



17th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the 2014 Review of
the *Official Languages Act*

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**STANDING COMMITTEE ON
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*OFFICIAL LANGUAGES ACT***

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**STANDING COMMITTEE ON
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**REPORT ON THE 2014 REVIEW OF THE
*OFFICIAL LANGUAGES ACT***

INTRODUCTION

The Standing Committee on Government Operations (“the Standing Committee” or “SCOGO”) is pleased to report on its 2014 Review of the *Official Languages Act*.

THE *OFFICIAL LANGUAGES ACT* – A BRIEF HISTORY

In June 1984, the Legislative Assembly of the Northwest Territories (NWT) passed its first *Official Languages Ordinance*. Modeled on federal official languages legislation, the territorial legislation guaranteed that members of the public could access government programs and services equally, in either French or English.

Additionally, the ordinance identified Chipewyan, Cree, Dogrib, Loucheux (Gwich’in), North Slavey, South Slavey and Inuktitut as the official aboriginal languages of the Northwest Territories. The ordinance provided that regulations could be used to prescribe the use of an aboriginal language for any and all of the official purposes of the Territories; this included prescribing the circumstances under which an aboriginal language may or shall be used and declaring an area to be one in which the regulations apply with respect to the use of an aboriginal language.

In 1985, the Official Languages Ordinance became the *Official Languages Act of the Northwest Territories*.

In 1989, a Special Committee on Aboriginal Languages was established as recommended by the NWT Task Force on Aboriginal Languages. The Special Committee Report, dated April 1990, included draft amendments to the *Official Languages Act* that, with some modifications, were passed into law in 1990.

As a result of the 1990 amendments, in addition to English and French, the *Act* recognized Chipewyan, Cree, Gwich’in, Inuktitut (which was specified to include Inuinnaqtun and Inuvialuktun), Slavey (which was specified as North Slavey and South Slavey) and Dogrib (now known as Tłıchǰ) as official languages of the

Northwest Territories. The aboriginal languages were given equal status within all institutions of the Legislative Assembly and the Government of the Northwest Territories, as defined in the *Act* and any subsequent regulations. In addition, the *Act* was amended to establish the Office of the Languages Commissioner.

PAST REVIEWS OF THE *OFFICIAL LANGUAGES ACT*

In 2000, a Special Committee on the Review of the *Official Languages Act* (SCROLA) was established by the Legislative Assembly to undertake a comprehensive review of the *Official Languages Act*.

As a result of this review, the 14th Legislative Assembly amended the *Act* in 2003, clearly identifying Chipewyan, Cree, English, French, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ as the official languages of the Northwest Territories. These amendments changed the roles of the Minister Responsible for Official Languages and the Languages Commissioner and established the Official Languages Board and the Aboriginal Languages Revitalization Board.

Section 35 (1) of the *Official Languages Act*, as amended in 2003, obligated a committee of the Legislative Assembly to review the provisions and operation of the *Official Languages Act* at the next session following December 31, 2007.

That review culminated in a report by the Standing Committee on Government Operations of the 16th Legislative Assembly entitled "Final Report on the Review of the *Official Languages Act* 2008-2009 – Reality Check: Securing a Future for the Official Languages of the Northwest Territories" ("the 2009 Report"). The response of the GNWT to that report is a matter of great concern for the current Standing Committee and will be addressed in this report.

THE COMMITTEE'S MANDATE

The mandate for the Standing Committee's review of the *Official Languages Act* comes from the *Act* itself. Section 35(2) mandates that the review shall include an examination of the administration and implementation of the *Act*, the effectiveness of its provisions, the achievement of the objectives stated in its preamble, and may include any recommendations for changes to the *Act*. Simply put, the Committee is obligated to examine program management and delivery, the strength of the legislative and policy framework and how effectively the roles defined in legislation are contributing to achieving the vision articulated in the preamble to the *Act*.

Section 35(1) requires that a review of the *Act* be undertaken in five-year intervals following the December 31, 2007 date. Accordingly, a review of the *Act* should have started in early 2013. Due to mitigating circumstances, the current review did not take place until 2014.

