



The Office of the Northwest Territories Languages Commissioner Annual Report 2007-2008



Know Your Language Rights – Use Your Language Rights

Message from the Languages Commissioner



Greetings.

This Annual Report provides an overview of the activities of the Office for the 2007-2008 fiscal year. This report also examines how the Legislative Assembly of the Northwest Territories and the Government of the Northwest Territories have responded to the recommendations of this Office that have been contained in previous annual reports. It also includes a number of recommendations for significant legislative change as the *Official Languages Act* is reviewed by the Legislative Assembly during the 2008 year. The report also contains an overview of recent court decisions, and how they may impact on the provision of language services in the Northwest Territories.

I strongly urge the Legislative Assembly of the Northwest Territories and the Government of the Northwest Territories to consider this report with a view to ensuring that the requirements of the *Official Languages Act* are met, and to ensure the best possible service to the residents of the Northwest Territories.

Please do not hesitate to contact my Office if you have any questions or concerns about this Annual Report, or if you have a complaint or inquiry that should be directed to this Office.

Mahsi.

The Past

Overview of the *Official Languages Act* and the Office of the Languages Commissioner

In 1984, the Legislative Assembly passed the *Official Languages Act*. Modelled after the Federal Act, it had two essential purposes: the Act guaranteed equal status for the use of English and French by members of the public accessing government programs and services, and the Act officially recognized the Aboriginal languages in use in the Northwest Territories. In 1990, the Legislative Assembly made major amendments to the Act to give greater status to northern Aboriginal languages. Recognizing the official status of Aboriginal languages was intended to preserve and promote Aboriginal cultures through protection of their languages.

The 1990 amendments also created the position of Languages Commissioner of the Northwest Territories to be appointed by the Legislative Assembly for a term of four years. The Act gave the Languages Commissioner authority to investigate complaints in regard to compliance with the Act, initiate investigations as appropriate and engage in activities related to the promotion and protection of Official Languages.

In 2001, the Legislative Assembly appointed a Special Committee on the Review of Official Languages (SCOL). In 2003-2004, the Government of the Northwest Territories (GNWT) considered and responded to the SCOL report. The end result was that major amendments were made to the Act. Some of those amendments had a direct and significant impact on the Office of the Languages Commissioner:

- Section 20(1) of the *Official Languages Act* used to contain a provision giving the Languages Commissioner a broad mandate, including taking steps to ensure the promotion and preservation of Official Languages. This promotional role was deleted and the position of Languages Commissioner was narrowed to that of an “ombudsman type” role. That is, the role of the Languages Commissioner became one of ensuring compliance with the Act through investigating complaints, handling inquiries and initiating investigations where appropriate.

- The role of promoting and preserving Official Languages was turned over to the newly created position of Minister Responsible for Official Languages. As part of fulfilling this role, the Minister established two Boards – the Official Languages Board and the Aboriginal Languages Revitalization Board. The Official Languages Board is to review the rights and status of Official Languages and their use in the administration and delivery of services to government institutions. The Aboriginal Languages Revitalization Board is responsible for reviewing programs and initiatives dealing with Aboriginal languages, and promoting and revitalizing Aboriginal languages.
- Before the amendments, the Act referred to eight Official Languages (Chipewyan, Cree, Dogrib, English, French, Gwich'in, Inuktitut, and Slavey). In the definitions section of the Act, "Slavey" was defined to include North Slavey and South Slavey, and "Inuktitut" was defined to include both Inuinnaqtun and Inuvialuktun. With the amendments, the Act now clearly identifies North Slavey, South Slavey, Inuinnaqtun and Inuvialuktun as separate Official Languages. As well, "Dogrib" is referred to by its proper name, Tłıchǫ. As such, the Northwest Territories now has 11 distinct Official Languages.

The Languages Commissioner needs to be available to handle inquiries, investigate complaints and initiate investigations of non-compliance with the Act. The Languages Commissioner acts in a truly ombudsman like fashion, and maintains distance from the Legislative Assembly and GNWT. This adds to the independence of the Office.

Section 35 of the *Official Languages Act* stipulates that the Act must be reviewed during 2008. It is the hope of this Office that positive changes, that are truly designed to meet the needs of the residents of the Northwest Territories, will be forthcoming from this review process.

Recommendations Previously Made By the Languages Commissioner

During the tenure of the current Languages Commissioner, a number of recommendations have been made in annual reports. These recommendations were provided to the Legislative Assembly for consideration. Most of the recommendations were accepted by the Standing Committee on Accountability and Oversight (or the Standing Committee on Government Operations). The rest were seen to be of interest, and the Committee passed motions that they be given serious consideration by the Government of the Northwest Territories, with a comprehensive

report to be provided within 120 days. These Committee reports were then tabled and approved by the Legislative Assembly.

To date, very few concrete steps have been taken to implement most of these recommendations, and there has been no report back to the Languages Commissioner.

Previous Recommendation

That the Legislative Assembly clarify what is meant by paragraph six of the preamble to the Official Languages Act. Further, paragraph ten of the preamble should be deleted.

Paragraph six deals with using Aboriginal Official Languages for “official purposes” in the Northwest Territories, but “official purposes” is not defined in the preamble or the Act. Paragraph ten deals with language rights in the workplace, but the Act itself does not deal with the issue of language of work.

This recommendation was accepted by the Standing Committee on Accountability and Oversight. It is hoped that the Legislative Assembly will consider these issues in detail as part of its review of the Act in 2008.

This issue is described in greater detail on the section dealing with amendments to the Act.

Previous Recommendation

That the Official Languages Act of the Northwest Territories be amended to include a provision that it binds all contractors with the Government of the Northwest Territories.

The Standing Committee on Accountability and Oversight recommended that the Government of the Northwest Territories examine and report back on the implications and advisability of implementing this recommendation. The Languages Commissioner has heard nothing back in regard to this recommendation.

This issue is described in greater detail on the section dealing with amendments to the Act.

Previous Recommendation

That the Legislative Assembly consider amending section 11 of the Official Languages Act such that, instead of defining language rights based on the concepts of “significant demand” and “nature of the office”, language rights in the area of communication be based on the following principles:

- (i) that some basic services should be available in any and all Official Languages, regardless of geographical area. This should include health services, mandatory registration, licensing, safety and other services that legislators consider essential.**
- (ii) that other services should be available according to designated language areas that are established in regulation. As well, those services that must be provided in those designated areas should also be set out in regulation, instead of policies and guidelines. In this way, the responsibility to provide such services will be clear and binding.**

The Committee recommended that the Government review and report back on the legal implications and feasibility of abandoning the concepts of “significant demand” and “nature of the office” in favour of regulations specifying that basic services should be available in any and all of the Official Languages, regardless of geographic location. The Languages Commissioner has never heard back in regard to the recommendation.

This recommendation is described in greater detail in the section dealing with the review of the Act.

Previous Recommendation

That the Legislative Assembly and all government departments review their systems for providing service through 1-800 numbers. Where a person who requests services in French will be transferred to an identified individual, consideration should be given to an automated response system for the 1-800 number, allowing for an individual to choose services in English or in French. This same approach should be considered for other Official Languages.

The Standing Committee on Accountability and Oversight recommended that the Government of the Northwest Territories review and report back on their system for providing services through toll-free numbers in French and Aboriginal Official Languages. The Languages Commissioner has never heard back in regard to this recommendation.

