

---

# Report of the 2021 Review of the *Official Languages Act* of New Brunswick

**ORGANIZATION, COMMUNICATION AND COMMITMENT**



DECEMBER 2021

**Report of the 2021 Review of the *Official Languages Act* of New Brunswick  
Organization, Communication and Commitment**

Province of New Brunswick  
PO 6000  
Fredericton NB  
E3B 5H1 CANADA

[www.gnb.ca](http://www.gnb.ca)

ISBN 978-1-4605-2973-7 (bilingual print edition)  
ISBN 978-1-4605-2974-4 (PDF English edition)  
ISBN 978-1-4605-2975-1 (PDF French edition)

13573 | December 2021 | Printed in New Brunswick

# Message from the commissioners



We are very pleased to present to the government and the people of New Brunswick our report on the 2021 review of the *Official Languages Act*. It has been a privilege and an honour for us to lead this exercise to improve both the *Official Languages Act* and the learning of our province's two official languages. We will address the matter of official languages learning in a separate report.

The *Official Languages Act* has been part of our legal landscape for over 50 years. It guarantees the equality of our official languages and our linguistic communities. It ensures that New Brunswickers are served by their government in the language of their choice.

We know that language issues can raise passions because they are at the heart of our identity as individuals and as a province. For this reason, we are grateful for the sincerity and consideration with which participants have shared their experiences and ideas. Thank you for the opportunity to engage in candid and respectful discussions and to learn from caring, hard-working, and open-minded people.

Although the pandemic required us to hold mostly virtual meetings, we were able to speak with a variety of stakeholders and experts from across the province. We heard from people from both linguistic communities in an independent and non-partisan manner. We greatly appreciated the organizations and individuals who presented their briefs, thereby providing us with valuable information. We also thank the thousands of participants who submitted their comments online or by mail during this important exercise.

Official bilingualism is an integral part of our culture, our history, and our future as a province. New Brunswick, like the rest of the world, is changing at a rapid pace and must adapt to new social, economic, and demographic challenges that have an impact on our linguistic reality. That said, we have much to be proud of, and what unites us is stronger than what divides us.

We hope that our recommendations will help promote the vitality of each official language community and strengthen the province's ability to provide quality services in both English and French. This will allow New Brunswick to fully play its role as a leader in official languages, and as the only officially bilingual province in Canada.

A blue ink signature of Judge Yvette Finn, written in a cursive style.

Judge Yvette Finn

A blue ink signature of John McLaughlin, written in a cursive style.

John McLaughlin

# Table of contents

Executive summary . . . . .	1
Commissioners' mandate . . . . .	4
Methodology . . . . .	5
Consultations . . . . .	5
Participation . . . . .	6
Demographics . . . . .	6
Context . . . . .	7
Institutional and Personal Bilingualism . . . . .	7
Evolution of Language Rights in New Brunswick . . . . .	7
New Brunswick's Demographic Characteristics and Linguistic Challenges . . . . .	8
Linguistic Portrait of the Population. . . . .	8
Rural – Urban Dynamics . . . . .	10
Immigration . . . . .	11
Meeting the Challenge . . . . .	11
Economic Benefits of a Bilingual New Brunswick . . . . .	11
Consultation: what was said . . . . .	13
Comments on Official Bilingualism in New Brunswick . . . . .	13
Comments on the implementation of the <i>Act</i> . . . . .	14
Themes from the Online Questionnaire . . . . .	15
Findings and recommendations . . . . .	17
Part I – Essential structures for effective governance . . . . .	18
1 – STANDING COMMITTEE ON OFFICIAL LANGUAGES OF THE LEGISLATIVE ASSEMBLY	19
2 – DEPARTMENT OF OFFICIAL LANGUAGES . . . . .	20
Departmental Responsibilities. . . . .	21
Support for the Premier . . . . .	21
Support for Institutions and Services Subject to the <i>Act</i> . . . . .	21
Relations with the Two Linguistic Communities . . . . .	21
3 – COMMISSIONER OF OFFICIAL LANGUAGES . . . . .	22
Commissioner's Investigative Role . . . . .	22
Annual Report to the Legislative Assembly . . . . .	23
Promotional Role of the Commissioner . . . . .	23

Part II – Priority themes . . . . .	.26
4 – LANGUAGE OF SERVICE AND LANGUAGE OF WORK IN THE PUBLIC SERVICE . . . . .	.26
Language of Service Policy . . . . .	.26
Linguistic Profiles . . . . .	.26
Integrated Team Approach . . . . .	.27
Language of Work Policy . . . . .	.28
5 – HEALTH SERVICES . . . . .	.30
Health Care System: Overview . . . . .	.30
Legislation . . . . .	.31
Obligations under the <i>Official Languages Act</i> . . . . .	.31
Obligations under the <i>Regional Health Authorities Act</i> . . . . .	.31
6 – NURSING HOMES . . . . .	.33
7 – MUNICIPALITIES . . . . .	.35
8 – IMMIGRATION . . . . .	.37
9 – REVIEW OF THE ACT. . . . .	.37
Conclusion . . . . .	.38

# Executive summary

The *Official Languages Act* has been part of our landscape for over 50 years. It guarantees the equality of our official languages and our linguistic communities and ensures that New Brunswickers are served by their government in the language of their choice.

In February 2021, we were appointed by the Premier to lead the review of the *Official Languages Act* (the *Act*). In addition, we were given a complementary mandate to identify ways to improve access to and learning of both official languages for New Brunswickers, which will be addressed in a subsequent report. Our objective with this first report is to provide Government and the people of New Brunswick with an action-oriented reference document to improve the provisions of the *Act* and ensure its proper implementation.

The interest of New Brunswickers in language issues is evident. Over 6,150 respondents completed the online questionnaire. We also received 89 emails and 31 briefs, and we held over 80 meetings with more than 200 individuals and representatives from 52 stakeholder groups. These include community organizations, public service employees, officers of the Legislative Assembly, members of all political parties, former premiers, post-secondary institutions, school administrators and teachers, parents, youth, and newcomers.

New Brunswickers are generally aware of the *Official Languages Act* and of their right to be served by Government in the language of their choice. However, many do not fully understand what the *Act* really entails and its impact on their community, their family, and their career.

Overall, participants from both linguistic communities support official bilingualism and want to know and understand each other better. Despite differing opinions on how to achieve it, the vast majority expressed a desire to help make our province a place where all New Brunswickers' linguistic, cultural, and social standings are respected and championed. However, we cannot ignore some divergent opinions and beliefs expressed regarding the implementation of the *Act* or even the merits of bilingualism. The following is a sample of various positions and beliefs that we heard:

- It is mandatory to be bilingual to get a job in the public service, and this requirement triggers the exodus of workers to other provinces.
- Bilingualism is expensive and creates duplication of resources with no added economic value, whereas translation would be sufficient to accommodate citizens.
- Official bilingualism is an important engine for economic growth and being served in the language of choice is a fundamental right that should not be impeded by an alleged lack of resources.
- It is not necessary to provide services in both official languages throughout the province where, in some regions, residents virtually use only one of the two languages.
- Central coordination of Government actions in implementing the *Act* is required to reflect the importance of official languages as a fundamental pillar of our province.
- Clarity is needed regarding language requirements and skills in the public service.

- Better awareness of the *Act* is required at various levels of government and the legislature, with respect to its content, its application, and its importance.
- Frustrations attributed to bilingualism are not always related to language issues, and other irritants may come into play. Bilingualism, however, sometimes becomes a scapegoat for more complex issues.

In some ways, the *Act* and its implementation have become a source of tension between the two linguistic communities, and this is perhaps the greatest impediment to New Brunswick becoming a truly bilingual province. We strongly believe that progress towards our goals must overcome decades of mistrust, fear, and anxiety about perceived, (and some would argue experienced) imbalances in power, influence, and access to the most basic benefits of life in New Brunswick. There is a dire need for cross-

community dialogue, interaction, understanding, and trust. The potential economic benefits alone should encourage us to embrace, celebrate, and promote our commitment to bilingualism and to our two official languages.

The *Official Languages Act* has brought tremendous positive changes to the social and linguistic fabric of our province. However, we remain on a journey towards fully realizing the goal of equality of status and rights of the two linguistic communities. It is essential to work together to instill a positive climate for bilingualism and develop a sense of pride in living in New Brunswick while accepting and respecting the differences among all New Brunswickers.

We propose that this important shift in attitude be based on three principles: **organization**, **communication**, and **commitment**. The following is a summary of our recommendations.

## RECOMMENDATIONS – ESSENTIAL STRUCTURES FOR EFFECTIVE GOVERNANCE

The starting point is the immediate implementation of an effective governance system built around three systemic pillars:

1. The establishment of a **Standing Committee on Official Languages of the Legislative Assembly**. This committee will be a legitimate forum for elected officials to engage in frank and constructive discussions on the official languages situation in New Brunswick.
2. The establishment of a **Department of Official Languages**. This department will be the central operational hub for all aspects of the implementation of the *Act* and will assume responsibility for and coordination of the official languages file across all parts of government that are subject to the *Act*.
3. **Reviewing the position of Commissioner of Official Languages to increase the effectiveness and relevance of this function to New Brunswickers.**

## RECOMMENDATIONS – PRIORITY THEMES

Certain themes emerged more often than others during the consultations. The following were identified as priorities.

4. **Language of Service and Language of Work** – There is a need to clarify the language requirements for provincial civil servants (current and future) to enable them to effectively deliver quality services in both official languages and to improve their



second-language competencies to make them more competitive for advancement. Also, through the proposed Department of Official Languages, all necessary measures need to be taken to ensure that provincial public servants can work in the official language of their choice and in an environment that is conducive to the use and learning of both official languages.

5. **Health Services** – It is important to expand the scope of the *Act* regarding the provision of health services to include the linguistic obligations of health authorities, such as active offer of service, posting and publication, and provision of services by a third party on behalf of the province (e.g., Ambulance NB and Extra-Mural services). Further, we need to ensure that the provisions of the *Regional Health Authorities Act*, which imposes on both authorities the responsibility to improve the delivery of health services in French, are respected in the development and implementation of a provincial health plan.
6. **Nursing Homes** – Recognizing the importance of communication as a matter of basic human dignity, and considering the unique and vulnerable position of seniors who transition to long term care, the *Act* should be amended to ensure that nursing homes, as defined in the *Nursing Homes Act*, are subject to the *Official Languages Act*, and a strategy should be developed to continually improve the capacity of nursing homes to provide equal quality of service in both official languages.

