Chapter 14: Northwest Territories

LAST UPDATE: AUGUST 2017

Northwest Territories – Main Language Laws

Official Languages Act, R.S.N.W.T. 1988, c. O-1

Recognizing that the existence of Aboriginal peoples, centred in the Northwest Territories from time immemorial, but also present elsewhere in Canada, constitutes a fundamental characteristic of Canada;

Recognizing that the existence of Aboriginal peoples, speaking Aboriginal languages constitutes the Northwest Territories a distinct society within Canada;

Recognizing that many languages are spoken and used by the people of the Northwest Territories;

Being committed to the preservation, development and enhancement of the Aboriginal languages;

Recognizing that the Aboriginal languages, being the languages of the Aboriginal peoples of the Northwest Territories, should be given recognition in law;

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 or any of the official purposes of the Northwest Territories at the time and in the manner that is appropriate;

Expressing the wish that the Aboriginal languages will be entrenched in the Constitution of Canada as Official Languages of the Northwest Territories;

Desiring to establish English and French as Official Languages of the Northwest Territories having equality of status and equal rights and privileges as Official Languages;

Believing that the legal protection of languages will assist in preserving the culture of the people as expressed through their language;

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 Government of the Northwest Territories, with due regard to the principle of selection of personnel according to merit;

Believing that preserving the use of Official Languages, and enhancing those languages, is a shared responsibility of language communities, the Legislative Assembly and the Government of the Northwest Territories;

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

R.S.N.W.T. 1988, c.56 (Supp.),s.2,21; S.N.W.T. 2003,c.23,s.2.

ANNOTATIONS – GENERAL

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

E. Language rights in the Northwest Territories

[49] The parties have acknowledged in their proceedings — unfortunately, the appeal books contain nothing on this — that in May 1984, the Government of Canada tabled a bill, Bill C-26, to amend the *Northwest Territories Act* to install a regime of legislative and judicial bilingualism in the Territories. Faced with opposition from the territorial government, the Canadian government abandoned Bill C-26, but only after signing the following agreement with the Government of the Territories: in return for the territorial government's firm undertaking to have the Commissioner in Council adopt an ordinance on official languages guaranteeing the provision of French-language services by the Government of the Territories, the federal government undertook to fund the costs associated with such provision.

[50] In 1984, in the wake of this agreement, the Commissioner of the Territories, on the advice and with the consent of the Legislative Assembly, enacted the *Official Languages Act*, S.N.W.T. 1984(2), c. 2.

[51] In 1988, the Parliament of Canada adopted the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.). Under section 98 of that *Act*, the *Northwest Territories Act* was amended through the insertion of Part II.1, entitled "Official Languages" and including sections 43.1 and 43.2:

43.1 Subject to section 43.2, the ordinance entitled the *Official Languages Act*, made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986, may be amended or repealed by the Commissioner in Council only if the amendment or repeal is concurred in by Parliament through an amendment to this Act.	43.1 Sous réserve de l'article 43.2, le commissaire en conseil ne peut modifier ou abroger l'ordonnance sur les langues officielles prise par lui le 28 juin 1984, et modifiée le 26 juin 1986, que si le Parlement donne son agrément à cet effet par voie de modification de la présente loi.
43.2 Nothing in this Part shall be construed as preventing the Commissioner, the Commissioner in Council or the Government of the Territories from granting rights in respect of, or providing services in, English and French or any languages of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in section 43.1, whether by amending the ordinance, without the concurrence of Parliament, or by any other means.	43.2 La présente partie n'a pas pour effet d'empêcher le commissaire, le commissaire en conseil ou le gouvernement des territoires d'accorder des droits à l'égard du français et de l'anglais ou des langues des peuples autochtones du Canada ou de fournir des services dans ces langues, en plus des droit et services prévus par l'ordonnance mentionnée à l'article 43.1, que ce soit par modification de celle-ci, sans le concours du Parlement ou par tout autre moyen.

[52] At the same time, subsection 3(1) of the 1988 *Official Languages Act* excluded "any institution of the Council or government of the Northwest Territories" from the "federal institutions" to which it was to apply (see *supra*, para. 26).

[…]

[55] Counsel for the Franco-ténois informed the Court, at the hearing, that the 1988 amendments to the Territories' *Official Languages Act* were not ratified by the Parliament of Canada and, he said, did not need such ratification because they were considered an enhancement of the existing provisions. Section 43.2 of the *Northwest Territories Act* (*supra*, para. 51) provides, in fact, that the Commissioner, the Commissioner in Council or the Government of the Territories may grant rights or provide additional services "without the concurrence of Parliament". I need not determine here whether counsel is right in thinking that these amendments could be made without the concurrence of Parliament.

[…]

[74] Furthermore, there exists in the Territories a superior court capable of ensuring the lawfulness of the actions taken by the Government of the Territories just as there are in the provinces superior courts capable of ensuring the lawfulness of the actions taken by the provincial governments. The Federal Court would betray its vocation as an "additional court for the better administration of the laws of Canada" (to paraphrase section 101 of the *Constitution Act, 1867*) if it were to be so bold as to review the implementation of the laws in the Territories. I note that in language rights matters, the Territories' *Official Languages Act*, an ordinance that has not been disallowed by the Governor in Council, has established the office of the Languages Commissioner and expressly allowed this official to apply to the Supreme Court of the Territories in order to enforce the language rights in the Territories. Thus there exists, for the Territories, the equivalent of what exists federally, with this difference that at the federal level it is the Commissioner of Official Languages of Canada and the Federal Court of Canada that oversee compliance with Canada's official languages policy. Here again, there is a symmetry in the administration of justice that appears to me to have been the intention of both Parliament and the Legislative Assembly of the Territories.

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

I. INTRODUCTION

[1] This appeal and cross-appeal concern the scope of French language rights in the Northwest Territories ("NWT") arising from the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1 ("*OLA*"). This case presents the first occasion for judicial interpretation of the *OLA* and raises important issues about the nature and extent of such rights.

[…]

[11] There are seven distinct Aboriginal regions in the NWT and nine official Aboriginal languages under the *OLA*. As of 1991, 8.7% of the population indicated that they neither spoke nor understood French or English.

[…]

[14] In March 1984 the GOC tabled Bill C-26. Its intent was to amend the *NWTA* [*Northwest Territories Act*] so as to insert provisions equivalent to ss. 16-20 of the Charter; make the federal *Official Languages Act* of 1968-69 applicable in the NWT; and establish a four-year deadline for the translation of territorial laws and regulations into French. It stated that French and English were the official languages of the NWT and had equal status, rights and privileges as to their use in the institutions of the NWT Council and the GNWT.

[15] Bill C-26 was poorly-received in the NWT, where it was perceived as infringing on territorial jurisdiction at a time when the GNWT was seeking increased autonomy from the GOC. On the other hand, the Executive Council of the GNWT saw the issue as a chance to promote Aboriginal languages and to obtain additional federal funding to that end. Negotiations between the two governments ensued, leading to an agreement on June 28, 1984. Under the agreement, Bill C-26

would not go beyond second reading in the House of Commons; the GNWT would adopt its own official languages law to reflect ss. 16-20 of the Charter; the GOC would assume, in perpetuity, the costs of providing French language services to the public in the NWT and implementing French as an official language in the NWT; and the *NWTA* would be amended so that the *OLA* could be amended only with the consent of Parliament.

[16] The same day, the *Official Languages Ordinance*, O.N.W.T., 1984(2), c. 2 was proclaimed. It became the *OLA* in 1988. This legislation required the laws of the NWT to be printed and published in both French and English; stated that new laws would be of no force and effect if not published in both languages by January 1, 1987; and stated that previous laws would be of no force and effect unless printed and published in both languages by January 1, 1988.

[17] Annual agreements were reached between the two levels of government concerning the implementation costs of the *OLA*. In 1988, Parliament tabled Bill C-72, which amended the federal *Official Languages Act* of 1968-69 in order to comply with ss. 16-20 of the *Charter* (*Official Languages Act*, R.C.S. 1985, c. 31 (4th Supp.) ("*OLAC*")). Bill C-72 also contained amendments to the *NWTA* to prevent diminution of language rights in the NWT without Parliament's consent.

[18] The trial judge summarized this history as follows:

> [94] It is clear from this historical overview of language rights in the NWT, that the *OLA* NWT is the result of a delicate political compromise: (i) it was adopted to resolve the uncertainty surrounding the status of official bilingualism in the NWT; (ii) its background attests to the federal commitment to promote respect for official language rights throughout the country; (iii) through its entrenchment, its provisions were sheltered from unilateral attack by a majority of the Assembly; (iv) its adoption as law in the NWT respected local concerns about the legislative autonomy of the NWT; and (v) the NWT used it as an opportunity to preserve and promote Aboriginal languages through Territorial legislative measures and a federal funding commitment.

[19] There were a number of delays in implementing the *OLA*. The deadlines for publishing new and existing laws in both official languages, as well as for providing services to the public and using both languages before the courts in the NWT, were extended several times. The last extension granted was to April 1, 1992.

[20] Between 1984 and 2004, there were many studies conducted, reports written and committees formed to deal with the implementation of the *OLA*, including estimates of the resulting costs. The trial judge reviewed these initiatives at paras. 156-266.

[…]

[24] Notwithstanding the 1987 recommendations of the Report, little was done by the GNWT to efficiently implement the *OLA*. Numerous studies and reports reveal the absence of a global plan, the chronic lack of long-term planning by the GNWT resulting in the lapsing of funds, and a lack of standards regarding services in French.

[…]

[30] The trial judge summarized the history and deficiencies in the implementation process, as follows:

> [266] Having considered the evidence regarding implementation of the OLA NWT, I make the following observations:
>
> 1. Distance, isolation, climate and dispersion of communities are challenges to be faced in the provision of government services and communications in the NWT. As well, the GNWT faces economic and social challenges and challenges of governance.

2. Published in 1987, the Bastarache Report presents an overall plan for the implementation of the *OLA* NWT. It analyzes the GNWT's obligations under the regime of the *OLA* NWT in relation to: the legislative process, the judicial system and the public service. The author recommends the establishment of a centralized information centre in order to provide direct access to government services in French, as well as the creation of bilingual positions. However, the GNWT has favoured a decentralized approach to the implementation of services in French within the government. Its implementation of the report was "very partial".

3. The New Economy Study (the evaluation of the 1991-1994 Canada-NWT cooperation agreement) noted that the demand for services increased when their existence was known. The study also deplored the lack of standards concerning services in French.

4. NWT LC [*Languages Commissioner of the NWT*] Harnum's annual reports indicate that, over the years, funds from the cooperation agreements have been repeatedly returned to the federal government. Ms. Harnum recommended that the GNWT clarify: (i) through regulation, the application of the *OLA* NWT to government organizations; (ii) the application of the *OLA* NWT to private suppliers of government services, and (iii) the definition of the terms "significant demand" and "nature of the office". Ms. Harnum recommended that the GNWT develop a framework for implementing the *OLA* NWT in its departments, boards and agencies.

5. The problem of lapsed funding had repercussions on the funding of GNWT services and communications. It contributed to a significant reduction of federal financing starting in 1994-1995. The lapsing of funds resulted, in particular, from a chronic lack of long term planning.

6. The Lutra Report, published in 1996, noted the following shortcomings: (i) the absence of guidelines for expenditures relating to official languages; (ii) the absence of an overall evaluation of official language needs, and (iii) the absence of a global plan for the implementation of the cooperation agreement, and corresponding deficiencies in the use of available resources. The report also recommended that the GNWT work in cooperation with the NWT Francophone community.

7. Prior to September 1997, no policy or guidelines had been issued to clarify the application of the *OLA* NWT. This situation continued despite the following: (i) the development of guidelines by the GNWT was contemplated in the context of the negotiations for the 1991-1992 cooperation agreement; (ii) the need to clarify the application of the *OLA* NWT had been stated in the NWT LC's 1992-1993, 1993-1994 and 1994-1995 annual reports. One of the stated goals of the PG was to ensure "reasonable access" by the public to government services and programs in the official languages. The PG perpetuated the decentralized approach to the extent that individual departments and agencies were given responsibility for provision of programs and services in French, in particular the translation of forms. At the same time, the responsibility for the implementation of the *OLA* NWT was removed from the government's central authority (Department of the Executive) and entrusted by the GNWT to the DECE [Department of Education, Culture and Employment].

8. Reiterating the theme of the reports of the previous NWT LC, the 1996-1997 report of NWT LC Tutcho recommended that the GNWT develop a plan for promoting official languages and an overall accountability framework that would guide authorities at every level of government regarding language issues.

9. The March 1999 forum reiterated a recommendation made 12 years earlier in the Bastarache Report that the GNWT establish a central documentation and reference service in French, along with a 1-800 number. The forum also reiterated the recommendation from NWT LC Harnum's 1992-1993 report that GNWT employees receive language rights training. In keeping with the call in the 1996 Lutra Report for closer cooperation between the GNWT and the NWT Francophone community concerning the cooperation agreements, the forum recommended setting up a cooperation committee.

10. In her 2000-2001 report, NWT LC Tatti reiterated certain earlier observations of Ms. Harnum to the effect that some officials were not familiar with the *OLA* NWT. NWT LC Tatti recommended for that reason that the departments of the GNWT offer workshops to their staff regarding the *OLA* NWT. Further, echoing the words of her two predecessors, NWT LC Tatti recommended that the government implement an action plan for official languages.

11. In its final report published in March 2003, the Special Committee for the Review of the *OLA* NWT concluded that the implementation of the *OLA* NWT was undermined by significant shortfalls in political and managerial accountability. The provision of programs and services in the official languages generally lacked coordination, or was inadequately coordinated. The Committee recommended: the adoption of regulations and a formal implementation plan for official languages, in order to reinforce the principle of accountability within departments and to clarify policies applicable to all interested parties; the implementation in all government departments and organizations of an adequate "active offer" and a verification system to monitor it; and the implementation of a one-stop pilot project.

12. The Terriplan Study, published in March 2004, noted that funding levels and priorities must reflect the short term needs of the communities and be informed by a longer term vision for the communities.

[…]

[60] Official languages statutes are quasi-constitutional and are to be given a broad purposive interpretation to achieve the goal of fostering official languages: See, for example, *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, 173 D.L.R. (4th) 193 ("*Beaulac*"); *Jones v. Att. Gen. of New Brunswick et al.*, 1974 CanLII 164 (SCC), [1975] 2 S.C.R. 182, 7 N.B.R. (2d) 526; *Att. Gen. of Quebec v. Blaikie et al.*, [1979] 2 S.C.R. 1016, 101 D.L.R. (3d) 394; *A.G. (Quebec) v. Blaikie et al.*, 1981 CanLII 14 (SCC), [1981] 1 S.C.R. 312, 123 D.L.R. (3d) 15; *Reference re: Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721, 35 Man. R. (2d) 83 ("*Manitoba Language Rights Reference*"); *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, 54 D.L.R. (4th) 577. Since such statutes mirror parts of the *Charter*, its interpretational principles are also relevant: *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII), [2002] 2 S.C.R. 773 at para. 23. *Charter* rights are to be given a broad and generous interpretation so as to enhance and preserve the underlying rights: *Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145 at 156, 55 A.R. 291; *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295 at 344, 60 A.R. 161; *United States of America v. Cotroni*, 1989 CanLII 106 (SCC), [1989] 1 S.C.R. 1469 at 1480, 48 C.C.C. (3d) 193. Further support for this approach is found in s. 10 of the *Interpretation Act*, R.S.N.W.T. 1988, c. I-8 ("*Interpretation Act* NWT"), which states that all enactments are to be construed as remedial and are to be given fair, large and liberal construction and interpretation.

[61] The trial judge correctly concluded that the *OLA* is a quasi-constitutional statute and should be interpreted as such. However, the broad and purposive approach applied to the interpretation of Charter rights should not override the specific words of a statute, which might limit remedies and should be afforded their ordinary meaning. As an interpretive tool, "*Charter* values" are limited to "circumstances of genuine ambiguity, *i.e.*, where a statutory provision is subject to differing, but equally plausible, interpretations": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559 at para. 62; also see *Charlebois v. Saint John (City)*, 2005 SCC 74 (CanLII), [2005] 3 S.C.R. 563 at para. 23.

[…]

[123] As discussed at para. 60, official language statutes are interpreted by using *Charter* principles. The underlying principle is the protection of minorities: see *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 2001 CanLII 21164 (ON CA), 56 O.R. (3d) 505, 208 D.L.R. (4th) 577 at para. 125 (C.A.) ("*Lalonde*") and *Kilrich Industries Ltd. v.*

Halotier, 2007 YKCA 12 (CanLII), 161 C.R.R. (2d) 331 at para. 53 ("*Halotier*"). The trial judge applied principles from language rights jurisprudence, especially *Beaulac* where the Supreme Court confirmed, at para. 22, that substantive equality is the correct norm. We agree with the COLC that substantive equality is the result envisaged by the legislature in enacting s. 16 of the *Charter* and ss. 4 and 5 of the *OLA*. Accordingly, the trial judge's use of the expression "obligations of result", was appropriate and supported by *Beaulac*.

[…]

[326] The *OLA*'s status is higher than that of other legislation. As discussed at para. 60, it is quasi-constitutional in nature and must be interpreted in accordance with principles used to interpret the *Charter*. That is precisely what the trial judge did.

Giroux v. Yellowknife Housing Authority, 2014 NWTSC 77 (CanLII)

[21] Regarding disbursements, the YHA [Yellowknife Housing Authority] is claiming $1,249.30. Most of this amount relates to the travelling and living expenses of the senior counsel on the case, who does not reside in the Northwest Territories.

[22] The eligibility of this type of disbursement is governed by Subrule 648(4), which reads as follows:

> 648. . . .
>
> (4) The proper travelling and living expenses of a solicitor who does not reside in the Northwest Territories are recoverable under subrule (3) only where, in the opinion of the Court,
>
> (a) the expertise required to perform the particular service was not available from those solicitors resident in the Territories; or
>
> (b) conflicts of interest prevented solicitors resident in the Territories from acting in the matter.
>
> […]

[…]

[25] According to the YHA, it was impossible to retain resident counsel to represent it, because the appeal involved the application of the *Canadian Charter of Rights and Freedoms* (the *Charter*) and had to be conducted in French. The YHA argues that, in order to retain a solicitor who had *Charter* expertise and was able to argue in French, it had to hire a solicitor from outside the Territory.

[26] The fact that a dispute raises *Charter* issues is not exceptional and cannot, on its own, justify retaining non-resident counsel.

[27] I recognize that the language in which the appeal had to proceed necessarily restricted the pool of solicitors able to take on this case. The number of French-speaking counsel who practice law in the Northwest Territories is certainly limited. The fact remains, however, that some of the members of the Law Society of the Northwest Territories who reside in this jurisdiction do speak French.

[28] The YHA did not present any evidence about its efforts to attempt to retain the services of a resident solicitor to represent it in this appeal. The lack of evidence establishing the need for retaining counsel from outside the jurisdiction is one of the factors that a court can consider when this type of claim if presented. *Nielsen v. Nielsen*, supra, at Paragraphs 55 and 56. I do not think

that it is appropriate for the Court to assume that no French-speaking solicitor in the Northwest Territories would have been qualified to represent the YHA.

[29] This aspect of the YHA's claim also raises a broader issue concerning the application of rule 648(4)(a). An overly broad interpretation of this Rule could become a deterrent for individuals wishing to assert their right to use French in any proceeding before the Court, as they are entitled to pursuant to Subsection 9(1) of the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1.

[30] It seems contrary to the spirit of that *Act* to impose financial consequences on those who choose to exercise the rights it protects, especially as the preamble of the *Act* expresses, among other things, the desire "to establish English and French as Official Languages of the Northwest Territories having equality of status and equal rights and privileges as Official Languages".

Nunavut (Minister of the Environment) v. WSCC, 2013 NUCJ 11 (CanLII)

[23] Laws may be constitutional, quasi-constitutional, or of general application. The paramountcy of legislation may be determined by reference to, amongst other things, its characterization as constitutional, quasi-constitutional, or of general application. Each type or level of legislation is subject to somewhat different rules of interpretation.

[24] Quasi-constitutional legislation is paramount to laws of general application. Any exemption to the application of quasi-constitutional legislation must be explicit and narrowly interpreted.

[25] Quasi-constitutional legislation is identified by canvassing the jurisprudence or by reading the legislation in question. Some legislation, such as human rights legislation, has long been identified by the courts as being quasi-constitutional in nature. On occasion, the legislation in question may state that it is quasi-constitutional in nature. Such is the case with the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1, as duplicated for Nunavut by s.29 of the *Nunavut Act*, S.C. 1993, c.28, and the *Inuit Language Protection Act*, S.Nu. 2008, c.17.

Interpretation

1. Definitions

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; (*institution gouvernementale*)

"Minister" means the Minister responsible for Official Languages; (*ministre*)

"Official Languages" means the languages referred to in section 4. (*langues officielles*)

R.S.N.W.T. 1988, c.56 (Supp.), s.3; c.125 (Supp.), s.4; S.N.W.T. 2003, c.23, s.3.

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2. Continuation of existing rights or privileges

2. Nothing in this Act abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Act with respect to any language that is not English or French.

3. Municipalities and settlements

3. For the purposes of this Act, a municipality or settlement or the council of a municipality or settlement shall not be construed to be a government institution.

S.N.W.T. 2003, c. 23, s.4.

Part I – Official Languages

4. Official Languages

4. Chipewyan, Cree, English, French, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ are the *Official Languages of the Northwest Territories*.

R.S.N.W.T. 1988, c. 56(Supp.), s. 4; S.N.W.T. 2003, c.23,s.5.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

B. Overview of the *OLA*

[31] Part I of the *OLA* [Northwest Territories *Official Languages Act*] is entitled "Official Languages". Section 4 declares that English, French and nine Aboriginal languages are official languages of the NWT [Northwest Territories]. Notwithstanding this declaration, the *OLA* treats the Aboriginal languages differently than English and French. Simply put, English and French are given a more elevated status than are the Aboriginal languages.

[…]

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[39] Briefly, s. 16(1) of the *Charter* is reflected in ss. 4 and 5 of the *OLA*. Presumably, the reason the *OLA* has two sections, whereas the *Charter* only has one, is the limiting language of s. 5 of the *OLA*: "to the extent and in the manner provided in this Act". This phrase permits the *OLA* to treat Aboriginal languages differently than English and French.

[…]

[123] As discussed at para. 60, official language statutes are interpreted by using *Charter* principles. The underlying principle is the protection of minorities: see *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 2001 CanLII 21164 (ON CA), 56 O.R. (3d) 505, 208 D.L.R. (4th) 577 at para. 125 (C.A.) ("*Lalonde*") and *Kilrich Industries Ltd. v. Halotier*, 2007 YKCA 12 (CanLII), 161 C.R.R. (2d) 331 at para. 53 ("*Halotier*"). The trial judge applied principles from language rights jurisprudence, especially *Beaulac* where the Supreme Court confirmed, at para. 22, that substantive equality is the correct norm. We agree with the COLC that substantive equality is the result envisaged by the legislature in enacting s. 16 of the *Charter* and ss. 4 and 5 of the *OLA*. Accordingly, the trial judge's use of the expression "obligations of result", was appropriate and supported by *Beaulac*.

City of Yellowknife et al. v. Commissioner of NWT et al., 2015 NWTSC 51 (CanLII)

[48] The Applicants argue that although the issue of under-representation of the Yellowknife districts was acknowledged, nothing in the Final Report explains why this problem could not be mitigated. I disagree. The Report refers to the other considerations that were factored into the analysis. In the excerpt quoted above at Paragraph 47, the [Electoral Boundaries] Commission refers directly to the challenges it faced, and to the need to take into account factors such as the historic configuration of electoral districts, language, culture, geography, land claims and self-government agreements.

[49] These concerns are very much in line with the realities cited by the Supreme Court of Canada in *Reference Re Prov. Electoral Boundaries (Sask.)* when it alluded to situations where a focus on voter parity may detract from the goal of effective representation:

> (...) représentation effective et la bonne administration dans ce pays obligent ceux qui sont chargés de fixer les limites des circonscriptions électorales à tenir parfois compte d'autres facteurs que la parité du nombre des électeurs, tels les conditions géographiques et les intérêts de la collectivité. La difficulté qu'il y a à représenter de vastes territoires à faible densité de population, par exemple, peut dicter un nombre d'électeurs quelque peu inférieur dans ces districts; en insistant sur la parité des nombres, on pourrait priver des citoyens, ayant des intérêts distincts, d'une voix effective au sein du processus législatif aussi bien que d'une aide réelle de la part de leurs représentants dans leur rôle d'"ombudsman". Ce n'est là qu'un des nombreux facteurs susceptibles de commander une dérogation à la règle "une personne, une voix" dans l'intérêt d'une représentation effective.
>
> *Circ. électorales provinciales (Sask.)*, précité, p. 188.

[50] It is difficult to imagine a jurisdiction where these considerations would resonate more than they do in the Northwest Territories. This jurisdiction spans over a widespread geographic area. Many of its communities do not have year-round road access. Air travel is very expensive. The Territory has eleven official languages, including nine aboriginal languages. *Official Languages Act*, R.S.N.W.T. 1988, c. O-1. Some aboriginal groups have settled land claims with beneficiaries who are spread out in several communities. Others do not have settled land claims, but have a community of interests. These are all factors that have a bearing on how the citizens of this territory can have effective representation in the Legislative Assembly.

HMTQ v. Beaverho, 2009 NWTSC 21 (CanLII)

[6] First, the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1, stipulates, in section 4, eleven official languages for the Northwest Territories (English, French and nine aboriginal languages: Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tlicho). Section 9 provides that any person may use any of these official languages in court.