This is, perhaps, one of the easiest recommendations to implement. Further, it would likely have the greatest cost benefits in terms of providing ongoing language services to the public in the most efficient means possible. It would allow trained interpreters and translators to provide language services regardless of their location, or the location of the person seeking services. Further, in the case of *Northwest Territories (Attorney General) v. Fédération Franco-Ténoise*, 2008 NWTCA 06, the Court of Appeal of the Northwest Territories stated:

“...while a member of the public is entitled to ask in French for a service mandated by the *OLA*, the front-line employee need not be bilingual. Rather, that individual should have ready access to a person who can respond to the request in French (for example,

through a 1-800 number of another bilingual person in the office). Such choices go beyond accommodation. Rather, they provide a contextual means in which to achieve equality in the unique circumstances of the NWT.”

There has been some movement on this front, with the creation of the Service TNO Office. This will be considered later in this report.

Previous Recommendation

That the Government of the Northwest Territories immediately implement a plan for the training and certification of interpreters and translators.

This recommendation was accepted by the Standing Committee on Accountability and Oversight. The recommendation was made again, and was again accepted by the Standing Committee on Government Operations. As well, this type of recommendation has been made by previous Languages Commissioners. Despite all of this, there has been no reporting back, and no clear action taken in regard to this matter.

Perhaps the issue is best summarized by the Standing Committee on Accountability and Oversight in their response to the 2005-2006 Annual Report of the Office of the Languages Commissioner, wherein they stated:

“With the closure of the Aboriginal Languages Section of the GNWT Language Bureau in the mid-1990s, the Northwest Territories has lost any institution that would be responsible for language standards, terminology development, training and accreditation. The precarious situation of our Aboriginal languages, combined with the declining numbers of mother tongue speakers, makes the need to actively address the revitalization of the Aboriginal languages more urgent. In recent years, the former Languages Commissioner and the Special Committee on Official Languages addressed the need for capacity building through the development of translation standards as well as training and certification standards for interpreters and translators.



Photo: Dept. of Info/NWT Archives/G-1995-001:5438

The Standing Committee on Accountability and Oversight recommended in its Report on the Review of the 2004-2005 Annual Report of the Languages Commissioner that “...the GNWT work with Aurora College to deliver a basic interpreter/translator training program for Aboriginal languages as well as specialized training in medical terminology.” While the government supports the idea in general, it “delegated” any action to the college and further made any action dependent on “sufficient demand and program funding”. The government’s response did not indicate any specific steps toward such an undertaking.

In her report, the Commissioner points out that despite the recognition of the importance of interpreter/translator training and certification, little has been done to actually implement any required steps that would address such education and standardization needs. In recommendation five, the Commissioner is clear about her expectations towards the GNWT in this regard.

The Committee also notes that the re-establishment of training and certification for Aboriginal languages interpreter/translator programs would be an important step towards language and terminology standardization as a vital aspect of language revitalization.”

Previous Recommendation

That the Government of the Northwest Territories immediately create a registry of interpreters and translators that is available to both the public and private sector.

This recommendation was also accepted by the Standing Committee on Accountability and Oversight. This type of recommendation was also made by previous Languages Commissioners. Nonetheless, there has been no reporting back, and no clear action taken in regard to this matter.

It should be noted that this was also recommended by the Special Committee on the Review of the *Official Languages Act*. Recommendation D8 of that committee states:

“The Official Languages Secretariat publish an updated public registry of French and Aboriginal interpreter/translators.”

Previous Recommendation

That the Legislative Assembly and the GNWT adopt a uniform policy in regard to the development of web sites, including the languages in which web site materials are available.

The Standing Committee on Government Operations considered this recommendation and passed a recommendation that the GNWT conduct a review of its web site policies and report back on whether the web site policy is in compliance with Official Languages policies, guidelines and legislation. The Languages Commissioner has never heard back in regard to this recommendation.

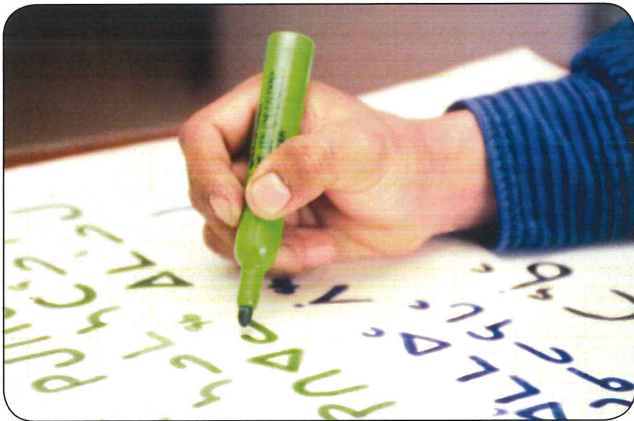


Photo: Dept. of Info/NWT Archives/G-1995-001:7943

It is the sense of this Office that one of the issues in regard to this recommendation is that the government is concerned about the cost of developing web sites that have information available in all 11 Official Languages. Nonetheless, web sites are undoubtedly one of the effective ways of providing general information to the public, including contact information. Further, information that is developed for a web site can also be made available in print form, for those who do not have access to a computer.

In a recent report by Canadian Heritage entitled “Government of Canada Consultations on Linguistic Duality and Official Languages”, Bernard Lord stated:

“...New technologies are outstanding tools for community organizations and represent the future of many communities. They can contribute to the education of young people and adults, and to the development of educational institutions. They are, in part, a means of countering community isolation and a lack of information. They also allow for improved collaboration within and among organizations at reduced cost...”

It should also be noted that the Special Committee on the Review of the *Official Languages Act* recommended that the government increase the use of Official Languages in media and technology. Recommendation II of that committee states:

“The GNWT expand its support for, and utilization of, Aboriginal and French language media, along with support for other communication initiatives, including the use of internet, digital technology and emerging media technologies.”

In reviewing all of these recommendations, it is clear that the Legislative Assembly and the Government of the Northwest Territories have not given any careful consideration to the recommendations put forward by the Languages Commissioner. Further, there has been no reporting back to the Languages Commissioner, even if it is just to advise that the recommendation was unfeasible, unrealistic or simply rejected. This is unacceptable and disappointing.

In its Report on the Review of the 2006-2007 Annual Report of the Languages Commissioner, the Standing Committee on Government Operations stated:

“During this discussion, the Committee also encouraged the Commissioner to follow up on her recommendations in accordance with her mandate and powers under the Act. The Committee suggests that the Commissioner include a status section on previous recommendations in future Annual Reports...

...the Standing Committee on Government Operations encourages the Commissioner... to exercise her powers... to ensure the GNWT complies with the spirit and intent of the Act.”

While the Office appreciates these suggestions and sentiments, they are also troublesome at the same time. First, it seems to be an attitude of “passing the buck”. It does little for the Languages Commissioner to continue to revisit issues. It does far more for the Legislative Assembly and Government of the Northwest Territories to action these issues, which they know exist. Second, the Languages Commissioner cannot ensure that the GNWT complies with the Act. The Languages Commissioner has no real power, and can only make recommendations. Third, it suggests that the Languages Commissioner is not doing her job, when in fact it is the Legislative Assembly and Government of the Northwest Territories that are not fulfilling their role once recommendations are made. This attitude is nothing new. The Special Committee on Official Languages (SCOL) pointed this out. At page 15 of their summary report, they stated:

“...the Legislative Assembly has often not responded to the Commissioner’s recommendations...”

This point was reiterated by the Court of Appeal in the case of *Northwest Territories (Attorney General) v. Fédération Franco-Ténoise* (2008 NWTCA 06).

RECOMMENDATION

That the Legislative Assembly ensure that there is an immediate report back to the Languages Commissioner on the following recommendations that have been made in previous annual reports:

That the Legislative Assembly and all government departments review their systems for providing service through 1-800 numbers. Where a person who requests services in French will be transferred to an identified individual, consideration should be given to an automated response system for the 1-800 number, allowing for an individual to choose services in English or French. This same technology should be considered for other Official Languages.