7. **Municipalities** – We recommend the establishment of a mechanism to periodically review the statistical data and the terms and conditions that will clearly identify the municipalities and regional service commissions that are subject to the *Act* and the population that is included in the definition of “*official language minority*” (for calculating the 20% in subsection 35(1)). The list of communications and services to be provided by municipalities in the regulation should be reviewed periodically. Rural communities (rural districts) should also be subject to the *Act*.

While we have recommended some changes to the *Act* itself, most of our observations and suggestions have to do with its implementation. In particular, we have focused on ways to clear up misunderstandings, to facilitate more streamlined and effective service delivery, and to implement incremental steps towards fully realizing the power of the *Act* as the cornerstone of New Brunswick’s position as being officially bilingual. We believe that our elected officials and leaders must come together to demonstrate an unwavering and nonpartisan dedication to the official languages mission. We firmly believe that our recommendations, if properly implemented, will breathe new life into this flagship piece of legislation that makes us unique and defines us as Canada’s only officially bilingual province.



# Commissioners' mandate

In February 2021, we were appointed as Commissioners by the Premier to lead the review of the *Official Languages Act* (hereafter the *Act*). In addition, we were given a complementary mandate to identify ways to improve access to and learning of both official languages for New Brunswickers. A subsequent report will address this additional mandate.

The *Act* provides that "*the Premier shall initiate a review of this Act, which shall be completed by December 31, 2021*".

To this end, the mandate given to us was as follows:

- To oversee the examination of and a consultation on the *Official Languages Act* (virtually/in person).
  - To review legal decisions, recommendations of the Office of the Commissioner of Official Languages, and suggestions and recommendations from civil society and New Brunswickers.
  - To receive briefs and suggestions and to hear presentations; briefs and suggestions will be filed by email, mail or on the website created for the exercise.
  - To receive presentations from stakeholders that filed formal submissions. Commissioners to determine which other individuals/ stakeholders/experts they wish to hear.
- To write and present a final report with recommendations by December 31, 2021. Recommendations could include possible amendments to the *Act*, to other legislation or any other recommendation the Commissioners see fit, including those of the complementary mandate.

This report presents the results of the consultation process as well as proposed recommendations to improve the *Act's* effectiveness.



# Methodology

## CONSULTATIONS

To fulfill our mandate, we wanted to ensure that we had a robust engagement strategy that was inclusive, non-partisan, and conducive to candid and respectful dialogue.

In the first few weeks after our appointment, we put together a team and designed the framework and tools for the consultations, including:

- A website (BilingualNB.ca; NBbilingue.ca) created to provide information to New Brunswickers, as well as an invitation to participate in the discussion.
- A background paper with issues to ponder, created and posted online.
- An online questionnaire designed to gather public input.
- A mailing address and an email address established to receive submissions and briefs.
- Virtual meetings held with a wide range of stakeholders to hear their presentations and comments.

The timeline and activities for the review were as follows:

- **Public launch** – The consultation was launched on May 3, 2021. Advertisements were placed in major daily and weekly newspapers and on social media.

- **Consultations** – In the first phase of the process (May to August), an online questionnaire was made available to the public. We also held a series of meetings with stakeholder groups and experts to hear different points of view. These meetings were held primarily via videoconference due to the COVID-19 pandemic, and were held in camera to allow for honest and open discussion with the participants.
- **Analysis, research, and writing** – The second phase (September to December) was dedicated to an analysis of the information collected, further research, and report writing. A report analyzing the responses to the online questionnaire, prepared by researcher Gilbert McLaughlin, was received. Additional meetings were held with stakeholders to obtain specific information and a more in-depth understanding of the issues and ideas.
- **Final Report** – The Commission's final report is due to the government by the prescribed date of December 31, 2021. The work of the Commission will be completed when both reports are tabled and made public.

## **PARTICIPATION**

The interest of New Brunswickers in language issues is evident, as shown in the table below.

<b>Participation data</b>
<p><b>Number of respondents to the online questionnaire*:</b></p> <ul style="list-style-type: none"><li>• English: 4,437 respondents (72.1%)</li><li>• French: 1,169 respondents (19.0%)</li><li>• English/French: 550 respondents (8.9%)</li></ul> <p><b>Total: 6,156 participants</b></p> <p>* According to the official language of choice indicated by the respondent</p>
<p><b>Number of emails received in the inbox of <a href="mailto:bilingualnbbilingue@gnb.ca">bilingualnbbilingue@gnb.ca</a>:</b></p> <ul style="list-style-type: none"><li>• English: 71 emails</li><li>• French: 16 emails</li><li>• English/French: 2 emails</li></ul> <p><b>Total: 89 emails</b></p>
<p><b>Number of briefs:</b></p> <ul style="list-style-type: none"><li>• English only: 6</li><li>• French only: 17</li><li>• English/French: 8</li></ul> <p><b>Total: 31 briefs</b></p>
<p><b>Number of meetings:</b></p> <p>We held over 80 meetings with more than 200 individuals and representatives from 52 stakeholder groups</p>

We had the opportunity to hear from a wide range of stakeholders, including community organizations, public service employees, officers of the Legislative Assembly, members of all political parties, former premiers, post-secondary institutions, school administrators and teachers, parents, youth and newcomers.

## **DEMOGRAPHICS**

The demographics used in the report are from the 2016 census since the results of the latest Statistics Canada census will not be available until 2022.

# Context

"English and French enjoy a status of legal equality and important constitutional protection in New Brunswick, but these elements alone cannot guarantee the future of the official languages, especially when one language is in a minority situation with respect to the other<sup>1</sup>."

Our objective in this report is to provide Government and the people of New Brunswick with an action-oriented reference document to improve the provisions of the *Act* and, more importantly, to ensure its effective implementation.

Our recommendations are intended to build capacity to achieve the desired progress, to improve awareness and understanding of the *Act* among all New Brunswickers, and to develop a culture of mutual respect and appreciation.

## **INSTITUTIONAL AND PERSONAL BILINGUALISM**

It is important to note that the review of the *Act* deals with institutional bilingualism, which refers to the use of English and French by Government in the delivery of its services. It gives individuals the choice of using either official language when dealing with the province and its institutions.

Institutional bilingualism does not impose any obligation on individuals to acquire proficiency in both official languages. Each person in New Brunswick can choose the language of communication, and the institution ensures that it has the necessary resources to meet this choice.

As for personal bilingualism, it refers to an individual's ability to communicate in both official languages<sup>2</sup>.

## **EVOLUTION OF LANGUAGE RIGHTS IN NEW BRUNSWICK**

In April 1969, the Province of New Brunswick adopted the *Official Languages Act*, which made official bilingualism one of the province's fundamental characteristics and placed the English and French languages on an equal footing. Among other things, the new *Act* required provincial officials to ensure that government services are available in either official language when requested by a recipient. In addition, from that point forward, provincial laws had to be adopted in both official languages.

In July 1981, the Legislative Assembly of New Brunswick adopted the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. This legislation, often referred to as *Bill 88*, was intended to affirm the equality of status, rights, and privileges of both linguistic communities. The Government of New Brunswick has an obligation to ensure the protection of this equality of communities, which are entitled to separate institutions offering cultural, educational, and social activities specific

1 Pépin-Filion, Dominique. 2018. *The Language Situation in New Brunswick: Worrying Trends and Some Encouraging Signs*. Moncton: Canadian Institute for Research on Linguistic Minorities, p. 2.

2 *Charlebois v. Moncton (City)*, 2001 NBCA 117, at paragraph 10, Chief Justice Joseph Z. Daigle stated that "The bilingualism regime established by law in New Brunswick is not personal bilingualism as its purpose is not to ensure that individuals will be proficient in both official languages. Rather, it establishes institutional bilingualism aiming for the use of both languages by the province and some of its institutions in the provision of public services. Under such a regime, individuals have the choice to use either English or French in their dealings with government institutions. On the other hand, certain state activities must necessarily be performed in both languages, legislative bilingualism being a case in point."

to one or the other. *Bill 88* also imposes a duty to promote, through positive measures, the development of both linguistic communities.

The following year saw the adoption of the *Canadian Charter of Rights and Freedoms* in the Constitution of Canada. Sections 16 to 20 of the *Charter* are significant from the point of view of language rights for New Brunswick since they entrench the province's official bilingualism in the Constitution.

In 1993, a provision was added to the *Charter* (s. 16.1) guaranteeing the equality of the English and French communities of New Brunswick. The principles of *Bill 88* are now part of the Canadian Constitution.

In August 2002, the Province of New Brunswick adopted a new *Official Languages Act*. The constitutional guarantees adopted since the initial 1969 *Act* were included. In the preamble, the legislation clearly states that the main objective is to respect the rights conferred by the *Charter* on the people of New Brunswick and to enable the government to implement the obligations set out therein.

Certain measures related to the implementation of the *Act* were added, including the obligation for provincial institutions to actively offer their services in the language chosen by the recipient.

An important element was the appointment of a Commissioner of Official Languages, whose role is to investigate and make recommendations on compliance with the *Act* and to promote the advancement of both official languages. The first Commissioner took office on April 1, 2003.

It was also stipulated that a review of the *Act* had to be undertaken by the end of 2012. This review was conducted by the *Legislative Assembly's Select Committee on the Review of the Official Languages Act*. Its report was tabled in the spring of 2013 and it resulted in a bill that was unanimously passed by the Legislative Assembly, the *Official Languages Act*, which is in force today.

The *Act* now provides for the development of an overall plan for the implementation of the official languages legislation as well as an action plan for each department. These are to be reviewed annually. Provisions concerning professional associations and government contractors imposed new language requirements on them.

Section 42 provides for the review of the *Act* to be completed by December 31, 2021.

It is in this context that the government has appointed us to consult with the public and make recommendations.

## **NEW BRUNSWICK'S DEMOGRAPHIC CHARACTERISTICS AND LINGUISTIC CHALLENGES**

Notable features of New Brunswick include the linguistic distribution of the population across the province, the rural-urban dynamic, and demographic changes with respect to immigration.

### **Linguistic Portrait of the Population**

According to Statistics Canada<sup>3</sup>, our province is made up of an English-speaking majority (approximately 68%) and a French-speaking minority (approximately 32%), dispersed throughout the province.

