

Standing Committee on
Government Operations



Report on the Review of the Languages Commissioner for the Northwest Territories Annual Report 2020-2021

19th Northwest Territories Legislative Assembly

Chair: Mr. Rylund Johnson

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE LANGUAGES COMMISSIONER FOR THE NORTHWEST TERRITORIES ANNUAL REPORT 2020-2021

INTRODUCTION

The Standing Committee on Government Operations (Committee) has reviewed the 2020-2021 Annual Report of the Languages Commissioner¹.

The *Official Languages Act* requires the Commissioner to prepare an annual report. The report includes information on the number of complaints filed. It can also include recommendations. The Speaker tables the report in the Legislative Assembly. Once tabled, Committee reviews the report.

As part of the review, the Languages Commissioner, Ms. Brenda Gauthier, appeared before the Committee on February 17, 2022². She delivered an excellent presentation on her 2020-2021 Annual Report. The Committee commends her work to relocate the Office of the Official Languages Commissioner to Fort Smith (Thebacha), as well as her work building relationships to understand and promote language rights. The Committee appreciated her timely and insightful comments on the ongoing statutory review of the *Official Languages Act*.

This report presents three (3) recommendations to strengthen the role of the Languages Commissioner. The Committee is pleased to submit these recommendations to the Government of the Northwest Territories (GNWT) and looks forward to their implementation.

STATUTORY REVIEW OF THE *OFFICIAL LANGUAGES ACT*

Over the past year, Committee has been working on a separate, statutory review of the *Official Languages Act*.³ The statutory review allows the Committee to examine how the *Act* is working and for the public to provide input on what could be done better.

¹ Available at: https://www.ntassembly.ca/sites/assembly/files/td_482-192.pdf.

² Available at: <https://www.youtube.com/watch?v=fF-b8CDQvU8>. The Legislative Assembly uploads video recordings of public meetings and other special events to its Youtube channel.

³ As required by Section 35 of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf#page=20>.

Unfortunately, the COVID-19 pandemic has slowed Committee's work. The Committee held public meetings in Inuvik (Inuuviik) in June 2021 and virtually in January 2022. At these meetings, stakeholders provided excellent input on how Official Languages could be better preserved, protected, and empowered to thrive. The Committee is grateful for these thoughtful contributions, which will inform the Committee's final report.

The Committee intends more travel beyond Yellowknife (Sòmbak'è) to collect feedback from speakers of other languages. This includes public hearings currently scheduled in Fort Smith (Thebacha), Kátł'odeeche First Nation, Hay River (Xátł'odehchee), and Fort Providence (Zhahti Kúé) over June 22-24, 2022.

The Committee is grateful for all stakeholders' contributions. The public's feedback will help the Committee make recommendations to strengthen all language communities in the NWT. The Committee continues to advocate for the GNWT to pass legislation to improve the *Official Languages Act* in the life of the 19th Legislative Assembly.

COMMISSIONER'S ABILITY TO GET RESPONSES

The Languages Commissioner made one (1) recommendation in her 2020-2021 Annual Report, regarding her ability to get responses. She recommended:

That the Legislative Assembly develops a formal process for responding back to the Office of [the] Languages Commissioner on recommendations presented by the Office. The process should include that the response be in writing, and that there be a specific time-line for response.

This is a long-standing recommendation. It has appeared, in the same or similar language, in each of the Languages Commissioner's past six (6) annual reports going back to 2015-16.

The *Official Languages Act* guides two ways the Languages Commissioner can make recommendations.

1. **Recommendations to the Legislative Assembly.** The Commissioner can make recommendations in an annual report on proposed changes to the *Act*. The annual report is then tabled in the Legislative Assembly and referred to a Committee. The Committee is required to review the annual report and report back within 180 days of the referral.⁴

⁴ For more information, see Section 23 of the *Official Languages Act*. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf#page=15>.

- 2. Recommendations to a public body.** The Commissioner can make recommendations to the head of a public body to take action after an investigation. The Commissioner may request a status update from the public body within a specified timeframe. The public body is not required to respond.⁵

In her appearance before the Committee, the Languages Commissioner clarified that she is primarily concerned with the response of public bodies. She explained the challenges with receiving responses from the Government to her recommendations. The Committee shares the Commissioner's concerns.

The Languages Commissioner specified three priority areas where the GNWT should be more responsive to her Office. These priority areas form the basis of Committee's recommendations to the GNWT in this report.

RECOMMENDATIONS

The Languages Commissioner stated that she finds her role to communicate with the Minister Responsible for Official Languages is "blurred". She added she is "unclear" on roles and responsibilities between herself and the Minister.

The *Official Languages Act* is silent on the relationship between the Languages Commissioner and the Minister Responsible for Official Languages.

Whereas the *Act* includes provisions that specify how the Languages Commissioner may make recommendations to Ministers and Deputy Ministers⁶ and the Legislative Assembly⁷, no such provisions exist for recommendations to the Minister Responsible for Official Languages.