That the Government of the Northwest Territories immediately implement a plan for the training and certification of interpreters and translators.

That the Government of the Northwest Territories immediately create a registry of interpreters and translators that is available to both the public and private sector.

That the Legislative Assembly and the GNWT adopt a uniform policy in regard to the development of web sites, including the languages in which web site materials are available.

The Present

Complaints and Inquiries

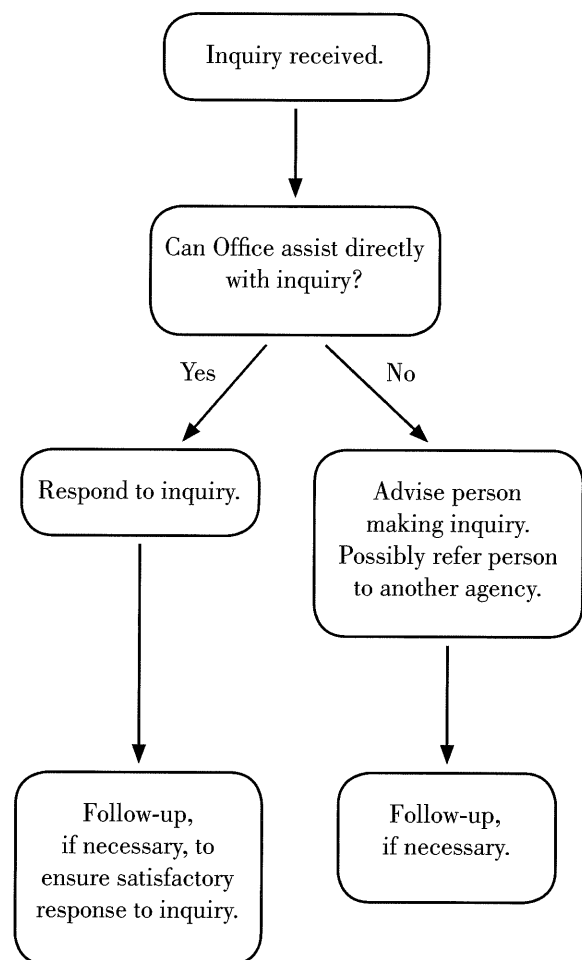
Definitions

- **Inquiry** – A simple request for information, usually related to the status or use of Official Languages, or about the *Official Languages Act*. It does not include any suggestion that a person feels that she or he has been unfairly treated.
- **Complaint** – A complaint involves a situation where a person or group feels that their language rights or privileges have been infringed or denied. They may feel that they have been treated unfairly or have been adversely affected by some policy, program, action or lack of action.
- **Investigation** – A situation where the Languages Commissioner decides to investigate a specific situation or larger systemic issue, regardless of whether a complaint has been filed with the Office.

Inquiry Process

The inquiry process established for the Office is as follows:

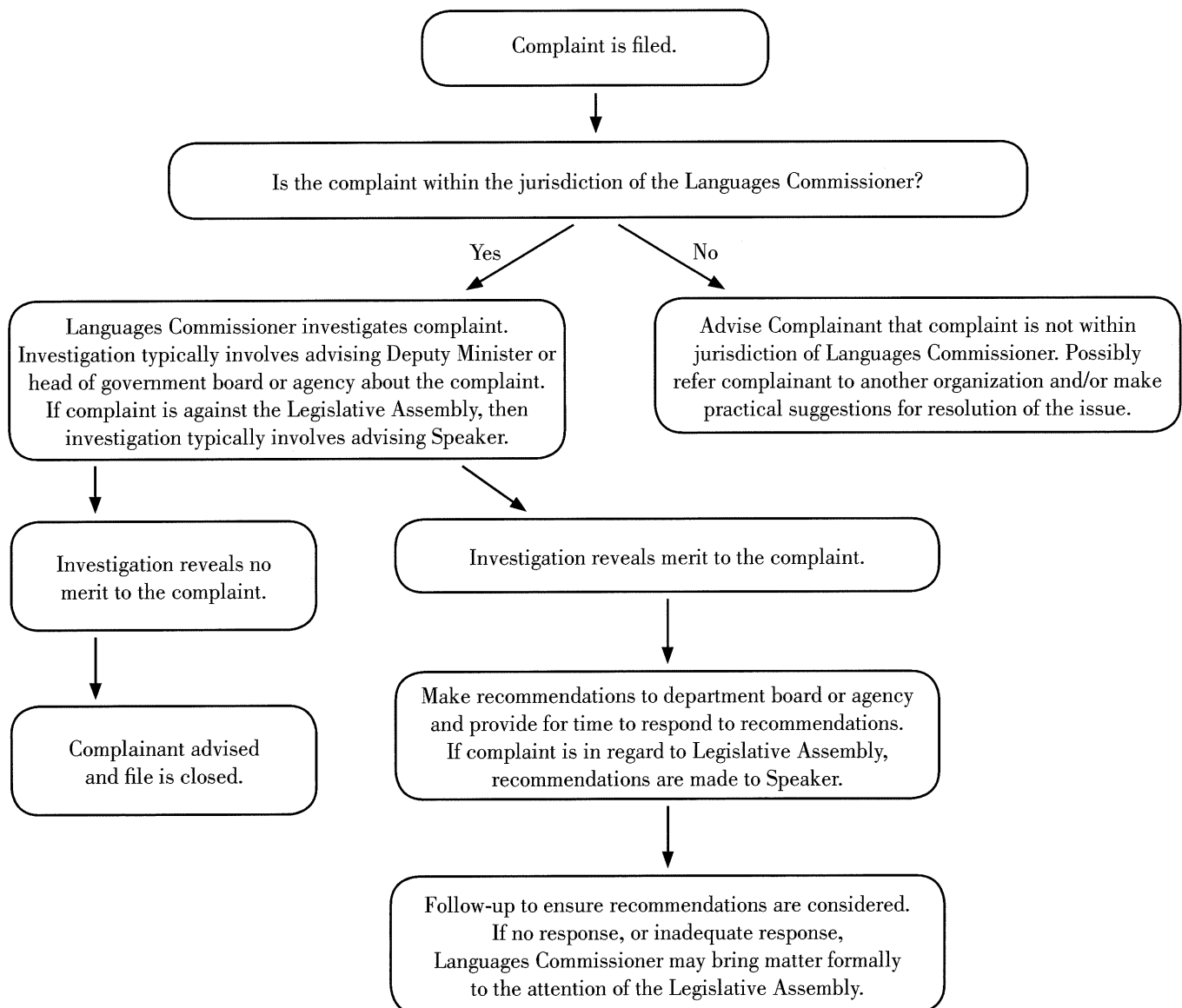
NWT *Official Languages Act* Inquiry Process



The Complaint Process

The complaint process established for the Office is as follows:

NWT *Official Languages Act* Complaint Process



Statistics for 2007-2008

- **Complaints** – In the 2007-2008 fiscal year, the Office received one complaint. The complaint was by a Francophone organization which received an English version of a government document. The Languages Commissioner was able to ensure that the organization obtained a French version of the document.
- **Inquiries** – In the 2007-2008 fiscal year, the Office received 21 inquiries. One inquiry was outside of the jurisdiction of the Office. The inquiries can be broken down as follows:
 - i) Private vs. Public Sector: 52% of the inquiries came from the private sector. Of these, 18% (10% of total inquiries) came from Aboriginal organizations. The other 48% of inquiries came from the public sector.
 - ii) Types of Inquiries: 19% of the inquiries were in regard to obtaining general information about the *Official Languages Act*. 49% were in regard to obtaining interpretation and translation services. 19% were in regard to education issues. Finally, 14% were in regard to communication and services to the public.
 - iii) Location of Inquiry:
 - 61% Yellowknife
 - 14% Inuvik
 - 5% Fort Smith
 - 5% Norman Wells
 - 10% Other Jurisdiction in Canada
 - 5% Other County
 - iv) Official Languages Involved in Inquiry:
 - 53% All Official Languages
 - 9% All Aboriginal Languages
 - 13% French
 - 5% Cree
 - 5% Inuvialuktun
 - 5% North Slavey
 - 5% Gwich'in
 - 5% Other

In all instances, the Office was able to provide information requested or refer to the proper agency.