---

3 Statistics Canada. 2019. *Statistics on official languages in Canada*, Catalogue number: CH14-42/2019E-PDF, version updated November 2019, Ottawa, Ontario.

The following table illustrates this reality:

Language spoken most often at home					
Region	Population (Residents)	English	French	English/French	Other
Northwest	47,267	10.61%	87.55%	1.47%	0.38%
Restigouche	25,812	40.05%	57.6%	2.17%	0.18%
Chaleur	34,559	37.96%	59.61%	1.88%	0.55%
Acadian Peninsula	48,108	3.11%	96.05%	0.74%	0.1%
Greater Miramichi	39,918	89.28%	9.15%	0.73%	0.84%
Kent	32,743	29%	66.88%	1.91%	2.22%
Southeast	178,741	66.39%	30.01%	1.61%	1.99%
Valley South Central	29,005	98.64%	0.59%	0.24%	0.52%
Fundy	115,623	95.52%	1.61%	0.38%	2.49%
Southwest	28,724	98.37%	0.53%	0.11%	0.99%
Capital	131,297	92.11%	4.25%	0.59%	3.06%
West Valley	35,304	97.35%	0.84%	0.2%	1.61%

Source: Government of New Brunswick<sup>4</sup>

In linguistic terms, some regions are essentially homogeneous (i.e., Acadian Peninsula – 96% French; Southwest region – 98% English). In other regions, both official languages coexist to different degrees, depending on the location (i.e., Restigouche – 58% French and 40% English).

4 Government of New Brunswick. *Community Profile Dashboard*. Profile information is based on data from the Department of the Environment and Local Government and census data from Statistics Canada. <https://experience.arcgis.com/experience/9ca54934b0c743ffadc712acc52821a4>

## Rural – Urban Dynamics

The table below presents the linguistic composition of the province's eight cities and a sample of different municipalities and local entities.

To compare "homogeneous" Anglophone and Francophone communities, we grouped together two entities of comparable population from each of the official languages and located in different regions of the province.

In some regions, there are few opportunities to get closer to and have discussions with the other community. For example, we are told that the people of St. Stephen rarely interact with and get to know the people of Caraquet, and vice versa.

<b>Language spoken most often at home Municipalities and local entities</b>					
	<b>Population (Residents)</b>	<b>English</b>	<b>French</b>	<b>English/French</b>	<b>Other</b>
<b>Cities</b>					
Moncton	71,889	71.89%	23.05%	1.85%	3.22%
Saint John	67,575	94.51%	1.58%	0.4%	3.5%
Fredericton	58,270	89.42%	3.7%	0.66%	6.21%
Dieppe	25,384	29.38%	66.51%	2.5%	1.61%
Miramichi	17,537	94.91%	3.67%	0.7%	0.73%
Bathurst	11,897	57.48%	38.93%	2.49%	1.09%
Edmundston	16,580	4.35%	93.31%	1.48%	0.86%
Campbellton	6,883	49.88%	46.61%	2.8%	0.7%
<b>Towns</b>					
St. Stephen	4,415	98.02%	0.47%	0.12%	1.4%
Caraquet	4,248	1.34%	97.92%	0.61%	0.12%
<b>Villages</b>					
Petit-Rocher	1,897	6.74%	91.64%	1.08%	0.54%
Perth-Andover	1,590	98.66%	0.67%	0.33%	0.33%
<b>Rural communities</b>					
Beaubassin-East	6,376	22.92%	74.73%	1.57%	0.78%
Hanwell	4 700	90.55%	7.86%	0.53%	1.06%
<b>Local service districts</b>					
Saint-Jacques	1,596	2.52%	96.54%	0.94%	No value
Gordon	1,493	96.97%	2.02%	1.01%	No value

Source: Government of New Brunswick<sup>5</sup>

More New Brunswickers are choosing to live in the urban areas of the province but despite this trend, a significant portion of the population

still lives in rural areas. In 2016, 49.9% of people were living in the three major urban centres of Fredericton, Saint John, and Moncton<sup>6</sup>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Statistics Canada, 2016 Census.



The phenomenon of Francophones from the North migrating to southern urban centres raises concerns regarding a decrease in their use of French and, consequently, of increased assimilation<sup>7</sup>. Indeed, research shows that the rate of language transmission to the next generation decreases when Francophones move to predominantly English-speaking urban centres<sup>8</sup>.

### Immigration

As New Brunswick grapples with its changing demographics, such as a declining population, an aging population, and a shrinking workforce, immigration has become an essential strategy for building prosperity. Aggressive immigration targets, while important to New Brunswick's overall success, will undoubtedly have an impact on our two official language communities. As our government actively promotes New Brunswick as a destination of choice for potential immigrants, we can expect to welcome 7,500 newcomers annually over the next few years.

While in many ways this influx of newcomers is an asset to our communities, concerns have been raised about maintaining the language balance. Moreover, rural areas have difficulty attracting and retaining newcomers.

### Meeting the Challenge

In conclusion, the *Act* establishes that every resident of New Brunswick has the right to communicate with and receive services from Government in the official language of his or her choice, no matter where they are in the province<sup>9</sup>. Given the complexities that define

our linguistic landscape, the delivery of services of equal quality throughout the province is a particular challenge.

Despite this, Government must take these demographic characteristics and linguistic challenges into account when implementing measures enabling it to fully meet its obligations and must ensure that the necessary resources are in place to do so.

### ECONOMIC BENEFITS OF A BILINGUAL NEW BRUNSWICK

Official bilingualism is often perceived as a source of expense rather than revenue. However, an analysis of the facts shows that, on the contrary, it is an important economic advantage for New Brunswick. Two senior economists have recently examined this issue. In April 2019, David Campbell and Pierre-Marcel Desjardins published an update to their 2015 study entitled "*Two Languages: it's Good for Business*"<sup>10</sup>, which explored the benefits and economic potential of bilingualism in New Brunswick.

The findings of their study clearly demonstrate the various economic benefits of bilingualism. For example, our bilingual workforce attracts large companies that set up shop here and offer employment to workers from both language communities. Contact centres alone employ 15,200 people and generate \$1.5 billion worth of interprovincial and international export revenue annually for the province. Given the clientele served, two thirds of these positions are unilingual English and one third are bilingual. Further, as a bilingual province,

---

7 Doucet, Michel. 2017. *Les droits linguistiques au Nouveau-Brunswick : à la recherche de l'égalité réelle!*, Caraquet, Éditions de la Francophonie, page 44, quoting researcher Rodrigue Landry: [Translation] "Linguistic assimilation occurs when members of one language group cease to use their language and adopt the language of another group."

8 Ibid, pages 45-47.

9 Her Majesty the Queen in Right of the Province of New Brunswick v. Canadian Union of Public Employees, Local 4848, 2019 NBQB 097, paragraph 109.

10 Desjardins, Pierre-Marcel; Campbell, David. 2019. "*Two Languages: It's Good for Business, Update on the 2015 Study on the Economic Benefits and Potential of Bilingualism in New Brunswick*," Office of the Commissioner of Official Languages of New Brunswick.

New Brunswick has access to Francophone markets and can export its expertise to them, in addition to attracting a greater diversity of tourists, immigrants and foreign students to post-secondary institutions.

It is important to highlight this positive dynamic and this significant engine for economic growth.



# Consultation: what was said

During our meetings, many participants thanked us for the opportunity to express their views on the whole issue of bilingualism. Clearly, the topic was important to New Brunswickers, and the breadth of opinions and perspectives was reflective of the myriad of experiences, aspirations, concerns and sometimes fears that are often unspoken. Moreover, they repeatedly indicated that by participating in a private and confidential consultation, they felt free to share their honest and candid thoughts without fear of criticism or reprisal.

Overall, we found that participants from both linguistic communities want to know and understand each other better. Despite differing opinions on how to achieve it, the vast majority expressed a desire to help make our province a truly bilingual place, where all New Brunswickers' linguistic, cultural, and social standings are respected and championed.

That said, we cannot ignore the fact that divergent opinions were also expressed, mainly through the online questionnaire, regarding the implementation and even the merits of bilingualism, including comments such as:

- Bilingualism should be abolished, and English should be the only official language of New Brunswick.
- English and French are the two official languages of New Brunswick, but the *Act* could be respected if a service is offered in one language only, with translation for those who do not understand that language.
- The only possible option for complying with the provisions of the *Act* is linguistic duality, as is the case in the public education system.

Many participants suggested that some of the frustrations attributed to bilingualism were not entirely related to the language issue. Administrative decisions, for example, such as a perceived favoring of urban centres over rural areas, are also significant irritants. It has been suggested that bilingualism sometimes becomes a scapegoat for various more complex issues.

## **COMMENTS ON OFFICIAL BILINGUALISM IN NEW BRUNSWICK**

The comments received are summarized as follows:

- A common belief is that it is mandatory to be bilingual to get a job in the public service and that this requirement is the reason for the exodus of workers to other provinces.
- Some people consider bilingualism to be expensive and that it creates a duplication of resources with no added economic value, whereas translation would be sufficient to accommodate citizens.
- Others argue that official bilingualism is an important economic asset for the province and that being served in the language of one's choice is a fundamental right that should not be guided by an alleged lack of human and financial resources.
- There is some confusion about the concept of official bilingualism under the *Act*.
- The importance of the province's bilingual character and the benefits that flow from it are absent from the political discourse.
- A standing committee of the Legislative Assembly could provide a legitimate forum for elected officials to engage in candid and constructive discussions on the official languages situation in New Brunswick.

- Some question the need to provide services in both official languages throughout the province, when in some regions, residents use virtually only one of the two languages.
- There is a general call to clarify the issue of language requirements and competencies in the public service.
- Many New Brunswickers are unaware of their official language proficiency level because tests are difficult to obtain, results are confusing, and government job postings do not clearly state the language requirements.
- Many have pointed out that immigration must be a priority because of the changing demographic situation in our province.

From time to time over the course of our meetings, we were reminded by various individuals of the importance of Indigenous languages. While we as commissioners appreciate the need to protect and promote Indigenous languages, which are facing very real threats to their continued existence, this topic was outside of the mandate that was given to us. That said, we encourage all government, Indigenous and community leaders to actively work on addressing this challenge while there is still time to do so.

### **COMMENTS ON THE IMPLEMENTATION OF THE ACT**

We met with several public service employees who work at various levels of the bureaucracy, and the following are the main points discussed:

- The *Act* stipulates that the Premier is responsible for its administration. That said, no senior official with a direct link to the Premier has exclusive responsibility for this file. The lower level of hierarchy of the administrative entities responsible for the

various duties related to the *Act* does not reflect the importance of official languages as a fundamental pillar of our province.

