainant added that the voicemail of his social worker's manager was also in French only.

Key issue: Through its social assistance program, the Department of Social Development provides assistance to people in financial difficulty to meet their essential needs, such as food, housing, utilities, and clothing. It can also provide assistance with other needs, such as childcare, transportation, prescription drugs, and more. According to section 27 of the *Official Languages Act*, members of the public have the right to communicate with any institution of the Government of New Brunswick and to receive its services in the official language of their choice.

Resolution method adopted in this case: Alternative complaint resolution process

Results: To remedy the situation, which could have had serious repercussions on the complainant's wellbeing, the Office of the Commissioner contacted him immediately to explain the details of the recorded message.

We then contacted the institution, which acknowledged its breaches of the *Official Languages Act*. The institution enacted the following measures to ensure compliance in the future:

- Change the voicemail of the employees in question to include both official languages.
- Require all employees to review the language of work and language of service policies and guidelines at the time of their annual performance review.



SOCIAL DEVELOPMENT

FOSTER FAMILY

Institution concerned: Department of Social Development

File number: 20-21-044

Brief summary of the complaint: On June 10, 2020, the Office of the Commissioner received a complaint concerning deficiencies in communication and service delivery in French by the Child Protection Service of the Department of Social Development. More specifically, the complainant had a child in a foster home under her responsibility, and the social worker assigned to that child never provided her with service in the official language of her choice, French. The complainant also reported to the Office of the Commissioner that the compulsory course for designation as a foster home, including the textbooks accompanying the training, was offered to her in English only.

Key issue: In New Brunswick, it is the responsibility of the Department of Social Development to provide protection services to children who cannot live safely with their family because of abuse or neglect. Some children and their families can receive services at home; others must be placed in a foster home. The Department of Social Development provides training, supervision, and follow-up of foster families and children placed in foster homes.

Resolution method adopted in this case: Investigation

Results: Our investigation made it possible to establish that the complaint was founded. We therefore made the following recommendations:

- That the institution remind its staff that members of the public have the right to service in the language of their choice and must always be given an active offer of service as of the first contact.
- That all staff be given a refresher course annually on their official language obligations.
- That as of April 1, 2021, when the institution offers any type of compulsory training, directly or through a third party, it take action to offer equal access to this training in both official languages, by offering a minimum of courses in both official languages in every region of the province regardless of the number of participants.



MUNICIPALITIES

CANADA DAY IN FREDERICTON

Institution concerned: City of Fredericton

File number: 20-21-057

Brief summary of the complaint: On June 30, the Commissioner received a publication from Fredericton Tourism inviting her to enjoy a variety of Canada Day entertainment from a YouTube link on a Facebook page and on the Fredericton Tourism website. The hyperlink in this publication led to the full schedule of this event posted on a Facebook page called “Canada Day Fredericton 2020 Live Stream.” The schedule for the day was posted in English only. The Commissioner also noticed that the list of artists for the celebration seemed to be made up of mainly if not entirely Anglophone artists and did not seem to contain any artists that would have represented the Francophone community.

Key issue: The Office of the Commissioner considered that the lack of a schedule in French was a possible breach of the *Official Languages Act* and of Regulation 2002-63. The *Act* stipulates the following:

35(2) A city is required to adopt and publish its by-laws in both official languages irrespective of the percentage required under subsection (1).

36 A municipality or city to which subsection 35(1), (2), or section 37 applies shall offer the services and communications prescribed by regulation in both official languages.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution informed the Office of the Commissioner that an administrative error was the source of the problem. A French version of the text had been prepared, but in the rush to put the information online, the English text was posted by mistake. The institution issued a reminder to staff in the Tourism Department to check in the future that its online communication process includes an examination of all texts to ensure that they are presented in both official languages.

Even though not having artists representing the Francophone community at Canada Day celebrations did not violate the *Official Languages Act*, the Commissioner adjourned the matter, but still encouraged the City of Fredericton to consider the potential positive impact of adding Francophone speakers or artists to future events, since Fredericton is the capital of the only officially bilingual province in Canada.