- **Investigations** – The Office completed an investigation and finished a Special Report entitled “Speaking of Health... Official Languages as Part of Quality Health Care in the Northwest Territories. The report, which contains 15 recommendations, has been tabled by the Legislative Assembly, and the Languages Commissioner looks forward to a response from the Legislative Assembly.

When the Languages Commissioner appeared in front of the Standing Committee on Government Operations in April 2008, a number of comments about complaints and inquiries were made by committee members that should be addressed:

- One committee member suggested that, because people still contact the Office in regard to obtaining information about interpretation and translation services, the role of the Office has not been made clear by the Languages Commissioner. With all due respect, the vast majority of inquiries received by the Office, since the inception of the Office, have been in regard to obtaining interpretation and translation services. This is alluded to by the first Languages Commissioner in her first annual report, wherein she stated:

“Whenever possible, the Languages Commissioner provided the information or material requested, but this is not really a role this Office should have to play...”

- While it is true that there has been a decreased caseload over time, there are many factors that need to be considered, including the definitions of “inquiry” and “complaint”. There was no uniformity in the use of these definitions between previous Languages Commissioners. For example, one Language Commissioner would consider a request for an interview or speaking engagement as an inquiry. The current Languages Commissioner would simply see this as promotion of the Office and not an inquiry under the Act. Another Languages Commissioner received a complaint that approximately 50 advertisements had not been published in a French newspaper, and it was alleged that this was a requirement under the Act. That was treated as 50 complaints. The current Languages Commissioner would see that as one complaint dealing with an issue regarding newspaper advertisements. Yet another Languages Commissioner had matters that started out as inquiries and then became complaints. She would register them as both inquiries and complaints. In the mind of the current Languages Commissioner, this overinflates the number of matters brought before the Office, and the status of the matter should have been simply changed from “inquiry” to “complaint”.
- It is also important to note that there have been years when very few complaints were filed. In 2003-2004, only one complaint was lodged.
- The vast majority of complaints over time have been made by the Francophone community. In 1999, the Federation Franco TeNOise decided to have these matters go to court to determine the extent of French language rights. This resulted in far fewer complaints, undoubtedly because another avenue was being used to determine these issues.
- There have been few inquiries related to language education issues over the past few years. It is the view of this Languages Commissioner that this is in large part because of the government’s increased emphasis on language and cultural education, including the directive in this regard.

Budget

Office of the Commissioner of Official Languages

Fiscal Year 2007-2008
at March 31, 2008

	2007-2008 Main Estimates	Expenditures	Free Balance
Compensation and Benefits			
Salaries	31,000.00	20,428.05	10,571.95
Benefits	0	0	0
Total Compensation and Benefits	\$31,000 .00	\$20,428.05	\$10,571.95
Other Operating Expenses			
Travel and Transportation	28,000.00	1,266.16	26,733.84
Materials and Supplies	20,000.00	21,064.05	(1,064.05)
Purchased Services	20,000.00	10,802.82	9,197.18
Utilities	0	0	0
Contract Services	56,000.00	33,909.70	22,090.30
Fees and Payments	15,000.00	2,145.50	12,854.50
Other Expenses	5,000.00	0	5,000.00
Tangible Assets	0	0	0
Computer Hardware and Software	5,000.00	0	5,000.00
Total Other Operating Expenses	\$149,000.00	\$69,188.23	\$79,811.77
TOTAL FOR THE OFFICE	\$180,000.00	\$89,616.28	\$90,383.72

Highlights

Web Site

The web site offers a quick way to gather information about the Office.

Promotion of the Office

Radio advertisements for the Office were run on CBC Radio, CJCD, Radio Taiga and CKLB (Aboriginal station). The advertisements, which promoted the Office, were heard in all 11 Official Languages. All of these stations have been enthusiastic about promoting the Office.

The Languages Commissioner also had an opportunity to meet with various groups and individuals during the course of the year. Some highlights include:

- A number of radio interviews.
- A visit to Bechoko and Edzo, including a visit to two schools, the language resource centre and meeting with government employees in June 2007.
- Meeting with federal Official Languages Commissioner in August 2007
- Attendance at the Official Languages Research Conference in Ottawa in January, 2008.

Report on Health Care

The Languages Commissioner completed a report entitled “Speaking of Health... Official Languages as Part of Quality Health Care in the Northwest Territories”. The report has now been tabled with the Legislative Assembly.

The report contains 15 recommendations that are designed to improve health care services in the Northwest Territories by improving language services throughout health care centres and hospitals throughout the Northwest Territories.

It is the hope of this Office that the Legislative Assembly will take these recommendations seriously, and we look forward to a response from the Legislative Assembly.

RECOMMENDATION

That the Legislative Assembly provide a written response back to the Languages Commissioner on the Special Report entitled “Speaking of Health... Official Languages as Part of Quality Health Care in the Northwest Territories”. This response should be provided in a timely fashion.

Recent Court Cases of Interest

Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada

This is an extremely interesting case that was rendered by the Supreme Court of Canada on April 11, 2008.

In this case, a woman from New Brunswick was pulled over by an RCMP officer for speeding. The RCMP officer did not speak French and made no active offer to do so, although the ticket was issued in French.

In New Brunswick, policing services are provided by the RCMP by means of a contract with the New Brunswick government. Section 20(1) of the *RCMP Act* specifically authorizes the RCMP to enter into agreements with a province to enforce the laws within the province. The Supreme Court of Canada unanimously ruled that while performing policing services under this contract, the RCMP were bound to provide police services

in accordance with Section 20(2) of the *Canadian Charter of Rights and Freedoms*, which states:

“20.(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislative assembly or government of New Brunswick in English or French.”

This is a more generous language service than what is ordinarily required by a federal public institution in accordance with Section 20(1) of the Charter, which bases language rights on the concepts of “nature of the office” and “significant demand”.

The Supreme Court of Canada ruled that while providing police services in the province of New Brunswick, the RCMP acted as an “institution” of the New Brunswick government, and had to provide services in accordance with provincial language standards.

This case is of importance in the Northwest Territories for two reasons. Specifically, the RCMP also provide police services in the Northwest Territories through a contract with the Minister of Justice. There is no reason why the same principles enunciated by the Supreme Court of Canada would not apply to the Northwest Territories. In other words, RCMP providing police services in the Northwest Territories would have to provide services in accordance with Section 11 of the Northwest Territories *Official Languages Act*. More generally, the principles suggest that any contractor with the Government of the Northwest Territories would be required to provide language services in accordance with the *Official Languages Act*. While this case dealt with rights under the Charter, the principles should apply equally to the *Official Languages Act* of the Northwest Territories, being quasi-constitutional legislation.

RECOMMENDATION

That the Legislative Assembly and the GNWT consider the implications of the *Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada* case on language services in the Northwest Territories.

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise

The decision of the Court of Appeal of the Northwest Territories following an appeal of the judgement of Madame Justice Moreau was rendered on June 27, 2008.