- The coordination of government actions in implementing the *Act* needs to be improved. There are work units in various departments that operate in silos, without central coordination.
- Some of the responsibilities of these work units are not related to the application of the *Act*, which results in a lack of cohesion and synergy. The Department of Intergovernmental Affairs includes a unit called *Canadian Francophonie and Official Languages*, yet the Canadian Francophonie is a separate file and has no specific relation to the *Act* itself. Most responsibilities for official languages are in a unit of the Department of Finance and Treasury Board which is also responsible for diversity<sup>11</sup>.
- Deputy ministers who should be responsible for the Implementation Plan in their respective departments are too often grappling with the rush of day-to-day realities to pay particular attention to this role.
- The duties of official languages coordinators, who are responsible for their individual department's action plan and for measuring its progress, are often assigned to employees who do not have the authority required to ensure full implementation of the plan. In addition, they are generally responsible for several other files not related to official languages.
- Some have indicated that at various levels of government and the legislature, there is a lack of understanding and knowledge of the *Act*, its importance, and its content.
- The language profiles related to public service job postings, and the integrated team approach used for several years to

---

11 Official Languages and Diversity (Section)

determine job-specific requirements, are not well communicated or understood, and are a major source of frustration. This team approach is also seen as difficult to manage and implement by many of those responsible for hiring in the public service.

- Many Francophone public servants indicated that it was difficult to work in French. Others, such as bilingual Anglophones or those trying to improve their French, also mentioned that they had few opportunities to use, maintain or develop their French language skills at work. It was reported by many that the implementation of the language of work policy is a challenge since the predominant language of work in the public service is English.
- The language training offered to public servants is not guided by a curriculum specific to the public service. The content of the courses offered is rather general and not always relevant to the learners' duties. We were not made aware of any individualized study plans for effective learning.
- Resources outside of New Brunswick are being used to provide training or conduct language assessments while resources are available in the province that would be more appropriate for our needs.
- Access to language training for all public servants is limited as it is dependent on the financial resources available at the branch level or the goodwill of managers.
- Language skills are assessed using evaluation grids that are far removed from the day-to-day activities and needs of public service employees. The competency scale used is misunderstood and confusing, particularly in posted positions.

- Many people have complained about the nature of the language testing when they apply for positions in the public service. Questions asked are often not contextualized to the role being pursued. For example, some respondents reported that the language evaluator asked them to speak to issues like human rights abuses in foreign countries, the causes of climate change, or the BREXIT movement. It was felt that when a person is feeling vulnerable in being assessed in their second language abilities, the questions should be relevant to the type of employment being sought.
- There is a lack of awareness of the mandate of the Commissioner of Official Languages and confusion about their role versus that of Government regarding the application of the *Act*. There is often a lack of follow-up by government entities to the Commissioner's recommendations.

## THEMES FROM THE ONLINE QUESTIONNAIRE

Thousands of respondents provided their opinions through the online questionnaire. It is important to note that this was not a statistically representative survey of the general population of the province. However, qualitative content analysis<sup>12</sup> allows for the identification of themes that emerged.

- **Availability of services in the language of choice** – Few respondents said they were unable to be served in their language, however, many complained about the quality of the service received (e.g., difficulty understanding the employee, poor quality of the language, and delays when requesting service in another language).

---

12 McLaughlin, Gilbert. 2021. "Une analyse des commentaires du questionnaire Web 2021 dans le cadre de la révision de la Loi sur les langues officielles et l'apprentissage d'une langue seconde au Nouveau-Brunswick."

- **Ways to ensure equal quality of service** – Translation is seen as a solution (e.g., electronic translation services in all languages, translation line for employees, etc.). The reorganization of government services is seen as another option (e.g. ensure adequate staffing, have one bilingual person per team, reduce waiting time to be served in one's own language; require all employees to be bilingual).
- **Increased use of technology** – Technology is perceived as an inexpensive tool for quick access to translation, either through an online application or a professional interpreter (available online or on the phone). However, there are concerns that technology may replace jobs and that quality may not be achieved.
- **Benefits of official bilingualism** – While many respondents see no benefits to bilingualism, others find several that relate to these areas:
  - culture (i.e., cultural diversity);
  - attraction (i.e., tourism, immigration);
  - economy (i.e. bilingual workforce, bilingual businesses, call centres);
  - identity (unique New Brunswick culture and outward looking) and services (i.e. duality and service to the province); and
  - personal benefits (i.e. social mobility, openness to the world, opportunities).
- **Ways in which the government can take advantage of these opportunities** – On the economic front, it was suggested that the advantages of bilingualism should be demonstrated to the public and to businesses, that a bilingual workforce be made available, and that relations with Francophone countries be promoted. Immigration and tourism should be encouraged. In the broad cultural sense, it was suggested that opportunities be provided to facilitate second-language learning. Others want bilingualism to be part of the development of the province's identity

(i.e., a bilingual culture that is more open to the world, a unique way of standing out). Schools were also seen as a place for cultural development (e.g., summer camps, language courses, and cultural exchanges).

Participants want Government to ensure language planning. Many also want the Premier to be able to speak in both languages. They also ask that the benefits of bilingualism be presented, that both cultures be promoted, that municipalities be bilingual, that all services be translated, etc. To bring the communities closer together, some suggested including other languages, presenting bilingualism as an asset, providing equal funding for both communities, promoting bilingual arts and culture, organizing intercultural meetings, etc.

- **Role of the Commissioner of Official Languages** – There seems to be confusion about the role of the Commissioner and that of Government. However, some would like the Commissioner to have more power, including the ability to impose sanctions when the *Act* is not respected. Others suggested that the position be abolished or merged with the Ombud's role. Another suggestion was to have a commissioner for each of the two linguistic communities. Finally, some mentioned the need to strengthen impartiality to prevent the Commissioner's appointment from being perceived as favouring only one language community.



# Findings and recommendations

If fully embraced, New Brunswick's status as "Canada's only bilingual province" represents a unique opportunity for economic, social, and cultural development. The consultation exercise we have just completed, however, has clearly shown that we are not taking full advantage of these opportunities. Over the years, official languages has become an issue that is best avoided in most public and political spheres. There is a sense that elected officials fear political consequences to any concrete and progressive action on bilingualism. There is also a concern among Government officials and citizens of the province about possible reprisal if they speak out on language matters.

As a result, official bilingualism, which should be seen as a positive and fundamental value of New Brunswick society, is a constant source of simmering frustration and misunderstanding. This situation contributes to a climate of mistrust between the two linguistic communities. Perceptions on both sides, most of which do not reflect the reality of our province, only aggravate tensions for a portion of the population. Moreover, learning a second language in our province seems to be perceived as an insurmountable obstacle, thus depriving future generations of the important benefits of bilingualism.

It is imperative that we do everything we can to change this climate by emphasizing the benefits of bilingualism. We need to develop a sense of pride in living in New Brunswick, while accepting and respecting differences among all New Brunswickers whether they are unilingual Anglophones, Francophones, Allophones, or bilingual individuals.

Making such a culture change will not be easy and will require the commitment of our province's elected officials and other leaders. For the implementation of the *Act* to truly work, the issues it generates must be addressed at a senior level and the senior public service must be part of any initiative to bring about real change.

In the preamble to the *Act*, the legislation makes it clear that the primary objective is to respect the Charter rights of the people of New Brunswick and to enable Government to implement the obligations contained therein. Therefore, suggesting changes that call into question bilingualism as a foundation of our province is not an option being considered by our commission.





# Part I – Essential structures for effective governance

We propose that this change in attitude towards official bilingualism be based on three principles: **organization, communication, and commitment**. These are the broad themes that encapsulate the comments we heard during our consultation exercise.

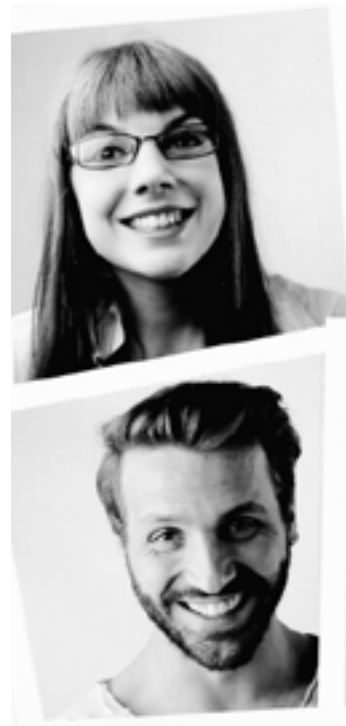
The implementation of the *Act* requires an organizational structure that defines the responsibilities and roles of each stakeholder inside and outside of Government, as well as the actions required in the short and medium term, including specific objectives with timelines and measures of progress.

A communication plan is required. We must ensure that the purpose of the *Act* and its provisions, the concept of bilingualism in the context of our province, the actions and programs undertaken, and the progress made, are all communicated to and understood by New Brunswickers. "*New Brunswick, the only bilingual province in Canada*" must become and remain a recurring refrain using a positive approach.

Additionally, we need to focus on engaging the entire population, firstly by calling upon the resources and expertise available in our province to customize a "New Brunswick" solution to our ongoing challenges related to the *Act*.

The starting point is the immediate implementation of an effective governance system. This is built around three systemic pillars:

1. **The establishment of a Standing Committee on Official Languages of the Legislative Assembly.** This committee will be a legitimate forum for elected officials to engage in frank and constructive discussions on the official languages situation in New Brunswick.
2. **The establishment of a Department of Official Languages.** This department will be the central operational hub for all aspects of the implementation of the *Act*, and will assume responsibility for and coordination of the official languages file across all relevant parts of Government.
3. **Reviewing the position of Commissioner of Official Languages to increase the effectiveness and relevance of this function to New Brunswickers.**



## 1 – STANDING COMMITTEE ON OFFICIAL LANGUAGES OF THE LEGISLATIVE ASSEMBLY

It seems ironic to us that in the only officially bilingual province in Canada, the Legislative Assembly does not have a standing committee on official languages. We suggest that leadership on the sensitive issue of official languages must come first from elected officials. Members of the Legislative Assembly represent all regions of the province, and a myriad of sociolinguistic realities. The 49 MLAs of different political stripes are undoubtedly in the best position to represent their constituents' perspectives on bilingualism.