[41] The recognition of the nine aboriginal languages (listed in s. 4 of the *Official Languages Act*) as "official languages" came about in 1984. Subsequently, in 1986, the Legislative Assembly passed an amendment to the *Jury Act* as follows:

> 5.2 An aboriginal person who does not speak and understand either the French language or the English language, but who speaks and understands an aboriginal language as defined in the Official Languages Act and is otherwise qualified under this Act, may serve as a juror in any action or proceeding that may be tried by a jury in the Territories,

[…]

[47] When I consider these sources I conclude that s. 4 of the *Jury Act* provides a right to the citizens of the Northwest Territories – the pool of potential jurors – as opposed to providing a right to any particular accused person. Any person speaking an "official language" is eligible to serve

on a jury. That language may be any one of the eleven official languages. There is nothing to suggest that an accused is entitled to have any particular language speaker on the jury.

[48] The purpose of the enactment was to increase and facilitate the opportunity for aboriginal citizens to serve on a jury. It is a participation right. It does not translate into a right of the accused to have a certain linguistic group on the jury, no more than the right to have a jury composed of a certain race or class.

SEE ALSO:

R. v. Kaunak, 1997 CanLII 4535 (NWT CA)

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5. Official Languages of the Northwest Territories

5. To the extent and in the manner provided in this Act and any regulations under this Act, the Official Languages of the Territories have equality of status and equal rights and privileges as to their use in all government institutions.

R.S.N.W.T. 1988, c.56 (Supp.), s.6; c.125(Supp.),s.4; S.N.W.T. 2003, c.23, s.6,20(1).

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[32] Although s. 5 declares that all the official languages have equal status and equal rights and privileges as to their use in all government institutions (a term defined since 2003 in s. 1 as including a department or ministry of the GNWT [Government of the Northwest Territories], the Office of the Legislative Assembly, and certain other bodies so designated by regulations), that is only "to the extent and in the manner provided" in the *OLA* and its regulations. As an example of how the *OLA* [Northwest Territories *Official Languages Act*] differentiates between English and French on the one hand, and the Aboriginal languages on the other, the sections principally engaged by this appeal (ss. 7(1), 8 and 11(1)) apply only to English and French and not to the Aboriginal languages. In contrast, under s. 6 (a section not at issue in this appeal), any official language may be used in the debates and other proceedings of the Assembly.

[…]

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[39] Briefly, s. 16(1) of the *Charter* is reflected in ss. 4 and 5 of the *OLA*. Presumably, the reason the *OLA* has two sections, whereas the *Charter* only has one, is the limiting language of s. 5 of the *OLA*: "to the extent and in the manner provided in this Act". This phrase permits the *OLA* to treat Aboriginal languages differently than English and French.

[…]

[123] As discussed at para. 60, official language statutes are interpreted by using *Charter* principles. The underlying principle is the protection of minorities: see *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 2001 CanLII 21164 (ON CA), 56 O.R. (3d) 505, 208 D.L.R. (4th) 577 at para. 125 (C.A.) ("*Lalonde*") and *Kilrich Industries Ltd. v. Halotier*, 2007 YKCA 12 (CanLII), 161 C.R.R. (2d) 331 at para. 53 ("*Halotier*"). The trial judge applied principles from language rights jurisprudence, especially *Beaulac* where the Supreme

Court confirmed, at para. 22, that substantive equality is the correct norm. We agree with the COLC [Commissioner of Official Languages of Canada] that substantive equality is the result envisaged by the legislature in enacting s. 16 of the *Charter* and ss. 4 and 5 of the *OLA*. Accordingly, the trial judge's use of the expression "obligations of result", was appropriate and supported by *Beaulac*.

Proceedings of Legislative Assembly

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

R.S.N.W.T. 1988,c.56 (Supp.),s.7; S.N.W.T. 2003,c.23,s.20(1).

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[32] Although s. 5 declares that all the official languages have equal status and equal rights and privileges as to their use in all government institutions (a term defined since 2003 in s. 1 as including a department or ministry of the GNWT [Government of the Northwest Territories], the Office of the Legislative Assembly, and certain other bodies so designated by regulations), that is only "to the extent and in the manner provided" in the *OLA* and its regulations. As an example of how the *OLA* [Northwest Territories *Official Languages Act*] differentiates between English and French on the one hand, and the Aboriginal languages on the other, the sections principally engaged by this appeal (ss. 7(1), 8 and 11(1)) apply only to English and French and not to the Aboriginal languages. In contrast, under s. 6 (a section not at issue in this appeal), any official language may be used in the debates and other proceedings of the Assembly.

[…]

[276] The term "Legislative Assembly" means something different than "Legislature or Government of the Northwest Territories" employed in s. 8, since ss. 6 and 7 of the *OLA* use the former term, while s. 8 employs the latter. This view is confirmed by the definition of "Legislature" in s. 28(1) of the Interpretation Act NWT: "the Commissioner acting by and with the advice and consent of the Legislative Assembly". That definition makes it plain that the Assembly is not the same as the Legislature.

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7. (1) Acts, records and journals

7. (1) Acts of the Legislature and records and journals of the Legislative Assembly shall be printed and published in English and French and both language versions are equally authoritative.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[32] Although s. 5 declares that all the official languages have equal status and equal rights and privileges as to their use in all government institutions (a term defined since 2003 in s. 1 as including a department or ministry of the GNWT [Government of the Northwest Territories], the Office of the Legislative Assembly, and certain other bodies so designated by regulations), that is

only “to the extent and in the manner provided” in the *OLA* and its regulations. As an example of how the *OLA* [Northwest Territories *Official Languages Act*] differentiates between English and French on the one hand, and the Aboriginal languages on the other, the sections principally engaged by this appeal (ss. 7(1), 8 and 11(1)) apply only to English and French and not to the Aboriginal languages. In contrast, under s. 6 (a section not at issue in this appeal), any official language may be used in the debates and other proceedings of the Assembly.

[33] Section 7 of the *OLA* requires that Acts of the Legislature and “records and journals of the Legislative Assembly” be printed and published in English and French, making both versions equally authoritative. Subject to the *OLA*, s. 8 requires the promulgation in English and French (and in any other official language prescribed by regulation) of “all instruments in writing directed to or intended for the notice of the public”, made or issued by or under the authority of the Legislature or the GNWT (and certain other bodies not relevant here).

[…]

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[…]

[40] Like s. 18(1) of the *Charter* (which concerns statutes, records and journals of Parliament), s. 7(1) of the *OLA* requires the printing in French and English of Acts of the Legislature and records and journals of the Legislative Assembly. Like s. 20(1) of the *Charter*, which concerns communications with and services from federal institutions, s. 11(1) of the *OLA* entitles the use of French and English with head or central offices of government institutions and with other offices where there is a significant demand or the nature of the office makes it reasonable.

[…]

[253] In addressing whether the *OLA* requires that Hansard be published in French, the trial judge framed the issue succinctly at para. 744: is Hansard covered by the English expressions “records and journals” and the French expressions “archives, comptes rendus et procès-verbaux” in s. 7(1)? The evidence reveals that whether the GNWT has a legal obligation to publish Hansard in French has long been a point of contention.

[…]

C. Analysis

[259] We start with a statutory interpretation of ss. 7, 8 and 11(1) of the *OLA* to determine whether, on their face, any of these provisions require the broadcasting of legislative debates or the publication of Hansard in French. If they do not, no question of legislative privilege arises. Beginning at para. 281, we turn to the question of whether, despite that interpretation, the concept of legislative privilege insulates from judicial scrutiny the Assembly’s language decisions on these two matters.

[…]

a) Section 7 of the *OLA*

[269] Whether Hansard falls under s. 7(1) must be resolved by a consideration of the English terms “records and journals of the Legislative Assembly” and the French terms “les archives, comptes rendus et procès-verbaux de l’Assemblée législative”.

[270] The following table compares this language with the counterpart language of other relevant provisions:

OLA s. 7	“records and journals” “les archives, comptes rendus et procès-verbaux”
OLAC s. 4(3)	“official reports of debates or other proceedings” “comptes rendus des débats et d’autres comptes rendus des travaux”
OLAC s. 5	“journals and other records” “archives, comptes rendus et procès-verbaux”
OLANB s. 8	“the records, journals and reports of the Legislative Assembly and its committees” “les archives, les comptes rendus, les procès-verbaux et les rapports de l’assemblée législative et de ses comités”
Charter s. 18(1)	The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.
Constitution Act, 1867 s. 133	Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec. Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la langue française ou de la langue anglaise, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité de la présente loi, et par-devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.

[271] This summary reveals that s. 4(3) of the *OLAC* refers specifically to "debates" in the English version ("débats" in the French version), while s. 8 of the *OLANB* refers to "reports" ("rapports") of the Legislative Assembly. Neither the English nor French versions of the *OLA* are as specific. This could suggest that the legislature did not mean to include Hansard in s. 7(1) because its words are more general than those employed in other official language statutes.

[272] The *OLA* uses the same English words as s. 133 of the *Constitution Act, 1867*, while the French version is marginally different (s. 133 employs "journaux" instead of "comptes rendus"). Section 18(1) of the *Charter* contains the same words as the *OLA* except for the use of the word "*statutes*" in s. 18(1) of the *Charter* as opposed to "*Acts of the Legislature*" in s. 7 *OLA*. There is no relevant authority about the meaning of s. 18(1) of the *Charter*. As the trial judge noted, the Manitoba Court of Appeal has expressed the view that the term "*records and journals*" in s. 23 of the *Manitoba Act, 1870* 33 Vic., Cap. 3 (Canada), (which reflects s. 133 of the *Constitution Act, 1867*), includes Hansard: *Forest v. Manitoba (Registrar of Court of Appeal)* (1977), 1977 CanLII 1635 (MB CA), 77 D.L.R. (3d) 445, [1977] 5 W.W.R. 347 (Man. C.A.). There is no analysis of this passing point in the decision, however, and it is obiter dictum. Although the Supreme Court has considered s. 133 of the *Constitution Act, 1867*, it has not opined on the meaning of "*records and journals*": *Manitoba Language Rights Reference*.

[273] To resolve this issue it is necessary to understand exactly what Hansard is. The appellants point to evidence that it is not an "official record": *Beauchesne's Rules & Forms of the House of Commons of Canada with Annotations, Comments and Precedents*, 6th ed. (Toronto: Carswell, 1989) at 7. On the other hand, the Rules, which are published only in English, define Hansard in s. 2(c) as "the edited official record of the Assembly proceedings". The term "Transcript" is defined in s. 2(n) as the "unedited record of the Assembly proceedings". Section 103 of the Rules (entitled "Hansard") at times uses the term "Transcript". It also uses the undefined term "report", but this is always in the context of ensuring the accuracy of the contents of Hansard.

[274] The appellants criticize the trial judge's reliance on language of the Assembly's website which describes Hansard as "the official verbatim report of the proceedings of the Legislature" and "le compte rendu quotidien", arguing that the website was not intended to create legal obligations. The same complaint, however, cannot be made about the English-only Rules, which define Hansard as the "official record". Given this definition, the trial judge cannot be faulted for concluding that, whatever its origins, Hansard in the NWT is an "official record" covered by s. 7(1). Her view that the French words "archives" and "comptes rendus" are equivalent to the English word "record" further supports her analysis.

[…]

[276] The term "Legislative Assembly" means something different than "Legislature or Government of the Northwest Territories" employed in s. 8, since ss. 6 and 7 of the *OLA* use the former term, while s. 8 employs the latter. This view is confirmed by the definition of "Legislature" in s. 28(1) of the *Interpretation Act NWT*: "the Commissioner acting by and with the advice and consent of the Legislative Assembly". That definition makes it plain that the Assembly is not the same as the Legislature.

[…]

A. Trial Decision

[282] The trial judge rejected the appellants' argument that privilege applied to the publication of Hansard, concluding that if it did, the Assembly had circumscribed it by adopting s. 7(1) of the *OLA* with no conditions or restrictions: at para. 761. She relied on *Roberts v. Northwest Territories (Commissioner)*, 2002 NWTSC 68 (CanLII), [2003] 1 W.W.R. 98 at para. 8 ("Roberts"), adding that this was because of the obligation of result and the remedial nature of the *OLA*.

[…]

[287] The difficult question raised here is whether the trial judge correctly concluded that the privilege had been circumscribed by the passage of the *OLA* without any restrictive language protecting legislative privilege. Although the matter is not free from doubt, we conclude that she erred in law on this point because the language of the *OLA* itself is not sufficiently explicit to abrogate the legislative privilege. Absent express language, abrogation of legislative privilege cannot be assumed. There are two reasons for this conclusion.

[288] First, at common law a recognized privilege is not abrogated unless by express words in the statute: *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661 ("*Duke of Newcastle*"). That case concerned the privilege of Members of Parliament not to be arrested for bankruptcy. In a previous version of the statute at issue, that privilege had been expressly reserved. The question was whether the privilege could subsist under the newer version that contained very general language and did not mention the privilege. The Lord Chancellor noted that the privilege originated at common law, although it had been "protected by special clauses inserted in the various Acts of Parliament, the general provisions of which might seem to militate against the privilege." id. at 667. He nonetheless concluded that the "privilege will not be annihilated because it is not specially dealt with in this Act of Parliament." id. at 671-672.

[…]

[294] A second and related reason for our conclusion that legislative privilege is not abrogated by general statutory language arises from the Supreme Court's views about the function of that privilege, including the appropriate interaction between the courts and the legislatures and the fact that even the *Charter* does not have the effect of abrogating legislative privilege.

[…]

[297] If even the *Charter* cannot cut down the exercise of legislative privilege, and if the courts are not empowered to review decisions made pursuant to privilege, it seems that more would be required than passage of a general statute (such as the *OLA*) to support the conclusion that a legislative privilege has been abrogated. In this case, the Assembly made an express decision concerning the extent to which debates would be broadcast in French and an implicit decision not to publish Hansard in French. These decisions are protected by privilege.

[…]

C. Summary

[299] The language of s. 11(1) required the GNWT to broadcast the legislative debates in French with the same frequency as in English and Hansard falls under the language of s. 7(1) and s. 11(1), but not s. 8. However, legislative privilege over decisions about the publication of Hansard and the broadcasting of the debates has not been abrogated merely by the passage of the *OLA*. Accordingly, the Assembly's decisions about language use in this regard cannot be reviewed by the courts.

[…]

[315] The trial judge correctly interpreted s. 11(1) of the *OLA* as requiring legislative debates broadcast in English to be similarly broadcast in French. Sections 7 and 11(1) dictate a similar result as to the publication of Hansard. However, as regards both topics, the concept of legislative privilege insulates from judicial review the Assembly's decisions in this regard. The trial judge did not err in her costs award.

Beamish v. Miltenberger, 1996 CanLII 2942 (NWT SC)

[5] In the Northwest Territories, the English and French versions of a statute are equally authoritative: see s.10 of the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1. This gives rise to

what has been termed as the "equal authenticity rule". Both language versions are authoritative and neither version enjoys priority or paramountcy over the other (even if one version can be considered as being merely a translation of the other). Discrepancies cannot be resolved by giving automatic preference to one. Both have equal status and authority: *Re Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721.

[6] The effect of the "equal authenticity rule" where there are discrepancies was explained as follows by Prof. R. Sullivan in *Driedger on the Construction of Statutes* (3rd ed., 1994) at page 218:

> Where the two versions of a bilingual enactment appear to say different things, the courts are obliged by the equal authenticity rule to read and rely on both versions. If an acceptable meaning common to both versions cannot be found, some way of dealing with the discrepancy must be found. However, the solution must depend on something other than preference for a particular language. It is inconsistent with the equal authenticity rule to resolve discrepancies between two language versions by giving automatic preference to one.
>
> It is clear from Manitoba Language Rights that the equal authenticity rule applies even where one language version is actually a translation of the other. From a constitutional point of view the key factor here is not preparation but enactment. So long as both language versions have at some point been enacted into law, both are original versions and have equal status and authority.

[7] The fact that there is a discrepancy requires the application of the "shared meaning rule". This was described in *Driedger* (at page 220): "Where the two versions of bilingual legislation do not say the same thing, the meaning that is shared by both ought to be adopted unless this meaning is for some reason unacceptable." This is not the equivalent of saying that the "lowest common denominator" is the applicable meaning although one author does suggest that where one version has a broader meaning than another, the shared meaning is the more narrow of the two: P.- A. C tT (sic), *The Interpretation of Legislation in Canada* (2nd ed., 1993) at pages 275-276.

[8] The search for a shared meaning must also, of course, keep in mind the importance of context and of reading the provision, not in isolation, but as part of the statute as a whole.

[9] I will now turn to the application of these general rules to the arguments advanced on behalf of the respondent.

[10] Counsel for the respondent submitted that preference should be given to the English version because it has been consistent in its wording since enactment of the *Elections Act* in 1986. Section 10 of the *Official Languages Act* did not come into force until 1989. To give effect to this argument however is to negate the "equal authenticity rule". The law speaks as of today and the fact that the English version predates the French is irrelevant.

N.B. – Paragraph 7(1) of the current *Official Languages Act* of the Northwest Territories was formerly paragraph 10(1) of the previous version of the *Act*.

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7. (2) Other languages

7. (2) The Commissioner in Executive Council may prescribe that a translation of any Act shall be made after enactment and be printed and published in one or more of the Official Languages in addition to English and French.

7. (3) Recordings of debates

7. (3) Copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions, shall be provided to any person on reasonable request.

R.S.N.W.T. 1988,c.56 (Supp.),s.8; S.N.W.T. 2003,c.23,s.20(1).

ANNOTATIONS

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[261] Apart from the matter of privilege, the appellants' main argument arises from s. 7(3), which obliges the GNWT [Government of the Northwest Territories] to provide "copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions", to any person on reasonable request. The appellants assert that if the legislature had intended to require the broadcast of debates in both languages, it would have said so more clearly and that the trial judge's interpretation of s. 11(1) has the effect of reading a requirement into the law that is not otherwise there. Essentially, the argument is that because the *OLA* [Northwest Territories *Official Languages Act*] deals specifically with the availability of sound recording of debates in s. 7(3), s. 11(1) should be interpreted to exclude broadcasting of the debates as a service that must be available in French and English.

[262] This argument has some superficial attraction because when there is a conflict between a general and a specific provision, the conflict may be avoided by applying the specific provision to the exclusion of the more general: *BG Checo Intl. Ltd. v. B.C. Hydro*, 1993 CanLII 145 (SCC), [1993] 1 S.C.R. 12 at 24, 99 D.L.R. (4th) 577. The argument cannot be sustained here, however, because there is no conflict between ss. 7(3) and 11(1).

[263] The right to obtain "sound recordings" contained in s. 7(3) is not the same as the right to receive "available services" found in s. 11(1). The debates are broadcast on television. Thus, the medium employed is different than that of a "sound recording". Moreover, although s. 7(3) contemplates the provision of sound recordings, it is up to an individual to request the recording. In contrast, a television broadcast is freely available to anyone who has access to a television. Further, the sound recording will be provided on "reasonable request", a term that gives discretion to whomever considers the request.

[264] The fact that the right in s. 7(3) to obtain a sound recording is more narrow than the unlimited right in s. 11(1) to receive "available services" from a head office suggests that s. 7(3) was not intended to limit the scope of s. 11(1). The broadcasting policy was put into place long after passage of the *OLA*, which also undermines any argument that the policy informs the interpretation of s. 11(1).

[265] The trial judge correctly concluded that broadcasting of the debates is an "available service". In Quigley v. Canada (House of Commons), 2002 FCT 645 (CanLII), [2003] 1 F.C. 132, moot appeal 2003 FCA 465 (CanLII), 314 N.R. 375, a similar conclusion was reached as regards the obligation of the House of Commons under s. 25 of the *OLAC* [*Official Languages Act*] to ensure that "available services" provided on behalf of a federal institution be provided in both official languages. There, the problem was that some service providers failed to make available to the public all the types of signals that had been provided by the House of Commons to the Cable Public Affairs Channel. The Federal Court concluded that "available services" under s. 25 included the broadcast of debates. Indeed, the appellants in this case did not press the argument that the broadcast of debates is not a "service".

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8. Instruments directed to public

8. Subject to this Act, all instruments in writing directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of the Legislature or Government of the Northwest Territories or any judicial, quasi-judicial or administrative body or Crown corporation established by or under an Act, shall be promulgated in English and French and in such other Official Languages as may be prescribed by regulation.

R.S.N.W.T. 1988, c.56 (Supp.),s.9,21; S.N.W.T. 2003,c.23,s.7,20(1).

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[32] Although s. 5 declares that all the official languages have equal status and equal rights and privileges as to their use in all government institutions (a term defined since 2003 in s. 1 as including a department or ministry of the GNWT [Government of the Northwest Territories], the Office of the Legislative Assembly, and certain other bodies so designated by regulations), that is only "to the extent and in the manner provided" in the *OLA* [Northwest Territories *Official Languages Act*] and its regulations. As an example of how the *OLA* differentiates between English and French on the one hand, and the Aboriginal languages on the other, the sections principally engaged by this appeal (ss. 7(1), 8 and 11(1)) apply only to English and French and not to the Aboriginal languages. In contrast, under s. 6 (a section not at issue in this appeal), any official language may be used in the debates and other proceedings of the Assembly.

[33] Section 7 of the *OLA* requires that Acts of the Legislature and "records and journals of the Legislative Assembly" be printed and published in English and French, making both versions equally authoritative. Subject to the *OLA*, s. 8 requires the promulgation in English and French (and in any other official language prescribed by regulation) of "all instruments in writing directed to or intended for the notice of the public", made or issued by or under the authority of the Legislature or the GNWT (and certain other bodies not relevant here).

[…]

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[…]

[41] Section 8 of the *OLA* (concerning the use of English and French in written documents directed to or intended for the notice of the public) has no counterpart in the *Charter*. Finally, the remedies section of the *OLA* (s. 32(1)) is virtually identical to s. 24(1) of the *Charter*.

[…]

4. Did the Trial Judge Err in Concluding that s. 8 Requires Official Government Notices and Certificates that Attest To a Person's Status to be Published in French?

[162] In our view, the English version of s. 8 is not narrower than the French. On the contrary, the shared meaning of both is that an "instrument" or "acte" is a document of a formal character that establishes a fact. We therefore agree with the trial judge that s. 8 encompasses "documents of a formal or official nature". When such a document is intended for the notice of the public and purports to be made or issued by the GNWT, it must be promulgated in French and English. The phrase "instruments in writing" may include, but is not limited to, legal writings.

[163] Thus, government notices, whether in the form of employment offers, public notices or calls for tenders, are formal notices intended for the public. Similarly, certificates that attest to a person's status are documents of a formal or official nature intended for the public. We have already said, at para. 125, that the trial judge correctly concluded that the *OLA* intended to create substantive equality with respect to French. It follows that when documents of a formal or official nature intended for the notice of the public are promulgated in English, they must also be in French. The GNWT does not enjoy room to manoeuvre under s. 8 because the section itself dictates the result.

[164] Given our view that government notices and certificates that attest to a person's status are subject to s. 8, we need not determine whether they constitute "invitations to communicate" subject to s. 11(1).

[…]

[220] We agree with the trial judge that a birth certificate is a "document of a formal or official nature" under s. 8. As the trial judge noted, it is defined as "a certified extract of the prescribed particulars of a registration filed in the office of the Registrar General" in s. 1 of the *Vital Statistics Act*. Its usefulness is based on its public nature as it is proof to the world of the facts recorded therein. Ms. Laquerre's rights were breached when she was required to wait 10 months for the issuance of Océane's birth certificate with the correct accent and because the legal size birth certificate, issued in July 2003, was in English.

[221] We also agree Ms. Laquerre was entitled to be served in French by the Department of Health in Yellowknife and the Inuvik Office. She was not served in French by either, nor was she given such an opportunity. The appeal is dismissed in this regard.

[…]

(bb) Analysis

[239] Again, we accept the appellants' argument that the trial judge should have refused to rule on Mr. Cousineau's apprenticeship certificate because it was not explicitly pleaded in the amended statement of claim. We also disagree with her conclusion that s. 11(1) was breached because Mr. Cousineau was not informed of the possibility of taking his apprenticeship programme in French in New Brunswick. Although for reasons given at para. 183 we agree that the office was subject to s. 11(1)(b), Mr. Cousineau never asked for services in French and, given the non-urgent nature of the services, there was no obligation to provide an active offer. The apprentice form (defined by the trial judge as a "time credit sheet" to confirm Mr. Cousineau's hours) did not constitute a "document of a formal or official nature" within the scope of s. 8. The damage award to Mr. Cousineau is vacated.

[…]

IX. DID THE TRIAL JUDGE ERR IN CONCLUDING THAT THE OLA REQUIRED THE BROADCASTING OF LEGISLATIVE ASSEMBLY DEBATES AND THE PUBLICATION OF HANSARD IN FRENCH? DID SHE ERR IN CONCLUDING THAT BOTH MATTERS WERE NOT SUBJECT TO LEGISLATIVE PRIVILEGE?

C. Analysis

[259] We start with a statutory interpretation of ss. 7, 8 and 11(1) of the *OLA* to determine whether, on their face, any of these provisions require the broadcasting of legislative debates or the publication of Hansard in French. If they do not, no question of legislative privilege arises. Beginning at para. 281, we turn to the question of whether, despite that interpretation, the concept of legislative privilege insulates from judicial scrutiny the Assembly's language decisions on these two matters.

[…]

b) Section 8 of the *OLA*

[275] Although it is unnecessary, we add that we disagree with the trial judge's alternative conclusion that Hansard falls under s. 8. Whether or not Hansard is "an instrument in writing directed to or intended for the notice of the public", s. 8 refers to instruments "purporting to be made or issued by or under the authority of the Legislature or Government of the Northwest Territories." The trial judge found that Hansard is published under the authority of the Speaker: at para. 486. For that reason alone, s. 8 does not embrace Hansard.

[276] The term "Legislative Assembly" means something different than "Legislature or Government of the Northwest Territories" employed in s. 8, since ss. 6 and 7 of the *OLA* use the former term, while s. 8 employs the latter. This view is confirmed by the definition of "Legislature" in s. 28(1) of the *Interpretation Act* NWT: "the Commissioner acting by and with the advice and consent of the Legislative Assembly". That definition makes it plain that the Assembly is not the same as the Legislature.