This is a very complex case dealing with French language rights in the Northwest Territories. The appeal decision contains some conclusions that are important when it comes to the requirement to provide French language services, and the nature in which those services are provided. Some highlights are:

- The Court of Appeal found that the Legislative Assembly and the Government of the Northwest Territories had a range of options to consider in meeting their obligations under the *Official Languages Act*. The court stated:

“A consideration of the NWT’s unique circumstances and the vast array of services that the government must attempt to provide leads us to conclude that the GNWT’s range of options in meeting its obligations under the *OLA* is more broad than that described by the trial judge. When the service sought involves urgent or highly confidential matters, a member of the public is entitled to immediate service in French. Ideally, such service should usually be available without the interposition of a third party interpreter, especially when such confidential and sensitive matters as health are concerned. Similarly, consent forms for medical treatment should be available in French.

On the other hand, when urgency or confidentiality is not immediately engaged, the GNWT has greater flexibility in determining how to provide services in French. For example, while a member of the public is entitled to ask in French for a service mandated by the *OLA*, the front-line employee need not be bilingual. Rather, that individual should have ready access to a person who can respond to the request in French (for example, through a 1-800 number or another bilingual person in the office). Such choices go beyond accommodation. Rather, they provide a contextual means in which to achieve substantive equality in the unique circumstances of the NWT.”

- The court found that the Official Languages Policy and Guidelines have no legal effect, a point that has been made by this Office for many years. However, the court also found that there must be substantive equality between English and French under the *OLA* and, therefore, all notices directed to the public must be published in English and French. This would include all employment offers, calls for tender and public notices. The court also found that it included certificates that attest to a person’s status, such as birth certificates. These requirements appear to be independent of location in the Northwest Territories.
- The court ruled that it did not have authority to review the decision made by the Legislative Assembly not to publish the Hansard in French. The court held that the Legislative Assembly has legislative privilege over decisions about the publication of the Hansard and broadcasts of the debates of the Legislative Assembly, and this privilege was not abrogated by the passage of the *Official Languages Act*.

Either party may still seek to appeal this decision. However, the way it stands, the decision has significant ramifications.

Audio Tours of the Legislative Assembly

The Languages Commissioner applauds the move by the Legislative Assembly to have audio tours available in all of the Official Languages of the Northwest Territories.

The Legislative Assembly was already providing tours in English and French, and providing equitable service in both languages. Depending on how the terms “significant demand” or “nature of the office” are interpreted, there may or may not be a requirement to provide such a service in the Aboriginal Official Languages. This issue has never been determined. Nonetheless, it is commendable to be proactive and provide the best possible access to these tours. The Legislative Assembly is, after all, the centre of our government!

Legislative Assembly Television Network

The Languages Commissioner also applauds the move by the Legislative Assembly to broadcast the house proceedings in the Official Languages of the Northwest Territories on a regional basis.

As already indicated, the decision to televise debates of the Legislative Assembly in French, in an Aboriginal language, or at all, is not subject to the *Official Languages Act*. Nonetheless, the Legislative Assembly is to be commended for taking steps to make proceedings of the Legislative Assembly more accessible to the public throughout the Northwest Territories.

Opening of the Services TNO Office

The Services TNO office is now opened in the Laing Building. Through this storefront office, the public can obtain basic information, in French, in regard to birth certificates, health care benefits, licenses and general government information. There is also a toll-free number to the office.

Office staff have only been trained in certain services, as indicated above. While there has been some use of the office, the office does not appear to be well used at this time. The government needs to consider broadening the scope of this office and train staff to provide French language services in a variety of other areas. As well, a recommendation has previously been made by the Office of the Languages Commissioner that the Legislative Assembly and government review their systems for providing service through 1-800 numbers. There is no reason why this office could not be used to provide interpretation/translation services in French where a member of the public seeks services in French.

RECOMMENDATION

That the Legislative Assembly and Government of the Northwest Territories seriously consider the expansion of the role of the Service TNO Office, such that it could provide information and services, in French, in regard to all government departments and agencies, including acting as a 1-800 service for the public seeking French language services.

The Future

Review of the *Official Languages Act* – The Need for Legislative Change

Pursuant to Section 35 of the *Official Languages Act*, the Legislative Assembly is required to review the Act in 2008. The Languages Commissioner has been asked to participate in this review process, and is pleased to do so.

There are many issues to be considered during the review process. Some issues are minor in nature, but others involve a consideration of the underlying principles of the Act. The Languages Commissioner believes that there are certain areas that must be addressed:

Preamble

Paragraph 6 of the preamble to the Act states:

“Desiring to provide in law for the use of the Aboriginal languages in the Northwest Territories, including the use of the Aboriginal languages for all and any official purposes of the Northwest Territories at the times and in the manner that is appropriate.”

Nowhere in the Act does it define “official purposes of the Northwest Territories”, and this statement is unclear. The likely intent was to highlight that the Act provides for the use of Aboriginal Official Languages in a number of situations. Suggested wording is:

“Desiring to provide in law for the use of Aboriginal languages in the Northwest Territories, including the use of Aboriginal languages in the manners and circumstances specifically identified and provided for in the Act.”

In addition, paragraph 10 of the preamble states:

“Desiring that all linguistic groups in the Northwest Territories should, without regard to their first language learned, have equal opportunities to obtain employment and participate in the institutions of the Legislative Assembly and the Government of the Northwest Territories, with due regard to the principles of selection of personnel according to merit.”

This paragraph appears to be largely drawn from the preamble to the federal *Official Languages Act*, which specifically provides for equality of the use of English and French in the workplace. The Northwest Territories *Official Languages Act* does not have any provisions with respect to language of work. As such, this section incorrectly suggests that language rights in the workplace are provided for in the Act. In addition, it suggests that the Act protects from discrimination in employment practices based on racial background.

That is provided for in the *Human Rights Act* of the Northwest Territories and not the *Official Languages Act*.

The Legislative Assembly and Government of the Northwest Territories need to consider the issue of language of work, keeping in mind a number of factors. One factor would be the cost of ensuring that people could have their language rights met in the workplace. This might include the need for interpreters and translators, and a possible decrease in productivity as a result of accommodating language rights. A second, and extremely important, factor is safety. If employees can not understand each other effectively, there could be a risk to them, their coworkers or the public.

RECOMMENDATION

That the Legislative Assembly of the Northwest Territories clarify what is meant by paragraph six of the preamble to the *Official Languages Act*. Further, the Legislative Assembly of the Northwest Territories needs to consider the issue of language rights in the workplace. If it is decided not to include language rights in the workplace in the *Official Languages Act*, then paragraph ten of the preamble should be deleted.

Section 1

Section 1 of the Act states:

“1. In this Act, “government institution” means a department or ministry of the Government of the Northwest Territories, the Office of the Legislative Assembly, and an agency, board, commission, corporation, office or other body designated in the regulations.”

The Legislative Assembly implemented the Government Institution Regulations, which set out those government institutions that are subject to the provisions of the *Official Languages Act*. The Legislative Assembly of the Northwest Territories should review these regulations to determine whether the list of institutions in the regulations adequately reflects those institutions that should be subject to the Act.

RECOMMENDATION

That the Legislative Assembly review the Government Institutions Regulations to ensure that they adequately reflect those government institutions that should be subject to the *Official Languages Act*.

Contractors

The Legislative Assembly should consider the issue of whether contractors who provide services on behalf of the government should have to provide services in accordance with the *Official Languages Act*. By legislating this requirement, it ensures that the public has the right to a certain language services, regardless of whether the service is being provided directly by the government or by a contractor on behalf of the government.