Candid and honest discussions between elected officials seem to us to be an essential exercise to identify the pulse of the population and to explore issues and possible solutions that are equitable for both linguistic communities. We have found that waiting 10 years to review the *Act* allows contentious issues to go underground, and to resurface in a somewhat emotional and heated manner. Ongoing nonpartisan dialogue by a legislative committee would normalize the discussion in a way that seeks continuous improvement by acknowledging strengths and shortcomings, and by suggesting strategies to bring us ever closer to achieving our linguistic goals.

The mandate of this committee should clearly express the need for our elected officials, those entrusted to do their best for our province, to not weaponize bilingualism through political sparring, but to show real leadership in championing our commitment to our two official languages. We are impressed by the way all four sitting political parties came together to guide our province through the challenging pandemic period, and we would hope this kind of genuine leadership might be shown on the important file of official languages.

The committee's terms of reference would include the following items:

1. Receive the Implementation Plan and reports from the Premier under subsections 5.1(1) and (5) regarding activities undertaken under the implementation plan.
2. Receive reports from the Commissioner of Official Languages.
3. Invite the proposed Department of Official Languages and other departments, institutions, and stakeholders to provide updates on implementation initiatives.
4. Make recommendations with respect to the implementation of the *Act*, and review tabled reports and subsequent follow-ups.
5. Consider and propose legislative changes related to official languages.
6. Monitor all other matters relating to official languages and, if necessary, call witnesses and experts.
7. Prepare reports with recommendations to the Legislative Assembly.

## Recommendation 1

That the *Official Languages Act* be amended to provide for the establishment of a Standing Committee on Official Languages of the Legislative Assembly. This committee will be a legitimate forum for elected officials to engage in frank and constructive discussions on the official languages situation in New Brunswick. This committee will be established in accordance with the provisions of Part IX of the *Standing Rules of the Legislative Assembly of New Brunswick*.

- 1.1 That this committee be specifically charged with monitoring the progress of the application of the *Act*, the regulations and instructions made under it, with considering the reports of the Premier, the Commissioner of Official Languages and the Department of Official Languages, and with making recommendations as appropriate.

## 2 – DEPARTMENT OF OFFICIAL LANGUAGES

Section 2 of the *Act* states that the Premier is responsible for the administration of this important piece of legislation. In the absence, however, of a full-time, permanent, designated staff to attend to it, and given the broad range of critical files that fall to the Premier to oversee and manage, this important position does not have the resources to effectively fulfil its exclusive responsibility. The establishment of a Department of Official Languages is essential to support the Premier in this function.

It should be noted that we are not recommending the creation of a costly new bureaucratic structure, but rather the bringing together of the positions and resources that are currently dispersed among various departments. The intention is to create synergy and to improve the effectiveness of actions related to official languages. It would be the **central operational hub** for coordinating the government's overall efforts to implement the *Act*.

That said, we feel strongly that it should be headed by a Deputy Minister who reports directly to the Premier. The new department would have primary responsibility for the implementation of the *Act* and, as its first task, would plan for and establish a new organizational culture that would benefit both language communities.

This department would also become a **resource centre** to support the various institutions that are subject to the *Act*. It would be responsible for ensuring that among other things, the designation of language requirements for public service positions, the organization of language of work and service, the language skills evaluation process, and official language learning are understandable, well communicated, and implemented with accountability and according to sound strategic processes.

This department would be a **facilitator** in that it would provide the people of our province with factual information on the official languages file. This would help ensure that bilingualism is indeed seen as a positive and fundamental value of New Brunswick society. In this role, the department would work with stakeholders on issues closely related to official languages, such as the learning of official languages outside the school system, the impact of newcomers on the socio-cultural and demographic composition of New Brunswick's population, and the promotion of bilingualism as one of the drivers of the province's economy. This second component will be developed further in the report on the Commission's complementary mandate on second-language learning.

## DEPARTMENTAL RESPONSIBILITIES

The functions of the new department, with respect to coordinating the implementation of the *Act*, would include, among other things, support for the Premier, support for institutions, and improved relations between the two linguistic communities:

### Support for the Premier

- Develop, review, monitor, and evaluate the Implementation Plan as required by the *Act*.
- Compile and publish statistical data to measure progress towards the equal use of English and French in the various parts of the public service.
- Prepare an annual report to the Legislative Assembly on the activities undertaken under the Implementation Plan.
- Support the review process for the *Act*, as prescribed in section 42, and recommend to the Premier from time to time such amendments as may be required.
- On behalf of the Premier, provide general advice to government institutions on measures to be taken to comply with the provisions of the *Act* and to meet the needs of the two linguistic communities.
- Act as liaison, on behalf of the Premier, between the Commissioner of Official Languages and the government and other institutions subject to the *Act* to ensure compliance with its provisions.

### Support for Institutions and Services Subject to the *Act*

- Develop and foster an organizational culture conducive to the use of English and French as languages of work and service.
- Provide the various parts of Government, the legislature, and relevant institutions with information on the provisions of the *Act*, and support them in the implementation of their legislated obligations.
- Review and adapt language training, language proficiency assessment, and language profile designation programs to meet the needs of various government departments.
- Support each department in the preparation of its action plan (including the measures taken to ensure its implementation), and in the preparation of its annual report to the Premier, as required by subsection 5.1(4) of the *Act*.
- Put in place a governance structure to ensure that departments carry out their action plans and table their annual reports as required.
- Revise the Language of Work and Language of Service policies, as required, and ensure their proper implementation.
- Provide the various sectors of activity or services subject to the *Act* with the support they need to meet their official languages obligations. This category includes, among other things, the administration of justice, police and health services, municipalities, regional service commissions, and professional associations.

### Relations with the Two Linguistic Communities

- Ensure that communications from Government to the public comply with the provisions of the *Act*.
- Inform the public and the media of the actions taken by Government to uphold its various official languages obligations.
- Ensure regular consultation with and between various stakeholders from both linguistic communities in order to mitigate any potential source of tension and misunderstanding.
- Identify opportunities and develop various initiatives that will enable the two linguistic communities to get to know, appreciate, and respect each other.

- Work closely with stakeholders to promote the economic benefits of bilingualism for our province.

## Recommendation 2

That the *Official Languages Act* be amended to provide for the establishment of a Department of Official Languages. This department will be the focal point for all aspects of the implementation of the *Act* and will assume responsibility for and coordinate the official languages file within all parts of Government.

## 3 – COMMISSIONER OF OFFICIAL LANGUAGES

The Commissioner of Official Languages is an officer of the Legislative Assembly, appointed by the Lieutenant-Governor in Council, on the recommendation of the Legislative Assembly, for a period of seven years.

The Commissioner is not responsible for the administration of the *Act*, but rather is an independent officer of the Legislative Assembly. Their mandate is to ensure that the provisions of the *Act* are respected by Government. In addition, they act as a privileged interlocutor for members of both linguistic communities who feel that their official languages rights are not being respected.

Provisions regarding the mandate, responsibilities, and complaint handling of the Commissioner of Official Languages are set out in section 43 of the *Act*. Specifically, the role of the Commissioner as described in subsection 43(9) provides for two functions:

- a) *to investigate, report on and make recommendations with regard to compliance with this Act and,*
- b) *to promote the advancement of both official languages in the province.*

Further, the means available to the Commissioner to carry out their mandate are set out in subsections 43(10) to 43(21).

### COMMISSIONER'S INVESTIGATIVE ROLE

Subsections 43(10) to 43(17) describe the Commissioner's investigative role as follows:

- The Commissioner conducts an investigation, either as a result of a complaint or on their own initiative.
- They submit the report of the investigation to the Premier, the institution concerned, and the complainant.
- The Premier and the institution that is the subject of a complaint must acknowledge, in writing, receipt of the report.

The only obligation imposed on the Premier and the institution that is the subject of the complaint is to acknowledge receipt of the Commissioner's report. No time limit is specified for fulfilling this obligation. In this context, it seems clear to us that the Commissioner's investigative role risks becoming a purely theoretical and inconsequential exercise unless further obligations are placed on the head of the institution to respond to the specific findings and recommendations.

Therefore, a provision should be added requiring the Premier and others to respond within a time frame prescribed by the *Act*, informing the Commissioner of the measures that will be taken to correct the situation or of their position on the



admissibility of the complaint or their position on the Commissioner's recommendations. We believe that failing to respond appropriately should permit the Commissioner to apply to the court for an order requiring the parties to provide a response.

Many people have discussed the procedure for taking legal action in the event of a dispute on an official languages issue. Experience has shown that recourse to the courts entails increasingly higher costs and longer delays. This is why an arbitration process, in addition to the usual rules of procedure, is an alternative option that deserves to be examined.

In her submission to our review, the Commissioner of Official Languages, Shirley MacLean, recommends adding a governance provision that would allow her to enter into compliance agreements with departments and institutions. We are reluctant to follow up on this recommendation. It must be remembered that the responsibility for enforcing the *Act* lies with the government. Therefore, we must avoid the perception that the Commissioner is responsible for the *Act*, thereby absolving the government of its responsibility. If the Commissioner's investigation of a complaint concludes that the complaint is well founded, it is up to Government to take appropriate action to correct the situation, which could include compliance agreements.

Another concern is that the *Act* is silent on the Commissioner's options if they receive a complaint that could place them in a real or perceived conflict of interest. There needs to be a mechanism to address this possibility.

## **ANNUAL REPORT TO THE LEGISLATIVE ASSEMBLY**

Subsection 43(21) states, without providing further details, that the Commissioner's report on the previous year's activities must be submitted to the Legislative Assembly "*within such time as is reasonably practicable after the end of each year*". Again, this provision is silent as to the procedure for tabling the report and the obligations of the Premier to respond or follow up.

In her submission to our review, Commissioner MacLean is frank in her assessment of this issue, stating:

*"Unfortunately, these annual reports are often forgotten as soon as they are submitted and the recommendations they contain are often rejected or ignored without any valid reason given for that decision."<sup>13</sup>*

In this context, the preparation of annual reports becomes a futile exercise that ignores the importance of the Commissioner's function and is an impediment to the sound administration of the *Act* as originally intended. To remedy this, we need to ensure that there is an effective and transparent monitoring and accountability mechanism in place.