[277] "Government of the Northwest Territories" is not a term defined in the *Interpretation Act* NWT. However, in a provincial context, the term "government" means the executive or administrative branch of government, whereas the Assembly is a component of the Legislature that, together with the Lieutenant Governor, comprises the Legislature: *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, 1993 CanLII 153 (SCC), [1993] 1 S.C.R. 319, 100 D.L.R. (4th) 212 ("*New Brunswick Broadcasting*"). In the NWT context, a like approach would mean that "Legislative Assembly" does not fall under the term "Government".

[278] As neither the terms "Government" nor "Legislature" is synonymous with "Legislative Assembly", and because Hansard is a publication of the Speaker, it follows that Hansard is not covered by s. 8.

[279] The counterpart provisions in the *OLAC* [*Official Languages Act*] and *OLANB* [New Brunswick *Official Languages Act*] differ from the *OLA*. Section 12 of the OLAC refers to instruments made or issued under the authority of a "federal institution". The *OLANB* has two similar provisions, both of which are worded more generally than the *OLA*. Section 14 refers to "Notices, advertisements and other announcements of an official nature" without mentioning their source. Section 15 relates to notices, announcements and other documents required to be published under the *OLANB* or another Act "by the Province or its institutions". The wording of these statutes further supports the conclusion that Hansard does not fall under s. 8 of the *OLA*.

[…]

C. Summary

[299] The language of s. 11(1) required the GNWT to broadcast the legislative debates in French with the same frequency as in English and Hansard falls under the language of s. 7(1) and s. 11(1), but not s. 8. However, legislative privilege over decisions about the publication of Hansard and the broadcasting of the debates has not been abrogated merely by the passage of the *OLA*. Accordingly, the Assembly's decisions about language use in this regard cannot be reviewed by the courts.

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9. (1) Proceedings in courts

9. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature.

9. (2) Use of Aboriginal languages in courts

9. (2) Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ may be used by any person in any court established by the Legislature.

9. (3) Interpretation for the public

9. (3) A court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous interpretation of the proceedings, including evidence given and taken, from one Official Language into another where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

R.S.N.W.T. 1988,c.56(Supp.),s.10; S.N.W.T. 2003,c.23,s.8,20(1).

ANNOTATIONS

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

[18] Nor is the Court called upon to prejudge the quality of the French-language services that the Franco-ténois would receive in the Supreme Court of the Territories should the action ultimately be disposed of in that Court. Section 12 of the Territories' *Official Languages Act* allows the use of French in the Territories' courts and in any pleading in or process issuing from a court, and section 13 of the *Act* requires that final decisions, orders and judgments, including any reasons given for them, shall be issued in both English and French. We are entitled to assume, therefore, that the right of the Franco-ténois to be tried in French would be respected if the proceedings were to be brought in the Supreme Court of the Territories.

N.B. – Section 9 of the current *Official Languages Act* of the Northwest Territories was formerly section 12 of the previous version of the *Act*.

Giroux v. Yellowknife Housing Authority, 2014 NWTSC 77 (CanLII)

[21] Regarding disbursements, the YHA [Yellowknife Housing Authority] is claiming $1,249.30. Most of this amount relates to the travelling and living expenses of the senior counsel on the case, who does not reside in the Northwest Territories.

[22] The eligibility of this type of disbursement is governed by Subrule 648(4), which reads as follows:

> 648. . . .
>
> (4) The proper travelling and living expenses of a solicitor who does not reside in the Northwest Territories are recoverable under subrule (3) only where, in the opinion of the Court,
>
> (a) the expertise required to perform the particular service was not available from those solicitors resident in the Territories; or
>
> (b) conflicts of interest prevented solicitors resident in the Territories from acting in the matter.

[…]

[25] According to the YHA, it was impossible to retain resident counsel to represent it, because the appeal involved the application of the *Canadian Charter of Rights and Freedoms* (the *Charter*)

and had to be conducted in French. The YHA argues that, in order to retain a solicitor who had *Charter* expertise and was able to argue in French, it had to hire a solicitor from outside the Territory.

[26] The fact that a dispute raises *Charter* issues is not exceptional and cannot, on its own, justify retaining non-resident counsel.

[27] I recognize that the language in which the appeal had to proceed necessarily restricted the pool of solicitors able to take on this case. The number of French-speaking counsel who practice law in the Northwest Territories is certainly limited. The fact remains, however, that some of the members of the Law Society of the Northwest Territories who reside in this jurisdiction do speak French.

[28] The YHA did not present any evidence about its efforts to attempt to retain the services of a resident solicitor to represent it in this appeal. The lack of evidence establishing the need for retaining counsel from outside the jurisdiction is one of the factors that a court can consider when this type of claim if presented. *Nielsen v. Nielsen*, *supra*, at Paragraphs 55 and 56. I do not think that it is appropriate for the Court to assume that no French-speaking solicitor in the Northwest Territories would have been qualified to represent the YHA.

[29] This aspect of the YHA's claim also raises a broader issue concerning the application of rule 648(4)(a). An overly broad interpretation of this Rule could become a deterrent for individuals wishing to assert their right to use French in any proceeding before the Court, as they are entitled to pursuant to Subsection 9(1) of the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1.

[30] It seems contrary to the spirit of that *Act* to impose financial consequences on those who choose to exercise the rights it protects, especially as the preamble of the *Act* expresses, among other things, the desire "to establish English and French as Official Languages of the Northwest Territories having equality of status and equal rights and privileges as Official Languages".

[31] As the Court noted in *WCB v. Mercer et al*; *Mercer v. WCB*, above, the YHA was free to retain whomever it wanted to represent it. Indeed, the YHA was admirably well represented in this appeal. The oral and written submissions were of exceptional quality and were very useful to the Court. Furthermore, the two solicitors representing the YHA were a model of courtesy and professionalism in the manner in which they treated Ms. Giroux at the hearing. Their approach was one that any counsel dealing with a self-represented litigant would be well-advised to follow. However, it is not the quality of the solicitor's work that is at issue, but rather, whether the YHA has established that it was necessary to retain that solicitor. In my opinion, the YHA has not established this need.

[32] As stated previously, costs are a matter of discretion. When exercising this discretion, the Court must consider not only general principles but also the circumstances of the case.

[33] I recognize that Ms. Giroux has limited financial means. The amount of the costs should not be crushing to her. It should also not discourage others in her situation from attempting to assert their rights. Ms. Giroux's appeal was neither frivolous nor vexatious. However, anyone who turns to the courts and forces another party to incur costs to defend itself faces potential financial consequences if he or she is unsuccessful.

HMTQ v. Beaverho, 2009 NWTSC 21 (CanLII)

[6] First, the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1, stipulates, in section 4, eleven official languages for the Northwest Territories (English, French and nine aboriginal languages: Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ). Section 9 provides that any person may use any of these official languages in court.

[…]

[41] The recognition of the nine aboriginal languages (listed in s. 4 of the *Official Languages Act*) as "official languages" came about in 1984. Subsequently, in 1986, the Legislative Assembly passed an amendment to the *Jury Act* as follows:

> 5.2 An aboriginal person who does not speak and understand either the French language or the English language, but who speaks and understands an aboriginal language as defined in the Official Languages Act and is otherwise qualified under this Act, may serve as a juror in any action or proceeding that may be tried by a jury in the Territories,

[…]

[47] When I consider these sources I conclude that s. 4 of the *Jury Act* provides a right to the citizens of the Northwest Territories – the pool of potential jurors – as opposed to providing a right to any particular accused person. Any person speaking an "official language" is eligible to serve on a jury. That language may be any one of the eleven official languages. There is nothing to suggest that an accused is entitled to have any particular language speaker on the jury.

[48] The purpose of the enactment was to increase and facilitate the opportunity for aboriginal citizens to serve on a jury. It is a participation right. It does not translate into a right of the accused to have a certain linguistic group on the jury, no more than the right to have a jury composed of a certain race or class.

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10. (1) Decisions, orders and judgments

10. (1) All final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be issued in both English and French where

> **(a) the decision, order or judgment determines a question of law of general public interest or importance; or**
>
> **(b) the proceedings leading to the issue of the decision, order or judgment were conducted in whole or in part in both English and French.**

10. (2) Delay in issuing one version

10. (2) Where a body by which a final decision, order or judgment including any reasons given for it is to be issued in both English and French under subsection (1) is of the opinion that to issue it in both English and French would occasion a delay

> **(a) prejudicial to the public interest, or**
>
> **(b) resulting in injustice or hardship to any party to the proceedings leading to its issue,**
>
> **the decision, order or judgment, including any reasons given for it, shall be issued in the first instance in its version in one of English or French and after that, within the time that is reasonable in the circumstances, in its version in the other language, each version to be effective from the time the first version is effective.**

10. (3) Oral rendition of decisions not affected

10. (3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in one only of the Official Languages, of any decision, order or judgment or any reasons given for it.

10. (4) Sound recordings

10. (4) A sound recording of all final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be made in one or more of the Official Languages other than English or French and copies of the sound recording shall be made available to any person on reasonable request, where

> **(a) the decision, order or judgment determines a question of law or general public interest or importance, and**
>
> **(b) it is practicable to make available that version or versions, and it will advance the general public knowledge of the decision, order or judgment.**

10. (5) Validity not affected

10. (5) Nothing in subsection (4) shall be construed as affecting the validity of a decision, order or judgment, referred to in subsection (1), (2) or (3).

R.S.N.W.T. 1988,c.56(Supp.),s.11,21; S.N.W.T. 2003, c.23,s.20(1).

ANNOTATIONS

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

[18] Nor is the Court called upon to prejudge the quality of the French-language services that the Franco-ténois would receive in the Supreme Court of the Territories should the action ultimately be disposed of in that Court. Section 12 of the Territories' *Official Languages Act* allows the use of French in the Territories' courts and in any pleading in or process issuing from a court, and section 13 of the *Act* requires that final decisions, orders and judgments, including any reasons given for them, shall be issued in both English and French. We are entitled to assume, therefore, that the right of the Franco-ténois to be tried in French would be respected if the proceedings were to be brought in the Supreme Court of the Territories.

N.B. – Section 10 of the current *Official Languages Act* of the Northwest Territories was formerly section 13 of the previous version of the *Act*.

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11. (1) Communication by public with head, central or other offices

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 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 both English and French.**

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[32] Although s. 5 declares that all the official languages have equal status and equal rights and privileges as to their use in all government institutions (a term defined since 2003 in s. 1 as including a department or ministry of the GNWT [Government of the Northwest Territories], the Office of the Legislative Assembly, and certain other bodies so designated by regulations), that is only "to the extent and in the manner provided" in the *OLA* [Northwest Territories *Official Languages Act*] and its regulations. As an example of how the *OLA* differentiates between English and French on the one hand, and the Aboriginal languages on the other, the sections principally engaged by this appeal (ss. 7(1), 8 and 11(1)) apply only to English and French and not to the Aboriginal languages. In contrast, under s. 6 (a section not at issue in this appeal), any official language may be used in the debates and other proceedings of the Assembly.

[…]

[34] Section 11(1), which is of prime importance in this appeal, concerns the availability of services. It entitles members of the public to communicate with and receive available services from head or central offices of a government institution in English or French, and, if there is a significant demand or it is reasonable, given the nature of the office, to communicate with and obtain services in these two languages from "any other office of that institution". In contrast, as to the Aboriginal languages, s. 11(2) gives the right of communication and services, in the requested languages, from any regional, area or community office only if there is a significant demand or it is reasonable given the nature of the office.

[…]

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[…]

[40] Like s. 18(1) of the *Charter* (which concerns statutes, records and journals of Parliament), s. 7(1) of the *OLA* requires the printing in French and English of Acts of the Legislature and records and journals of the Legislative Assembly. Like s. 20(1) of the *Charter*, which concerns communications with and services from federal institutions, s. 11(1) of the *OLA* entitles the use of French and English with head or central offices of government institutions and with other offices where there is a significant demand or the nature of the office makes it reasonable.

[…]

[124] At the heart of this case is the meaning of substantive equality in the context of the provision of bilingual government services in the NWT. There is little helpful authority on this issue. For example, *Beaulac* dealt with the accused's rights to a trial in French under s. 530 (1) and (4) of the *Criminal Code*, R.S.C. 1985, c. C-46. Other cases have addressed substantive equality in the context of s. 23 of the *Charter* (the right to an education in French where numbers warrant.) (See *Mahe* and *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC 1 (CanLII), [2000] 1 S.C.R. 3 ("*Arsenault-Cameron*")). *Lalonde* addressed the *French Language Services Act*, R.S.O 1990, c. F.32 in the context of closure of an Ontario hospital. *Halotier* dealt with whether rules of court had to be in French. This is the first case to address the provision of bilingual government services on a large scale and in a multiplicity of contexts.

[…]

[129] The trial judge relied on the wording of the *OLA*. Section 11 contemplates three different levels of language rights regarding communication with and services from government institutions. The first two are contained in s. 11(1). First, if the contact is with a head or central office, there is a right to communicate with and receive services in French or English. Second, if the contact is with any office other than the head or central office, the member of the public has a right to communicate with and receive services from that office in French or English if (a) there is significant demand for the communication with and services from that office in that language; or (b) it is reasonable, given the nature of the office, that the communications with and services from it be available in both languages. The third right, in s. 11(2), deals with Aboriginal languages and is not relevant here.

[130] Section 11(1) distinguishes between the communication with and services from a head or central office, and those with or from other offices. This distinction supports the trial judge's conclusion that the qualifying words in ss. 11(1)(a) and (b) as regards non-head or central offices ("significant demand" or "reasonable given the nature of the office") grant the government some room to manoeuvre in determining when services will be available. The absence of those qualifying words as to head or central offices reinforces her conclusion that substantive equality in that context provides less flexibility concerning the availability of bilingual services.

[…]

[135] Moreover, within the offices referred to in s. 11(1), the GNWT offers a broad spectrum of services. At one end are services for the health and safety of the public (for example, at the Stanton Hospital). Often, although not always, the demand for such services is urgent. As regards health, it may involve sensitive or confidential matters. At the other end are services that are not urgent and do not concern the immediate health or safety of the public (for example, the issuance of a birth certificate or a driver's licence). The nature of the service being sought must be factored into an assessment as to how the obligations under the *OLA* can be met.

[136] 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.

[137] 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.

[138] Given this context, we do not agree with the trial judge that use of an interpreter will only suffice "as a last resort and temporary solution": at para. 732. That said, the trial judge rightly criticized the GNWT's short-comings in recruiting bilingual service providers. Although para. 4(j) of her formal judgment appropriately requires the global plan to deal with recruitment, we vacate the portion of para. 4(k) requiring interpreters only as a last resort.

3. Did the Trial Judge Err in Concluding that Active Offer Was a Fundamental Part of Section 11(1)?

[139] An active offer is a greeting that informs the member of the public that they may communicate in either French or English. Its purpose, as described by Mr. Wissell, an investigator with the Office of the COLC, is to ensure that an individual feels comfortable requesting a service. It is a sign of respect. An active offer can take the form of a sign, a personal greeting or a message.

[140] The trial judge found that the active offer was an integral part of the substantive equality contemplated by s. 5 of the *OLA*, whether mentioned or not: at para. 693. The appellants submit that if the legislature intended to make active offer an essential part of s. 11(1), it would have said so (as in the case of ss. 28-30 of the *OLAC* [*Official Languages Act*] and s. 28.1 of the *Official Languages Act*, S.N.B. 2002, c.O-0.5 ("*OLANB*")). They contend that, absent similar provisions in the OLA, the legislature is free to enact regulations to provide for active offer.

[…]

[143] We disagree with the trial judge's conclusion on this point. The notion of active offer was not overlooked in the *OLA*. Section 34(e) provides that the Commissioner may make regulations respecting active offer. The GNWT did not enact regulations. Rather, it developed the PGs [Policy and Guidelines] (discussed in detail beginning at para. 166), which provide for active offer in specified government offices. This distinguishes the *OLA* from the *OLAC* and the *OLANB*. Enactments on the same topic from other jurisdictions "form part of the legal context in which statutes are enacted and operate": Ruth Sullivan, Sullivan and Driedger on the Construction of Statutes, 4th ed., (Markham: Butterworths Canada Ltd., 2002) at 331 ("*Sullivan*"). "When statutes that are otherwise similar use different words or adopt a different approach, this suggests a different meaning was intended": *Ibid.*; also, see *Morguard Properties Ltd. v. Winnipeg (City)*, 1983 CanLII 33 (SCC), [1983] 2 S.C.R. 493 at 504-505, 25 Man. R. (2d) 302; and *Reference Re Canada Labour Code*, 1992 CanLII 54 (SCC), [1992] 2 S.C.R. 50 at 106, 91 D.L.R. (4th) 449. These principles and s. 34(e) of the *OLA* suggest that it was not the legislature's intention to make active offer a fundamental part of s. 11(1).

[144] We conclude that the trial judge erred in finding that active offer was necessary in all head or central offices. Nevertheless, in those contexts where urgent or highly confidential matters are likely to arise, the person who seeks such services in French cannot easily access it or know it is available without an active offer. As an example, unless the Stanton Hospital provides signage or a greeting in French a person who seeks services in French in the emergency room cannot know it is available. Interestingly, this is consistent with the GNWT's own policy as found in the PGs.

[…]

b) The assessment of individual complaints under s. 11(1) in light of the non-binding nature of the PGs

[180] The individual complaints arise in three ways. If the allegation concerns a head or central office, services in French are required. If the allegation concerns an office that is not a head or central office, services in French will be required only pursuant to s. 11(1)(a) or (b), namely, if there is a significant demand or if the nature of the office requires services in French. Since the trial judge looked to the PGs to determine significant demand (through reliance on PG #1 (Designated Regions)), she did not need to make findings about significant demand. Similarly, she did not generally need to make determinations about the nature of the office, because she relied on Schedule A to PG #2 (Designated Offices) to determine what government facilities were bound to comply with the PGs. In particular, the fact that "hospitals" were listed on Schedule A enabled her to draw conclusions about the adequacy of French services in hospitals and the need for such services at the Office of Vital Statistics ("Inuvik Office").

[181] We are not positioned to make findings about significant demand. Indeed, we doubt that the evidence presented by the individual respondents would generally show significant demand,

since in many cases it appears that they sought services as part of FFT's [Fédération Franco-ténoise] strategy of establishing the inadequacy of services.

[182] We are able to draw some conclusions about whether, under s. 11(1)(b), "it is reasonable, given the nature of the office, that communications with and services from it be available in both French and English". In our view, such a designation is justified in the case of the Stanton Hospital because it is the referral centre for the NWT. This point was apparently conceded at trial as regards Stanton Hospital: at para. 724. There is inadequate evidence to support the same conclusion about the Hay River Hospital and it is unclear whether a similar concession was made at trial.

[183] A different rationale applies to the Inuvik Office. It is the central service point chosen by the Department of Health and Social Services for the issuance of any official certificate. It deals with the registration of all vital events that occur in the NWT, such as births, deaths, stillbirths and marriages. Its nature brings it under s. 11(1)(b). Similarly, the Department of Transportation in Yellowknife deals with the public in the capital and so requires the provision of French services pursuant to s. 11(1)(b). The same point applies to the apprenticeship office in Yellowknife.

[184] A like conclusion cannot be reached about the Public Works office in Fort Smith. The appellants' evidence showed that it did not offer services to the public. Accordingly, it cannot be said that its nature required the provision of French services under s. 11(1)(b).

[185] These conclusions, along with other conclusions previously reached, guide our analysis of the appellants' complaints concerning certain specific allegations of breaches.

[…]

(i) Allegations of Fernand Denault against the former Department of Natural Resources, Wildlife and Economic Development

(aa) Background and trial decision

[190] He alleged his right to government services in French was infringed (i) when he twice received a questionnaire in English without an active offer of a French version; (ii) when he was greeted by an English-only recording in his attempt to reach the Department's languages coordinator; and (iii) when he was greeted in English by an employee after having placed another telephone call to the Department.

[…]

(bb) Analysis

[194] First, given our earlier conclusion that s. 11(1) of the *OLA* does not generally require an active offer, the trial judge erred in law in finding a breach of s. 11(1) because the questionnaire was not accompanied by an offer of a French version. She likewise erred in concluding that the Department was obligated to make known a telephone number at which to obtain services in French (as that is also a form of active offer) and that s. 11(1) was breached by the use of a voice-mail message in English only.

[195] Second, given the services he sought when he contacted the office (which were not urgent or confidential), access to a bilingual employee on the next working day met the GNWT's legal obligation under s. 11(1).

[196] The award of damages to Mr. Denault is vacated.

[…]

(ii) Allegations of Suzanne Houde regarding the Stanton Regional Hospital

(aa) Background and trial decision

[199] The trial judge found that Ms. Houde's rights under s. 11(1) were breached because (i) despite the presence of welcome signs in French, Ms. Houde did not benefit from a French greeting at the hospital on a number of occasions; (ii) several times, she was prompted by the hospital to rely on the interpretation skills of her husband and, in some cases, she had to depend on her husband's translation of consent forms; (iii) she was encouraged to make her own arrangements for an interpreter for a consultation with an orthopaedist; and (iv) she did not have access to an interpreter in the recovery room following surgery. The trial judge awarded Ms. Houde $12,000 in compensatory damages as well as $750 for her travel to Québec in 2002 for surgery.

[200] These findings are justified by the evidence and the law.

(bb) Analysis

[201] As we have said at para. 182, it was conceded that Stanton Hospital was obliged to provide bilingual services. Ms. Houde's experiences demonstrate the importance of a contextual approach. Because her interactions were related to her health and largely of a confidential nature, service in French had to be offered immediately. This is the type of situation where a contextual approach requires the use of an active offer, without which the person requiring services in French cannot know that they exist.

[202] The nature of the required care necessitates the use of front line personnel who can greet and respond to patients in French. The hospital's recourse to Mr. Légaré's skill in interpreting and translating medical consent forms shows a blatant misunderstanding of a patient's needs in a hospital context. Asking a person untrained in interpretation and medical terminology to translate the risks of a treatment or surgery to a loved one is an unacceptable approach to the provision of services.

[203] Similarly, Ms. Houde's rights to services in French were breached when she was encouraged to make her own arrangements for an interpreter when consulting an orthopaedist at the hospital and when she had no access to French services in dealing with health care professionals and was therefore, on one occasion, unable to communicate her need for medication following surgery. Moreover, the delicate and confidential nature of the information exchanged between health care professionals and patients mandates that efforts be made to recruit francophone employees before providing services through an interpreter. The trial judge dealt with this issue appropriately and her damage award to Ms. Houde was justified.

[…]

(iii) Allegations of Suzanne Houde regarding the Inuvik Office

[210] For reasons set out at para. 183, we are of the view that s. 11(1)(b) applies to the Inuvik Office. As such, the trial judge correctly concluded that Ms. Houde was entitled to receive services from it in French. Obtaining a health card is not of such an urgent nature that the GNWT should be denied a choice as to the means by which it provides such services. Ms. Houde, however, sought service in French and never received it. Unlike Mr. Denault, she was never offered any method by which to obtain service in French. The damage award was justified.

[…]

(iv) Allegations of Pierre Ranger regarding the Health Services in Hay River

[214] As we concluded at para. 182 , the evidence does not show that the Hay River Hospital falls under s. 11(1)(b). Accordingly, the damages awarded to Mr. Ranger are vacated.

[…]

(vi) Allegations of Nadia Laquerre regarding the Department of Public Works

[227] For the reasons given at para. 184 and absent a finding that it was a head or central office, we agree with the appellants that the Fort Smith Public Works office was not subject to s. 11(1). The appeal is allowed in that regard.

[…]

(vii) Allegations of Yvon Dominic Cousineau regarding the Department of Transportation

(bb) Analysis

[233] For reasons given at para. 73, we agree with the appellants' argument that the absence of a French greeting at the transport office could not ground a finding by the trial judge because that breach was not specifically pleaded in the amended statement of claim. Moreover, since there was no obligation to publish the manual in French, no legal liability arose as a result of a failure to do so. These facts did not entitle Mr. Cousineau to damages.

[234] That said, the fact that Mr. Cousineau did not benefit from the existence of the driver's manual in French is symptomatic of the GNWT's lack of organization and implementation of the *OLA*. It provides another justification for the trial judge's structural remedy.

[…]

(viii) Allegations of Yvon Dominic Cousineau regarding the DECE [Department of Education, Culture and Employment]

(bb) Analysis

[239] Again, we accept the appellants' argument that the trial judge should have refused to rule on Mr. Cousineau's apprenticeship certificate because it was not explicitly pleaded in the amended statement of claim. We also disagree with her conclusion that s. 11(1) was breached because Mr. Cousineau was not informed of the possibility of taking his apprenticeship programme in French in New Brunswick. Although for reasons given at para. 183 we agree that the office was subject to s. 11(1)(b), Mr. Cousineau never asked for services in French and, given the non-urgent nature of the services, there was no obligation to provide an active offer. The apprentice form (defined by the trial judge as a "time credit sheet" to confirm Mr. Cousineau's hours) did not constitute a "document of a formal or official nature" within the scope of s. 8. The damage award to Mr. Cousineau is vacated.

D. Summary

[240] The trial judge erred in limiting the latitude to be given to the GNWT in choosing the means to meet its obligations under s. 11(1). The context is extremely important. Given the NWT's unique circumstances, complete bilingualism is impossible to achieve in the provision of all government services. When a required service involves urgent or confidential matters, a member of the public is entitled to communicate with and receive services in French without delay. Ideally, such services will be provided without resort to an interpreter, but given the difficulties of recruitment and other contextual factors in the NWT, that will not always be possible. The trial judge's requirement that a global plan deal with recruitment should assist in making bilingual service providers more available. If the service in question does not involve confidential or urgent services, the GNWT has greater latitude in providing its services. A 1-800 number may fulfill this

obligation, and short delays in making services available in French will not constitute violations of the *OLA*. Although active offers are not generally required, in the context of urgent or confidential circumstances, only with a French greeting will it be obvious that French services are available.