POLICE SERVICES

EDMUNDSTON POLICE FORCE

Institution concerned: Edmundston Police Force

File Number: 2020-013

Brief summary of the complaint: In the fall of 2019, the Edmundston Police Force executed a search warrant filled out in French only, on a member of the public at their home. Since this person wanted service in English, they requested a copy of the search warrant in that language, but the request was refused. After receiving the complaint, our efforts to contact the complainant were unsuccessful and we were unable to pursue the complaint as filed. However, the Commissioner believed that this was a matter of public importance and launched an investigation on her own initiative.

Key issue: To determine if issuing a search warrant to the public constitutes a service under subsection 31(1) of the *Official Languages Act*, the Office of the Commissioner followed the reasoning set out in paragraph 85 of *R. c. Lavoie*, in which Judge Cloutier said the following: *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 service 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.*

Resolution method adopted in this case: Investigation

Results: The Office of the Commissioner concluded that the procedures used by the Edmundston Police Force when serving the search warrant, were not in compliance with section 31 of the *Official Languages Act*, and therefore made 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*.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/2020-013EN.



POLICE SERVICES

FREDERICTON POLICE FORCE

Institution concerned: Fredericton Police Force

File number: 20-21-168

Brief summary of the complaint: On October 22, 2020, the Office of the Commissioner received a complaint about deficiencies in communication in French concerning the Fredericton Police Force. More specifically, the complainant noticed that during an important police operation on that day, the Fredericton Police Force was using social media to keep the public informed of the situation. Among other things, the messages posted in the English and French versions of the institution's Twitter account were not of equal quality. The complainant also noticed major time lapses in the publication of the information in French and missing messages on the French account.

Key issue: The Office of the Commissioner carried out a verification of the messages on the Twitter and Facebook accounts of the Fredericton Police Force related to the police operation of October 22, 2020. It found that, in general, the quality of the French in the French messages on Twitter and Facebook was poor. Some messages published on Twitter, including those about Priestman and Montgomery Street schools, were published in English only; yet the messages concerning École Sainte-Anne and École des Bâisseurs were published in both official languages. At the end of the day, once the operation was over, a news release was shared on the institution's accounts in English at 5:40 p.m., whereas the news release in French was published at 8:57 p.m., more than three hours later. The institution confirmed to us that it employs only one bilingual person responsible for public relations. That day, this person had to follow the sequence of events, manage media requests, ensure liaison with the parties concerned, and put content on the Facebook and Twitter accounts, an admittedly overwhelming task.

Resolution method adopted in this case: Alternative complaint resolution process

Results: The institution implicated in this complaint implemented the following measure to ensure that, in the future, communications in both official languages would be issued quickly during events of this nature:

- Ensure that in the future, a second bilingual resource of the Fredericton Police Force or the City of Fredericton is available during crisis situations.



SERVICE NEW BRUNSWICK

MOTOR VEHICLE INSPECTIONS

Institutions concerned: Service New Brunswick, Department of Justice and Public Safety

File numbers: 20-21-035, 20-21-062

Brief summary of the complaint: On June 2, 2020, the Office of the Commissioner received a complaint concerning deficiencies in the provision of service in French targeting two institutions: Service New Brunswick (SNB) and the Department of Justice and Public Safety. More specifically, the complainant had called the SNB service centre to obtain information on trailers. The employee on the phone informed the complainant that the inspectors who could speak French had all been reassigned to the borders because of COVID-19 and that, if he wished to obtain service in French, he should call back the next day or the following week. Since the complainant needed this information quickly, he agreed to have an English-speaking inspector call him back.