## **PROMOTIONAL ROLE OF THE COMMISSIONER**

The second function of the Commissioner is "*to promote the advancement of both official languages in the Province*" (subsection 43(9)). We believe that the Commissioner can make an important contribution to facilitating the advancement of a positive perception of official languages in our province.

The *Act* is silent on the initiatives that should be carried out under this component. This may result in differing interpretations regarding the

---

13 Brief of the Commissioner of Official Languages of New Brunswick on the Review of the *Official Languages Act of New Brunswick*, July 2021, p. 62.

nature and scope of promotional initiatives between Government, the Commissioner, and other stakeholders. In addition, it may impact the public's understanding of the Commissioner's mandate.

In her 2020-2021 Annual Report, the Commissioner describes her promotional role as follows<sup>14</sup>:

- 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.

The lack of clarity in the *Act* makes it difficult to determine whether this description meets the intent of the Legislature, and whether the Commissioner has sufficient resources to fulfill this function. We found that this problem has been encountered by successive Commissioners who have had to interpret the scope of their promotional mandate in their own way. Clearly, though, it is an important function, because if the Commissioner only deals with complaints, the office is seen as an official languages watchdog, and we feel strongly the role should be much more balanced than that.



---

14 Office of the Commissioner of Official Languages of New Brunswick. *2020-2021 Annual Report*, October 2021, page 63.



### **Recommendation 3**

That the provisions of the *Act* relating to the position of Commissioner of Official Languages be reviewed in order to increase the effectiveness and relevance of this function to the people of New Brunswick:

- 3.1 Investigation and duty to respond:** That a provision be added to section 43 of the *Act* requiring the institution that is the subject of an investigation report to respond to the Commissioner within 30 working days. This response must include the measures that will be taken to correct the situation or, if no measures are taken or contemplated, the reasons for not following up on the investigation report. In the event of failure to do so, the Commissioner may apply to the court for an order requiring the parties to provide a response.
- 3.2 Annual Report's Follow-up:** That subsection 43(21) be amended to require that the Commissioner's annual report be tabled in the Legislative Assembly and considered by the proposed Standing Committee on Official Languages and the Legislative Assembly for follow-up.
- 3.3 Premier's Response:** That the *Act* be amended to require the Premier to table in the Legislative Assembly, within 90 days of receipt of the Commissioner's annual report, a written response outlining the steps the government intends to take in response to the report or, if no steps are taken or contemplated, the reasons for not acting on specific recommendations. This written response must also be considered by the proposed Standing Committee on Official Languages.
- 3.4 Arbitration:** That consideration be given to introducing an arbitration process in the *Act* to resolve disputes between Government and the Commissioner or complainants. The use of arbitration could generate solutions more quickly and less expensively than referring the matter to court.
- 3.5 Conflict of Interest:** That a provision be added to the *Act* that provides a mechanism for the Commissioner to delegate their investigative powers to deal with complaints received in which the Commissioner is in a real or perceived conflict of interest.
- 3.6 Promotional Role:** That the Commissioner's promotional mandate under subsection 43(9) of the *Act* be clarified to ensure that they are able to fulfill their role in accordance with legislative intent.

# Part II – Priority themes

During the consultations, we received many suggestions that merit consideration, with some topics coming up more often than others and therefore deserving of special attention. We have

selected the following themes to expand upon: language of service and work, health services, nursing homes, municipalities, and immigration.

## 4 – LANGUAGE OF SERVICE AND LANGUAGE OF WORK IN THE PUBLIC SERVICE

Two government policies currently exist on the use of official languages in the public service:

- AD-2919 Official Languages – Language of Service Policy and Guidelines.
- AD-2920 Official Languages – Language of Work Policy and Guidelines.

### LANGUAGE OF SERVICE POLICY

The purpose of the language of service policy is to ensure that Government and its institutions offer and provide services of equal quality in both official languages. It addresses the following:

- Oral communication
- Correspondence
- Electronic service delivery channels (email, internet, voicemail)
- Staffing interviews
- Public forms and public documents
- Information material
- Signage
- Judicial and Administrative Tribunals
- Public services provided by third parties.

This policy addresses the modalities of active offer of service<sup>15</sup> and the development of public service linguistic profiles, which describes:

- The criteria to be considered in developing linguistic profiles.
- The integrated team approach.
- The approval of the requirements for a recruitment competition process to ensure that the linguistic profile of the team in which the position is situated is respected.

### Linguistic Profiles

Recent government data on the composition of the linguistic profiles of employees in Part I of the Public Service<sup>16</sup> (i.e., across departments) indicates the following

- 53% of positions are "English essential," so employees must be able to communicate in English.
- 2% of positions are "English or French essential," so employees must be able to speak English or French.
- 41% of positions are "English and French essential," so employees must be able to speak both official languages.

---

15 Active offer is defined in section 28.1 of the *Act*, which states that "An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

16 The departments and corporations that make up Part I are included in Schedule I of the *Public Service Labour Relations Act*

- 4% of positions are "French essential," so employees must be able to speak French<sup>17</sup>.

The data were virtually the same in 2019<sup>18</sup> as in 2016<sup>19</sup>.

The level of bilingualism required of an employee depends on the nature of the position and the service to be provided. Competition notices do not systematically mention the level of bilingualism required. Generally, they simply state that "*written and spoken competence in English and French is required*," without specifying the expected level of proficiency. Also, employees who would like to improve their skills do not always have the opportunity to participate in language training that would enable them to do so.

Transparency and clarity are needed to promote a better understanding of this mechanism. It would also help those who are in the public service, or who aspire to join the public service, to take full advantage of employment opportunities as they arise.

### **Integrated Team Approach**

The integrated team approach means that, depending on the context, a team may be composed of a mix of employees with different language skills. This approach must ensure the quality of service meets the needs of the clients served. Service is provided in a manner that takes into account the location of the service and the method used (in person, on the telephone, etc.). Departments must ensure that team composition is developed, reviewed, and updated regularly.

The policy describes the criteria for developing the teams' linguistic profiles:

1. The client base to be served (if they are members of the public or internal employees, and the linguistic composition of the client base in their region, which may be mostly French or English or mixed).
2. The nature of the services provided by the team (areas of specialization; functions accomplished by employees – e.g., training, negotiations, etc.; and the service delivery mode initiated by the client – i.e., in person, on the phone, etc.)
3. The requirements of the team (effective structure to serve clients given the above, i.e., groups, cross-functional groups, or a mixture, etc.)

We have found that the team approach is not well known among public service employees, and this leads to inconsistencies in its implementation. Also, the changing nature of the language requirement of positions is confusing. Indeed, when an employee is replaced, the language profile may change to reflect the evolving skill set of the team, which may leave some employees confused and bitter, with understandable but likely unfounded suspicions that one language group is favoured over another.

<sup>17</sup> Government of New Brunswick. Part I data, as of 31 March 2021, provided by the Department of Finance and Treasury Board.

<sup>18</sup> Office of the Commissioner of Official Languages of New Brunswick. 2019, "*Myths and Realities about Official Languages in New Brunswick*".

<sup>19</sup> Office of the Commissioner of Official Languages of New Brunswick. 2016, "*Let's Set the Record Straight - Myths and Realities about Official Languages in New Brunswick*".

## Recommendation 4.1

That the government take all necessary measures to clarify the language requirements for provincial civil servants (current and future) to enable them to effectively deliver quality services in both official languages and to improve their second-language competencies to make them more competitive for advancement. Among other things, the following actions must be taken:

- 4.1.1 Provide training to employees and supervisors on the content of the language of service policy to ensure general understanding of linguistic profiles and the integrated team approach.
- 4.1.2 Review the language profiles for all positions in the various institutions to meet Government's language of service obligations, while taking regional language realities into account.
- 4.1.3 Review the language proficiency ranges required to ensure that they are in line with the range of positions in the provincial civil service.
- 4.1.4 Develop a standardized assessment of language skills that is generally recognized by the private and public sectors in New Brunswick and elsewhere, but that is contextualized for different types of positions, (i.e., entry level clerical, public facing service providers, middle management, senior policy advisors, deputy heads, etc.).
- 4.1.5 Offer effective English and French training programs to facilitate second-language learning for employees of government institutions. These courses should be available not only to employees in positions with specific language requirements, but also to those who express an interest in taking them. The objective is to ensure that employees not only have the opportunity to learn a second language, but that their language ability is a springboard for future promotion to positions requiring specific language skills. To the extent possible, the training programs should be intensive and immersive in nature.

## LANGUAGE OF WORK POLICY

"[Translation] The real equality of the two official languages in provincial government institutions cannot be achieved as long as one (French) is used as a language of translation while the other (English) is the language of use<sup>20</sup>."

During the consultations, several public servants indicated that it was difficult to work in French within a dominant English language environment. Others, who were bilingual Anglophones or were trying to improve their French, mentioned that they had few opportunities to use, maintain or develop their proficiency in French at work.

In keeping with the wording and spirit of the *Act*, public service employees must be able to benefit from a work environment and organizational culture that encourages the daily use of their language of choice, while respecting the obligations related to language of service.

20 Finn, Jean-Guy. Brief entitled, "Prendre acte de l'état des langues officielles et des communautés linguistiques", submitted to the Commissioners in July 2021.

The *Canadian Charter of Rights and Freedoms* (section 16(2)) provides that English and French have equality of status as to their use in the institutions of the Legislative Assembly and the Government of New Brunswick. It is generally recognized that this constitutional provision gives provincial public service employees the right to work in the official language of their choice.

The policy on language of work provides a framework for this right. It deals with services to employees and outlines the following procedures:

- performance reviews
- communication between supervisors and their employees
- drafting of documents (including translation services)
- work tools
- conducting of meetings

This policy also includes guidelines regarding communication between head offices and regional offices, as well as communication between employees.

Additionally, as part of the institutional linguistic capacity, the policy clarifies the concept of “required language skills”, which means that employees are able to function in English or in French, or in both languages, to the level required to carry out their duties.

Section 5.1(1) of the *Act* lists the elements that must be included in the implementation plan:

(c) *measures to ensure the equality of use of the English and French language in the public service;*

(d) *measures to ensure that language of work is considered when identifying work groups within the public services and when developing language profiles for positions in the public service;*

(e) *measures to improve the bilingual capacity of senior management in the public service;*

In its 2019-2020 annual report, the Office of the Commissioner of Official Languages drew the following conclusions regarding the ability of public servants to work in their preferred language:

*“The Office of the Commissioner conducted two investigations into the implementation of the Plan on Official Languages. With respect to the language of work, the two investigations determined that the government’s plan did not allow provincial public servants to be supervised and to work in their choice of official language. This finding stems mostly from the fact that the planned language of work measures have not been implemented by the provincial government.”* (p. 21)

Here again, the difficulties encountered are related to implementation rather than intent. Consequently, Government must commit to, establish, and implement effective measures to ensure that provincial public servants can work in the official language of their choice on a daily basis.