[…]

IX. DID THE TRIAL JUDGE ERR IN CONCLUDING THAT THE OLA REQUIRED THE BROADCASTING OF LEGISLATIVE ASSEMBLY DEBATES AND THE PUBLICATION OF HANSARD IN FRENCH? DID SHE ERR IN CONCLUDING THAT BOTH MATTERS WERE NOT SUBJECT TO LEGISLATIVE PRIVILEGE?

C. Analysis

[259] We start with a statutory interpretation of ss. 7, 8 and 11(1) of the *OLA* to determine whether, on their face, any of these provisions require the broadcasting of legislative debates or the publication of Hansard in French. If they do not, no question of legislative privilege arises. Beginning at para. 281, we turn to the question of whether, despite that interpretation, the concept of legislative privilege insulates from judicial scrutiny the Assembly's language decisions on these two matters.

[…]

[261] Apart from the matter of privilege, the appellants' main argument arises from s. 7(3), which obliges the GNWT to provide "copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions", to any person on reasonable request. The appellants assert that if the legislature had intended to require the broadcast of debates in both languages, it would have said so more clearly and that the trial judge's interpretation of s. 11(1) has the effect of reading a requirement into the law that is not otherwise there. Essentially, the argument is that because the *OLA* deals specifically with the availability of sound recording of debates in s. 7(3), s. 11(1) should be interpreted to exclude broadcasting of the debates as a service that must be available in French and English.

[262] This argument has some superficial attraction because when there is a conflict between a general and a specific provision, the conflict may be avoided by applying the specific provision to the exclusion of the more general: *BG Checo Intl. Ltd. v. B.C. Hydro*, 1993 CanLII 145 (SCC), [1993] 1 S.C.R. 12 at 24, 99 D.L.R. (4th) 577. The argument cannot be sustained here, however, because there is no conflict between ss. 7(3) and 11(1).

[263] The right to obtain "sound recordings" contained in s. 7(3) is not the same as the right to receive "available services" found in s. 11(1). The debates are broadcast on television. Thus, the medium employed is different than that of a "sound recording". Moreover, although s. 7(3) contemplates the provision of sound recordings, it is up to an individual to request the recording. In contrast, a television broadcast is freely available to anyone who has access to a television. Further, the sound recording will be provided on "reasonable request", a term that gives discretion to whomever considers the request.

[264] The fact that the right in s. 7(3) to obtain a sound recording is more narrow than the unlimited right in s. 11(1) to receive "available services" from a head office suggests that s. 7(3) was not intended to limit the scope of s. 11(1). The broadcasting policy was put into place long after passage of the *OLA*, which also undermines any argument that the policy informs the interpretation of s. 11(1).

[265] The trial judge correctly concluded that broadcasting of the debates is an "available service". In *Quigley v. Canada (House of Commons)*, 2002 FCT 645 (CanLII), [2003] 1 F.C. 132, moot appeal 2003 FCA 465 (CanLII), 314 N.R. 375, a similar conclusion was reached as regards the obligation of the House of Commons under s. 25 of the *OLAC* to ensure that "available services" provided on behalf of a federal institution be provided in both official languages. There,

the problem was that some service providers failed to make available to the public all the types of signals that had been provided by the House of Commons to the Cable Public Affairs Channel. The Federal Court concluded that “available services” under s. 25 included the broadcast of debates. Indeed, the appellants in this case did not press the argument that the broadcast of debates is not a “service”.

[…]

c) Section 11(1) of the OLA

[280] In any event, we agree with the respondents that, for the reasons given above with regard to the broadcasting of the debates, the publication of Hansard is a “service” emanating from a head or central office of a government institution (defined in s. 1 as including the Office of the Legislative Assembly) for the purposes of s. 11(1).

[…]

C. Summary

[299] The language of s. 11(1) required the GNWT to broadcast the legislative debates in French with the same frequency as in English and Hansard falls under the language of s. 7(1) and s. 11(1), but not s. 8. However, legislative privilege over decisions about the publication of Hansard and the broadcasting of the debates has not been abrogated merely by the passage of the *OLA*. Accordingly, the Assembly’s decisions about language use in this regard cannot be reviewed by the courts.

[…]

[313] Although she erred in relying on a civil law concept to help her define the parameters of substantive equality, this did not affect the correctness of her general approach. While she appropriately took a contextual approach to substantive equality, in applying that concept to s. 11(1) she gave inadequate weight to the unique circumstances of the NWT, including the composition and location of its population, its challenges in providing even elementary services, and the nature of services being sought. She was wrong to conclude that s. 11(1) generally requires the use of active offer, although active offer may be required when services are needed immediately in urgent or confidential situations. Her interpretation of the scope of s. 8 was correct although she misapplied it in regard to Mr. Cousineau. She also erred in awarding him damages for alleged specific breaches which were not explicitly pleaded. She correctly held that the PGs did not create binding legal obligations, but her reliance on the PGs led to some inappropriate findings as to allegations by individual respondents.

[…]

[315] The trial judge correctly interpreted s. 11(1) of the *OLA* as requiring legislative debates broadcast in English to be similarly broadcast in French. Sections 7 and 11(1) dictate a similar result as to the publication of Hansard. However, as regards both topics, the concept of legislative privilege insulates from judicial review the Assembly’s decisions in this regard. The trial judge did not err in her costs award.

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11. (2) Communication by public with regional, area or community offices

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.**

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[34] Section 11(1), which is of prime importance in this appeal, concerns the availability of services. It entitles members of the public to communicate with and receive available services from head or central offices of a government institution in English or French, and, if there is a significant demand or it is reasonable, given the nature of the office, to communicate with and obtain services in these two languages from "any other office of that institution". In contrast, as to the Aboriginal languages, s. 11(2) gives the right of communication and services, in the requested languages, from any regional, area or community office only if there is a significant demand or it is reasonable given the nature of the office.

[…]

[124] At the heart of this case is the meaning of substantive equality in the context of the provision of bilingual government services in the NWT. There is little helpful authority on this issue. For example, *Beaulac* dealt with the accused's rights to a trial in French under s. 530 (1) and (4) of the *Criminal Code*, R.S.C. 1985, c. C-46. Other cases have addressed substantive equality in the context of s. 23 of the *Charter* (the right to an education in French where numbers warrant.) (See *Mahe* and *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC 1 (CanLII), [2000] 1 S.C.R. 3 ("*Arsenault-Cameron*")). Lalonde addressed the *French Language Services Act*, R.S.O 1990, c. F.32 in the context of closure of an Ontario hospital. *Halotier* dealt with whether rules of court had to be in French. This is the first case to address the provision of bilingual government services on a large scale and in a multiplicity of contexts.

[…]

[129] The trial judge relied on the wording of the *OLA*. Section 11 contemplates three different levels of language rights regarding communication with and services from government institutions. The first two are contained in s. 11(1). First, if the contact is with a head or central office, there is a right to communicate with and receive services in French or English. Second, if the contact is with any office other than the head or central office, the member of the public has a right to communicate with and receive services from that office in French or English if (a) there is significant demand for the communication with and services from that office in that language; or (b) it is reasonable, given the nature of the office, that the communications with and services from it be available in both languages. The third right, in s. 11(2), deals with Aboriginal languages and is not relevant here.

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11. (3) Interpretation

11. (3) In interpreting subsection (2), consideration shall be given to collective rights of Aboriginal peoples pertaining to Aboriginal languages and exercised within the traditional homelands of those peoples, consistent with any applicable lands, resources and self-

government agreements, including land claim and treaty land entitlement agreements, and any other sources or expressions of those collective rights.

R.S.N.W.T. 1988,c.56(Supp.),s.12.; S.N.W.T. 2003,c.23,s.9,20(1).

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12. Publication in Northwest Territories Gazette

12. Any Act, and any rule, order, regulation, by-law or proclamation required by or under the authority of an Act to be published in the Northwest Territories Gazette is of no force or effect if it is not printed and published in both English and French.

R.S.N.W.T. 1988,c.56(Supp.),s.13,21;c.78(Supp.),s.1; S.N.W.T. 1991-92,c.8,s.1; S.N.W.T. 2003,c.23,s.10,20(1).

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13. Rights and services not affected

13. Nothing in this Part shall be construed as preventing the Commissioner, the Legislative Assembly or the Government of the Northwest Territories from granting rights in respect of, or providing services in, any Official Language in addition to the rights and services provided in this Act and the regulations.

R.S.N.W.T. 1988, c.56 (Supp.),s.14; S.N.W.T. 2003,c.23,s.20(1).

Part II – Languages Commissioner

ANNOTATIONS – GENERAL

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[35] Part II of the *OLA* provides for the office of the LC [Languages Commissioner of the Northwest Territoires], who is empowered to investigate complaints concerning official languages. Section 20(1) states that it is the LC's duty "to take all actions and measures" within his or her authority "with a view to ensuring recognition of the rights, status and privileges" of the official languages and "compliance with the spirit and intent" of the *OLA*. Section 23 requires the preparation of an annual report by the LC.

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14. Definitions

14. In this Part,

"Board of Management" means the Board of Management of the Legislative Assembly; (*Bureau de régie*)

"Speaker" means the Speaker of the Legislative Assembly. (*président*)

S.N.W.T. 2003,c.23,s.11,20(1).

15. (1) Appointment of Languages Commissioner

15. (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint a Languages Commissioner to exercise the powers and perform the duties set out in this Act.

15. (2) Not in public service

15. (2) The Languages Commissioner may not be a member of the public service.

15. (3) Term of office

15. (3) Subject to section 16, the Languages Commissioner holds office during good behavior for a term of four years.

R.S.N.W.T. 1988, c.56 (Supp.), s.15; S.N.W.T. 2003,c.23,s.11,20(1),(2).

ANNOTATIONS

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

[60] It follows as well that the Languages Commissioner in the Territories could not be the "Crown" for the purposes of subsection 17(1) [of the *Federal Court Act*]. The Languages Commissioner is appointed by the Commissioner of the Territories after a resolution of the Legislative Assembly. She holds office during good behaviour for a term of four years, but may be removed by the Commissioner of the Territories on address of the Legislative Assembly. It is true that she "shall rank as and have all the powers of a Deputy Minister of a department" (see para. 53 of these reasons), but in no way can it be said that she exercises the executive power or that she is an agent of the executive power. The Languages Commissioner of the Territories is no more the "Crown" than is the Commissioner of Official Languages of Canada.

[61] At best, the Commissioner is a "board, commission or other tribunal", which would be of no use to the Franco-ténois. On the one hand, their action is not based on section 18 of the *Federal Court Act* (this section gives the Federal Court exclusive jurisdiction over judicial review of the federal administration). On the other hand, as I said earlier (para. 48), their action could not in any event be based on section 18 since the very definition of "federal board, commission or other tribunal" in section 2 of the *Federal Court Act* excludes a board, commission or tribunal constituted under an ordinance of the Territories. Moreover, one need only consult the list of "boards, commissions or tribunals" listed in the statement of claim (see para. 3, supra) to be persuaded of the merits of this case law: who, for example, would argue that such boards as the Territories' Highway Transport Board or Social Assistance Appeal Board are "federal boards, commissions or other tribunals" subject to judicial review by the Federal Court?

[62] Moreover, even if the Territories' Language Commissioner was a "federal board, commission or other tribunal", she could not be both a "federal board, commission or other tribunal" and "the Crown" (see *M.N.R. v. Creative Shoes Ltd.*, [1972] F.C. 993 (C.A.), leave to appeal refused by S.C.C., [1972] F.C. 1425) and could not therefore be a defendant in an action brought under section 17 of the *Federal Court Act*. Worse still, a declaratory judgment, under subsection 18(3) of the *Federal Court Act*, cannot be obtained against a federal board, commission or other tribunal except by an application for judicial review; but the proceeding in question, here, is an action.

[63] The trial judge therefore erred when he concluded that subsection 17(1) granted jurisdiction to the Federal Court in relation to the claim for relief made against the Speaker of the Legislative Assembly of the Territories and against the Languages Commissioner of the Territories.

[…]

[74] Furthermore, there exists in the Territories a superior court capable of ensuring the lawfulness of the actions taken by the Government of the Territories just as there are in the provinces superior courts capable of ensuring the lawfulness of the actions taken by the provincial governments. The Federal Court would betray its vocation as an "additional court for the better administration of the laws of Canada" (to paraphrase section 101 of the *Constitution Act, 1867*) if it were to be so bold as to review the implementation of the laws in the Territories. I note that in language rights matters, the Territories' *Official Languages Act*, an ordinance that has not been disallowed by the Governor in Council, has established the office of the Languages Commissioner and expressly allowed this official to apply to the Supreme Court of the Territories in order to enforce the language rights in the Territories. Thus there exists, for the Territories, the equivalent of what exists federally, with this difference that at the federal level it is the Commissioner of Official Languages of Canada and the Federal Court of Canada that oversee compliance with Canada's official languages policy. Here again, there is a symmetry in the administration of justice that appears to me to have been the intention of both Parliament and the Legislative Assembly of the Territories.

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16. (1) Resignation

16. (1) The Languages Commissioner may resign at any time by notifying the Speaker in writing or, if the Speaker is absent or unable to act or the office of the Speaker is vacant, by so notifying the Clerk of the Legislative Assembly.

16. (2) Removal for cause or incapacity

16. (2) The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend or remove from office the Languages Commissioner.

16. (3) Suspension

16. (3) If the Legislative Assembly is not sitting, the Commissioner, on the recommendation of the Board of Management, may suspend the Languages Commissioner for cause or incapacity.

S.N.W.T. 2003,c.23,s.11,20(1).

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17. (1) Acting Languages Commissioner

17. (1) The Commissioner, on the recommendation of the Board of Management, may appoint an acting Languages Commissioner when

> **(a) the Languages Commissioner is temporarily unable to act because of illness or for another reason;**
>
> **(b) the office of Languages Commissioner becomes vacant when the Legislative Assembly is not sitting;**

(c) the Languages Commissioner is suspended when the Legislative Assembly is not sitting; or

(d) the Languages Commissioner is removed or the office of the Languages Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection 15(1) before the end of the sitting.

17. (2) Term

17. (2) An acting Languages Commissioner holds office until

(a) the Languages Commissioner returns to office after a temporary absence,

(b) the suspension of the Languages Commissioner ends, or

(c) a person is appointed under subsection 15(1), whichever is the case.

S.N.W.T. 2003, c.23, s.11, 20(1),(3),(4).

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18. (1) Special Languages Commissioner

18. (1) If, for any reason, the Languages Commissioner determines that he or she should not act in respect of any particular matter under this Act, the Commissioner, on the recommendation of the Board of Management, may appoint a special Languages Commissioner to act in the place of the Languages Commissioner in respect of that matter.

18. (2) Term

18. (2) A special Languages Commissioner holds office until the conclusion of the matter in respect of which he or she has been appointed.

S.N.W.T. 2003,c.23,s.11,20(1).

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19. Staff

19. Such officers and employees as are necessary for the proper conduct of the work of the office of the Languages Commissioner shall be appointed in the manner authorized by law.

R.S.N.W.T. 1988, c.56 (Supp.),s.15; S.N.W.T. 2003,c.23,s.12,20(1).

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20. (1) Duty of Languages Commissioner

20. (1) It is the duty of the Languages Commissioner to take all actions and measures within the authority of the Languages Commissioner 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 this Act in the administration of the affairs of government institutions.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[35] Part II of the *OLA* provides for the office of the LC [Languages Commissioner], who is empowered to investigate complaints concerning official languages. Section 20(1) states that it is the LC's duty "to take all actions and measures" within his or her authority "with a view to ensuring recognition of the rights, status and privileges" of the official languages and "compliance with the spirit and intent" of the *OLA*. Section 23 requires the preparation of an annual report by the LC.

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20. (2) Investigations and reports

20. (2) In carrying out the duties set out in subsection (1), the Languages Commissioner may conduct and carry out investigations either on his or her own initiative or pursuant to any complaint made to the Languages Commissioner, and may report and make recommendations as provided in this Act.

R.S.N.W.T. 1988,c.56(Supp.),s.15; S.N.W.T. 2003,c.23,s.13.

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21. (1) Investigations of complaints

21. (1) The Languages Commissioner shall investigate any reasonable complaint made to the Languages Commissioner arising from any act or omission to the effect that, in any particular instance or case, in the administration of the affairs of any government institution

(a) the status of an Official Language was not or is not being recognized;

(b) any provision of any Act or regulation relating to the status or use of the Official Languages was not or is not being complied with; or

(c) the spirit and intent of this Act was not or is not being complied with.

21. (2) Refuse or cease investigation

21. (2) The Languages Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the Languages Commissioner it is reasonable to do so, in which case the Languages Commissioner shall inform the complainant of that decision and the reasons for it.

R.S.N.W.T. 1988, c.56(Supp.),s.15.

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22. (1) Report to Minister and Deputy Minister

22. (1) If, after carrying out an investigation under this Act, the Languages Commissioner is of the opinion that any matter should be referred to a government institution concerned for consideration and any necessary action, the Languages Commissioner shall report

that opinion and the reasons for it to the Minister, and to the Deputy Minister or other administrative head of the institution concerned.

22. (2) Recommendations

22. (2) In a report under subsection (1) the Languages Commissioner may make the recommendations that he or she considers appropriate and may request the Deputy Minister or other administrative head of the government institution concerned to notify the Languages Commissioner within a specified time of the action, if any, that the institution proposes to take to give effect to those recommendations.

22. (3) Inform complainant

22. (3) The Languages Commissioner shall inform the complainant of the results of an investigation, the recommendations made and any action taken, in the manner and at the time that the Languages Commissioner considers appropriate.

22. (4) Report to Legislative Assembly where appropriate action not taken

22. (4) If, within a reasonable time after a copy of a report is transmitted to the Minister, and to the Deputy Minister or other administrative head of the government institution, appropriate action has not, in the opinion of the Languages Commissioner, been taken, the Languages Commissioner may make such report to the Legislative Assembly as the Languages Commissioner considers appropriate.

R.S.N.W.T. 1988,c.56 (Supp.), s.15; S.N.W.T. 2003,c.23,s.14.

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23. (1) Annual report

23. (1) The Languages Commissioner shall, by October 1 in each year, prepare and submit to the Speaker a report on the activities of the Languages Commissioner and the discharge of his or her duties under this Act during the preceding fiscal year including recommendations, if any, for proposed changes to this Act that the Languages Commissioner considers necessary or desirable in order to give effect to its spirit and intent.

23. (2) Tabling report

23. (2) The Speaker shall lay the annual report before the Legislative Assembly as soon as is reasonably practicable.

23. (3) Referral to committee

23. (3) The annual report laid before the Legislative Assembly shall be referred to a committee designated or established by it, and that committee shall report on its review of the annual report within 180 days of the referral.

R.S.N.W.T. 1988,c.56(Supp.),s.15; S.N.W.T. 2003,c.23,s.15.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[35] Part II of the *OLA* provides for the office of the LC [Languages Commissioner], who is empowered to investigate complaints concerning official languages. Section 20(1) states that it is the LC's duty "to take all actions and measures" within his or her authority "with a view to ensuring recognition of the rights, status and privileges" of the official languages and "compliance with the spirit and intent" of the *OLA*. Section 23 requires the preparation of an annual report by the LC.

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24. Confidentiality

24. Subject to this Act, the Languages Commissioner and every person acting on behalf or under the direction of the Languages Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

R.S.N.W.T. 1988,c.56 (Supp.),s.15.

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25. Protection of Commissioner

25. No criminal or civil proceedings lie against the Languages Commissioner, or against any person acting on behalf or under the direction of the Languages Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Languages Commissioner under this Act.

R.S.N.W.T. 1988,c.56(Supp.),s.15.

Part III – Minister Responsible for Official Languages

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[36] Part III makes a minister responsible for the *OLA* and for the direction and coordination of government policies relating to official languages. He or she is also required to report annually to the Legislature. An Official Languages Board is established to advise the minister and evaluate the effectiveness of the legislation. An Aboriginal Languages Revitalization Board is established to promote Aboriginal languages.

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26. (1) Minister responsible for Official Languages

26. (1) The Minister has responsibility for this Act and for the general direction and coordination of the policies and programs of the Government of the Northwest Territories that relate to Official Languages.

26. (2) Minister

26. (2) In carrying out his or her responsibilities under subsection (1), the Minister shall

(a) consider advice given and recommendations made by the Official Languages Board and the Aboriginal Languages Revitalization Board;

(b) oversee the development of policies and regulations necessary to implement this Act;

ANNOTATIONS

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[177] While the *OLA* [Northwest Territories *Official Languages Act*] refers to regulations, nowhere does it mention guidelines. This suggests that only regulations (not PGs [Policy and Guidelines]) 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.

(c) promote Official Languages education in schools and post-secondary institutions and in adult education and literacy training programs;

(d) promote the use of Official Languages in the administration and delivery of programs and services by government institutions; and

(e) encourage the maintenance and revitalization of Aboriginal languages.

S.N.W.T. 2003,c.23,s.16,20(1).

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27. (1) Annual report

27. (1) The Minister shall prepare, in respect of a fiscal year, an annual report on Official Languages, including

(a) an assessment of the status of each Official Language, based on such information as is available;

(b) an evaluation of the effectiveness and efficiency of the policies and programs of government institutions relating to Official Languages, including an analysis of program expenditures; and

(c) a report on the activities of the Official Languages Board and the Aboriginal Languages Revitalization Board.

27. (2) Tabling report

27. (2) The Minister shall lay the annual report before the Legislative Assembly no later than the first sitting of the Legislative Assembly following the expiry of six months after the end of the fiscal year that is the subject of the report.

S.N.W.T. 2003,c.23,s.16,20(1).

Official Languages Board

28. (1) Official Languages Board established

28. (1) An Official Languages Board is established, comprised of at least one member of each of the Chipewyan, Cree, English, French, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ language communities.

28. (2) Membership

28. (2) The members of the Official Languages Board shall be appointed by the Commissioner in Executive Council on the recommendation of the Minister and on the nomination of the prescribed representatives of each of the language communities referred to in subsection (1).

S.N.W.T. 2003,c.23,s.17,20(1).

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29. (1) Mandate

29. (1) The Official Languages Board

> **(a) 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, and may, in the course of that review, evaluate the provisions, operation and effectiveness of the *Official Languages Act*; and**
>
> **(b) may advise and make recommendations to the Minister with respect to any matter within its review.**

29. (2) Consultation

29. (2) For the purposes of fulfilling its functions under subsection (1), the Official Languages Board may, in its discretion, consult with the Aboriginal Languages Revitalization Board.

S.N.W.T. 2003, c.23,s.17,20(1).

Aboriginal Languages Revitalization Board

30. (1) Aboriginal Languages Revitalization Board established

30. (1) An Aboriginal Languages Revitalization Board is established, comprised of at least one member of each of the Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ language communities.

30. (2) Membership

30. (2) The members of the Aboriginal Languages Revitalization Board shall be appointed by the Commissioner in Executive Council on the recommendation of the Minister and on

the nomination of the prescribed representatives of each of the language communities referred to in subsection (1).

S.N.W.T. 2003,c.23,s.17,20(1).

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31. (1) Mandate

31. (1) The Aboriginal Languages Revitalization Board

> **(a) may review programs and initiatives of communities, government institutions and other bodies or institutions to maintain, promote and revitalize Aboriginal languages, and may, in the course of that review, evaluate the provisions, operation and effectiveness of the *Official Languages Act*; and**
>
> **(b) may advise and make recommendations to the Minister with respect to any matter within its review.**

31. (2) Consultation

31. (2) For the purposes of fulfilling its functions under subsection (1), the Aboriginal Languages Revitalization Board may, in its discretion, consult with the Official Languages Board.

S.N.W.T. 2003, c.23,s.17,20(1).

Part IV – General

32. (1) Enforcement

32. (1) Anyone whose rights under this Act or the regulations have been infringed or denied may apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just in the circumstances.

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[37] Part IV (General) contains a remedies provision in s. 32(1). It also authorizes the minister or the LC [Languages Commissioner] to enter into agreements concerning the implementation of the *OLA* and contemplates the making of regulations.

[38] Many of the sections of the *OLA* are nearly identical to relevant parts of the *Charter*, although the *OLA* contains some rights that are more extensive than those in the *Charter*. Appendix C summarizes the similarities and differences.

[…]

[41] Section 8 of the *OLA* (concerning the use of English and French in written documents directed to or intended for the notice of the public) has no counterpart in the *Charter*. Finally, the remedies section of the *OLA* (s. 32(1)) is virtually identical to s. 24(1) of the *Charter*.

[…]

B. Standard of Review

[56] This ground of appeal includes several sub-issues attracting different standards of review:

> 1. The interpretation of s. 32(1) of the *OLA* is a question of law to be dealt with on the correctness standard.
>
> […]
>
> 4. Generally, choice of remedy involves the exercise of discretion by the trial judge and will not be interfered with absent a misdirection on the law or a palpable error on the facts: *Bowlen v. Digger Excavating* (1983) Ltd., 2001 2001 ABCA 214 (CanLII), ABCA 214, 286 A.R. 291 at paras. 10-12, citing *Harris v. Robinson* (1892), 21 S.C.R. 390 and *Soulos v. Korkontzilas*, 1997 CanLII 346 (SCC), [1997] 2 S.C.R. 217, 32 O.R. (3d) 716. As is discussed at para. 60, the language in the *OLA*'s remedial provision is similar to the language in s. 24(1) of the *Charter* and should therefore be interpreted in a similar manner. Section 32(1) of the *OLA*, like s. 24(1) of the *Charter*, provides a superior court with wide and unfettered discretion to grant remedies: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 (CanLII), [2003] 3 S.C.R. 3 at para. 50 ("*Doucet-Boudreau*"), citing *Mills v. The Queen*, 1986 CanLII 17 (SCC), [1986] 1 S.C.R. 863 at 965. Those remedies are subject to challenge only where the party seeking to do so can establish that the order is not "appropriate and just in the circumstances": *Doucet-Boudreau* at para. 50.