As already indicated in this report, the case of *Societe des Acadiens et Acadiennes du Nouveau-Brunswick v. Canada*, a case from the Supreme Court of Canada, gives strong support for the notion that where services are provided for by a government through a contract source, that contractor performs the role of an “institution of the legislature or government” and must comply with the language obligations in that jurisdiction.

The requirement for contractors with the government to provide services in accordance with the *Official Languages Act* should not prove too onerous. Most contractors with the government do not provide services directly to the public. They provide services to government boards and agencies. For those who do provide services directly to the public on behalf of the government, a plan and the costs in regard to providing language services could be included in a proposal or tender as an expense that would be incurred by the contractor but recouped from the government. This would appear to be reasonable. First, even if the government was providing the service directly to the public, no assumption should be made that the government would be able to provide for language services internally. Second, in the Final Report of the Standing Committee on Official Languages, the committee recognized that there is a cost to providing appropriate language services.

The following wording, which comes from the federal *Official Languages Act*, is recommended:

“Every government institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in the Northwest Territories or elsewhere can communicate with and obtain those services from that person or organization in any particular Official Language in any case where those services, if provided by the institution, would be required to be provided in that Official Language.”

RECOMMENDATION

That the *Official Languages Act* of the Northwest Territories be amended to include a provision that it binds all contractors with the Government of the Northwest Territories. Suggested wording is as follows:

“Every government institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in the Northwest Territories or elsewhere can communicate with and obtain services from that person or organization in any particular Official Language in any case where those services, if provided by the institution, would be required to be provided in that Official Language.”

That the Legislative Assembly consult broadly with the public throughout the Northwest Territories in reviewing the *Official Languages Act* and in determining priorities for legislative amendments.

Section 4 – Official Languages

Section 4 defines the 11 Official Languages of the Northwest Territories.

For years, this Office has heard from the public that there are concerns in regard to which languages have been seen fit to be included in the definition of “Official Languages”. Members of the Aboriginal language communities, in particular, have expressed concern that there are many other languages and dialects not adequately protected through this definition.

As the Act is reviewed, this is an opportune time to reconsider which languages should be considered as “Official Languages” and, thereby, be protected by the provisions of the *Official Languages Act*.

RECOMMENDATION

That the Legislative Assembly consider what languages should be considered as Official Languages and thereby be protected by the provisions of the *Official Languages Act*.

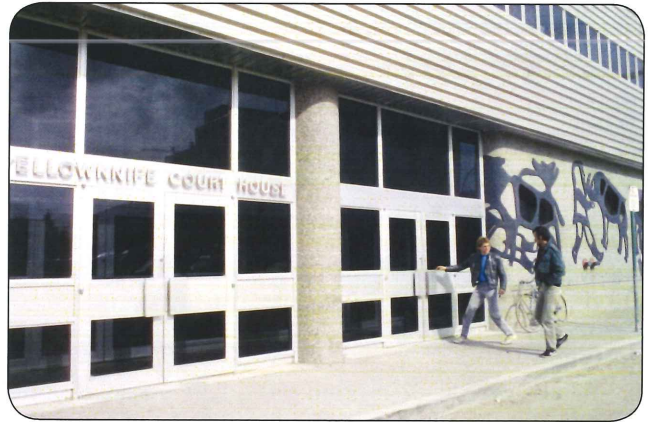


Photo: Dept. of Info/NWT Archives/G-1995-001:2068

Section 6 – Use of Official Languages in the Legislative Assembly

Section 6 of the Act states:

“Everyone has the right to use any Official Language in the debates and other proceedings of the Legislative Assembly.”

It is one thing to have a right to use any Official Language in the proceedings of the Legislative Assembly. It is quite another to be understood. What good is exercising your right to speak your mother tongue in the Legislative Assembly if other

members do not have the corresponding right to understand you? This needs to be clarified, and the following amendment is recommended:

“Everyone has the right to use any Official Language in the debates and other proceedings of the Legislative Assembly, and every Member of the Legislative Assembly has the right to translation of those debates in another Official Language.”

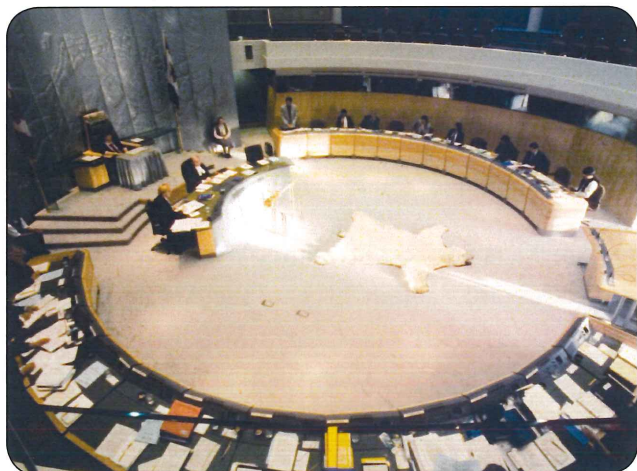


Photo: Dept. of Info/NWT Archives/G-1995-001:8217

This type of amendment might also encourage Members of the Legislative Assembly to use their mother tongue. Further, what better way to celebrate the Official Languages of the Northwest Territories than by encouraging their use in the Legislative Assembly. This would be leading by example.

RECOMMENDATION

That section 6 of the *Official Languages Act* be amended to read:

“Everyone has the right to use any Official Language in the debates and other proceedings of the Legislative Assembly, and every Member of the Legislative Assembly has the right to translation of those debates in another Official Language.”

Nothing in this recommendation is intended to take away from the steps recently taken by the Legislative Assembly to allow broadcasting of the debates of the Legislative Assembly in the various Official Languages in the various regions of the Northwest Territories.

Section 11 – Service to the Public

Sections 11(1) and (2) of the *Official Languages Act* states:

“11. (1) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where:

- (a) there is a significant demand for communication with and services from the office in that language; or
- (b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French.



Photo: Dept. of Info/NWT Archives/G-1995-001:8259

11.(2) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any regional, area or community office of a government institution in an Official Language other than English or French spoken in that region or community, where:

- (a) there is a significant demand for communications with and services from the office in that language; or
- (b) it is reasonable, given the nature of the office, that communications with and services from it be available in that language.”

Section 11 is very problematic. When considered in great detail, Section 11(1) of the Act does not make any sense. It specifically deals with the right to receive services in English or French when dealing with a head or central office of a government institution. It then goes on to deal with the issue of English and French language rights when dealing with other offices of that government institution, and is based on the concepts of “significant demand” and “nature of the office”. These terms were derived directly from the federal *Official Languages Act*, but unlike the federal government, the territorial government did not go on to define these terms. The federal government’s

definition of “significant demand” is based almost entirely on a numerical criteria. Regulations under the federal *Official Languages Act* also establish what is meant by the term “nature of the office”. In large part, it refers to basic services being available in either English or French where the office in question deals with issues of health, safety or security of the public.

Without clarification of the terms “significant demand” and “nature of the office”, it calls into question whether there are any English or French language rights in regional or community offices of the Government of the Northwest Territories. Is “significant demand” based on the number of persons in a region who speak a language? Is it based on the number of requests for service in that language? Or, could it be based on one serious and compelling request for language services, in French, at that office? What kinds of regional and community offices are required to provide services in French due to the “nature of the office”? It does not appear that these questions were given serious consideration when the *Official Languages Act* was developed.

Section 11(2) of the Act deals with services in regional or community offices, and gives a person the right to communicate with that office in the Official Languages of that area, but only where there is a “significant demand” or due to the

“nature of the office”. The same issues arise in regard to the meaning of these terms. Does Section 11(2) mean that an elder from Bechokò, who is unilingual, can demand services at the health centre in Tłı̄chq? Does that one person’s request constitute a “significant demand” or is the health centre required, due to the “nature of the office”, to oblige all such requests.