To this end, the proposed Department of Official Languages will have to review existing policies and measures and implement initiatives to develop and foster a workplace conducive to the use of both official languages. Such an approach would not only allow employees to use their language of choice but would also promote the learning of a second language and the maintenance of language skills.

## Recommendation 4.2

That Government (through the proposed Department of Official Languages), take all necessary measures to ensure that provincial public servants can work in the official language of their choice and in an environment that is conducive to the use and learning of both official languages. The following actions must be taken:

- 4.2.1 Ensure that initiatives are put in place to create an organizational culture that fosters a work environment conducive to the effective use of both official languages while allowing employees to use either one.
- 4.2.2 Adopt a plan with specific short-, medium- and long-term objectives to ensure that, within a reasonable period of time, all employees of institutions are able to work in the language of their choice.
- 4.2.3 Clearly indicate language requirements when posting positions so that potential candidates have a clear idea of the employer's expectations in this regard.
- 4.2.4 Take measures to improve the bilingual capacity of senior management within the public service (including officers of the Legislative Assembly), who would benefit from, as would the employees they lead, the ability to speak and understand both official languages.

## 5 – HEALTH SERVICES

During the consultations, many expressed concerns about the health care system and official languages. To begin, we offer an overview that summarizes the points of view that were shared with us on both sides.

### HEALTH CARE SYSTEM: OVERVIEW

Four types of care that require different interventions or approaches from a language perspective were identified.

- **Routine care** – Communication between therapist and patient is an essential part of treatment. The therapist must know and be able to communicate with the patient, adopt the patient's language and use familiar words.
- **Emergency and acute care** – It is self-evident that appropriate treatment should be given first, even if communication is minimal.

- **Specialized care** – This should be provided by separate networks, but if this is not possible, it may be necessary to refer the patient to a facility that usually operates in the language other than that of the patient.
- **Out-of-Province Care** – For care not available in the province, consideration should be given to the language of the patient by ensuring that the patient is referred to an out-of-province hospital that is able to communicate in the patient's language.

Several key viewpoints were expressed regarding the preferred approach to meeting the language requirements of the health legislation.

On one hand, the Francophone community generally believes that for communication to be effective between a therapist and their patient, language must be an integral part of the caregiving relationship. Language is therefore strongly linked to the quality of care,



with communication considered as important as the treatment. Therefore, they advocate a dualist model, i.e., a French system distinct from the English system. In their opinion, this is the only way to adequately serve each official language community.

On the other hand, many in the Anglophone community do not consider language to be a major concern for patients. In their view, the health professional's skills are more important than language, since patients are looking for highly professional treatment. Thus, they believe the quality of care must take precedence over any linguistic considerations, which means that communication takes a back seat. From this viewpoint, any hospital is functional in both languages as long as it has interpreters. With interpreters always available, the language problem is solved. Although they admit that communication through an interpreter is not ideal, it is considered acceptable.

Some believe that imposing too many language requirements could encourage health professionals to leave the province; hence, it is deemed acceptable to sacrifice rights, if necessary. They feel that there is no room for two health authorities that lead to duplication. They consider merging the management of hospital services to be an economically viable option.

Another point of view is that the health sector is one where, more than in any other circumstances, sick people need to be able to express themselves and communicate with their attending physician or nurse in their language. They believe that it is impossible to provide good care without respecting the person in a holistic way. It is normal for an institution to function in a common language of operation, considering the linguistic character of its region. In homogeneous regions, there should still be a sufficient number of bilingual employees capable

of providing care to people in the language of their choice, even if it is not the institution's language of operation. In heterogeneous regions, hospitals should offer services of equal quality to both language groups.

Lastly, many espouse the guiding principle that it is not up to the patient to adapt to the institution, but rather for the institution to adapt to the patient, regardless of language.

## LEGISLATION

To understand the health system's official languages obligations, we must refer not only to the provisions of the *Official Languages Act*, but also to those of the *Regional Health Authorities Act*.

### Obligations under the *Official Languages Act*

The *Act* provides that members of the public may communicate with and receive health services in the official language of their choice (Section 33). However, the wording needs to be clarified in order to include the linguistic obligations of health authorities, such as active offer of services, posting and publication, and provision of services by a third party on behalf of the province (e.g., Ambulance NB and Extra-Mural services).

### Obligations under the *Regional Health Authorities Act*

The *Regional Health Authorities Act* provides for two authorities, Vitalité and Horizon, both of which must provide services in both official languages. However, section 19, which deals with language and health services, states the following:

**19(1)** *Regional Health Authority A/Régie régionale de la santé A (Vitalité) shall operate in French and Regional Health Authority B/Régie régionale de la santé B (Horizon) shall operate in English.*



19(2) *Despite subsection (1), a regional health authority shall*

(a) *respect the language of daily operations of the facilities under its responsibility, and*

(b) *provide health services to members of the public in the official language of their choice through the regional health authority's network of health establishments, facilities and programs.*

19(3) *Each regional health authority has the responsibility to improve the delivery of health services in the French language.*

The *Regional Health Authorities Act* provides for the development of a provincial health plan. The elements that may be included in this plan are listed in subsection 6(1) and include, but are not limited to, the programs and services provided by the regional health authorities.

Last spring, the Minister of Health launched a series of public consultations to prepare a new action plan. A document entitled *Striving for Dependable Public Health Care: A discussion paper on the future of health care in New Brunswick*<sup>21</sup>, served as a guide for these consultations. Recently, Government released its new health plan, *"Stabilizing Health Care: An Urgent Call to Action"*<sup>22</sup>. One of its guiding principles is inclusion, meaning that *"citizens will experience an inclusive health-care system that respects differences, including official languages, culture, gender and sexual identity, age and ability"* (p. 5).

Clearly, the organization of the health care system in the province is not part of the mandate we have been given. However, the review of the *Act*, as it relates to health services, must take into account the official languages provisions found in the *Regional Health Authorities Act*, and this is the reason for the following recommendations

## Recommendation 5

With respect to official language requirements for health care in New Brunswick:

- 5.1 Amend subsection 33(1) of the *Act* to include a reference to sections 28.1, 29, and 30 to include the active offer of services (s.28.1), the posting and publication of information for the public (s.29) and the provision of services by a third party on behalf of the province (s.30). (For example: Ambulance NB and extra-mural services).
- 5.2 Ensure that in any action relating to the development of a provincial health plan, the operating language of the health authorities must not take precedence over their obligation to provide all care in the official language of the patient's choice.
- 5.3 Ensure that the provisions of subsection 19(3) of the *Regional Health Authorities Act*, which imposes on both authorities the responsibility to improve the delivery of health services in French, are respected in the development of a provincial health plan.

21 Government of New Brunswick. 2021. *"Striving for Dependable Public Health Care: A discussion paper on the future of health care in New Brunswick"*.

22 Government of New Brunswick. 2021. *"Stabilizing Health Care: An Urgent Call to Action"*.

## 6 – NURSING HOMES

New Brunswick's aging population means more and more of our residents have been, and will continue to be, transitioning into nursing homes. This demographic shift is increasing the demand for access to ongoing care for many of our most vulnerable citizens. As the public and private sectors collaborate on addressing this challenge, it is important that, to the extent possible, plans take into consideration the language needs of residents. We, as commissioners, feel strongly that when a New Brunswicker chooses or is forced to spend their later years in a residential setting (having given up their home and independence), they should be assured of the ability to communicate effectively with staff in the official language of their choice. It is, quite simply, a matter of personal dignity at a time when many seniors experience the unavoidable indignities associated with a loss of autonomy.

Since 2016, the percentage of New Brunswickers over 65 years of age has increased by 2.5%, from 19.5% in 2016 to 22% in 2020. From a national perspective, New Brunswick has the highest percentage of seniors among all Canadian provinces<sup>23</sup>.

Consequently, this will bring demographic, economic and health care challenges for the province. Housing for seniors has already become a major concern in our society, and while many will have the health and good fortune to live independently in their own homes, a growing number, when faced with debilitating circumstances, will have to resort to alternative housing arrangements.

Nursing homes have been operating in the province for many years and offer a wide range of services to this clientele. There are 357 special care homes in the province. These are privately owned and operated facilities that provide services to clients who do not require daily medical care, but who need constant supervision. Licensed nursing homes provide services to clients who require a higher level of care. There are 70 licensed nursing homes in New Brunswick, and these are non profit organizations managed by volunteer boards of directors. Currently, around 12,000 New Brunswick residents live in one of these nursing homes, and this number is expected to grow<sup>24</sup>.

An issue that was raised during the consultations was the availability of nursing home placements for Anglophones or Francophones in areas of the province where the other language is overwhelmingly predominant. The number of institutions offering services in the minority language in these regions appears to be insufficient to meet current or future demand. It may be appropriate to develop a true picture of the situation in order to determine exactly where the need is greatest.

The *Nursing Homes Act* provides a legal and regulatory framework. Among other things, it defines "nursing home" as follows:

*A residential facility operated, whether for profit or not, for the purpose of supervisory, personal or nursing care for seven or more persons who are not related by blood or marriage to the operator*

---

23 Statistics Canada. 2020. *Table 17-10-0005-01 Population estimates as of July 1, by age and sex*, Ottawa, updated September 2020; and *Population projections for Canada (2013 to 2063), provinces and territories (2013 to 2038)*, by Nora Bohnert, Jonathan Chagnon, Patrice Dion, Catalogue no. 91-520-X, Ottawa, Statistics Canada, May 2015.

24 These data were collected by the International Observatory on Language Rights and included in their *Mémoire présenté aux commissaires chargés de la révision de la Loi sur les langues officielles du Nouveau-Brunswick*, August 2021, p. 6-7.

*of the home and who by reason of age, infirmity or mental or physical disability are not fully able to care for themselves [...].*

This legislation gives the government significant and exclusive authority over this type of accommodation. Owners must obtain a licence from the province to operate, and they are subject to several terms and conditions<sup>25</sup>.