C. Analysis

[57] This section begins with a general discussion of how to approach the interpretation of s. 32(1) of the *OLA*. It considers the extent of a court's ability to examine allegations of systemic breaches of constitutional or quasi-constitutional rights, and the effect of the pleadings in this case on the scope of the trial and the remedies granted. It concludes with a consideration of whether the structural remedy granted by the trial judge was inappropriate or unjust because it lacked an evidentiary basis, was premature since this was the first litigation involving the *OLA*, or intruded unduly on the role of the legislature.

1. Interpretation of s. 32(1) of the *OLA*

[58] Section 32(1) of the *OLA* provides:

> 32(1) Anyone whose rights under this Act or the regulations have been infringed or denied may apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just in the circumstances.
>
> 32(1) Toute personne lésée dans les droits que lui confèrent la présente loi et ses règlements peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

[59] In determining whether the trial judge erred as to the remedies she granted, it is necessary to begin with an analysis of this provision, in particular the closing words "appropriate and just in the circumstances". The words of a statute "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87; see also *Friesen v. Canada*, 1995 CanLII 62 (SCC), [1995] 3 S.C.R. 103 at para. 10, 127 D.L.R. (4th) 193; *Verdun v. Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550 at para. 22, 139 D.L.R. (4th) 415; *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213 at para. 144, 151 D.L.R. (4th) 32; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21, 36 O.R. (3d) 418.

[60] Official languages statutes are quasi-constitutional and are to be given a broad purposive interpretation to achieve the goal of fostering official languages: See, for example, *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, 173 D.L.R. (4th) 193 ("*Beaulac*"); *Jones v. Att. Gen. of New Brunswick et al.*, 1974 CanLII 164 (SCC), [1975] 2 S.C.R. 182, 7 N.B.R. (2d) 526; *Att. Gen. of Quebec v. Blaikie et al.*, [1979] 2 S.C.R. 1016, 101 D.L.R. (3d) 394; *A.G. (Quebec) v. Blaikie et al.*, 1981 CanLII 14 (SCC), [1981] 1 S.C.R. 312, 123 D.L.R. (3d) 15; *Reference re: Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721, 35 Man. R. (2d) 83 ("*Manitoba Language Rights Reference*"); *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, 54 D.L.R. (4th) 577. Since such statutes mirror parts of the *Charter*, its interpretational principles are also relevant: *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII), [2002] 2 S.C.R. 773 at para. 23. *Charter* rights are to be given a broad and generous interpretation so as to enhance and preserve the underlying rights: *Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145 at 156, 55 A.R. 291; *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295 at 344, 60 A.R. 161; *United States of America v. Cotroni*, 1989 CanLII 106 (SCC), [1989] 1 S.C.R. 1469 at 1480, 48 C.C.C. (3d) 193. Further support for this approach is found in s. 10 of the *Interpretation Act*, R.S.N.W.T. 1988, c. I-8 ("*Interpretation Act* NWT"), which states that all enactments are to be construed as remedial and are to be given fair, large and liberal construction and interpretation.

[61] The trial judge correctly concluded that the *OLA* is a quasi-constitutional statute and should be interpreted as such. However, the broad and purposive approach applied to the interpretation of *Charter* rights should not override the specific words of a statute, which might limit remedies and should be afforded their ordinary meaning. As an interpretive tool, "*Charter* values" are limited to "circumstances of genuine ambiguity, *i.e.*, where a statutory provision is subject to differing, but equally plausible, interpretations": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559 at para. 62; also see *Charlebois v. Saint John (City)*, 2005 SCC 74 (CanLII), [2005] 3 S.C.R. 563 at para. 23.

[62] Both the words "appropriate" and "just" must be considered in fashioning a remedy. The word "appropriate" has many synonyms, including: correct, acceptable, reasonable, apt, becoming, befitting, felicitous, fitting, proper, right, tailor-made, convenient, expedient, suitable, useful, deserved, due, and merited. The juxtaposition of the word "just" suggests that the legislature did not consider that all appropriate remedies would be available to the courts. In considering the meaning of these words in a bilingual context in *Kodellas v. Saskatchewan (Human Rights Commission)* (1989), 1989 CanLII 284 (SK CA), 77 Sask. R. 94, [1989] 5 W.W.R. 1 at 50 (C.A.) Vancise J.A. observed:

> The remedy must be more than appropriate. The remedy must be one which is in the circumstances fair, equitable and appropriate. A just remedy must of necessity be appropriate, but an appropriate remedy may not be fair or equitable in the circumstances.

The phrase "just and appropriate" in the circumstances implies a degree of proportionality and linkage between the wrong done and the remedy granted.

[63] Searching for justice involves balancing the interests of aggrieved individuals with the state's authority to act in the best interests of its citizens. In the context of remedies for breaches of official languages laws, which concern the rights of individuals or smaller groups, the choice of remedy will generally favour something that meets the state's obligation to individuals or smaller groups, and has the least effect on the interests of the majority. In some cases, a just remedy may be deleterious to the interests of the majority. However, if two remedies would be equally effective, justice requires the imposition of that which respects the role of government and does the least harm to the majority. In that regard, expense may be an aspect of harm, and prohibitive expense is likely to be an aspect of harm.

[64] Although the Supreme Court has not defined the exact parameters of "appropriate and just", it has described five factors or considerations that courts should take into account in determining

what is appropriate and just in the circumstances: *Doucet-Boudreau* at paras. 55-59. These are discussed in detail at para. 101.

2. The Effect of the Pleadings on the Scope of the Trial and the Remedies Granted

[65] At trial, the appellants argued that the alleged systemic breaches were not justiciable. In their factum and during oral argument, they described the trial as an inquiry into the implementation of the *OLA*. The respondents argued that, while the trial was wide-ranging, that was a necessary feature of a trial that dealt with extensive systemic breaches. Those breaches could be pleaded, were pleaded, and were proven at trial. We begin with an examination of the role of the courts in assessing allegations of systemic breaches and then consider the effect of the pleadings in this case on the scope of the trial and the remedies granted.

[…]

[70] The jurisprudence establishes that, in general, courts may hear allegations of systemic breaches of *Charter* rights and grant appropriate and just remedies to address such breaches. For reasons discussed at para. 60, similar principles are applicable to quasi-constitutional language cases. It remains to be considered whether the trial judge should have refused to consider alleged systemic breaches of the *OLA* because the pleadings were too narrow to permit this.

[…]

b) Did the pleadings narrow the scope of the trial?

[73] In our view, the trial judge did not err in proceeding as she did. Systemic breaches of any right are repetitive and will often involve hundreds, if not thousands, of allegations of the failure to respect the underlying right. Providing precise details of each alleged breach would, in many such cases, require excessively long pleadings. When the issue is the breach of a contract or negligent operation of a motor vehicle, reasonable detail of the alleged breach is required. This principle pertains to the specific complaints of individual respondents. However, when the alleged breach consists of a series of identical breaches it will be sufficient to describe one breach, then state that the breach was repeated a number of times. Similarly, when the breach is systemic, involving allegations of similar but not identical breaches, it is sufficient to describe a reasonable number of representative breaches, indicating that these are part of a pattern of conduct. As noted by the Supreme Court in *Chaoulli* at para. 189:

> [T]he appellants advance the broad claim that the Quebec health plan is unconstitutional for systemic reasons. They do not limit themselves to the circumstances of any particular patient. Their argument is not limited to a case-by-case consideration. They make the generic argument that Quebec's chronic waiting lists destroy Quebec's legislative authority to draw the line against private health insurance. From a practical point of view, while individual patients could be expected to bring their own cases to court if they wished to do so, it would be unreasonable to expect a seriously ailing person to bring a systemic challenge to the whole health plan, as was done here. ...
>
> (emphasis in original)

[74] Here, part of the respondents' systemic complaint was the alleged failure of the GNWT to provide services in French. If an office never provided required French language services, it is sufficient to simply say so; it is unnecessary for pleadings to list dates and times, because the alleged breach relates to all dates and times. Similarly, if required service is sporadic, it is sufficient for the pleadings to say so generally, rather than pointing to specific evidentiary examples. All facts in issue will be relevant at trial but may not be necessary in the pleadings: *Hillman v. Imperial Bank of Canada* (1926), 1926 CanLII 128 (SK CA), 20 Sask. L.R. 507, [1926] 2 W.W.R. 276 (C.A.).

[…]

[76] This was sufficient to place in issue the systemic failure of the GNWT to implement the *OLA*. Moreover, pre-trial processes were available to the appellants to investigate the breadth of the respondents' allegations. In some instances, the appellants chose to limit discovery to particular incidents pleaded and not to explore allegations of systemic breaches. Such tactical decisions did not limit the trial judge to dealing with precise allegations of breaches. She properly heard evidence that disclosed systemic breaches of the *OLA*.

[…]

c) Did the remedies granted by the trial judge go beyond what was contemplated in the pleadings?

[80] So long as the pleadings disclose facts that give rise to remedies, a plaintiff may be granted remedies that are not inconsistent with its pleadings. Here, the respondents clearly alleged systemic breaches of the *OLA*, placing into issue the failure of the GNWT to implement the *OLA*. The trial judge was entitled to receive evidence from citizens regarding their experiences in receiving French language services from government offices. It was also open to the respondents to adduce evidence, through examination of GNWT personnel, regarding how and to what extent French language services were being provided in government offices. As well, at least some of the remedies the respondents sought were consistent with relief being granted in the form of a structural remedy.

[…]

a) Evidentiary basis

[84] The appellants point to individual pieces of evidence that the trial judge did not consider or discounted without reason. But trial judges are not obligated to mention every item of evidence in their reasons. In a lengthy trial such as this, that would be impossible. So long as the reasons generally disclose that the trial judge was alive to the respective competing positions, they will withstand appellate scrutiny. In some instances, of course, a single item of evidence can be so critical that it may be a palpable and overriding error to fail to consider it.

[…]

(iii) Application of legal principles

[107] The remedy granted by the trial judge is fair to the GNWT. The order generally compels the GNWT to do that which is required to implement its own legislation. Although there may be other ways in which the *OLA* could be implemented, it is difficult to imagine any effective implementation route which would not include a global plan. The alternative (no comprehensive plan) has persisted for many years, with little visible progress. Although some aspects of the remedy granted by the trial judge are less obviously part of an essential implementation process, all were suggested in one or another of the reports commissioned by the GNWT over the years since the *OLA* was passed.

[108] The part of the order directing the implementation of a regulation concerning which institutions would be bound by the *OLA* falls at the very extreme edge of what role is appropriate for a court. The order did not, of course, direct the content of such regulations but focussed on the well-documented necessity for having them. The trial judge gave compelling reasons why, without such a regulation, the *OLA* could not be implemented. Among other things, neither those asserting a right to service, or indeed the GNWT itself, would know which offices and agencies were required to provide bilingual services. The fact that, as discussed beginning at para. 166, PGs dealing with such matters were already in place and were said by the appellants, at trial, to demonstrate their implementation of the *OLA*, further supports this part of the order. In these

highly unusual circumstances, she was justified in requiring the passage of a regulation. At para. 53, we noted that at the time of the trial the Executive Committee was already drafting regulations so that this part of the structural remedy only required the GNWT to continue doing what it was already doing and in fact this part of the structural remedy has been complied with since the trial. See *Government Institution Regulations*, N.W.T. Reg. 082–2006 ("*Government Institution Regulations*").

[109] Lastly, the trial judge's remedy may be novel, but the circumstances of the case justified the measures she imposed.

[110] We cannot say that her order was an unreasonable response to the evidence before her. Although we might have differed in respect of some of its details, the overall order meets the necessary standard of review.

D. Summary

[111] Trial courts are entitled to entertain constitutional challenges involving systemic violations. The pleadings in this case put in issue systemic violations regarding the respondents' quasi-constitutional French language rights and the trial did not exceed the scope of pleadings. The remedies granted by the trial judge were contemplated by the pleadings. Finally, in general the structural remedy granted by the trial judge was available in law and meets the reasonableness standard. In later parts of these Reasons we consider the appropriateness of some parts of her order given our interpretation of the *OLA* and the application of other legal principles.

[…]

VIII. DID THE TRIAL JUDGE ERR IN CONCLUDING THAT THE PLAINTIFFS DID NOT HAVE TO EXHAUST THEIR REMEDIES UNDER THE OLA?

C. Analysis

[248] Section 32 grants an injured party recourse before a competent court. Unlike the *OLAC* [*Official Languages Act* of Canada], it does not require a party to lodge a complaint with the LC before initiating legal action under the *OLA*. Nonetheless, the appellants argue that the trial judge should have encouraged recourse to the complaint mechanism of the *OLA* so as to preserve the integrity of this administrative mechanism. They cite *Harelkin v. University of Regina*, 1979 CanLII 18 (SCC), [1979] 2 S.C.R. 561 at 595, 96 D.L.R. (3d) 14 ("*Harelkin*") where Beetz J., writing for the majority, noted:

> Sections 78(1)(c) and 33(1)(e) are in my view inspired by the general intent of the Legislature that intestine [adj. Latin from intestinus 'internal'] grievances preferably be resolved internally by the means provided in the Act, the university thus being given the chance to correct its own errors, consonantly with the traditional autonomy of universities as well as with expeditiousness and low cost for the public and the members of the university. While of course not amounting to privative clauses, provisions like ss. 55, 66, 33(1)(e) and 78(1)(c) are a clear signal to the courts that they should use restraint and be slow to intervene in university affairs by means of discretionary writs whenever it is still possible for the university to correct its errors with its own institutional means.

[249] Unlike the legislation in *Harelkin*, the *OLA* contains neither a privative clause nor any mechanism for an appeal from the LC's recommendations.

[…]

[251] The *OLA* has no privative clause similar to that found in s. 77 of the *OLAC*. As a result, exclusivity of remedy cannot be assumed. The trial judge was entitled to assess the adequacies of the remedies available under the *OLA* and made no error in concluding that this was not an

appropriate case for requiring the exhaustion of remedies under the *OLA* before commencing litigation. There is no basis on which to interfere with her conclusion that it did not provide an adequate alternative remedy.

[…]

X. DID THE TRIAL JUDGE ERR IN GRANTING SOLICITOR–CLIENT COSTS TO THE RESPONDENTS?

[307] The trial judge's reasons make it clear that she considered solicitor-client costs part of an appropriate remedy under s. 32(1). Her rational for such a remedy included the FFT's efforts to find a political solution before litigating and the failure of the GNWT to adopt a global action plan or otherwise implement the many recommendations that had been made concerning effective implementation of the *OLA*. She appropriately took account of these factors in fashioning a remedy that included solicitor-client costs. Since she did not err in law or principle in making these costs part of the remedy, we cannot interfere: *Doucet-Boudreau* at para. 87.

[…]

[312] In our view, both the evidence and evolving law justify the trial judge's overall decision to grant a structural remedy that gave the GNWT fairly explicit directions about how to fulfill its obligations to implement the *OLA*.

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[2] At trial, the respondents/cross-appellants [Fédération Franco-Ténoise, Éditions Franco-ténoises / L'Aquilon, and several individuals "FFT"] were granted costs on a solicitor-client basis against the appellants/cross-respondents [Attorney General of the Northwest Territories, the Commissioner of the Northwest Territories, the Speaker of the Legislative Assembly of the Northwest Territories, and the Language Commissioner of the Northwest Territories "GNWT"] as part of an appropriate and just remedy pursuant to s. 32 of the *Official Languages Act of the Northwest Territories*, R.S.N.W.T. 1988, c. O-1. The trial judge directed that the Attorney General of Canada ["AGC"] could seek costs since the claim against it had been dismissed, but it did not do so. The AGC was a respondent on the cross-appeal.

[…]

Analysis

[7] As between the GNWT and the FFT, we are of the view that each side should bear its own costs of both the appeal and the cross-appeal. There was partial success on the appeal, but in our view the appeal failed to a greater degree than it succeeded. The cross-appeal failed totally, but required less time than the appeal.

[8] We reject the argument that the main appeal precipitated the cross-appeal. We accept, however, that the GNWT pressed the idea of an electronic appeal. Given these circumstances, it is not entitled to repayment of the preparation of the FFT's facta in electronic form.

[9] The AGC is entitled to its costs on the cross-appeal. It is awarded its costs and disbursements pursuant to column 5, given that the FFT sought damages against it in excess of $150,000.

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32. (2) Languages Commissioner may apply or appear

32. (2) The Languages Commissioner may

(a) appear before the Supreme Court on behalf of any person who has applied under subsection (1) for a remedy; or

(b) with leave of the Supreme Court, appear as a party to any proceedings under subsection (1).

R.S.N.W.T. 1988,c.56 (Supp.),s.17,18; S.N.W.T. 2003, c.23, s.20(1).

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[74] Furthermore, there exists in the Territories a superior court capable of ensuring the lawfulness of the actions taken by the Government of the Territories just as there are in the provinces superior courts capable of ensuring the lawfulness of the actions taken by the provincial governments. The Federal Court would betray its vocation as an "additional court for the better administration of the laws of Canada" (to paraphrase section 101 of the *Constitution Act, 1867*) if it were to be so bold as to review the implementation of the laws in the Territories. I note that in language rights matters, the Territories' *Official Languages Act*, an ordinance that has not been disallowed by the Governor in Council, has established the office of the Languages Commissioner and expressly allowed this official to apply to the Supreme Court of the Territories in order to enforce the language rights in the Territories. Thus there exists, for the Territories, the equivalent of what exists federally, with this difference that at the federal level it is the Commissioner of Official Languages of Canada and the Federal Court of Canada that oversee compliance with Canada's official languages policy. Here again, there is a symmetry in the administration of justice that appears to me to have been the intention of both Parliament and the Legislative Assembly of the Territories.

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33. Agreements

33. The Minister or the Commissioner, on the recommendation of the Minister, may, on behalf of the Government of the Northwest Territories, enter into agreements with the Government of Canada or any person or body respecting the implementation of this Act or the regulations or any other matter related to this Act or the regulations.

R.S.N.W.T. 1988, c.56(Supp.),s.17; S.N.W.T. 2003,c.23,s.20(1).

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34. Regulations

34. The Commissioner, on the recommendation of the Executive Council, may make regulations

(a) designating agencies, boards, commissions, corporations, offices or other bodies as government institutions;

(b) respecting the implementation of section 9;

(c) designating English or French, or both, as Official Languages in which communications with and services from an office of a government institution, other than a head or central office, shall be provided under subsection 11(1);

(d) designating an Official Language or Languages in which communications with and services from regional, area and community offices shall be provided under subsection 11(2);

(e) respecting the active offer for the provision in an Official Language of available services from a head, central, regional, area or community office of a government institution, where such services are to be provided to members of the public in that Official Language under subsection 11(1) or (2);

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[143] We disagree with the trial judge's conclusion on this point. The notion of active offer was not overlooked in the *OLA* [*Official Languages Act*]. Section 34(e) provides that the Commissioner may make regulations respecting active offer. The GNWT [Government of the Northwest Territories] did not enact regulations. Rather, it developed the PGs [Policy and Guidelines] (discussed in detail beginning at para. 166), which provide for active offer in specified government offices. This distinguishes the *OLA* from the *OLAC* [*Official Languages Act* of Canada] and the *OLANB* [New Brunswick *Official Languages Act*]. Enactments on the same topic from other jurisdictions "form part of the legal context in which statutes are enacted and operate": Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., (Markham: Butterworths Canada Ltd., 2002) at 331 ("*Sullivan*"). "When statutes that are otherwise similar use different words or adopt a different approach, this suggests a different meaning was intended": *Ibid.*; also, see *Morguard Properties Ltd. v. Winnipeg (City)*, 1983 CanLII 33 (SCC), [1983] 2 S.C.R. 493 at 504-505, 25 Man. R. (2d) 302; and *Reference Re Canada Labour Code*, 1992 CanLII 54 (SCC), [1992] 2 S.C.R. 50 at 106, 91 D.L.R. (4th) 449. These principles and s. 34(e) of the *OLA* suggest that it was not the legislature's intention to make active offer a fundamental part of s. 11(1).

(f) prescribing persons, bodies or organizations to serve as the representatives of specified language communities for the purposes of subsections 28(2) and 30(2);

(g) respecting the structure, operations and functions of the Official Languages Board and the Aboriginal Languages Revitalization Board; and

(h) respecting any other matter the Commissioner considers necessary for carrying out the purposes and provisions of this Act.

S.N.W.T. 2003, c.23,s.18,20(1),(5)-(9)

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[176] In contrast, s. 34 of the OLA [Northwest Territories *Official Languages Act*] states that the Commissioner "may make regulations" *inter alia* designating government institutions, respecting active offers, and respecting any other matter necessary for carrying out the *OLA*.

[…]

[179] We appreciate that this situation was created by the GNWT's [Government of the Northwest Territories] past failure to pass regulations. We nevertheless conclude that the trial judge erred in relying on the PGs [Policy and Guidelines] to assess whether the specific breaches were made

out. If the PGs do not have the force of law, a failure to comply with them cannot be the basis of an award of damages. Since the trial, the GNWT has passed some regulations under the *OLA*, namely *Aboriginal Languages Revitalization Board Regulations*, N.W.T. Reg. 050-2004; *Official Languages Board Regulations*, N.W.T. Reg. 049-2004, and notably, the *Government Institution Regulations* discussed at para. 108. The absence of regulations concerning institutions at the time when certain specific complaints arose creates a difficulty in this case in assessing some of those complaints. Our view about the non-binding nature of the PGs requires us to revisit the trial judge's determinations about s. 11(1) breaches.

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35. (1) Review after 5 years

35. (1) The Legislative Assembly or a committee of the Legislative Assembly designated or established by it shall review the provisions and operation of the Official Languages Act at the next session following December 31, 2007, and subsequently at the next session following each successive fifth anniversary of that date.

35. (2) Scope of review

35. (2) 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.

35. (3) Assistance

35. (3) The Minister, Languages Commissioner, Official Languages Board and Aboriginal Languages Revitalization Board shall each provide all reasonable assistance to the Legislative Assembly or any committee of it that is designated or established for the purposes of this section.

R.S.N.W.T. 1988, c.56(Supp.),s.20; S.N.W.T. 2003,c.23,s.19,20(1).

Aboriginal Languages Revitalization Board Regulations – Official Languages Act, N.W.T. Reg. 050-2004

The Commissioner, on the recommendation of the Executive Council, under section 28 of the *Official Languages Act* and every enabling power, makes the *Aboriginal Languages Revitalization Board Regulations*.

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1. In these regulations, "Board" means the Aboriginal Languages Revitalization Board established under section 25.5 of the *Official Languages Act*, as set out in section 17 of *An Act to Amend the Official Languages Act, No. 3*, S.N.W.T. 2003, c.23.

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2. The members of the Board must be appointed in accordance with the Schedule.

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3. A person is not eligible to serve as a Board member unless he or she is a resident of the Northwest Territories.

4. A Board member holds office during pleasure for a term of two years.

5. A Board member may resign at any time by notifying the Minister in writing.

6. The Board members shall designate a chairperson and a vice-chairperson from among their number.

7. Five Board members constitute a quorum for meetings of the Board.

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[177] While the *OLA* [Northwest Territories *Official Languages Act*] refers to regulations, nowhere does it mention guidelines. This suggests that only regulations (not PGs [Policy and Guidelines]) 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.

[178] Although the trial judge said that the PGs were only policy, she nevertheless relied on them to determine whether some of the specific allegations were well-founded: at para. 698. She took the view that they represented, at the least, a minimum standard, acknowledged by the GNWT, with which it did not always comply.

[179] We appreciate that this situation was created by the GNWT's past failure to pass regulations. We nevertheless conclude that the trial judge erred in relying on the PGs to assess whether the specific breaches were made out. If the PGs do not have the force of law, a failure to comply with them cannot be the basis of an award of damages. Since the trial, the GNWT has passed some regulations under the *OLA*, namely *Aboriginal Languages Revitalization Board Regulations*, N.W.T. Reg. 050-2004; *Official Languages Board Regulations*, N.W.T. Reg. 049-2004, and notably, the *Government Institution Regulations* discussed at para. 108. The absence of regulations concerning institutions at the time when certain specific complaints arose creates a difficulty in this case in assessing some of those complaints. Our view about the non-binding nature of the PGs requires us to revisit the trial judge's determinations about s. 11(1) breaches.

Schedule – Process for Appointment of Members of Aboriginal Languages Revitalization Board

The members of the Aboriginal Languages Revitalization Board representing the language communities referred to in column 1 shall be appointed by the Commissioner in Executive Council on the recommendation of the Minister and on the nomination of the representatives of the language communities referred to in column 2.

Column 1	Column 2
Language Communities	Representatives of Language Communities
Chipewyan	Akaitcho Territory Government Yellowknives Dene First Nation
Cree	Northwest Territory Metis Nation
Gwich'in	Gwich'in Social and Cultural Institute
Inuinnaqtun	Inuvialuit Cultural Resource Centre Inuvialuit Regional Corporation
Inuktitut	Inuktitut Advisory Committee
Inuvialuktun	Inuvialuit Cultural Resource Centre Inuvialuit Regional Corporation
North Slavey	Sahtu Secretariat Inc.
South Slavey	Deh Cho First Nation
Tłı̨chǫ	Rae-Edzo Friendship Centre Yellowknives Dene First Nation

Government Institution Regulations – Official Languages Act, N.W.T. Reg. 082-2006

The Commissioner, on the recommendation of the Executive Council, under section 34 of the *Official Languages Act* and every enabling power, makes the *Government Institution Regulations*.

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1. For the purposes of the *Official Languages Act*, each agency, board, commission, corporation, office or other body referred to in the Schedule is designated as a government institution.