The answer to all of the above questions is unknown and call into question an individual’s ability to demand language services from the Government of the Northwest Territories in any of the Official Languages. These issues should have been sorted out before the *Official Languages Act* was passed. At best, the Act is ambiguous.

As indicated, the Legislative Assembly never developed regulations to define the concepts of “significant demand” and “nature of the office”. Instead, the Government of the Northwest Territories developed the Official Languages Policy and Guidelines, which set out designated language areas (based on the Official Languages most commonly spoken in the various regions of the Northwest Territories) and guidelines for providing services to the public in a number of areas (including interpretation at public meetings and hearings and translation of public information material). It is important to note that the Official Languages Policy and Guidelines are

not legally binding. This point was not lost on the Special Committee on the Review of the *Official Languages Act*, which stated at page 207 of its final report:

“...The language revitalization framework stresses the need for management of decisions that are “guided and accountable” through legislation and policy. The questionnaire results confirm that the Official Languages Policy and Guidelines are not being followed or monitored in a systemic way. If many departments are able to avoid or ignore implementing key elements of Official Languages Policy and Guidelines, the Committee must conclude that the policy and guidelines are not sufficiently prescriptive, nor are accountability mechanisms adequate to measure and ensure compliance.”

In other words, the Official Languages Policy and Guidelines clearly offer no protection to the public in obtaining services from the GNWT. Further, the Court of Appeal of the Northwest Territories highlighted this point in the case of *Northwest Territories (Attorney General) v. Federation Franco-Tenoise* (2008 NWTCA 06), wherein the court stated:

“While the *OLA* refers to regulations, nowhere does it mention guidelines. This suggests that only regulations (not Pgs) passed under the *OLA* were intended to have legal effect. The respondents rely in part on s. 26(2)(b), which requires the Minister Responsible for the *OLA* to oversee the development of policies and regulations. However, that provision simply reinforces the view that there is a dichotomy in the *OLA* between legally binding regulations and non-binding policies or directives.”

This does not mean that defining the terms “significant demand” or “nature of the office” in the regulations would fully address the issue. As indicated in the 2005-2006 Annual Report of the Languages Commissioner, the term “significant demand” has caused problems at the federal level, and would be even more problematic in the Northwest Territories. In some instances, we are dealing with extremely small numbers of persons who speak a particular Aboriginal language. Trying to determine “significant demand” based on such small percentages of the population fails to recognize the special characteristics of some of these Official Languages and, in particular, fails to take into account that some of them are in fear of extinction. Further, one of the objectives of the *Official Languages Act* is to preserve and promote Official Languages. How can basing language rights on a numerical criteria help

to preserve Official Languages? In addition, fewer and fewer people appear to be speaking an Aboriginal Official Language over time. If “significant demand” is based on the percentage of the population that speaks a particular Official Language, then the obligation to provide services in that Official Language could diminish over time. In effect, the Government of the Northwest Territories could become an active participant in the demise of an Official Language. Application of a strict numerical criteria could also create an inequity in services between Aboriginal Official Languages. For example, persons in Whati, where 96.9% of the population speaks an Aboriginal Official Language, may be entitled to more language services than people in Aklavik, where only 19.3% of the population speaks an Aboriginal Official Language. How can any of this be said to provide equality of service in the various Official Languages?

On the other hand, looking at the concept of “nature of the office” may be promising, in that it puts the focus on ensuring that some basic government services are available in all Official Languages.

In the end, a truly northern approach is needed to ensure that language rights are respected in the area of communication with the public. A number of factors need to be considered in developing an approach:

- i) Simplicity – Complicated formulas to determine language rights are neither practical or effective. The system should be simple and easy to understand.
- ii) Accessibility of Services to the Public – The focus must be on accessibility of services to the public and not administrative ease for the government. Certain basic services should be available in all Official Languages of the Northwest Territories, regardless of location. The concept of “nature of the office” in the federal *Official Languages Act* is helpful in this regard. It focuses on basic services, such as health care and safety, as being of primary importance to the public. The Government of the Northwest Territories needs to look at what basic services the public should be entitled to in any Official Language, and take steps to ensure universal accessibility in all languages. Other language rights may be based on designated language areas, and may include many of the types of services currently outlined in the Official Languages Policy and Guidelines.
- iii) Holistic Approach – Language rights must be clearly entrenched in legislation and regulation, and be all encompassing.

RECOMMENDATION

That the Legislative Assembly consider amending Section 11 of the *Official Languages Act* such that, instead of defining language rights based on the concepts of “significant demand” and “nature of the office”, language rights in the area of communication with the public be based on the following principles:

- i) that some basic services should be available in any and all Official Languages, regardless of geographical area. This should include health services, mandatory registration, licensing, safety and other services that the legislators consider essential.
- ii) that other services should be available according to designated language areas that are established in regulation. As well, those services that must be provided in those designated language areas should be set out in regulation, instead of policies and guidelines. In this way, the responsibility to provide such services will be clear and binding.

Authority of the Languages Commissioner

Sections 20 through 22 of the *Official Languages Act* set out the authority of the Languages Commissioner. The Languages Commissioner can investigate complaints and initiate investigations where there are concerns that the requirements of the Act are not being met. The Languages Commissioner can then report back to the Minister and Deputy Minister of the relevant department. Should the Languages Commissioner not feel that appropriate action has been taken by the department in question, then the Languages Commissioner can report the matter to the Legislative Assembly.

As part of the review of the Act, the Legislative Assembly needs to consider the scope of the Languages Commissioner’s authority. What is important to remember is that, unlike the federal Official Languages Commissioner, there is no power on the part of the Languages Commissioner to make orders. There are some advantages to only being able to make recommendations. Recommendations can be persuasive, and can encourage leaders of the day to give thoughtful consideration to important issues, rather than having matters dictated to them. On the other hand, the experience of this Office, as already indicated in this report, is that the Legislative Assembly has not taken seriously

the recommendations made by this Office. This suggests that a more heavy handed approach may be necessary to evoke action, and perhaps the Languages Commissioner needs the power to make orders.

RECOMMENDATION

That the Legislative Assembly consider the scope of power of the Languages Commissioner as part of the review of the Act.

Official Languages Board and the Aboriginal Languages Revitalization Board

Section 28 of the Act provides for the establishment of the Official Languages Board. The Official Languages Board may review the rights and status of each of the Official Languages and their use in the administration and delivery of services by government institutions, can evaluate the effectiveness of the Act, and may advise and make recommendations to the Minister.

Section 30 of the Act provides for the establishment of the Aboriginal Languages Revitalization Board. The Aboriginal Languages Revitalization Board is to review programs and initiatives of communities, government institutions and other bodies or institutions to maintain, promote and revitalize Aboriginal languages, can evaluate the effectiveness of the Act, and make recommendations to the Minister.

When amendments were made to the Act in 2003, the Minister Responsible for Official Languages was given the task of promoting and preserving Official Languages. These two boards should be key to this task. As part of the review of the Act, it is essential to determine whether these boards have been an effective means of assisting with this responsibility.

RECOMMENDATION

That, as part of the review of the Act, the Legislative Assembly review the effectiveness of the Official Languages Board and Aboriginal Languages Revitalization Board in the promotion and protection of Official Languages.

This report outlines some areas where there needs to be serious consideration of issues with the Act. Undoubtedly, many other issues will arise during the course of the review. As such, it is essential that the Legislative Assembly consult with the various language communities to determine legislative priorities.

RECOMMENDATION

That as part of the review of the Act, the Legislative Assembly consult with the various language communities to determine legislative priorities.