The *Nursing Homes Act* is silent on the language requirements for operating a nursing home. However, section 30 of the *Official Languages Act* requires that third parties providing services on behalf of the province must comply with sections 27 to 29, which deal with communications with the public.

### **Services provided by third parties**

*30. When the Province or an institution engages a third party to provide a service on its behalf, the Province or the institution, as the case may be, is responsible for ensuring that its obligations under sections 27 to 29 are met by the third party.*

It should be noted that there is no consensus on the interpretation of this provision as it applies to nursing homes<sup>26</sup>. Therefore, clarification is required.

Given the vulnerability of the clientele served in nursing homes, and the fact that for senior citizens a change of living environment is often a difficult transition, language choice should be an important concern. A person moving into a nursing home should not have to give up their language preference in order to access accommodation in their area.

That said, before imposing sudden changes on the sector, we must acknowledge certain realities, including:

- The overall shortage of medical personnel required to staff nursing homes.
- The current language proficiency of personnel.
- The predominantly unilingual demographic nature of certain rural communities in the province.
- The long waiting lists of senior citizens who desperately need nursing home care.

In this context, we are of the opinion that rigid new linguistic requirements would place many nursing homes in immediate noncompliance with legislation. However, given the urgent situation facing our province, we propose a strategic approach that targets appropriate supports and builds capacity, while maintaining rigor and a firm commitment to continuous improvement.

We firmly believe that clear legislative provisions should be included in the *Act* regarding language requirements for the operation of nursing homes in the province. That said, while some of the groups and individuals we consulted with have called for legislation to govern the linguistic designation of nursing homes, we have chosen to focus on language of service as opposed to language of administration or operation of these facilities. The *Act* guarantees linguistic rights to New Brunswickers who access government services, and our recommendations will focus on this dynamic. It is Government's job to establish the appropriate structures to provide those services in both official languages. In no way, however, do we wish to diminish the importance of this pressing matter, and we urge Government

---

25 The duties and obligations of the operator are outlined in the legislation and in New Brunswick Regulation 85-187.

26 Note: On the application of the current legislative provisions that apply to nursing homes, see OCOL Investigation Reports, File Number 2019-091, October 2020 and File Number 2018-3572, July 2018.

to take swift, decisive, and meaningful action to ensure New Brunswick's senior citizens can fully participate in their residential environments

### **Recommendation 6**

In recognition of the importance of communication as a matter of basic human dignity, and considering the unique and vulnerable position of seniors who are transitioning to long term care, we recommend:

- 6.1 That a provision be added to the *Official Languages Act* stating that nursing homes, as defined in the *Nursing Homes Act*, are subject to the *Official Languages Act*.
- 6.2 That the language preference of the resident, when moving into a nursing home, be taken into account by the competent authorities.
- 6.3 That Government immediately develop a strategy to improve the capacity of nursing homes to provide equal quality of service in both official languages. Among other things, Government must make high quality language training available to front-line nursing home staff, so they are better able to communicate with residents in the official language of their choice. This recommendation will be expanded upon in our companion report on second-language learning.

## **7 – MUNICIPALITIES**

Sections 35 to 41 of the *Act* contain the provisions that apply to municipalities and regional service commissions.

Government has undertaken a local governance reform in the province and has published a white paper entitled "*Working together for vibrant and sustainable communities*"<sup>27</sup>.

This entails a major restructuring that will be effective as of January 1, 2023. It includes numerous consolidations that will significantly alter the size and linguistic composition of many local entities.

One of the white paper's principles is about respect for both linguistic communities

*"Respect the identity of communities, including their language, culture, sense of place and history, while reducing the number of local governance entities. This includes respecting the important principles established in the Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick". (page 7)*

We share this objective. From this perspective, the reform of local governance must take into account cultural and linguistic realities in order to preserve a balance that is often precarious. It is imperative that the provisions of the *Act* be considered in the development of a new form of local governance.

We anticipate that the significant changes resulting from this reform will require a complete review of the provisions of the *Act*, particularly those pertaining to municipalities and regional

---

27 Government of New Brunswick. 2021. "*Working together for vibrant and sustainable communities – White Paper*".

services commissions (sections 35 to 41). This review will have to proceed in conjunction with the implementation of the new local governance structure. In reviewing these sections, we have noted that changes are needed for clarification purposes, regardless of the outcome of the reform. We recommend that the current provisions be amended and adapted, where appropriate. These provisions are as follows:

- There is ambiguity surrounding the calculation of the 20% of the total minority language population that qualifies for certain services provided by a municipality or regional service commission. The *Act* provides that when the minority language population, English, or French, reaches 20%, the municipality or regional service commission is required to also provide services and communications in the minority language. These services are set out in the regulation adopted under the *Act*.
- Schedule A of Regulation 2002-63 lists the services and communications that must be provided by municipalities and regional service commissions. This list includes almost exclusively basic and front-line services, such as access to information on municipal services. The *Act* is silent on the review of this regulation; and this list has not been updated since 2002.
- Currently, rural communities are local governance structures that have no language obligations specified in the *Act*.
- Section 22 of the *Act* states that "*Her Majesty in right of New Brunswick or an institution*" involved in a civil action before a court must use the official language chosen by the civil party. The Supreme Court of Canada<sup>28</sup>, has interpreted this requirement to mean that municipalities are not included in the definition of "institution" in the *Act* and are therefore not subject to this requirement.

## Recommendation 7

With respect to official language requirements for municipalities:

- 7.1 Establish, by regulation, a mechanism to periodically review the statistical data and the terms and conditions that will clearly identify the municipalities and regional service commissions that are subject to the *Act* (re: calculating the 20% in subsection 35(1)).
- 7.2 Define the terminology "*official language minority*" in subsection 35(1) of the *Act* so that official language minority persons can be clearly identified.
- 7.3 Revise Regulation 2002-63 to update the list of services and communications set out in Schedules A and B and that the *Act* be amended to specify that this regulation be reviewed as required and at the time of the periodic review of the *Act*.
- 7.4 Amend the *Act* to provide that rural municipalities (rural districts) are subject to the same linguistic obligations as municipalities and regional service commissions.
- 7.5 Amend section 22 of the *Act*, which deals with the obligations to use the language chosen by the civil party in a civil matter before a court, to include municipalities and regional service commissions.

28 Charlebois v Saint John (City), 2005 SCC 74.



## 8 – IMMIGRATION

On a few occasions during our review, individuals and groups told us that immigration should play a key role in strengthening New Brunswick's Francophone community. It was suggested that migration from predominantly Francophone areas of the province to more urban centres is leading to an erosion of the use of the French language in those areas. The challenge is exacerbated by the natural process of assimilation in which a minority language struggles to thrive in a context of a strong overall majority.

While we have looked seriously at this issue and certainly believe that immigration can help solve the issue, we do not consider that it falls within the scope of the *Official Languages Act*. That said, we support Government's setting and rigorously pursuing goals to attract and retain Francophone immigrants. In addition, we strongly believe that opportunities to learn French and English as an additional language must be strengthened, and this will be expanded upon in our report on learning New Brunswick's two official languages.

## 9 – REVIEW OF THE ACT

Section 42(1) states that "*the Premier shall initiate a review of this Act and the review shall be completed no later than December 31, 2021*". Since 2002, the *Act* has been reviewed every ten years.

Our recommendations focus more on the governance system and the administration of the *Act*. Given the importance of the changes contemplated, it would be important for the next review to take place within five years in order to measure progress and propose changes, if necessary.

### Recommendation 8

That subsection 42(1) of the *Act* be amended to require the Premier to initiate a review of the *Act*, to be completed by December 31, 2026.





# Conclusion

The first *Official Languages Act* was passed in 1969, and despite the tremendous positive changes it has brought to the social and linguistic fabric of our province, we remain on a journey towards fully realizing the goal of equality of status and rights of the two linguistic communities. It is one thing to be designated *officially bilingual* by law. It is quite another to be *truly bilingual* by virtue of action, will, and shared commitment to an overall provincial identity.

In some ways, the *Act* and its implementation have become a source of tension between the two linguistic communities, and this is perhaps the greatest impediment to New Brunswick becoming a truly bilingual province. Like all social tensions, we have noticed significant emotion around official bilingualism. We strongly believe that progress towards our goals must overcome decades of mistrust, fear, and anxiety about perceived imbalances in power, influence, and access to the most basic benefits of life in New Brunswick. There is a dire need for cross-community dialogue, interaction, understanding, and trust.

While we have recommended some changes to the *Act* itself, the majority of our observations and suggestions have to do with its implementation. In particular, we have focused on ways to clear up misunderstandings, to facilitate more streamlined and effective service delivery, and to implement incremental steps towards fully realizing the power of the *Act* as the cornerstone of New Brunswick's position as being officially bilingual, one in which both linguistic communities will be on equal footing. The potential economic benefits alone should encourage us to embrace, celebrate, and promote our commitment to bilingualism and to our two official languages.

When we were appointed to lead this Commission, we were given two mandates. This report has focused exclusively on those elements directly related to the review of the *Official Languages Act*. We feel strongly, however, that the second mandate, which involves opportunities for all New Brunswickers to improve their second official language competencies, while separate from the *Act* itself, has revealed important tools to help us fully realize the aspirations of this important piece of legislation. In our opinion, the better that New Brunswickers are able to understand and communicate in both official languages, the fewer challenges there will be in implementing the *Act*. We urge government leaders and officials to read and consider the complementary report related to language learning, and to give strong consideration to its contents and its recommendations.

In conclusion, we believe that it is our elected representatives who must come together to demonstrate an unwavering and nonpartisan dedication to the official languages mission. They must listen to the hopes, fears, and experiences of their constituents in order to implement incremental improvement strategies that transcend government mandates.

The position of the premier, as the legislated owner of the *Act*, across any elected government, must fully embrace this role, signalling to all elected officials, civil servants and the general public that this mission is important to our identity and overall success as a province. This is not a reference to any premier in particular, but rather a reflection on the level of importance given to the *Act* across successive governments.

Within the barrage of competing priorities and ever-evolving crises that any premier and their government must deal with, it may lead to the

implementation of the *Act* waning in importance. This, however, should not be the rule. Every premier needs a diligent team to keep a watchful and responsible eye on implementation procedures, and we urge Government to create the conditions whereby progressive and positive change becomes the norm.

We firmly believe that our recommendations, if properly implemented, will breathe new life into this flagship piece of legislation that makes us unique and defines us as Canada's only officially bilingual province.