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2. For the purposes of paragraph 11(1)(a) of the Act, there is a significant demand for communications with and services to the public in both English and French from an office of a government institution located in the following communities:

(a) Fort Smith;

(b) Hay River;

(c) Inuvik;

(d) Yellowknife.

R-079-2013,s.2.

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3. For the purposes of paragraph 11(1)(b) of the Act, the nature of an office of a government institution is such that it is reasonable that communications with and services from that office be available in both English and French, if the office

(a) generally offers services to the public; and

(b) in respect of those services, is a central service point or a referral centre providing services to the public for the whole of the Northwest Territories.

R-079-2013,s.2.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[108] The part of the order directing the implementation of a regulation concerning which institutions would be bound by the *OLA* [Northwest Territories *Official Languages Act*] falls at the very extreme edge of what role is appropriate for a court. The order did not, of course, direct the content of such regulations but focussed on the well-documented necessity for having them. The trial judge gave compelling reasons why, without such a regulation, the *OLA* could not be implemented. Among other things, neither those asserting a right to service, or indeed the GNWT [Government of the Northwest Territoires] itself, would know which offices and agencies were required to provide bilingual services. The fact that, as discussed beginning at para. 166, PGs [Policy and Guidelines] dealing with such matters were already in place and were said by the appellants, at trial, to demonstrate their implementation of the *OLA*, further supports this part of the order. In these highly unusual circumstances, she was justified in requiring the passage of a regulation. At para. 53, we noted that at the time of the trial the Executive Committee was already drafting regulations so that this part of the structural remedy only required the GNWT to continue doing what it was already doing and in fact this part of the structural remedy has been complied with since the trial. See *Government Institution Regulations*, N.W.T. Reg. 082-2006 ("*Government Institution Regulations*").

[…]

[177] 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.

[178] Although the trial judge said that the PGs were only policy, she nevertheless relied on them to determine whether some of the specific allegations were well-founded: at para. 698. She took the view that they represented, at the least, a minimum standard, acknowledged by the GNWT, with which it did not always comply.

[179] We appreciate that this situation was created by the GNWT's past failure to pass regulations. We nevertheless conclude that the trial judge erred in relying on the PGs to assess whether the specific breaches were made out. If the PGs do not have the force of law, a failure to comply with them cannot be the basis of an award of damages. Since the trial, the GNWT has passed some regulations under the *OLA*, namely *Aboriginal Languages Revitalization Board Regulations*, N.W.T. Reg. 050‑2004; *Official Languages Board Regulations*, N.W.T. Reg. 049‑2004, and notably, the *Government Institution Regulations* discussed at para. 108. The absence of regulations concerning institutions at the time when certain specific complaints arose creates a difficulty in this case in assessing some of those complaints. Our view about the non-binding nature of the PGs requires us to revisit the trial judge's determinations about s. 11(1) breaches.

Schedule – Government Institutions

A. Access to Information and Protection of Privacy Act

1. Information and Privacy Commissioner

B. Aurora College Act

1. Aurora College

C. Education Act

1. Beaufort-Delta Divisional Education Council

2. Commission scolaire francophone, Territoires du Nord-Ouest

3. Dehcho Divisional Education Council

4. Dettah District Education Authority

5. Sahtu Divisional Education Council

6. South Slave Divisional Education Council

7. Yellowknife District No. 1 Education Authority

8. Yellowknife Public Denominational District Education Authority

D. Elections and Plebiscites Act

1. Chief Electoral Officer

E. Hospital Insurance and Health and Social Services Administration Act

1. Northwest Territories Health and Social Services Authority

2. Hay River Health and Social Services Authority

F. Human Rights Act

1. Director of Human Rights

2. Northwest Territories Human Rights Commission

G. Repealed, R-059-2008,s.2.

H. Legal Services Act

1. Legal Services Board of the Northwest Territories

I. Legislative Assembly and Executive Council Act

1. Conflict of Interest Commissioner

J. Liquor Act

1. Liquor Licensing Board

K. Northwest Territories Business Development and Investment Corporation Act

1. Northwest Territories Business Development and Investment Corporation

L. Northwest Territories Housing Corporation Act

1. Northwest Territories Housing Corporation

M. Official Languages Act

1. Languages Commissioner

N. Repealed, R-059-2008,s.2.

O. Public Utilities Act

1. Public Utilities Board

P. Residential Tenancies Act

1. Rental Officer

P.1. Surface Rights Board Act

1. Surface Rights Board

Q. Tłı̨chǫ Community Services Agency Act

1. Tłı̨chǫ Community Services Agency

Q.1. Waters Act

1. Inuvialuit Water Board

R. Workers' Compensation Act

1. Workers' Safety and Compensation Commission

R-059-2008,s.2; R-041-2014,s.2; R-098-2016,s.2.

Official Languages Board Regulations – Official Languages Act, N.W.T. Reg. 049-2004

The Commissioner, on the recommendation of the Executive Council, under section 28 of the *Official Languages Act* and every enabling power, makes the *Official Languages Board Regulations*.

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1. In these regulations, "Board" means the Official Languages Board established under section 25.3 of the *Official Languages Act*, as set out in section 17 of *An Act to Amend the Official Languages Act, No. 3*, S.N.W.T. 2003, c.23.

2. The members of the Board must be appointed in accordance with the Schedule.

3. A person is not eligible to serve as a Board member unless he or she is a resident of the Northwest Territories.

4. A Board member holds office during pleasure for a term of two years.

5. A Board member may resign at any time by notifying the Minister in writing.

6. The Board members shall designate a chairperson and a vice-chairperson from among their number.

7. Six Board members constitute a quorum for meetings of the Board.

ANNOTATIONS

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[177] While the *OLA* [Northwest Territories *Official Languages Act*] refers to regulations, nowhere does it mention guidelines. This suggests that only regulations (not PGs [Policy and Guidelines]) 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.

[178] Although the trial judge said that the PGs were only policy, she nevertheless relied on them to determine whether some of the specific allegations were well-founded: at para. 698. She took the view that they represented, at the least, a minimum standard, acknowledged by the GNWT, with which it did not always comply.

[179] We appreciate that this situation was created by the GNWT's past failure to pass regulations. We nevertheless conclude that the trial judge erred in relying on the PGs to assess whether the specific breaches were made out. If the PGs do not have the force of law, a failure to comply with them cannot be the basis of an award of damages. Since the trial, the GNWT has passed some regulations under the *OLA*, namely *Aboriginal Languages Revitalization Board Regulations*, N.W.T. Reg. 050-2004; *Official Languages Board Regulations*, N.W.T. Reg. 049-2004, and notably, the *Government Institution Regulations* discussed at para. 108. The absence of regulations concerning institutions at the time when certain specific complaints arose creates a difficulty in this case in assessing some of those complaints. Our view about the non-binding nature of the PGs requires us to revisit the trial judge's determinations about s. 11(1) breaches.

Schedule – Process for Appointment of Members of Official Languages Board

The members of the Official Languages Board representing the language communities referred to in column 1 shall be appointed by the Commissioner in Executive Council on the recommendation of the Minister and on the nomination of the representatives of the language communities referred to in column 2.

Column 1	Column 2
Language Communities	Representatives of Language Communities
Chipewyan	Akaitcho Territory Government Yellowknives Dene First Nation
Cree	Northwest Territory Metis Nation
English	Ministerial Council on Literacy
French	Fédération Franco-Ténoise
Gwich'in	Gwich'in Social and Cultural Institute
Inuinnaqtun	Inuvialuit Cultural Resource Centre Inuvialuit Regional Corporation
Inuktitut	Inuktitut Advisory Committee
Inuvialuktun	Inuvialuit Cultural Resource Centre Inuvialuit Regional Corporation
North Slavey	Sahtu Secretariat Inc.
South Slavey	Deh Cho First Nation
Tłı̨chǫ	Rae-Edzo Friendship Centre Yellowknives Dene First Nation

Northwest Territories – Other Language Laws

Access to Information and Protection of Privacy Act, S.N.W.T. 1994, c. 20

Part I – Access to Information

7. (3) Language of access

7. (3) The head of a public body shall give access to a record in the Official Language of the Northwest Territories requested by an applicant where

(a) the record already exists in the control of the public body in that language; or

(b) the head of the public body considers it to be in the public interest to have a translation of the record prepared in that language.

Access to Information and Protection of Privacy Regulations – Access to Information and Protection of Privacy Act, N.W.T. Reg. 206-96

3. Requests

3. An applicant may make an oral request for access to a record if

(a) the applicant's ability to read or write in an Official Language is limited; or

Adoption Act, S.N.W.T. 1998, c. 9

3. Best interests of the child

3. Where there is a reference in this Act to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child including the following factors, with a recognition that differing cultural values and practices must be respected in making that determination:

[…]

(c) the child's cultural, linguistic and spiritual or religious ties or upbringing and the importance of a family environment that will respect the child's cultural and linguistic heritage and traditions and religious or spiritual background;

Adoption Regulations – Adoption Act, N.W.T. Reg. 141-98

20. (1) Subsidized Departmental Adoptions

20. (1) For the purpose of placing a child with an approved applicant on the list of approved applicants under subsection 18(2) of the Act, the Director shall review the list of approved applicants and assess each applicant in relation to the following:

[…]

(d) the child's cultural, linguistic and spiritual or religious ties and upbringing and whether the applicant will be able to provide a family environment that will respect the child's cultural and linguistic heritage and traditions and religious or spiritual background;

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40. (1) Departmental Placement

40. (1) For the purpose of placing a child outside the Territories under subsection 44(1) of the Act, the Director shall review the list of approved applicants for placement outside the Territories and assess each applicant in relation to the following:

[…]

(d) the child's cultural, linguistic and spiritual or religious ties and upbringing and whether the applicant will be able to provide a family environment that will respect the child's cultural and linguistic heritage and traditions and religious or spiritual background;

---

55. (1) Completing Personal History

55. (1) An Adoption Worker shall use a personal history form approved by the Director in completing a personal history, which must include the following information about the person who is the subject of the personal history:

[…]

(c) ancestral history including ethnicity, languages spoken, aboriginal status and any other thing related to ancestral history;

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68. General

68. Notwithstanding sections 63, 64 and 66, a person who wishes to receive registry information may make an oral request instead of submitting a request for registry information form if

(a) the person's ability to read or write in an Official Language is limited; or

(b) the person has a physical disability or condition that impairs his or her ability to submit a request for registry information form.

---

70. (1) Registry information shall be disclosed in the language in which it is deposited with the Adoption Registry.

70. (2) A person may request the Registrar to translate all or part of the registry information disclosed to him or her into an Official Language.

Adoption of the French Version of Statutes and Statutory Instruments Act, R.S.N.W.T. 1988, c. 92 (Supp.)

1. Definition of “statutory instrument”

1. In this Act, "statutory instrument" means a rule, order, regulation or proclamation issued, made or established

(a) in the execution of a power conferred by or under an Act, by or under which the instrument is expressly authorized to be issued, made or established otherwise than by the conferring on any person or body of powers or functions in relation to a matter to which the instrument relates, or

(b) by or under the authority of the Commissioner, but does not include

(c) an order of a court made in the course of an action,

(d) an order made by a public officer or administrative tribunal in a dispute between two or more persons, or

(e) a by-law, resolution, order or directive of a local authority.

---

2. (1) Preparation of Rolls

2. (1) The Minister shall cause to be prepared and printed

(a) a Statute Roll comprised of the French version of

(i) all statutes revised in accordance with the *Statute Revision Act*,

(ii) all statutes not revised but still in force, and

(iii) all statutes enacted after December 31, 1988 and before the Commissioner declares any part of the Statute Roll in force; and

(b) subject to subsection (2), a Statutory Instruments Roll comprised of the French version of all statutory instruments in force on December 31, 1990.

2. (2) Regulations repealed and replaced

2. (2) Subsection (1) does not apply to regulations that were in force on December 31, 1990 and that are repealed or repealed and replaced between that date and March 31, 1992.

2. (2.1) Supreme Court Rules

2. (2.1) The Supreme Court Rules need not be included in the Statutory Instruments Roll referred to in subsection (1).

2. (3) Deposit of Rolls

2. (3) The Statute Roll and the Statutory Instruments Roll shall be attested by the signature of the Commissioner and countersigned by the Minister and shall be deposited in the Office of the Clerk of the Legislative Assembly.

2. (4) Original of French version

2. (4) The Statute Roll and the Statutory Instruments Roll deposited in the Office of the Clerk of the Legislative Assembly are the original of the French version of the Acts and statutory instruments contained in the Rolls.

S.N.W.T. 1991-92,c.1,s.1.

---

3. (1) Laying before Legislative Assembly

3. (1) The Minister shall lay the Statute Roll before the Legislative Assembly as soon as possible after it is completed.

3. (2) Coming into force

3. (2) The Commissioner may, by order, declare the day or days on which the Statute Roll, a part of the Statute Roll, the Statutory Instruments Roll or a part of the Statutory Instruments Roll come into force and has effect as law.

3. (3) Effect of order respecting Statute Roll

3. (3) On or after the day named in an order made under subsection (2), the Statute Roll or that part of the Statute Roll is in force and has effect as law to all intents as if the Statute Roll or part of the Statute Roll was expressly embodied in and enacted by this Act to come into force and to have effect on and after that day.

3. (4) Effect of order respecting Statutory Instruments Rolls

3. (4) On or after the day named in an order made under subsection (2), the Statutory Instruments Roll or that part of the Statutory Instruments Roll is in force and has effect as law to all intents as if the Statutory Instruments Roll or part of the Statutory Instruments Roll was expressly brought into force in accordance with the *Regulations Act*.

---

4. (1) Effect on Acts not yet in force

4. (1) An order under section 3 does not, unless it otherwise states, operate to bring into force an Act or part of an Act included in the Statute Roll, where

(a) the Act contains a provision stating that the Act or part of the Act is to come into force on a day specified in the Act or on a day to be fixed by order of the Commissioner; and

(b) the Act or part of the Act does not come into force before the day on which the Statute Roll or that part of the Statute Roll containing the Act comes into force.

4. (2) Effect on statutory instruments not yet in force

4. (2) An order under section 3 does not, unless it otherwise states, operate to bring into force a statutory instrument or part of a statutory instrument included in the Statutory Instruments Roll, where

(a) the statutory instrument contains a provision stating that the statutory instrument or part of the statutory instrument is to come into force on a day specified in the statutory instrument; and

(b) the statutory instrument or part of the statutory instrument does not come into force before the day on which the Statutory Instruments Roll or that part of the Statutory Instruments Roll containing the statutory instrument comes into force.

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5. Effect of inclusion or omission in the Rolls

5. The inclusion or omission of an Act or a part of an Act in the Statute Roll or a statutory instrument or a part of a statutory instrument in the Statutory Instruments Roll shall not be construed as a declaration that the Act or statutory instrument or part of the Act or statutory instrument was or was not in force immediately before the coming into force of the Statute Roll or the Statutory Instruments Roll.

---

6. (1) Citation of Act

6. (1) An Act in the Statute Roll may be cited by its title as an Act or as a chapter of the *Revised Statutes of the Northwest Territories, 1988* or a supplement to the *Revised Statutes of the Northwest Territories, 1988*.

6. (2) Citation of statutory instruments

6. (2) A statutory instrument in the Statutory Instruments Roll may be cited by its title as a statutory instrument or as a chapter of the *Revised Regulations of the Northwest Territories*.

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7. Corrections

7. The Minister may cause to be made any modifications, additions or corrections required to the Statute Roll or Statutory Instruments Roll by reason of any omission or error in its preparation or printing.

Business Corporations Act, S.N.W.T. 1996, c. 19

Part II – Incorporation

10. (4) Alternate name

10. (4) A corporation may set out its name in its articles in an English form, a French form, an English form and a French form or in a combined English and French form, and the corporation may use and may be legally designated by any of those forms.

10. (5) Languages other than English or French

10. (5) A corporation may, in accordance with the regulations, set out its name in the articles in a form that includes words in a language other than English or Fench.

Part XXI – Extra-territorial corporations

282. (1) Application for registration

282. (1) An extra-territorial corporation shall apply for registration by sending to the Registrar a statement in prescribed form together with

> **(a) a copy of the charter of the extraterritorial corporation verified in a manner satisfactory to the Registrar;**
>
> **(b) documents relating to the name of the extra-territorial corporation that are prescribed by the regulations;**
>
> **(c) a notice of the address of the registered office in accordance with section 287; and**
>
> **(d) such other documents or information as the Registrar may require.**

282. (2) Charter in languages other than English or French

282. (2) If all or any part of the charter is not in English or French, the Registrar may require a translation of the charter or that part of the charter, verified in a manner satisfactory to the Registrar, before the extra-territorial corporation is registered.

Business Corporations Regulations – Business Corporations Act, N.W.T. Reg. 018-98

Part II – Corporate Names

16. (1) Where a corporation has set out its name in two language forms under subsection 10(4) of the Act, one language form shall be a direct translation of the other language form.

16. (2) Notwithstanding subsection (1), minor changes may be made to ensure that each form is idiomatically correct.

16. (3) Where a corporation has set out a combined English and French form, the "/" mark shall separate the two forms of the name.

Child and Family Services Act, S.N.W.T. 1997, c. 13

Principles

3. Best interests of child

3. Where there is a reference in this Act to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child including the following factors, with a recognition that differing cultural values and practices must be respected in making that determination:

[…]

(c) the child's cultural, linguistic and spiritual or religious upbringing and ties;

S.N.W.T. 2010, c.2.s.3; S.N.3W.T. 2015,c.12,s.22.

Children's Law Act, S.N.W.T. 1997, c. 14

Part III – Custody, Access and Guardianship

Division A – Custody and Access

17. (1) Best Interests Test

17. (1) The merits of an application under this Division in respect of custody of or access to a child shall be determined in accordance with the best interests of the child, with a recognition that differing cultural values and practices must be respected in that determination.

17. (2) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

[…]

(c) the child's cultural, linguistic and spiritual or religious upbringing and ties;

ANNOTATIONS

Boucher v. McKay, 2017 NWTSC 14 (CanLII)

The child's cultural, linguistic and spiritual or religious upbringing and ties:

[43] I consider XXXX's enrolment in the French Immersion program in Yellowknife to be a neutral factor. It shows a commitment by XXXX and XXXX to XXXX's education, but it can be a mixed blessing, especially when none of a child's parents speak French. It also has to be offset against the loss of an opportunity to both learn the Chipewyan language and be part of the Chipewyan culture in Fort Resolution. It was suggested by counsel for XXXX that the court consider Chipewyan to be a dying language. This I will not do. The fact that XXXX is receiving some limited instruction in the Dene culture in Yellowknife does not take the place of the opportunity to learn the language of the culture he was born into.

[44] Languages only die when people stop speaking them and caring about them. Language is also the primary medium for the transmission of culture. I was impressed by the testimony of the teacher from the school in Fort Resolution. It is clear that the school and the community are committed to the students and the Chipewyan culture. If XXXX loses this opportunity as child it will be almost impossible for him to regain it as an adult, no matter how badly he wants to.

Lacoursiere v. Penk, 2015 NWTSC 19 (CanLII)

[103] Section 17(1) of the *Children's Law Act* says that different cultural values and practices must be respected in the determination of best interests. XXXX wishes the children to know and appreciate their German heritage. Although XXXX does not put a lot of emphasis on that, she has lived in Germany and speaks German and I am satisfied that she is sensitive to their heritage.

Corrections Act, R.S.N.W.T. 1988, c. C-22

15. (1) Information for inmates

15. (1) On admission to a correctional centre, every inmate shall be provided with

(a) full information concerning the rules governing the treatment of inmates; and

(b) other information of which the inmate should have knowledge.

15. (2) Content of information

15. (2) Information referred to in subsection (1) must

[…]

(b) be in writing or by other means and in a language that the inmate understands; and

Education Act, S.N.W.T. 1995, c. 28

Preamble

[…]

Recognizing the relationship between language, culture and learning, and the multi-cultural heritage of Canada, and believing that school programs must be based on the cultures of the Northwest Territories and that students may receive their education in one of the Official Languages of the Northwest Territories;

[…]

Recognizing the rights and freedoms of every individual and English and French linguistic minorities as set out in sections 15 and 23 of the *Constitution Act, 1982*;

Recognizing the rights and freedoms of the aboriginal peoples of the Northwest Territories as set out in sections 25 and 35 of the *Constitution Act, 1982*;

ANNOTATIONS – GENERAL

Association des Parents ayants droit de Yellowknife et al v. Attorney General of the Northwest Territories et al, 2012 NWTSC 43 (CanLII)

B. Legislative Framework

[14] The GNWT has the jurisdiction to draft legislation regarding education in the NWT. It has exercised this jurisdiction by creating the *Education Act*, S.N.W.T. 1995, c. 28 (the Act), and regulations establishing the parameters of the education system in the NWT.

[15] The implementation of French minority language rights is specifically provided for in the Act. Regulations were adopted to govern this implementation, in particular the *French First Language Education Regulations*, R-166-96, and the *Commission Scolaire Francophone, Territoires du Nord-ouest Regulations*, R-071-2000.

[16] The *French First Language Education Regulations* govern the parameters of the creation of the program and the extent of the powers of management conferred on the parents.

[17] The first step is the creation of the program itself. Section 2 of the *Regulations* stipulates that where the Minister determines that the right under section 23 of the *Canadian Charter of Rights and Freedoms of French* first language instruction applies in an education district, the Minister shall direct the District Education Authority to establish a program of French first language instruction.

[18] With respect to program management, section 4 states that where a program exists and a “conseil scolaire francophone” (a Francophone education council) or “commission scolaire francophone” (a Francophone school board) is not established, three or more parents may request that the District Education Authority establish a “comité de parents francophones” (a Francophone parents’ committee). If such a request is made, the District Education Authority must establish the committee.

[19] Section 5 states that a Francophone parents’ committee that has been in existence for at least one year may request that the District Education Authority establish a Francophone education council. Again, if such a request is made, the District Education Authority is required to establish a Francophone education council. Once it has been established, certain powers, enumerated in sections 7 and 8 of the *Regulations*, must be delegated to it by the District Education Authority.

[20] Section 84 of the Act states that one or more Francophone education councils may request that the Minister establish a Francophone divisional school board. Section 9 of the *Regulations* specifies the circumstances under which the Minister may establish such a school board. That section sets out two potential bases for the Minister’s decision to establish a Francophone school board. The first, set out in paragraph 9(3)(b) of the *Regulations*, is purely numeric: the request may be made if more than 500 students are registered in the program in the area that would be within the board’s jurisdiction.

[21] If the number of registered students is less than 500, the Minister nevertheless has the power to establish a Francophone school board under paragraph 9(3)(a) if, based on the information provided, he or she is satisfied that the school board will fulfil the duties of an education body under the Act, meet the

standards established by the Minister for the education program and be able to fulfil the duties of a Superintendant under the Act. The decision in this case is therefore not based on the number of students registered, but rather on the Minister's assessment of the school board's capacity to exercise the higher level of management required by the Act.

[22] Once a Francophone school board has been established, subsection 84(3) of the Act sets out that the Minister must delegate to it certain powers (those enumerated in sections 117 and 118) and may delegate to it certain other powers (enumerated in section 119).

[23] The powers enumerated in section 119 are those related to buildings, including the power to build, maintain, insure and replace them, as well as powers related to tax collection and the right to borrow money.

[24] The provisions of subsection 84(3) are essentially identical to those in section 81 of the Act, which deals with the delegation of powers by the Minister to district education authorities established to manage the other school programs in the NWT. In fact, section 81 obliges the Minister to delegate to district education authorities the powers set out in sections 117 and 118, but leaves it to his or her discretion as to whether to delegate those powers related to buildings.

Interpretation

1. (1) Definitions

1. (1) In this Act,

[…]

"comité de parents francophones" means a parents' advisory committee for French language programs established pursuant to paragraph 117(1)(v); (*comité de parents francophones*)

"commission scolaire francophone de division" means a commission scolaire francophone de division established under section 84; (*commission scolaire francophone de division*)

[…]

"conseil scolaire francophone" means a conseil scolaire francophone established pursuant to paragraph 117(1)(v); (*conseil scolaire francophone*)

[…]

"Official Language" means an Official Language referred to in section 4 of the *Official Languages Act*; (*langue officielle*)

Language and Traditional Knowledge Instructors

59. Hiring of language instructors

59. Where no teacher is available, an education body may hire a person who is not a teacher to provide the instruction, as part of the education program, of an Official Language, other than English or French, where that person

(a) is fluent in that language;

(b) successfully completes a test for that language administered by the education body; and

(c) receives orientation in teaching methods as provided by the education body.

Part III – Cultural Diversity

Language of Instruction and Language Taught

70. (1) Language of instruction

70. (1) The language of instruction of the education program must be an Official Language.

70. (2) Number of languages of instruction

70. (2) There may be more than one language of instruction in an education district and more than one language of instruction in a school.

---

71. (1) Determining language of instruction

71. (1) A District Education Authority shall, in accordance with the requirements of this section and in accordance with the regulations, determine a language of instruction to be used in the education district.

71. (2) Prior request for information

71. (2) Before determining a language of instruction in an education district that is in an education division in which there is more than one education district, a District Education Authority shall request information from the Divisional Education Council relating to the development and use of school program materials and the supply of teachers who are fluent in a language and their availability to teach in that language.

71. (3) Ministerial directions

71. (3) The Minister may give directions establishing standards and guidelines for the selection and use of a language of instruction to assure the maintenance of the highest possible standards of education.

71. (4) Choice of language of instruction

71. (4) A District Education Authority may choose a language as the language of instruction if

(a) there is a significant demand for the language in the education district;

(b) there are a sufficient number of teachers who are fluent in the language available to teach in the language in the education district; and

(c) there are sufficient and suitable school program materials available in the language.

---

72. Instruction in French

72. Students whose parents have a right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in French are entitled to receive that instruction in accordance with the regulations wherever in the Territories that right applies.