THE COMMITTEE'S APPROACH TO THE REVIEW

Although the *Act* prescribes what the Standing Committee must consider under the review, it allows great latitude for the Committee to determine how the review will be undertaken.

Previous reviews have focused largely on the management and delivery of official languages programs and services. In the 2009 review, the 16th Assembly's Standing Committee on Government Operations chose to focus on the following areas: strengthening legislation and policy; improvement of management and accountability; effective and adequate financing; enhancing service delivery; building human resource capacity; supporting research and development for official languages; increasing and improving aboriginal languages education and promoting official languages. This approach resulted in an exhaustive review of the Department of Education, Culture and Employment's (ECE) official languages program management and delivery, which resulted in over 70 recommendations and sub-recommendations for improvement.

In designing the 2014 review, the Committee was cognizant of the massive amount of work that went into the 2009 review. This review spanned two years and involved extensive travel, consultation and expense. The Committee did not want to duplicate the efforts of the previous Standing Committee by doing another review of the same magnitude, particularly in light of what the Committee views as an inadequate response from the GNWT to the previous review.

The Committee was also aware that the Department conducted not one, but two, language symposia, involving the key language stakeholders in the Northwest Territories, in the period since the 2009 review. The Committee was, therefore, concerned about consultation fatigue in the language communities.

The Committee also felt that the timing of such an expansive consultation was not optimal. When the Committee began its review, ECE was in the process of establishing an Aboriginal Languages Secretariat. The Committee saw little advantage in consulting with the aboriginal languages communities before the completion of this initiative.

Instead, the Committee chose to pick up where the 2009 review left off and build upon the work of the previous Committee by ensuring accountability for the work

that was previously done. The Committee conducted in-depth assessment of the work done by ECE in response to the 2009 Report and held an *in camera* briefing with the Honourable Jackson Lafferty, Minister of Education, Culture and Employment and his officials regarding the Committee review of the *Official Languages Act*.

THE REVIEW

The Committee began its review with an exhaustive examination of previous Committee reports and briefing materials related to the management and delivery of official languages programming.

The GNWT's Response to the 2009 Review

The Committee examined the GNWT's "Response to the Standing Committee on Government Operations Review of the *Official Languages Act*" ("the 2009 Response"), tabled October 5, 2009. The Committee was troubled by the tone of the response and the lack of commitment by the Department to follow up with the Standing Committee regarding progress on implementing the recommendations made in the report.

The Committee found the following statement in the Government's response to be very telling of the Department's attitude towards the work of the 16th Assembly's Standing Committee:

"The Government of the Northwest Territories is not providing a detailed response to each recommendation at this time to ensure that we do not bias the development of the Official Languages Strategy and implementation plans that will involve on-going engagement and consultation with language communities and practitioners."

The Standing Committee wishes to point out that the very language communities and practitioners referred to by the Department were essentially the same groups consulted in the development of the Standing Committee's report. The suggestion that consideration of the Committee's recommendations might "bias" the work of the Department reveals a stunning lack of respect for months of work by the 16th Assembly's Standing Committee on Government Operations and for the stakeholders consulted. The recommendations of the 16th Assembly's Standing Committee should have served as a tool to inform the development of the promised Official Languages Strategy, not be viewed as something that would detract from it.

The Committee reminds the Department that the recommendations contained in the 2009 Report, as well as those in this report, flow from a review process that is mandated by law. The Department has an obligation to consider these recommendations fully and fairly and to respond in good faith.

In its 2009 Response, the GNWT committed to table a full response to the 2009 report in the fall 2010 session, yet this commitment was not met. The Department further noted that, although detailed responses to the Standing Committee's recommendations would not be ready for inclusion in the October 2009 Report on Official Languages, updates would be included in subsequent annual reports.

When the Department tabled its "Annual Report on Official Languages 2010-2011", on December 15, 2011, the Standing Committee took note of the fact that it did not contain a progress report on the recommendations arising from the 2009 Review. The Chair of the Standing Committee wrote to Minister Lafferty to point out this oversight.