Summary of Recommendations

1. That the Legislative Assembly ensure that there is an immediate report back to the Languages Commissioner on the following recommendations that have been made in previous annual reports:

That the Legislative Assembly and all government departments review their systems for providing services through 1-800 numbers. Where a person who requests services in French will be transferred to an identified individual, consideration should be given to an automated response system for the 1-800 number, allowing for an individual to choose services in English or French. This same technology should be considered for other Official Languages.

That the Government of the Northwest Territories immediately implement a plan for the training and certification of interpreters and translators.

That the Government of the Northwest Territories immediately create a registry of interpreters and translators that is available to both the public and private sector.

2. That the Legislative Assembly and the GNWT consider the implications of the *Societe des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada* case on language services in the Northwest Territories.

That the Legislative Assembly and the GNWT adopt a uniform policy in regard to the development of web sites, including the languages in which web site materials are available.

3. That the Legislative Assembly provide a written response back to the Languages Commissioner on the Special Report entitled “Speaking of Health... Official Languages as Part of Quality Health Care in the Northwest Territories”. This response should be provided in a timely fashion.
4. That the Legislative Assembly and Government of the Northwest Territories seriously consider the expansion of the role of the Service TNO Office, such that it could provide information and services, in French, in regard to all government departments and agencies, including acting as a 1-800 service for the public seeking French language services.

5. That the Legislative Assembly of the Northwest Territories clarify what is meant by paragraph six of the preamble to the *Official Languages Act*. Further, the Legislative Assembly of the Northwest Territories needs to consider the issue of language rights in the workplace. If it is decided not to include language rights in the workplace in the *Official Languages Act*, then paragraph ten of the preamble should be deleted.

6. That the Legislative Assembly review the Government Institution Regulations to ensure that they adequately reflect those government institutions that should be subject to the *Official Languages Act*.

7. That the *Official Languages Act* of the Northwest Territories be amended to include a provision that it binds all contractors with the Government of the Northwest Territories. Suggested wording is as follows:

“Every government institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of

the public in the Northwest Territories or elsewhere can communicate with and obtain services from that person or organization in any particular Official Language in any case where those services, if provided by the institution, would be required to be provided in that Official Language.”

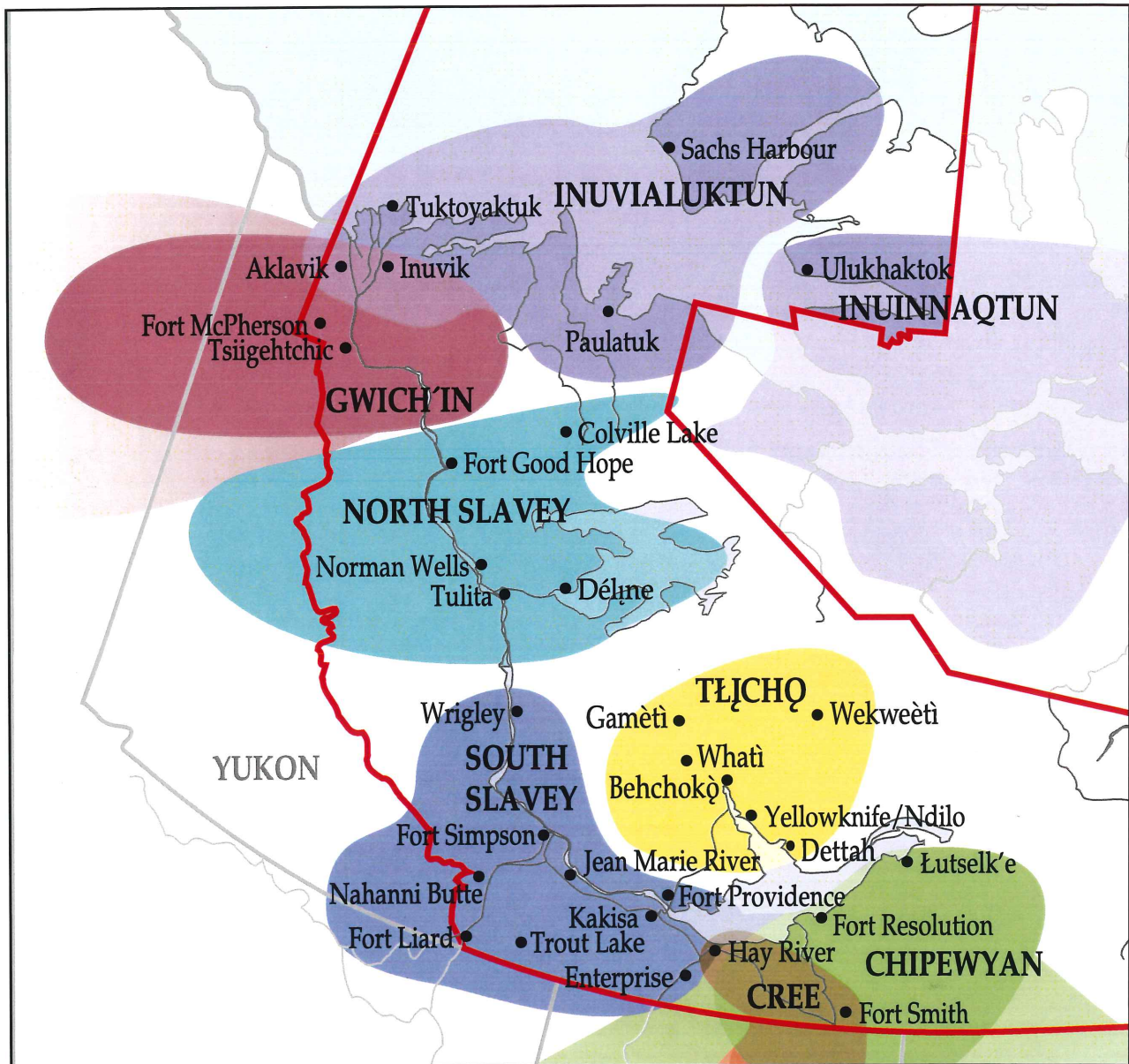
8. That the Legislative Assembly consider what languages should be considered as Official Languages and, thereby, be protected by the provisions of the *Official Languages Act*.

9. That Section 6 of the *Official Languages Act* be amended to read:

“Everyone has the right to use any Official Language in the debates and other proceedings of the Legislative Assembly, and every Member of the Legislative Assembly has the right to translation of those debates in another Official Language.”

10. That the Legislative Assembly consider amending Section 11 of the *Official Languages Act* such that, instead of defining language rights based on the concepts of “significant demand” and “nature of the office”, language rights in the area of communication with the public be based on the following principles:
 - i) that some basic services should be available in any and all Official Languages, regardless of geographical area. This should include health services, mandatory registration, licensing, safety and other services that the legislators consider essential.
 - ii) that other services should be available according to designated language areas that are established in regulation. As well, those services that must be provided in those designated language areas should also be set out in regulation, instead of policies and guidelines. In this way, the responsibility to provide such services will be clear and binding.
11. That as part of the review of the Act, the Legislative Assembly consider the scope of power of the Languages Commissioner.
12. That as part of the review of the Act, the Legislative Assembly review the effectiveness of the Official Languages Board and Aboriginal Languages Revitalization Board in the promotion and protection of Official Languages.
13. That as part of the review of the Act, the Legislative Assembly consult with the various language communities to determine legislative priorities.

Official Languages of the Northwest Territories



FRENCH is mostly spoken in Hay River, Fort Smith, Inuvik and Yellowknife.
ENGLISH is spoken throughout the Northwest Territories.
INUKTITUT is mostly spoken in Yellowknife.

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