Further, the *Act* requires the Minister Responsible for Official Languages to consider recommendations made by the Official Languages Board and the Aboriginal Languages Revitalization Board⁸. But the *Act* says nothing about the Minister considering recommendations from the Languages Commissioner.

Therefore, the Standing Committee on Government Operations recommends:

⁵ For more information, see Section 22 of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf#page=15>.

⁶ See Section 22(2) of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf>.

⁷ See Section 23(1) of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf>.

⁸ See Section 26(2)(a) of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf>.

Recommendation 1: That the Department of Education, Culture and Employment clarify the role of the Languages Commissioner, specifically regarding how the Languages Commissioner may bring forward concerns and recommendations to the Minister Responsible for Official Languages.

The Languages Commissioner pointed out that she lacks powers to compel the disclosure of information from public bodies in investigations. While she indicated that all departments have been cooperative with her to date, she is concerned by the lack of tools to deal with non-cooperation.

Other statutory officers have confirmed that public bodies do not always cooperate with investigations. The Information and Privacy Commissioner (IPC) highlighted the issue in his *2020-2021 Annual Report*. When the IPC conducts a review under the *Health Information Act*, section 153(2) requires the GNWT to provide requested information within 14 days. The IPC has reported that “this response time is frequently not met”⁹. The IPC’s difficulty accessing requested records undermines the public’s interest in timely, comprehensive reviews of government decisions, actions, or failures to act on access and correction requests.

Unlike the Languages Commissioner, other NWT statutory officers that conduct reviews and investigations have significant powers to compel the disclosure of requested records.

- The IPC can require the production of relevant records, within a time limit¹⁰.
- The Ombud can require a person to produce a document related to an investigation, subject to certain restrictions. The Ombud can also summon and examine under oath any person whom she believes is able to give information relevant to an investigation, subject to certain restrictions¹¹.
- The Human Rights Commission (HRC) can demand the production of documents and records that are relevant to a human rights complaint, subject to certain restrictions. If the demand is not met, the HRC can apply to the Supreme Court for an order to enforce compliance¹².

The Committee believes the Languages Commissioner should have similar powers to

⁹ Information and Privacy Commissioner (2021). *Annual Report 2020-21*. Available at https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=31.

¹⁰ See Section 153 of the *Health Information Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/health-information/health-information.a.pdf#page=90>.

¹¹ See Section 26(2) of the *Ombud Act* for the Ombud’s investigative powers, and Section 28 and 29 for restrictions on the investigative powers. Available at <https://www.justice.gov.nt.ca/en/files/legislation/ombud/ombud.a.pdf#page=16>.

¹² See Section 36 of the *Human Rights Act* for the HRC’s powers to demand information, and Section 39 for limitations on those powers. Available at <https://www.justice.gov.nt.ca/en/files/legislation/human-rights/human-rights.a.pdf#page=34>.

require the production of relevant records when she carries out an investigation. Therefore, the Standing Committee on Government Operations recommends:

Recommendation 2: That the Department of Education, Culture and Employment strengthen the Languages Commissioner’s ability to get requested information from public bodies, including time-bound requirements to respond to requests.

The Languages Commissioner highlighted that when she puts recommendations to public bodies, they are not, in fact, required to respond. The *Official Languages Act* merely allows the Languages Commissioner to request a notification of the action, if any, that the public body proposes to take to give effect to her recommendations¹³.

The Committee believes these provisions are weak. As the Languages Commissioner stated in her Annual Report: “The only power the Languages Commissioner has is to make recommendations. If recommendations are ignored, it calls into question whether the Office has any real purpose”¹⁴.

The Committee agrees with the Languages Commissioner’s concerns. Her limited authority to monitor and assess the implementation of recommendations undermines her ability to carry out her mandate, namely:

*To take all actions and measures within [her] authority [...] with a view to ensuring recognition of the rights, status and privileges of each of the Official Languages and compliance with the spirit and intent of [the Official Languages Act] in the administration of the affairs of government institutions*¹⁵.

Public bodies should face more stringent duties to respond to recommendations from the Languages Commissioner. The Standing Committee on Government Operations therefore recommends:

Recommendation 3: That the Department of Education, Culture and Employment impose time-bound requirements on public bodies to respond to recommendations from the Languages Commissioner.

CONCLUSION

¹³ See Section 22(2) of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf#page=15>.

¹⁴ Available at https://www.ntassembly.ca/sites/assembly/files/td_482-192.pdf#page=10.

¹⁵ See Section 20(1) of the *Official Languages Act*. Available at <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf#page=14>.

This concludes the Standing Committee on Government Operations' *Report on the Review of the Languages Commissioner for the Northwest Territories Annual Report 2020-2021*. The Committee looks forward to the Government's response to these recommendations.

Recommendation 4: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a response to this report within 120 days.