---

73. (1) Language taught

73. (1) Subject to subsection (2), a District Education Authority shall, in accordance with any directions of the Minister, determine a language to be taught as part of the education program in the education district or in any school in the education district.

73. (2) If language of instruction not English

73. (2) If an Official Language other than English is the language of instruction, English must be taught as a language as part of the education program.

73. (3) If English is language of instruction

73. (3) If English is the language of instruction, an Official Language other than English must be taught as part of the education program.

---

74. (1) Home schooling exemption

74. (1) A parent of a student in a home schooling program may apply in writing to the Minister for an exemption from using or teaching the language determined by the District Education Authority as the language of instruction or the language to be taught as part of the education program.

74. (2) Language of instruction and language taught

74. (2) The Minister may allow the operator of a private school or the parent of a child attending a home schooling program to determine, subject to the approval of the Minister,

(a) a language of instruction of the education program at the private school or in the home schooling program; and

(b) a language to be taught as part of the education program at the private school or in the home schooling program.

74. (3) Determining language

74. (3) Subsection 70(1) does not apply to a private school or a home schooling program.

Part IV – Governance

District Education Authorities

84. (1) Request to establish *commission scolaire francophone de division*

84. (1) Where one or more *conseils scolaires francophones* exist, the *conseil* or *conseils* may, on meeting the requirements of the regulations, request the Minister to establish a *commission scolaire francophone de division* for the Territories.

84. (2) Establishment of *commission scolaire francophone de division*

84. (2) On receipt of a request under subsection (1), the Minister shall, by regulation,

> **(a) set out the area within the jurisdiction of the *commission scolaire francophone de division*; and**
>
> **(b) set out the form and manner for the establishment and operation of the *commission scolaire francophone de division*.**

84. (3) Powers, duties, of *commission scolaire francophone de division*

84. (3) Where the Minister establishes a *commission scolaire francophone de division* under subsection (2), the Minister

> **(a) shall, by regulation, allocate to that *commission scolaire francophone de division* all of the powers and duties set out in**
>
> > **(i) section 117, except paragraph (1)(v), and**
> >
> > **(ii) section 118; and**
>
> **(b) may, by regulation, allocate to that *commission scolaire francophone de division* some or all of the powers set out in section 119.**

84. (3.1) Adding *conseil scolaire francophone* to existing *commission scolaire francophone de division*

84. (3.1) Where a *commission scolaire francophone de division* is established for the Territories, a *conseil scolaire francophone* that is not within the jurisdiction of the *commission scolaire francophone de division* may request, in writing, that the Minister add the education district in which the *conseil scolaire francophone* was established to the area within the jurisdiction of the *commission scolaire francophone de division*.

84. (3.2) Action required by Minister

84. (3.2) On receipt of a request under subsection (3.1), the Minister shall, where the application meets the requirements of this Act and the regulations, amend the regulations establishing the

commission scolaire francophone de division **to add the education district in which the** ***conseil scolaire francophone*** **was established.**

S.N.W.T. 1996,c.10,s.27; S.N.W.T. 1998,c.31,Sch.K, s.1.

Duties and Powers of Education Bodies

117. (1) Duties of education body

117. (1) Subject to subsections 81(3), (5), (6) and 102(3), an education body shall, for the area within its jurisdiction,

> **[…]**
>
> **(v) where in the Territories the right of parents under section 23 of the** ***Canadian Charter of Rights and Freedoms*** **to have their children receive instruction in French applies, in accordance with the regulations,**
>
> > **(i) establish comités de parents francophones,**
> >
> > **(ii) establish conseils scolaires francophones, and**
> >
> > **(iii) delegate to the conseils scolaires francophones the powers and duties that are necessary for the delivery of French language instruction and the management of French language instruction in the education district; and**

---

118. (1) Powers of education body

118. (1) Subject to subsections 81(4), 81(5) and 102(4), an education body may, for the area within its jurisdiction,

> **(a) develop and produce learning resources and materials to support the delivery of culture based school programs and other local programs;**
>
> **[…]**
>
> **(h) provide interpreter and translator services to assist in the conduct of the business of the education body;**
>
> **[…]**
>
> **(k) in addition to the school program, develop and deliver early childhood development, adult education, cultural, religious or other programs to enhance learning and charge fees for the programs;**

118. (2) Further powers

118. (2) In addition to the powers set out in subsection (1) and subject to subsections 81(4), 81(5) and 102(4), an education body may, for the area within its jurisdiction,

[…]

(b.1) enter into agreements regarding aboriginal schools;

---

119. (1) Additional powers of education body

119. (1) Subject to subsections 81(7) and 102(5), an education body may, for the area within its jurisdiction,

(a) maintain and insure buildings and property used for the delivery of the education program;

(b) acquire lands and buildings, construct additional buildings and replace existing buildings where required;

(c) receive annually from the taxing authority for the district the sum of money collected from property taxes for education purposes;

(d) borrow money on a short term basis according to the terms of this Act;

(e) make a resolution to borrow money for projects according to the terms of this Act;

(f) make a by-law to borrow money on the security of a mortgage or debenture according to the terms of this Act; and

(g) employ teachers outside the public service.

119. (2) Disposal of real property

119. (2) Subject to subsections 81(7) and 102(5) and subsection (3) of this section, an education body may, for the area within its jurisdiction, sell, lease or otherwise dispose of any of its real property.

119. (3) Approval of Minister

119. (3) An education body shall not sell, lease or otherwise dispose of any of its real property unless it has obtained the written approval of the Minister.

S.N.W.T. 1998,c.16,s.1(3); S.N.W.T. 2001,c.11,s.5.

ANNOTATIONS

Association des Parents ayants droit de Yellowknife et al v. Attorney General of the Northwest Territories et al, 2012 NWTSC 43 (CanLII)

[554] The following are the issues that must be decided in this proceeding:

(a) the constitutional validity of the Minister of Education's decision not to delegate powers under section 119 of the Act to the CSFTN-O [Commission scolaire francophone des Territoires du Nord-Ouest];

(b) ÉASC's compliance with section 23 requirements;

(c) the constitutional status of the daycare and pre-kindergarten program;

(d) the appropriate remedies if the Court concludes that the Defendants have indeed violated section 23.

B. The Minister of Education's decision not to delegate powers under section 119 of the Act to the CSFTN-O

[555] The Plaintiffs submit that the Minister's decision not to delegate the powers set out in section 119 of the *Education Act* to the CSFTN-O violates the right of management protected by section 23. The powers enumerated in section 119 concern the management of lands and buildings (the right to acquire and maintain these and the right to borrow money, including money on the security of a mortgage).

[556] For any education body established under the Act, the Minister has the power, but not the obligation, to allocate these powers to an education authority. Section 119 therefore does not apply exclusively to the CSFTN-O. But the Plaintiffs argue that, regarding the minority language school board, this absence of delegated powers violates the right of management protected by section 23.

[557] The Plaintiffs submit that, by establishing the CSFTN-O, the GNWT necessarily recognized that the number of right holders in the NWT warranted the delegation of the highest level of management possible after application of the sliding scale principle, and that the maximum degree of management in all cases entails the right to own the infrastructure and to manage it in a fully autonomous manner.

[558] In my opinion, the case law does not support this position. On the contrary, the judgments dealing with section 23 have established that its enforcement must be flexible and adapted to the circumstances. The Plaintiffs' position on the right of management—essentially an all-or-nothing approach—goes against these principles.

[559] All school boards in the NWT are in the same situation as the CSFTN-O, apart from the two English school boards in Yellowknife, which own their own buildings for historical reasons. The evidence on this matter was not very detailed. But the powers of these two school boards do not flow from a decision of the GNWT to treat them differently from the other school boards.

[560] What is more significant, to my mind, is that the evidence has established that even though they own their own buildings, these two school boards do not enjoy complete autonomy with respect to their infrastructures. Capital projects concerning the schools under the authority of these school boards are proposed by the Department of Education and submitted for inclusion in the government's Capital Plan, as are projects for the schools under the jurisdiction of the CSFTN-O or other school boards. For example, Mr. Huculak explained that the YK1 school board believes that Sissons School requires renovations. However, the project was not included in the 2011–2012 Capital Plan. It will not take place in the immediate future, and there is nothing the school board can do about it.

[561] No school board in the NWT enjoys the full autonomy, as regards their infrastructure, that the Plaintiffs are claiming. The case law recognizes that the minority community must on occasion be treated differently to achieve substantive equality. But it also recognizes the importance of giving the government the broadest discretion and the greatest flexibility possible in selecting the measures to take to meet its obligations towards the minority language group.

[562] Dr. Landry explained that the more autonomy a school board has in managing its infrastructure, the more effectively it can promote the remedial goals of section 23. While I accept this, I do not believe that this means that, legally, full autonomy is required in all cases.

[563] For me, the *French First Language Education Regulations* adequately reflect the flexibility required for governments in implementing the objectives of section 23.

[564] Section 9 of the *Regulations* stipulates that the Minister may establish a “commission scolaire francophone”, that is, a French-language school board, when a threshold number has been attained (more than 500 students registered in the program). But the provision also recognizes that the Minister may do so even if this threshold number is not attained, if he or she is satisfied that the French-language school board will fulfil the duties of an education body and meet the educational standards established by the government. The effect of this provision is to allow the Minister to establish a school board for the minority language group even when the number of right holders is relatively small. The *Regulations* recognize that while the number of enrolments is a reason to create a school board, it is not the only reason.

[565] In the present case, the Minister availed himself of this opportunity. It is clear that the number of students enrolled in the French-language education program when the CSFTN-O was created was below 500 (as it still is). The Minister’s decision to create a school board was therefore necessarily based on paragraph 9(3)(a) of the *Regulations*.

[566] This decision is not without consequence. The Act imposes a duty on the Minister to delegate a number of powers to a school board so established. It therefore implies, in my opinion, recognition that the numbers warrant a certain degree of management.

[567] The first conclusion the Plaintiffs have asked me to draw is that the Defendants’ decision to establish a school board represents an admission that they were constitutionally obliged to do so. This argument does not take into account the legislative framework I have just described, nor does it take into account the case law that recognizes that a government may be proactive and go beyond its strict constitutional obligations regarding the right of management.

[568] But even if the Plaintiffs are correct, the real problem is the second submission they make, namely that, under section 23, if the numbers warrant the establishment of a school board, they also necessarily warrant that the school board be given full autonomy over the infrastructure.

[569] In my view, the sliding scale principle means that numbers have an impact on the necessity to establish a minority language school board, but they also have an impact on the degree of autonomy to be given to that school board.

[570] In my opinion, it is inconsistent with the case law to argue that any school board, be it responsible for 100 students or 10,000, must necessarily have exactly the same power of management and the same level of autonomy as the government.

[571] This interpretation, if it were accepted, could harm the implementation of the objectives of section 23 rather than promote them. Such a rigid approach could have a dissuasive effect on governments and incite them to avoid, as much as possible, establishing minority language school boards in order to maintain greater control over public spending. In some cases, this would deprive right holders of several other benefits that arise from having their own school board.

[572] In my opinion, a more nuanced approach is more compatible with the sliding scale principle and the flexibility the courts have allowed governments in implementing section 23.

[573] It is not the fact of establishing a minority language school board that determines the scope of the right of management it should have, but the numbers. The establishment of a school board therefore does not lead to a series of predetermined consequences for the scope of its right of management.

[574] In this case, the CSFTN‑O enjoys, in accordance with the Act, the powers enumerated in sections 117 and 118. I will deal with the issue of the target student body below, but even using the figures submitted by the Plaintiffs, the numbers remain relatively modest.

[575] In my view, the Plaintiffs have not established that, in accordance with the sliding scale principle, the CSFTN-O's right of management must necessarily include the powers set out in section 119 of the Act, as well as the other powers they are claiming. I am therefore not satisfied that the Minister's decision not to delegate those powers to the CSFTN-O is a violation of section 23, nor am I satisfied that the Plaintiffs are entitled to the other declarations they are seeking with respect to the powers that should be held by the CSFTN-O.

[576] That said, the establishment of a minority language school board creates obligations for the government and has consequences for the way the government must proceed in respect of right holders, including in decision-making processes regarding infrastructure. The government must be consistent: in the context of section 23, if it decides to create a minority language school board, it must accept its role in managing the French-language education program, including identifying its needs.

[577] The government must therefore work closely with the minority language school board with regard to programs and infrastructure. It is in the government's interest to seriously consider the needs identified by the school board. The case law recognizes that the school board is often in the best position to assess its pedagogical needs. When it decides not to satisfy the requests of the school board, the government must be able to justify those decisions.

[…]

c. Constitutional status of the daycare and the pre-kindergarten program

[754] Besides additional spaces for educational purposes, the Plaintiffs are seeking declarations from the Court regarding the spaces that they want to see set aside for the Garderie Plein Soleil and the pre-kindergarten program for three- and four-year-old children.

[755] The Plaintiffs argue that the daycare benefits from constitutional protection. They also submit that the Defendants must provide space for the pre-kindergarten program because the CSFTN-O, in its enrolment policy, includes pre-kindergarten in its primary program. The Plaintiffs argue that the CSFTN-O's right of management gives it the right to exceed the parameters of the school program as set by the *Education Act*.

[756] In the alternative, the Plaintiffs argue that the Court should order the Defendants to provide additional space for the daycare and pre-kindergarten program as a remedial measure to remedy past harms and delays by the GNWT in implementing section 23.

[757] The Plaintiffs have submitted that it is not necessary to address the issue of whether the daycare and pre-kindergarten program are constitutionally protected, since there are other legal bases on which the remedy they are seeking may be founded. I do, however, consider it necessary to decide the issue. The Garderie Plein Soleil is a Plaintiff in this proceeding, and the pleadings clearly raise the issue of its constitutional status.

[758] In my view, the daycare does not benefit from constitutional protection, regardless of the context. Section 23 creates a right to receive education at the primary and secondary levels. I do not see how its language could be interpreted as including a daycare service, even under the most generous interpretation. To my knowledge, there is no case law giving constitutional status to a daycare in a minority setting.

[759] As for the pre-kindergarten program, it is clear that the CSFTN-O has the right to establish such a program. However, I cannot agree with the argument that, in so doing, it ascribes a constitutional status to that program. The GNWT has jurisdiction over education, and it has the authority to set the parameters for the primary and secondary school programs. In my opinion, the CSFTN-O's right of management does not give it the power to create a school program that exceeds the parameters set by the government.

[760] In my opinion, the only legal basis available to the Plaintiffs for requesting an order that the Defendants cover the cost of spaces for the daycare or pre-kindergarten program is to establish that this constitutes an appropriate and just remedy within the meaning of subsection 24(1) of the *Charter*.

Part VI – General

Regulations

151. (1) Regulations: students, language of instruction and school programs

151. (1) The Minister may make regulations

[…]

(b) respecting the establishment, maintenance and translation into an official language of student records by a principal;

[…]

(g.1) governing the requirements for consultation for the selection of a language of instruction;

(h) respecting anything that may be required to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*;

(i) establishing a *commission scolaire francophone de division* and setting out the area within its jurisdiction;

(j) respecting the procedure for the election of members of a commission scolaire francophone de division;

Commission Scolaire Francophone, Territoires du Nord-Ouest Regulations – Education Act, N.W.T. Reg. 071-2000

WHEREAS the conseil scolaire francophone de Yellowknife, under subsection 84(1) of the *Education Act*, has requested the Minister to establish a commission scolaire francophone de division;

The Minister, under sections 84 and 151 of the *Education Act* and every enabling power, makes the *Commission scolaire francophone de division Regulations*.

[…]

3. The area within the jurisdiction of the Commission scolaire francophone, Territoires du Nord-Ouest is comprised of the following education districts:

(a) Hay River Education District;

(b) Yellowknife Education District No. 1.

R-086-2001,s.3; R-016-2008,s.4.

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7. (1) The Commission scolaire francophone, Territoires du Nord-Ouest shall, for the program of French first language instruction in the education districts within its jurisdiction,

(a) provide education to all students in accordance with the Act and the regulations made under the Act;

(b) ensure the enforcement of the registration of a child under section 12 of the Act and accept the registration of a child under paragraph 12(1)(c) of the Act;

(c) administer and manage the educational affairs of the education body in accordance with the Act and the regulations made under the Act;

(d) consider any comments and recommendations, with regard to a school, that are provided by the students, student representatives, parents and school staff who have an interest in that school;

(e) at the beginning of each academic year, invite each principal to have a student representative from each school attend and participate in the public meetings of the education body and establish guidelines for the participation of student representatives in those meetings;

(f) enter into agreements with health, justice, social services and other community agencies for the provision of support services to students in addition to those provided under subsection 7(2) of the Act where, in the opinion of the education body, the services are necessary for the effective delivery of the education program and individual education plans;

(g) provide support services in accordance with the directions of the Minister under subsection 7(2) of the Act;

(h) provide students with text books and other learning materials and, where in the opinion of the education body it is necessary, fix prices for those books and materials;

(i) provide library, audio-visual and other resource materials;

(j) subject to sections 38 to 43 of the Act, attempt to settle all disputes relating to the education program and individual education plans that arise between a student or his or her parent and education staff;

(k) with the advice of education staff, parents and community elders, develop and deliver culture based school programs in accordance with the requirements of the curriculum;

(l) provide direction to and supervise the Superintendent in the recruitment, hiring, employment, discipline and dismissal of education staff and school staff in accordance with the Act, the regulations made under the Act and the *Public Service Act*;

(m) employ a Superintendent;

(n) set out powers and duties of the Superintendent, in addition to those set out in the Act;

(o) hold a public meeting annually to consult with parents, community elders and other members of the community regarding the goals and plans for the school program for the next school year;

(p) monitor, evaluate and direct the delivery of school programs to assure the highest possible education standards in the schools;

(q) evaluate school program plans and provide direction with respect to those plans;

(r) in accordance with the regulations made under the Act, evaluate and provide support to home schooling programs;

(s) in accordance with the regulations made under the Act, establish and advise the Minister of the hours for the academic year for schools, the opening and closing dates for schools and dates for vacations and for the observance of holidays for schools;

(t) prepare and submit to the Minister the reports and evaluations required by the Act and the regulations made under the Act;

(u) follow the directions of the Minister; and

(v) provide accommodation to senior secondary students in accordance with section 10 of the Act.

7. (2) The Commission scolaire francophone, Territoires du Nord-Ouest shall, for the program of French first language instruction in the education districts within its jurisdiction, also

(a) provide equipment and facilities for school programs for physical education, athletics and recreation;

(b) at the direction of the Minister, enter into agreements that provide for the maximum possible use of education facilities for purposes outside the education program;

(c) inform the governing body of the community within the education district of plans for the use and development of education facilities;

(d) have custody and safekeeping of all the education facilities that are used for the education program and maintain the education facilities in good condition;

(e) obtain a corporate seal;

(f) employ and bond a financial officer or officers as it considers necessary;

(g) receive the moneys that are provided by grant or contribution by the Minister for the use of the education body for the delivery of the education program;

(h) make expenditures to meet the requirements of the education program and the Act and supervise and be accountable for all expenditures;

(i) keep a full and accurate record of its proceedings and financial transactions and affairs;

(j) maintain insurance as directed by the Minister;

(k) subject to subsection 136(5) of the Act, prepare for the approval of the Minister, in accordance with the regulations made under the Act, an annual estimate of revenue and expenditures for the operation and maintenance of the education program in the area within its jurisdiction for the next school year;

(l) subject to subsection 136(5) of the Act, prepare, for the approval of the Minister and in accordance with the directions of the Minister, an annual estimate of revenue and expenditures for all capital items for the education program in the area within its jurisdiction for the next school year; and

(m) prepare, for the approval of the Minister and in accordance with the regulations made under the Act, an operational plan for the education program in the area within its jurisdiction.

R-086-2001,s.6; R-015-2005,s.2; R-016-2008,s.4; R-045-2016,s.2.

---

8. (1) The Commission scolaire francophone, Territoires du Nord-Ouest may, for the program of French first language instruction in the education districts within its jurisdiction,

(a) develop and produce learning resources and materials to support the delivery of culture based school programs and other local programs;

(b) advise the Minister regarding the issuance of honorary teaching certificates to elders;

(c) authorize, supervise and evaluate the use of distance learning programs in the provision of the education program;

(d) charge fees for goods and services that it provides but that are not required for the instruction of the education program;

(e) provide transportation to students to enable them to have access to the education program and, where in the opinion of the education body it is necessary, fix fees to be charged for that transportation;

(f) operate student residences and home boarding programs for students to enable them to have access to the education program and, where in the opinion of the education body it is necessary, fix fees to be charged for that residence or program;

(g) establish committees of the education body and assign powers and duties to those committees;

(h) establish committees, including parents' advisory committees, whose members are not members of the education body, to advise the education body respecting education issues;

(i) provide interpreter and translator services to assist in the conduct of the business of the education body;

(j) pay an honorarium and expenses to each of its members in accordance with the regulations made under the Act;

(k) acquire personal property by gift, devise, lease, purchase or otherwise;

(l) in addition to the school program, develop and deliver early childhood development, adult education, cultural, religious or other programs to enhance learning and charge fees for the programs;

(m) hire and employ teachers or persons who are not teachers for the instruction of local programs;

(n) establish and charge tuition fees in respect of students in accordance with the Act;

(o) collect or maintain information that affects decisions made about the education of a student and maintain a record of the decisions; and

(p) allow persons who do not reside in the education district or whose parent does not reside in the Territories to register with a school under subsection 14(1) or section 15 of the Act.

8. (2) The Commission scolaire francophone, Territoires du Nord-Ouest may, for the program of French first language instruction in the education districts within its jurisdiction, also

(a) enter into agreements with public colleges to support the development and delivery of a teacher education program;

(b) enter into agreements with other education bodies to deliver the education program including the payment of tuition in the circumstances set out in subsection 14(2) of the Act;

(c) enter into agreements regarding aboriginal schools;

(d) with the approval of the student, or where that student is a minor, the student's parent, enter into an agreement with another education body to enable the student to attend school in an education district other than the one in which the student resides where

(i) the student has reached an education level beyond that offered in the education district in which the student resides, or

(ii) the educational needs of the student would be better served at another school;

(e) employ outside the public service, school staff, other than teachers, whom the education body considers necessary for the effective operation of the education program or for individual education plans;

(f) enter into agreements with other education bodies for the transfer of teachers;

(g) provide for the payment of a pension to a person employed outside the public service under paragraph (e), on that person's retirement on account of age or disability;

(h) allow an employee to take a leave of absence for educational purposes;

(i) arrange and pay for the bonding of one or more financial officers;

(j) join and pay the fees of educational associations; and

(k) enter into contracts for the provision of services to support the school program or individual education plans.

R-086-2001,s.6; R-016-2008,s.4.

Consultation Regulations – Education Act, N.W.T. Reg. 071-96

2. (1) A register is established at the headquarters office of the Department of Education, Culture and Employment in Yellowknife, Northwest Territories for the purposes of registering organizations that wish to be consulted under subsection 151(6) of the Act.

2. (3) An organization that wishes to be added to the register shall provide the following information:

[…]

(c) which of the following categories of regulations the organization wishes to comment on:

(i) students, language of instruction and school programs;

Education Staff Regulations – Education Act, N.W.T. Reg. 170-96

Teaching Certificates – Specialty

25. Interim Aboriginal Language Teaching Certificate

25. (1) In this section and sections 26 to 29, "aboriginal language" means an Official Language other than English or French.

25. (2) The Registrar may issue an Interim Aboriginal Language Teaching Certificate to a person who

(a) meets the requirements of these regulations;

(b) is fluent in an aboriginal language;

(c) successfully completes a test for that aboriginal language administered by an education body;

(d) is recommended by the Superintendent; and

(e) has, in the opinion of the Superintendent,

(i) successfully completed one academic year of work experience in a classroom, or

(ii) successfully completed a 25 hour

teacher training program.

25. (3) An Interim Aboriginal Language Teaching Certificate issued under subsection (2) expires at the end of the second school year following the school year in which it is issued.

25. (4) The holder of an Interim Aboriginal Language Teaching Certificate issued under subsection (2) shall successfully complete two academic years of teaching in a classroom and the courses required by the N.W.T. Teacher Qualification Service toward completion of an aboriginal language teacher training program during the term of the teaching certificate.

25. (5) The Registrar may, once, renew an Interim Aboriginal Language Teaching Certificate issued under subsection (2) for a term of three school years where the holder

(a) has successfully completed two academic years of teaching in a classroom and the courses required by the N.W.T. Teacher Qualification Service toward completion of an aboriginal language teacher training program during the term of the teaching certificate; or

(b) is permitted, pursuant to the policies and procedures of the N.W.T. Teacher Qualification Service, to have the teaching certificate renewed.

25. (6) The holder of an Interim Aboriginal Language Teaching Certificate renewed under subsection (5) shall successfully complete the courses required by the N.W.T. Teacher Qualification Service toward completion of an aboriginal language teacher training program during the term of the teaching certificate.

25. (7) The Registrar may, once, renew an Interim Aboriginal Language Teaching Certificate renewed under subsection (5) for a term of one school year where the holder

(a) has successfully completed the courses required by the N.W.T. Teacher Qualification Service toward completion of an aboriginal language teacher training program; or

(b) is permitted, pursuant to the policies and procedures of the N.W.T. Teacher Qualification Service, to have the teaching certificate renewed.

25. (8) The holder of an Interim Aboriginal Language Teaching Certificate renewed under subsection (7) shall successfully complete the courses required by the N.W.T. Teacher Qualification Service toward completion of an aboriginal language teacher training program during the term of the teaching certificate.

R-053-2017,s.7.

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26. (1) The holder of an Interim Aboriginal Language Teaching Certificate may apply, in writing, to the Registrar for an extension of the time to complete the courses and teaching experience required by subsection 25(4) or the courses required by subsection 25(8).

