

**FAMILY CROWN SERVICES OPERATIONAL MANUAL**

LANGUAGE RIGHTS	New	Office of the Attorney General / Family Crown Services	Policy 17
Policy Title	New or Amended	Division / Branch / Section	Policy #

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**LANGUAGE RIGHTS**

**1. Introduction**

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The *Constitution Act*, the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act* of New Brunswick provide 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 Government of New Brunswick.

**2. Statement of the policy**

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It is the responsibility of the Assistant Deputy Attorney General of Family Crown Services to ensure that the regional Family Crown Services offices serve the public in the official language of their choice. While staffing profiles are intended to accomplish this objective, it is the responsibility of the Family Crown Counsel and the Assistant Deputy Attorney General of Family Crown Services to make any necessary internal office arrangements to provide this service.

Every party to a proceeding is entitled to proceed in the official language of his or her choice. Every witness in a proceeding is entitled to testify in the official language of his or her choice.

Family Crown Counsel has a duty to ensure that the language rights of parties and witnesses are respected.

**3. Procedure**

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**3.1 Applications filed on behalf of the Minister of Social Development or the Director of Support Enforcement**

In applications filed on behalf of the Minister of Social Development or the Director of Support Enforcement, it is their responsibility to maintain the file, to prepare the court documents and to ensure that proceedings are commenced in the language of choice of their client. If, during the file approval, document review and/or disclosure phases, Family Crown Counsel observes that the file does not respect

the language choice, he / she shall bring this to the attention of the moving party. The Minister of Social Development or the Director of Support Enforcement will be responsible to arrange and pay for translation in a timely fashion in cases where other respondents to the proceedings wish to proceed in the other official language and translation of the documents is mandated.

### **3.2 Disclosure**

As a general rule, the Minister of Social Development does not provide translation for disclosure documents. There is no statutory legal obligation to provide a written translation of any evidence disclosed pursuant to the Crown's disclosure obligation.

Whether to provide translated disclosure material is a question that Family Crown Counsel shall decide on a case-by-case basis having regard to the unique circumstances of each case. The objective is to provide the parties with adequate information about the Crown's evidence so that he or she may understand the issues and be able to respond to same.

Any request for the translation of disclosure must be immediately brought to the attention of the Assistant Deputy Attorney General of Family Crown Services.

### **3.3 Incoming interjurisdictional applications**

It is the responsibility of the extraprovincial jurisdiction to provide documents in one of the official languages of New Brunswick. In the event that the respondent wishes to proceed in the other official language, it will be the responsibility of the extraprovincial jurisdiction to arrange and pay for translation in a timely fashion.

### **3.4 Court of Queen's Bench**

#### **3.4.1 Where the respondent is represented by legal counsel**

Where translation services will be required at preliminary appearances or hearings, counsel for the respondent shall, as soon as possible, notify the Clerk of the Court who has the responsibility to make appropriate arrangements. Where translation services are only required for portions of the court proceedings, it is the responsibility of counsel for the respondent to make every effort to identify the timeframe during which a translator will be required. Where translation services are no longer required, it is the responsibility of counsel for the respondent to inform Court Services accordingly.

#### **3.4.2 Where the respondent is unrepresented**

Where translation services will be required at preliminary appearances or hearings, Family Crown Counsel shall, as soon as possible, notify the Clerk of the Court who has the responsibility to make appropriate arrangements. Where translation services are only required for portions of the court proceedings, it is the responsibility of Family Crown Counsel to make every effort to identify the timeframe during which a translator will be required. Where translation services are no longer required, it is the responsibility of Family Crown Counsel to inform Court Services accordingly.

#### **3.4.3 Translation options**

The court may order court appearances, hearings and/or trials in either of the official languages or may order a bilingual trial. In a bilingual trial, the questions are posed and answered in the official language of

the witness. By contrast, in a hearing or trial held in one of the official languages, the entire hearing or trial, including all questions to a witness, are posed in the official language chosen for the hearing or trial and are translated out loud to the witness, where necessary. The witness' response is then translated out loud to the court, where necessary.

### **3.5 Obligations of Family Crown Counsel and language capacity**

Where an order is made for a hearing or trial in an official language, and it is apparent that any language right of the parties is not being respected, Family Crown Counsel shall either request an adjournment to remedy the situation or shall ask the presiding justice to seek clarification on the record as to whether the parties are waiving the relevant language rights.

Where an order is made for a hearing or trial in an official language, the Family Crown Counsel responsible for the file shall ensure that he / she has sufficient command in both oral and written use of the official language in question. If Family Crown Counsel is not comfortable in proceeding with the hearing, he / she shall refer the matter to the Assistant Deputy Attorney General.

### **3.6 Request by Family Crown Counsel for a bilingual hearing or trial**

Where the majority of Crown witnesses do not speak the official language of choice of a bilingual party, Family Crown Counsel may request a bilingual hearing or trial. Such an order will permit witnesses to be examined in their own language rather than through an interpreter.

Where co-respondents exercise their respective rights to proceed in different official languages, Family Crown Counsel may request a bilingual hearing or trial.

## **4. Related Documents**

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Policy 22 - Disclosure