Key issue: Although SNB is often the “gateway,” the Motor Vehicle Inspections service falls under the Department of Justice and Public Safety. The latter confirmed to the Office of the Commissioner that there were three motor vehicle inspectors in the province, two who were bilingual, and one who was a unilingual Anglophone, but that at the beginning of the COVID-19 pandemic, one bilingual inspector left his job and the other two inspectors were reassigned to New Brunswick borders and airports. The Department added that as things return to normal, the institution will hire a new bilingual inspector and reassign the two inspectors to their original positions.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institutions targeted by this complaint have implemented, among others, the following measures to ensure their future compliance with the *Official Languages Act*:

- Reassign the bilingual inspector to his regular duties to ensure that the Motor Vehicle Inspections office is able to provide service in both official languages at all times.
- Remind staff to always make an active offer of service in both official languages.
- Remind the employees of the Department of Justice and Public Safety of their linguistic obligations each year during their performance reviews. By signing the annual performance agreement, employees acknowledge having read and understood the policies on their linguistic obligations.



SERVICE NEW BRUNSWICK

REACTIVATION OF A DRIVER'S LICENCE

Institutions concerned: Service New Brunswick, Department of Justice and Public Safety

File numbers: 20-21-056, 20-21-059

Brief summary of the complaints: On June 29, 2020, the Office of the Commissioner received a complaint concerning deficiencies in the delivery of services in French. More specifically, the complainant's mother called Service New Brunswick (SNB) to have her driver's licence reactivated by telephone. The SNB employee told his mother that the person responsible for driver's licences, an employee of the Department of Justice and Public Safety, was a unilingual Anglophone. Surprised, the complainant contacted SNB himself and was told the same thing.

Key issue: Given that this situation was urgent in order for the complainant's mother to obtain her driver's licence quickly, the Office of the Commissioner contacted the two institutions concerned in order to work together to resolve this situation as soon as possible. The Department of Justice and Public Safety confirmed to us that the person responsible for driver's licences was in fact an Anglophone, but that there was a bilingual employee at that office to provide service in French if necessary. Our office was also able to confirm that the bilingual employee had contacted the complainant's mother by phone and that her driver's licence had been reactivated.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The Department of Justice and Public Safety confirmed that the employee with whom the complainant and his mother spoke on the phone should not have said that the service is provided only in English, since, in fact, the employee responsible for the reactivation of driver's licences calls on bilingual colleagues to provide services in both official languages.

Among other things, the institution also implemented the following measures to ensure its future compliance with the *Official Languages Act*:

- Remind staff of their linguistic obligations and the importance of ensuring that service is offered in both official languages.
- Remind the employees of the Department of Justice and Public Safety of their linguistic obligations each year during their performance reviews. By signing the annual performance agreement, employees acknowledge having read and understood the policies on their linguistic obligations.



SERVICE NEW BRUNSWICK

RESIDENTIAL TENANCIES TRIBUNAL

Institution concerned: Service New Brunswick

File number: 20-21-079

Brief summary of the complaint: On July 22, 2020, the complainant learned that he was going to be evicted from his apartment due to renovations. He complained to a mediator with the Residential Tenancies Tribunal. The Tribunal rendered its decision, which the complainant accepted, but found that the quality of the French language used in the decision of the Residential Tenancies Tribunal was unacceptable. He informed us of his complaint regarding this document on July 28, 2020.

Key issue: The Residential Tenancies Tribunal is a provincial government office. Landlords and tenants may consult with a residential tenancies officer on all matters relating to their rights and obligations with respect to the rental of residential accommodations. If a conflict cannot be resolved between a landlord and a tenant, a Residential Tenancies Tribunal mediator can be called in, who in turn will investigate the case and make a decision. The institution confirmed that in order to ensure that the mediators provide a product of equal quality in both official languages to members of the public, a review of the written decisions of each employee is completed periodically throughout the year.

Resolution method adopted in this case: Investigation

Results: In its response to our notice of investigation, the institution claimed that the errors noted in the decision in question were due to the inattention of the mediator responsible for the case.