The Standing Committee was assured that future annual reports would contain updates on the various recommendations arising from the 2009 Review. Since that time, Annual Reports on Official Languages for 2011-2012, 2012-2013 and 2013-2014 have been tabled and none has contained any references to the recommendations arising from the 2009 Review or how they may have shaped the model for official languages program and service delivery that the Department is implementing.

The Committee did, ultimately, receive two detailed progress reports which were provided by the Department at the request of the Committee Chair in preparation for meetings between the Minister and the Standing Committee. These reports, dated May 2012 and April 2014, were not tabled by the Department and are therefore not available to the public.

The Department's "New Approach"

Since the 2009 Review, the Department has done a great deal of work to restructure the delivery of official languages programs and services in the Northwest Territories. The Minister has referred to this as the Department's "new approach."

In the absence of a final response from ECE to the 2009 review, the Standing Committee has struggled to reconcile the direction that ECE has taken with this "new approach," with the vision outlined in the Standing Committee's 2009 Report, which was based on the development of an official languages services model and a separate and distinct aboriginal languages protection regime.

It might have been the Department's intention, at one point in time, to outline its new approach in the "Official Languages Strategy" promised in the 2009 Response, but it does not appear that such a strategy was ever tabled. This strategy is the missing link that might have bridged the communications gap between the recommendations contained in the 2009 report and the French and Aboriginal Languages Plans that were finally produced.

In October 2010, ECE did table a document titled "Northwest Territories Aboriginal Languages Plan: A Shared Responsibility." This appears to have formed the basis of the Department's "new approach" which involved the establishment of an Aboriginal Languages Secretariat – which was under development at the time this review commenced – and the transfer of funding directly to Aboriginal Language Communities. This funding approach is apparently intended to allow the aboriginal language communities to implement their own priorities, as identified in a series of language plans developed with the assistance of the department.

The tabling of the "NWT Aboriginal Languages Plan: A Shared Responsibility" seems to have been complemented by the "Strategic Plan on French Language Communications and Services", which was tabled in the Legislative Assembly in October 2012. ECE officially opened the Secretariat for Francophone Affairs in Yellowknife on April 3, 2012.

In the "NWT Aboriginal Languages Plan: A Shared Responsibility," under the strategy of "enhanced organizational support for language activities," the Department noted the need for changes to the legislation to support the strategy and also acknowledged (p. 64) that legislative change was called for by the Legislative Assembly in the Standing Committee's 2009 Review. The report also confirmed the Government's intention to eliminate the Official Languages Board.

The Department did bring forward a legislative proposal in June 2011 for *An Act to Amend the Official Languages Act (OLA)*. In it, the transitional recommendations for changes to the *Official Languages Act* contained in the 2009 Report are referenced in support of the legislative changes being proposed. However, the Department only brought forward a specific component of the transitional recommendations, citing the priorities established in the "Northwest Territories Aboriginal Languages Plan: A Shared Responsibility" as the reason for doing so.

In August 2011, the Standing Committee on Social Programs reviewed the legislative proposal and advised that the Bill should address all of the legislative amendments contained in the transitional recommendations of the 2009 Report.

The Standing Committee was, therefore, of the view that changes to the *Official Languages Act* should contain the transitional recommendations on the Languages Commissioner, in addition to those referring to the Official Languages Board and the Aboriginal Languages Revitalization Board.

No further progress was made on changes to the legislation which, consequently, remains unchanged since 2004.

Following the order of the Supreme Court of the NWT, the GNWT and the Fédération franco-ténoise established a Comprehensive Plan Consultation and Co-operation Committee in 2010 to facilitate consultation on a strategic plan for the provision of French language communications and services under the *Official Languages Act*. It is the understanding of the Standing Committee that the participation of French language community representatives on this committee supercedes, by mutual agreement, the participation of the French representatives on the Official Languages Board and that it follows the withdrawal of the Fédération franco-ténoise from the Official Languages Board in 2006.