Our investigation made it possible to establish that the complaint was founded. We therefore made the following recommendation:

- That the institution ensure that all decisions of the Residential Tenancies Tribunal are reviewed before their distribution, by a member of its staff with the appropriate language skills in written expression in French and English, to ensure that the document is of equal quality, regardless of the official language used.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-079EN



ELECTIONS NEW BRUNSWICK

PROVINCIAL ELECTION - SEPTEMBER 2020

Institution concerned: Elections New Brunswick

File numbers: 20-21-127, 20-21-129, 20-21-131

Brief summary of the complaints: Between September 5 and 14, 2020, the Office of the Commissioner received three complaints regarding deficiencies in the provision of services in French in person at three polling stations for the provincial election: Noonan (advance polls), Douglas (advance polls), and Campbellton (polling day).

Key issue: During the last provincial election in 2018, the Office of the Commissioner investigated similar deficiencies and made the following recommendation:

- That the institution adopt the measures required to remedy the shortcomings reported in this case and that it continue to work proactively to ensure that elections can be held with the greatest respect for the linguistic rights of citizens of the province.

Upon receipt of the first complaint in 2020, the Office of the Commissioner contacted the institution in order to make them aware of the situation. The institution confirmed that the returning officer would contact the supervisor of the office concerned to remind employees to make an active offer of service in both official languages. After receiving the second complaint, the Office of the Commissioner suggested that the institution send an e-mail to all of its election supervisors so that they have a procedure in place to ensure that voters receive service in the language of their choice throughout the process. On polling day, the Office of the Commissioner nevertheless received a third complaint against the institution.

Resolution method adopted in these cases: Alternative complaint resolution process

Results: The institution targeted by these complaints has implemented the following measures to ensure its future compliance with the *Official Languages Act*:

- Review the training offered to all election officials to determine if there are other ways of insisting that all electors be served in the official language of their choice.
- Continue to lobby the government to remove legislative constraints that hamper the institution's ability to recruit and properly remunerate qualified election officials.
- Increase awareness among Francophone community groups in predominantly Anglophone communities, as these groups are an important resource for identifying qualified bilingual election personnel.



EXECUTIVE COUNCIL OFFICE

CALLS FOR TENDERS

Institution concerned: Executive Council Office

File number: 20-21-054

Brief summary of the complaint: On June 25, 2020, the Office of the Commissioner received a complaint regarding communication shortcomings in French. More specifically, the complaint targeted the New Brunswick Opportunities Network (NBON). The complainant had submitted an access to information request to the Department of Health in order to obtain a specific call for tenders. The document had been sent to him in English only. When the complainant asked for the call for tenders in French, the Department of Health and Service New Brunswick told him that this call for tenders was not available in French.

Key issue: Service New Brunswick (SNB) is the institution responsible for the management of NBON. In its response to the complainant, SNB indicated that the common practice for posting tenders on the NBON site was as follows: “Calls for tenders are published in the language in which the request is received from the client department. Bidders can request a version in the other language, and they are translated in such cases. This call for tenders was issued in English only, and SNB has not received a request for translation.”

Resolution method adopted in this case: Alternative complaint resolution process

Results: Although this complaint involved the Department of Health and SNB, the Office of the Commissioner addressed the Executive Council Office in its resolution, because the calls for tenders affect the entire provincial civil service.

The Office of the Commissioner had investigated similar complaints before. The Executive Council Office confirmed that the following measures will be taken by SNB in order to increase the number of public calls for tenders launched in NBON in both official languages:

- Conduct research on practices applied elsewhere, including the federal government, to determine the best practice for posting public calls for tenders in both official languages.
- Call on clients in order to obtain their commitment to post their public calls for tenders in both official languages.
- Submit a policy proposal to the government by March 31, 2021, regarding the posting of public calls for tenders in both official languages.



UNFOUNDED COMPLAINT

NEW BRUNSWICK COURTS

Institution concerned: Department of Justice and Public Safety

File number: 20-21-041

Brief summary of the complaint: On June 8, 2020, the Office of the Commissioner received a complaint about deficiencies in delivery of services and communication in English. More specifically, the complainant was served with a notice to appear before the court. The notice of application was completed in English and the applicant indicated his intention to proceed in English, his language of choice. When the complainant appeared in court, virtually all of the proceedings took place in English. However, near the end, the lawyer representing the applicant began to speak to the judge in French. A verbal exchange ensued between the judge and the two lawyers. For perhaps five minutes, all the communication took place in French, and the complainant did not understand anything that was being said. The judge then put an end to the proceedings. The complainant informed the Office of the Commissioner that this exchange in French between the judge and the lawyers caused him great distress because he would have made objections and comments if he had understood the content of the discussion.

Key issue: English and French are the official languages of the New Brunswick courts. That means that, among other things, members of the public have the right to use the official language of their choice before the courts, that they cannot be placed at a disadvantage because of their choice of language, and if a person is a party to a proceeding, the court must understand the language this person has chosen without the assistance of an interpreter.

Resolution method adopted in this case: Investigation

Results: As part of its investigation, the Office of the Commissioner obtained an audio recording of the legal proceedings in question. The investigative staff of the Office of the Commissioner listened to the recording and determined that the legal proceedings in their entirety took place in English, the complainant's language of choice.

Our investigation made it possible to establish that the complaint was unfounded. The Office of the Commissioner therefore did not make any recommendations.



INADMISSIBLE COMPLAINT

LANGUAGE OF WORK

Institution concerned: Department of Finance and Treasury Board

File number: 20-21-158

Brief summary of the complaint: On October 16, 2020, the Office of the Commissioner received a complaint about a communication received in English only from the provincial Office of the Comptroller. More specifically, the complainant, who was working in another department of the provincial public service, indicated she had received a document from the Office of the Comptroller entitled "Employment Development Programs" in English only.

Key issue: Under the Government of New Brunswick's *Official Languages - Language of Work Policy and Guidelines*, "Personnel services and other administrative services provided to employees must be offered and provided in the employees' official language of choice." Although this provision is contained in a government policy, the *Official Languages Act (OLA)* does not contain any provisions about the language of work for provincial public servants. This means that a public servant whose linguistic rights are not respected cannot have recourse to the Office of the Commissioner of Official Languages to try to resolve the situation.

In the overview of proposed amendments to the OLA presented in its 2019-2020 annual report, the Office of the Commissioner recommended clearly including in the OLA the right of public servants to work in the official language of their choice. This amendment would require the provincial government to take the necessary action once and for all to enable Francophone and Francophile public servants to be supervised and work in French.

Resolution method adopted in this case: Under the OLA, the Commissioner did not have the authority to investigate this complaint.

Results: Under the promotional component of her mandate, the Commissioner still thought it was expedient to send a promotional letter to the institution. In the letter, she suggests the following action to make the Department of Finance and Treasury Board a leader in the promotion of New Brunswick's two official languages:

- Encourage the staff of the institution to have translated any publications that are sent to other institutions and to employees of the Government of New Brunswick.



INADMISSIBLE COMPLAINT

VOICEMAIL MESSAGE

Institution concerned: New Brunswick Real Estate Association

File numbers: 20-21-264, 20-21-274

Brief summary of the complaints: On February 17 and 23, 2021, the Office of the Commissioner received two complaints of allegations of deficiencies in communication in French concerning the New Brunswick Real Estate Association (NBREA). More specifically, the complainants alleged that the NBREA's telephone message did not communicate equally to the two official linguistic communities.

Key issue: Upon receipt of these complaints, the Office of the Commissioner conducted audits by calling the telephone numbers of the NBREA and observed that the name of the association is heard in English first, followed by "Pour poursuivre en français, appuyez sur le 9" (to continue in French, press 9); the rest of the message is in English. When you press "9", you hear the same message entirely in French. Based on the result of our audits, the Office of the Commissioner noticed that by pressing "9", the NBREA's telephone message is available in both official languages.

Resolution method adopted in these cases: The Office of the Commissioner concluded that there was no violation of the *Official Languages Act* in these cases.