New members were appointed to the Official Languages Board and the Aboriginal Languages Revitalization Board in March and April 2010. Contrary to the requirements of the existing *Official Languages Act* and the requirements of the regulations for both the Official Languages Board and the Aboriginal Languages Revitalization Board, English, French and Inuktitut language communities were not represented.

FINDINGS AND RECOMMENDATIONS

The Standing Committee is deeply concerned by the attitude of disregard displayed by the Department with respect to the 2009 Review and hopes that future reviews of the *Official Languages Act* will be received respectfully and treated more seriously.

- A. The failure of the Department of Education, Culture and Employment to provide a final, public response to the 2009 Report had the following impacts:
1. The Department did not articulate which parts of the 2009 Report it agreed with and was prepared to implement, nor provide any rationale for those recommendations it rejected;
 2. The Department, without adequate rationale or substantiation to the Standing Committee, implemented a model for official

languages programs and services that differs from the one proposed in the 2009 Report; and

3. With the exception of the Department's initial response to the 2009 Review, none of the information provided by the Department in response to the review is in the public domain.

As a result, the Department failed to be accountable to the Standing Committee, which has a legitimate mandate for oversight, or to the public which has a significant interest in and right to know what factors are influencing official languages policymaking and programming.

Another unfortunate outcome of the lack of response to the 2009 Report is that it has strained the Department's relationship with the Standing Committee and overshadowed the fact that the Department has done a lot of work and made a good deal of progress on official languages. The Standing Committee wants to emphasize that the criticism directed at the Department in this report has more to do with the casual treatment of the Standing Committee's role and mandate than with much of the actual work being done by the Department.

- B. Nonetheless, the Standing Committee is deeply troubled by the Department's apparent lack of concern for the fact that it is operating the Official Languages Board and the Aboriginal Languages Revitalization Board in contravention of its own legislation. The department has created a de-facto Aboriginal Languages Revitalization Board, similar to the one contemplated in the "Northwest Territories Aboriginal Languages Plan: A Shared Responsibility", by tailoring the membership on the existing board to align with the "new approach." This was done as a matter of expediency, which may have served the purpose of meeting immediate needs, but is not a defense against the need to ensure that the legislation is current. Given the fact that the FFT withdrew from the Official Languages Board in 2006, the Department has had more than ample time to amend the legislation. The legislation should ultimately be dictating the structure and function of official languages program service and delivery, not the other way around.
- C. The Standing Committee is also concerned about the funding model for the delivery of aboriginal language revitalization. The Standing Committee supports the aspirations of the language communities, but has concerns about accountability, particularly in the event that goals established by the language communities are not met within the funding

provided. The Standing Committee will be looking to ensure that the Department establishes an appropriate monitoring and accountability framework.

In concluding its report, the Standing Committee on Government Operations makes the following recommendations:

Recommendation 1

The Standing Committee on Government Operations recommends that the Department of Education, Culture and Employment table an Official Languages Strategy, that includes a clear response to the 2009 Review, identifying which recommendations were accepted and rejected and the reasons why. This report must clearly articulate the vision for the Department's "new approach" and identify how this coincides with and differs from the vision contained in the 2009 Report.

With respect to this recommendation, the Committee notes that a good deal of this analytical work has already been done by the Department, but because it takes place in confidential updates and correspondence from the Minister, it is not available for public review as it should be.

Recommendation 2

The Standing Committee on Government Operations recommends that the Department of Education, Culture and Employment work closely with the Standing Committee to revise and bring forward its legislative proposal for amendments to the *Official Languages Act* in the life of this Assembly. If the Department has received any legal opinions related to the issue of federal concurrence with changes to the NWT's *Official Languages Act*, this information should be shared in confidence with the Standing Committee, so that the Department and Standing Committee are working with a shared understanding of the factors affecting legislative change.

Recommendation 3

The Standing Committee on Government Operations recommends that the Department of Education, Culture and Employment establish an accountability framework for the funding provided to aboriginal language communities under the “new approach” and provide the Standing Committee with progress reports and a copy of the framework when completed.

Recommendation 4

The Standing Committee on Government Operations recommends that the Department of Education, Culture and Employment respond to this report within 120 days.