Results: Under the promotional component of her mandate, the Commissioner still thought it a good idea to send a promotional letter to the institution. In the letter, she suggested that the NBREA change the beginning of its telephone message to include the name of its association in both official languages right at the start.

A few days after receiving our promotional letter, the institution contacted the Office of the Commissioner to inform us that it had further changed its automatic voicemail messages to clearly include the name of the association in both official languages from the beginning of the pre-recorded message.

**PROMOTING THE ADVANCEMENT
OF BOTH OFFICIAL LANGUAGES**

THE PROMOTION MANDATE : A KEY ELEMENT OF PROGRESS

Context

The Commissioner of Official Languages has a dual mandate: to investigate, report on, and make recommendations regarding compliance with the *Official Languages Act* and to promote the advancement of both official languages in the province.

Activities intended to promote the advancement of the two official languages in the province are vital for progressing towards real equality of the two languages and the two official language communities.

These promotional activities aim to:

- demonstrate the importance of bilingual services for the two linguistic communities;
- debunk in a more systematic way the myths surrounding official bilingualism and linguistic duality;
- highlight the social and economic benefits of the bilingual character of the province;
- promote dialogue between our two linguistic communities; and
- respond to members of the public's questions regarding duality and official bilingualism.

43(9) In accordance with the authority provided to the Commissioner under this Act, it is the role of the Commissioner to investigate, report on and make recommendations with regard to compliance with this Act and to promote the advancement of both official languages in the Province.

43(9) Conformément aux pouvoirs qui lui sont conférés en vertu de la présente loi, le rôle du commissaire est d'enquêter, présenter des rapports et de faire des recommandations visant le respect de la présente loi et de promouvoir l'avancement des deux langues officielles dans la province.

QUESTION PERIOD AT THE LEGISLATIVE ASSEMBLY



The vitality of a language is not only related to the number of its speakers. Several other factors play a role: its status (official language or not), its instruction in schools, its use in the workplace, and its presence in the media. In addition, public use of a language, particularly within important institutions, can have an influence on public perceptions with respect to its importance or place within society.

We can therefore understand that a balanced use of both official languages in the Legislative Assembly is of great importance. Question period is definitely one of the highlights of the Legislature’s activities. Webcast and closely monitored by journalists, it has a direct impact on current affairs in the province. Although simultaneous interpretation is available during question period, the choice of languages used during a debate has a highly symbolic value that cannot be underestimated.

A review of the question period transcripts from May 26, 2020, to March 25, 2021 (24 daily sittings) shows that, on average, debates were carried out **in English 84% of the time** and **in French 16% of the time**.

The Commissioner recognizes and respects the right of Members of the Legislative Assembly (MLA) to use their language of choice during debates. However, she notes the important role elected officials can play in the vitality of both official languages in the province and encourages all MLAs to strive for a more balanced use of English and French in the Legislature.

| Use of English and French during question period | | |
|--|-----------|------------|
| | 2019-2020 | 2020-2021 |
| English | 85% | 84% |
| French | 15% | 16% |

PRESENTATIONS BY THE COMMISSIONER

Below are the main activities in which the Commissioner was involved during the 2020-2021 fiscal year.

| | |
|---------------------------|--|
| September 24, 2020 | Members of the Legislative Assembly Presentation regarding the Commissioner's mandate and official languages in New Brunswick |
| November 18, 2020 | Members of the Green Party Presentation regarding the Commissioner's mandate and official languages in New Brunswick |
| January 27, 2021 | New Brunswick Legislative Internship Program Presentation regarding the Commissioner's mandate and official languages in New Brunswick |
| February 16, 2021 | Members of the Standing Committee on Procedure, Privileges and Legislative Officers Presentation of 2019-2020 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick |
| March 4, 2021 | Participation in a virtual discussion about the active offer in healthcare with the Welsh Language Commissioner and the Ontario French Language Services Commissioner |
| March 9, 2021 | École L'Odysée of Moncton - Students in grades 11 and 12 Virtual conference about linguistic rights in New Brunswick |