26. (2) The Registrar may grant one or more extensions to a person applying under subsection (1) and, on granting an extension, the Registrar may renew the Interim Aboriginal Language Teaching Certificate for a term of one school year.

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27. Standard Aboriginal Language Teaching Certificate

27. (1) The Registrar may issue a Standard Aboriginal Language Teaching Certificate to a person who

(a) meets the requirements of these regulations;

(b) holds an Interim Aboriginal Language Teaching Certificate;

(c) has, in the opinion of the Superintendent, successfully completed two academic years of teaching in a classroom; and

(d) has successfully completed an aboriginal language teacher training program approved by the Registrar.

27. (2) A Standard Aboriginal Language Teaching Certificate issued under subsection (1) expires at the end of the second school year following the school year in which it is issued.

27. (3) The holder of a Standard Aboriginal Language Teaching Certificate issued under subsection (1) shall successfully complete the courses required by the N.W.T. Teacher Qualification Service toward completion of a one year training program, approved by the Registrar, during the term of the teaching certificate.

27. (4) The Registrar may, once, renew a Standard Aboriginal Language Teaching Certificate issued under subsection (1) for a term of three school years where the holder

(a) has successfully completed the courses required by the N.W.T. Teacher Qualification Service toward completion of a one year training program approved by the Registrar; or

(b) is permitted, pursuant to the policies and procedures of the N.W.T. Teacher Qualification Service, to have the teaching certificate renewed.

27. (5) The holder of a Standard Aboriginal Language Teaching Certificate renewed under subsection (4) shall successfully complete the courses required by the N.W.T. Teacher Qualification Service toward completion of a one year training program approved by the Registrar during the term of the teaching certificate.

27. (6) The Registrar may renew a Standard Aboriginal Language Teaching Certificate renewed under subsection (4) for a term of one school year where the holder

(a) has successfully completed the courses required by the N.W.T. Teacher Qualification Service toward completion of a one year training program approved by the Registrar; or

(b) is permitted, pursuant to the policies and procedures of the N.W.T. Teacher Qualification Service, to have the teaching certificate renewed.

27. (7) The holder of a Standard Aboriginal Language Teaching Certificate renewed under subsection (6) shall successfully complete the courses required by the N.W.T. Teacher Qualification Service toward completion of a one year training program approved by the Registrar during the term of the teaching certificate.

R-053-2017,s.8.

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28. (1) The holder of a Standard Aboriginal Language Teaching Certificate may apply, in writing, to the Registrar for an extension of the time to complete the courses required by subsection 27(7).

28. (2) The Registrar may grant one or more extensions to a person applying under subsection (1) and, on granting an extension, the Registrar may renew the Standard Aboriginal Language Teaching Certificate for a term of one school year.

---

29. Aboriginal Language Specialty Teaching Certificate

29. (1) The Registrar may issue an Aboriginal Language Specialty Teaching Certificate to a person who

(a) meets the requirements of these regulations;

(b) holds a Standard Aboriginal Language Teaching Certificate; and

(c) has successfully completed a one year training program approved by the Registrar.

29. (2) Before July 1, 1997, the Registrar shall issue an Aboriginal Language Speciality Teaching Certificate to a teacher holding a valid Permanent Aboriginal Languages Specialist Certificate, issued under the Education Regulations, R.R.N.W.T. 1990,c.E-13.

29. (3) An Aboriginal Language Specialty Teaching Certificate expires at the end of the fourth school year following the year in which it is issued or renewed.

29. (4) The Registrar may renew an Aboriginal Language Specialty Teaching Certificate where the holder of the Aboriginal Language Specialty Teaching Certificate has met the requirements for recertification established by the Registrar. R-053-2017,s.9

Teaching Certificates – Miscellaneous

43. Letter of Authority

43. (1) Subject to subsection (1.1), where there is no teacher who holds, or is eligible for, a teaching certificate in respect of a certain subject or grade available to teach a subject or grade required by an education body, the Registrar may issue a letter of authority to a teacher who holds, or is eligible for, a teaching certificate issued under these regulations to allow that teacher to teach the subject or grade specified in the letter of authority.

[…]

43. (2) Where there is no teacher available under subsection (1) to teach a subject or grade required by an education body, the Registrar may issue a letter of authority on the terms and conditions directed under subsection (3) to a person who

> **[…]**
>
> **(b) furnishes evidence satisfactory to the Registrar that he or she**
>
> > **[…]**
> >
> > **(ii) possesses specific skills and knowledge relating to the culture, language or lifestyle of the students in a particular school.**

French First Language Education Regulations – Education Act, N.W.T. Reg. 166-96

1. Interpretation

1. In these regulations,

[…]

"French first language instruction" means instruction in the education program in French but does not include a French immersion program or the teaching of French as a second language. (*enseignement en français langue première*)

---

2. Establishment of Program

2. (1) Where the Minister determines that the right under section 23 of the *Canadian Charter of Rights and Freedoms* of French first language instruction applies in an education district, the Minister shall direct the District Education Authority for that education district to establish a program of French first language instruction.

2. (2) In order to determine whether the right under section 23 of the *Canadian Charter of Rights and Freedoms* of French first language instruction applies in an education district, the Minister shall consider

> **(a) the existence of a program of French first language instruction in a neighbouring education district;**
>
> **(b) the number of and ages of eligible children in the education district;**
>
> **(c) the number of and ages of the eligible children in a neighbouring education district;**
>
> **(d) the number of potential registrations of children in the education district and of children in a neighbouring education district; and**
>
> **(e) the distance over which eligible children would have to be transported.**

3. Where a program of French first language instruction is established, the Minister and the District Education Authority shall make every effort to continue that program for a minimum of three years.

4. *Comités de parents francophones*

4. (1) Where a program of French first language instruction exists and a conseil scolaire francophone or commission scolaire francophone de division is not established in respect of that program, three or more parents of children eligible for the program may, in writing, request the District Education Authority responsible for the education district in which the parents reside to establish a comité de parents francophones.

4. (2) A District Education Authority receiving a request under subsection (1) shall establish a comité de parents francophones.

4. (3) A District Education Authority may establish more than one comité de parents francophones in an education district, but no more than one comité de parents francophones may be established in respect of any one school.

5. *Conseils scolaires francophones*

5. (1) A District Education Authority shall establish a conseil scolaire francophone where a comité de parents francophones has been in existence for at least one school year and the comité de parents francophones requests, in writing, that the District Education Authority establish a conseil scolaire francophone.

5. (2) A District Education Authority establishing a conseil scolaire francophone under subsection (1) shall, by by-law, specify the number of members of the conseil scolaire francophone, which number must be between three and five and as requested by the comité de parents francophones.

5. (3) A District Education Authority may establish more than one conseil scolaire francophone in an education district, but no more than one conseil scolaire francophone may be established in respect of any one school.

6. (1) A District Education Authority shall ensure that every person having rights under section 23 of the *Canadian Charter of Rights and Freedoms* and who has a child registered in a French first language program is enumerated as a voter for the election for members of a conseil scolaire francophone and shall prepare a list of voters in advance of the election.

6. (2) No person other than a person having rights under section 23 of the *Canadian Charter of Rights and Freedoms* may be nominated or stand as a candidate in an election for members of a conseil scolaire francophone.

7. (1) A District Education Authority establishing a conseil scolaire francophone shall, with regard to the delivery of a program of French first language instruction, delegate to that conseil scolaire francophone the duty to

(a) consider any comments and recommendations, with regard to a school, that are provided by the students, student representatives, parents and school staff who have an interest in that school;

(b) at the beginning of each academic year, invite each principal to have a student representative from each school attend and participate in the public meetings of the conseil scolaire francophone and establish guidelines for the participation of student representatives in those meetings;

(c) provide students with text books and other learning materials and, where in the opinion of the conseil scolaire francophone it is necessary, fix prices for those books and materials;

(d) provide library, audio-visual and other resource materials;

(e) subject to sections 38 to 43 of the Act, attempt to settle all disputes relating to French first language instruction and individual education plans that arise between a student or his or her parent and education staff;

(f) with the advice of education staff, parents, persons having rights under section 23 of the *Canadian Charter of Rights and Freedoms* and other community members, develop and deliver culture based school programs in accordance with the requirements of the curriculum;

(g) hold a public meeting annually to consult with persons having rights under section 23 of the *Canadian Charter of Rights and Freedoms* regarding the goals and plans for the program of French first language instruction for the next school year;

(h) in accordance with the directions of the District Education Authority, monitor, evaluate and direct the delivery of school programs to assure the highest possible education standards in the schools;

(i) in accordance with the directions of the District Education Authority, evaluate program plans and provide direction with respect to those plans;

(j) in cooperation with the District Education Authority, evaluate and provide support to home schooling programs in French first language instruction; and

(k) in accordance with the directions of the District Education Authority, establish and advise the District Education Authority of the hours of instruction for the academic year for schools, the opening and closing dates for schools, the dates established for the development of the skills of the education staff, the dates established for the performance of noninstructional duties by education staff, and dates for vacations and for the observance of holidays for schools.

7. (2) A District Education Authority establishing a conseil scolaire francophone shall also, with regard to the delivery of a program of French first language instruction, delegate to that conseil the duty to

(a) in cooperation with the District Education Authority, provide equipment and facilities for school programs for physical education, athletics and recreation;

(b) in accordance with the directions of the District Education Authority, enter into agreements that provide for the maximum possible use of education facilities for purposes outside the education program;

(c) have custody and safekeeping of all the education facilities that are used for the education program and maintain the education facilities in good condition;

(d) employ and bond a financial officer or officers as it considers necessary;

(e) receive the moneys that are provided by grant or contribution by the Minister for the use of the conseil scolaire francophone for the delivery of the education program;

(f) make expenditures to meet the requirements of the education program and the Act and supervise and be accountable for all expenditures;

(g) provide advice to the District Education Authority regarding the purchase or construction of education facilities;

(h) keep a full and accurate record of its proceedings and financial transactions and

affairs;

(i) subject to subsection 136(5) of the Act, prepare for the approval of the District Education Authority, in accordance with the regulations made under the Act, an annual estimate of revenue and expenditures for the operation and maintenance of the education program in the area within its jurisdiction for the next school year;

(j) subject to subsection 136(5) of the Act, prepare, for the approval of the District Education Authority and in accordance with the directions of the Minister, an annual estimate of revenue and expenditures for all capital items for the education program in the area within its jurisdiction for the next school year; and

(k) prepare, for the approval of the Minister and in accordance with the regulations made under the Act, an operational plan for the education program in the area within its jurisdiction.

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8. A District Education Authority establishing a conseil scolaire francophone shall, with regard to the delivery of a program of French first language instruction, delegate to that conseil scolaire francophone the power to

(a) develop and produce learning resources and materials to support the delivery of culture based school programs and other local programs;

(b) authorize, supervise and evaluate the use of distance learning programs in the provision of the education program;

(c) establish committees of the conseil scolaire francophone and assign powers and duties to those committees;

(d) guide the District Education Authority with regard to the entering into of agreements with other education bodies to deliver the education program including the payment of tuition in the circumstances set out in subsection 14(2) of the Act;

(e) pay an honorarium and expenses to each of its members in accordance with the regulations made under the Act;

(f) in addition to the school program, develop and deliver early childhood development, adult education, cultural, religious or other programs to enhance learning and charge fees for the programs;

(g) collect or maintain information that affects decisions made about the education of a student and maintain a record of the decisions; and

(h) with regard to the education staff assigned to the conseil scolaire francophone for French first language instruction, provide direction to the Superintendent regarding the recruitment, interviewing and hiring of applicants.

---

12. (1) A person having rights under section 23 of the *Canadian Charter of Rights and Freedoms* may be nominated and stand as a candidate in an election for members of a commission scolaire francophone de division.

12. (2) A person having rights under section 23 of the *Canadian Charter of Rights and Freedoms* and who has a child registered in a French first language program may vote in an election for members of a commission scolaire francophone de division.

Funding Regulations – Education Act, N.W.T. Reg. 044-2000

2. (1) The student teacher ratio referred to in paragraph 128(1.1)(a) of the Act for a particular financial year is the ratio of full-time equivalent students in the Northwest Territories in that year to the number of teaching positions funded in the Northwest Territories in that year, where

[…]

(c) the number of teaching positions is the number of funded teaching positions in the education program for kindergarten to grade 12, and includes positions for principals, vice-principals and program support teachers but does not include positions for holders of aboriginal language teaching certificates issued under the *Education Staff Regulations* made under the Act.

[…]

Public Denominational Education Body Petition Regulations – Education Act, N.W.T. Reg. 070-96

3. (1) Where the Minister has instructed a Superintendent to call a meeting to be held for the purpose of determining whether the ratepayers wish to create a public denominational education

district, the Superintendent shall, not less than 30 days before the day of the meeting, advertise the meeting in the education district.

3. (2) The Superintendent shall advertise under subsection (1) in English and at least one other Official Language and, where that other Official Language is French, one additional Official Language that is spoken in the education district.

Safe Schools Regulations – Education Act, N.W.T. Reg. 010-2016

Schedule (*Section 1*)

Territorial School Code of Conduct

The purpose of the Territorial School Code of Conduct is to promote a positive learning environment in the Northwest Territories. Students, parents, elders, school staff and all members of the school community have the shared responsibility to establish an effective education system in a safe, respectful and caring atmosphere.

School Community Responsibilities and Rights:

> **[…]**
>
> **7. To recognize Canada's and the Northwest Territories' multi-cultural heritage, and to respect the value of different linguistic, cultural, historical, political and spiritual backgrounds.**
>
> **[…]**

Student Record Regulations – Education Act, N.W.T. Reg. 168-96

4. (1) Every student record must contain the following information, with regard to the student for whom it is prepared:

> **[…]**
>
> **(j) mother tongue and language spoken most often at home;**
>
> **(k) eligibility for French first language instruction, as defined in regulations made under the Act, under section 23 of the *Constitution Act, 1982*.**
>
> **[…]**

---

8. Where a student or a parent does not speak or understand the language in which the student record of that student is maintained, and requests that the student record be translated into an Official Language, the principal shall, within a reasonable period of time, provide an oral or written translation of the student record.

11. (1) The Superintendent shall, for each student registered with a school in the area within his or her jurisdiction and in accordance with the directions of the Minister, provide the following information to the Minister:

[…]

(f) eligibility for French first language instruction, as defined in regulations made under the Act, under section 23 of the *Constitution Act, 1982*;

Other Regulations Associated with the *Education Act*:

ESTABLISHMENT OF FRANCOPHONE ORGANIZATIONS

N.B. – Regulations for the district education authorities typically include a provision that outlines the authority's obligations under section 23 of the *Canadian Charter of Rights and Freedoms*. For example, the provision in the *Łutsel K'e Education District and Łutsel K'e District Education Authority Regulation – Education Act*, N.W.T. Reg. 144-96 outlines the following:

8. (1) The Łutsel K'e District Education Authority shall, for the Łutsel K'e Education District,

[…]

(t) where in the Territories the right of parents under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in French applied, in accordance with the regulations made under the Act,

(i) establish comités de parents francophones,

(ii) establish conseils scolaires francophones, and

(iii) delegate to the conseils scolaires francophones the powers and duties that are necessary for the delivery of French language instruction and the management of French language instruction in the education district; and

[…]

Other regulations governing containing a similar provision include the following:

K'atlodeeche First Nations Education District and K'atlodeeche First Nations District Education Authority Regulations – Education Act, N.W.T. Reg. 030-2006, s. 8(1)(d)

Fort Smith Education District and Fort Smith District Education Authority Regulations – Education Act, N.W.T. Reg. 141-96, s. 7(1)(t)

Yellowknife Education District No.1 and Yellowknife District No.1 Education Authority Regulations – Education Act, N.W.T. Reg. 080-96, s. 6(1)(v)

Yellowknife Education District No. 2 and Yellowknife Public Denominational District Education Authority Regulations – Education Act, N.W.T. Reg. 098-96, s. 6(1)(v)

Behchokǫ̀ Education District and Behchokǫ̀ District Education Authority Regulations – Education Act, N.W.T. Reg. 116-96, s. 7(1)(t)

Wekweètì Education District and Wekweètì District Education Authority Regulations – Education Act, N.W.T. Reg. 118-96, s. 7(1)(t)

Paulatuk Education District and Paulatuk District Education Authority Regulations – Education Act, N.W.T. Reg. 110-96, s. 7(1)(t)

Gamètì Education District and Gamètì District Education Authority Regulations – Education Act, N.W.T. Reg. 117-96, s. 7(1)(t)

Whatì Education District and Whatì District Education Authority Regulations – Education Act, N.W.T. Reg. 119-96, s. 8(1)(t)

Ulukhaktok Education District and Ulukhaktok District Education Authority Regulations – Education Act, N.W.T. Reg. 102-96, s. 7(1)(t)

Jean Marie River Education District and Jean Marie River District Education Authority Regulations – Education Act, N.W.T. Reg. 085-96, s. 7(1)(t)

K'ásho Got'iné Education District and K'ásho Got'iné District Education Authority Regulations – Education Act, N.W.T. Reg. 095-96, s. 8(1)(p)

Fort Providence Education District and Fort Providence District Education Authority Regulations – Education Act, N.W.T. Reg. 083-96, s. 7(1)(t)

Nahanni Butte Education District and Nahanni Butte District Education Authority Regulations – Education Act, N.W.T. Reg. 086-96, s. 7(1)(t)

Fort Liard Education District and Fort Liard District Education Authority Regulations – Education Act, N.W.T. Reg. 082-96, s. 7(1)(t)

Fort Simpson Education District and Fort Simpson District Education Authority Regulations – Education Act, N.W.T. Reg. 084-96, s. 7(1)(t)

Sachs Harbour Education District and Sachs Harbour District Education Authority Regulations – Education Act, N.W.T. Reg. 111-96, s. 7(1)(t)

Wrigley Education District and Wrigley District Education Authority Regulations – Education Act, N.W.T. Reg. 088-96, s. 7(1)(t)

Hay River Education District and Hay River District Education Authority Regulations – Education Act, N.W.T. Reg. 143-96, s. 7(1)(t)

Fort McPherson Education District and Fort McPherson District Education Authority Regulations – Education Act, N.W.T. Reg. 108-96, s. 7(1)(t)

Fort Resolution Education District and Fort Resolution District Education Authority Regulations – Education Act, N.W.T. Reg. 140-96, s. 7(1)(t)

Kakisa Lake Education District and Kakisa Lake District Education Authority Regulations – Education Act, N.W.T. Reg. 096-97, s. 7(1)(t)

Norman Wells Education District and Norman Wells District Education Authority Regulations – Education Act, N.W.T. Reg. 096-96, s. 7(1)(t)

Déljne Education District and Déljne District Education Authority Regulations – Education Act, N.W.T. Reg. 094-96, s. 8(1)(p)

Tsiigehtchic Education District and Tsiigehtchic District Education Authority Regulations – Education Act, N.W.T. Reg. 112-96, s. 8(1)(t)

Dettah Education District and Dettah District Education Authority Regulations – Education Act, N.W.T. Reg. 115-96, s. 7(1)(t)

Tulita Education District and Tulita District Education Authority Regulations – Education Act, N.W.T. Reg. 097-96, s. 8(1)(p)

Inuvik Education District and Inuvik District Education Authority Regulations – Education Act, N.W.T. Reg. 109-96, s. 7(1)(t)

Aklavik Education District and Aklavik District Education Authority Regulations – Education Act, N.W.T. Reg. 107-96, s. 7(1)(t)

Trout Lake Education District and Trout Lake District Education Authority Regulations – Education Act, N.W.T. Reg. 087-96, s. 7(1)(t)

Colville Lake Education District and Colville Lake District Education Authority Regulations – Education Act, N.W.T. Reg. 093-96, s. 7(1)(p)

Tuktoyaktuk Education District and Tuktoyaktuk District Education Authority Regulations – Education Act, N.W.T. Reg. 113-96, s. 7(1)(t)

N'dìlo Education District and N'dìlo District Education Authority Regulations – Education AcN.W.T. Reg. 035-2013, s. 6(1)(t)

Elections and Plebiscites Act, S.N.W.T. 2006, c. 15

Part 7 – Voting

Secrecy of the Vote

117. (3) Secrecy at polling place

117. (3) Subject to subsection (4), no elector shall

(a) on entering a polling station or other place where voting is conducted, and before receiving a ballot, declare the candidate for whom the elector intends to vote, or how the elector intends to vote on a plebiscite;

(b) show his or her ballot, when marked, so as to allow others to know the name of the candidate for whom the elector has voted, or how the elector has voted on a plebiscite; or

(c) before leaving the polling station, or other place where voting is conducted, declare the candidate for whom the elector has voted or declare how the elector has voted on a plebiscite.

117. (4) Exception

117. (4) An elector does not contravene subsection (3) if he or she discloses information in the course of obtaining assistance to vote because of

(a) an inability to read any of the languages in which the ballot is written; or

(b) a physical disability.

Interpreters

124. (1) Other interpreters

124. (1) A returning officer or deputy returning officer who does not understand the language spoken by an elector shall, if practicable, appoint an interpreter to assist in communication between the elector and the returning officer or deputy returning officer with reference to all matters required to enable that elector to vote.

124. (2) Oath or affirmation

124. (2) An interpreter appointed under subsection (1) shall take an oath or make an affirmation in the form and manner approved by the Chief Electoral Officer.

124. (3) Validity of election

124. (3) A failure to comply with this section shall not affect the validity of an election or plebiscite.

Manner of Voting

189. (1) Elector requiring assistance

189. (1) An elector may, in accordance with this section, be assisted in marking his or her ballot, if he or she requires assistance to mark it because of

(a) an inability to read any of the languages in which the ballot is written; or

(b) a physical disability.

Part 10 – General

Aboriginal Languages

277. (1) Aboriginal languages

277. (1) The Chief Electoral Officer may decide, if he or she considers it necessary, to provide one or more of the following documents in an Aboriginal language for an electoral district:

(a) the proclamation, plebiscite proclamation or public notice of a plebiscite;

(b) the nomination paper;

(c) the front page of the preliminary and official list of electors;

(d) directions to electors;

(e) excerpts from this Act.

277. (2) Ballot papers

277. (2) If documents are provided to an electoral district under subsection (1), the Chief Electoral Officer must ensure that ballots for that district are printed in English, French and the applicable Aboriginal language.

Tariff of Fees Regulations – Elections and Plebiscites Act, N.W.T. Reg. 104-2014

8. Bilingual Bonus

8. Subject to the approval of the Chief Electoral Officer, an election officer who speaks fluently in an official language other than English is eligible to be paid $100.

Electoral Boundaries Commission Act, S.N.W.T. 2003, c. 4

9. Relevant considerations

9. The Commission, in preparing its report, shall take into consideration

[…]

(g) language, culture and any other special community or diversity of interests of the residents of any part of the Northwest Territories;

[…]

Guardianship and Trusteeship Act, S.N.W.T. 1994, c. 29

Guardianship

3. (1) Explanation of proceedings

3. (1) The person applying under subsection 2(1) shall, before the application is made, explain the application and proceedings to the person in respect of whom the application is made.

3. (2) Understanding of explanation

3. (2) The person applying under subsection 2(1) satisfies the requirement in subsection (1) if he or she explains the matter to the best of his or her ability, whether or not the person receiving the explanation understands it.

3. (3) Language rights

3. (3) Where the person in respect of whom the application is made does not speak or understand the same language as the person applying, the person applying shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (1).

---

4. (1) Application by petition

4. (1) An application for an order appointing a guardian must be made by petition.

[…]

4. (3) Language of report

4. (3) Where the person in respect of whom the application is made does not read, speak or understand the language in which the report prepared under subsection 2(2) is written, the person applying under subsection 2(1) shall arrange for a suitable interpreter to provide an oral interpretation of the report before the hearing takes place.

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12. (1) Definition: “capable”

12. (1) In this section, a person is "capable" if he or she has the ability, by himself or herself or with assistance,

> **(a) to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety; and**
>
> **(b) to appreciate the reasonably foreseeable consequences of a decision referred to in paragraph (a) or a lack of such a decision.**

[…]

12. (5) Language rights

12. (5) Where the represented person does not speak or understand the same language as the guardian, the guardian shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (3).

Duties of Trustee

43. (1) Duties of trustee

43. (1) A trustee is a fiduciary and shall exercise his or her powers and perform his or her duties diligently, honestly and in good faith for the benefit of the represented person.

43. (2) Explanation

43. (2) A trustee shall explain the nature of the trustee's powers and duties to the represented person.

[…]

43. (4) Language rights

43. (4) Where the represented person does not speak or understand the same language as the trustee, the trustee shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (2).

SEE ALSO:

Guardianship and Trusteeship Forms Regulations – Guardianship and Trusteeship Act, N.W.T. Reg. 049-97

Interjurisdictional Support Orders Act, S.N.W.T. 2002, c. 19

Part 5 – General Matters

38. (1) Transmission of documents

38. (1) On receipt of an order or document for transmission under this Act to a reciprocating jurisdiction, the designated authority shall transmit the order or document to the appropriate authority of the reciprocating jurisdiction.

38. (2) Certificate

38. (2) If the reciprocating jurisdiction requires an order or document to be translated into a language other than English or French, the person for whom the order or document is being transmitted shall provide the required translation together with a certificate of the translator authenticating the accuracy of the translation.

42. (3) Documents not in English or French

42. (3) If a foreign order or other document written in a language other than English or French is submitted for filing in an application for an order of the Northwest Territories court, or for registration with the Northwest Territories court under Part 2 of this Act, the order or document must be accompanied by

(a) a translation of the order or document into English or French; and

(b) a certificate of the translator authenticating the translation as being accurate.

International Child Abduction Act, R.S.N.W.T. 1988, c. I-5

Schedule (Section 1) – Convention on the Civil Aspects of International Child Abduction

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

International Commercial Arbitration Act, R.S.N.W.T. 1988, c. I-6

Schedule A – Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

Schedule B – UNCITRAL Model Law on International Commercial Arbitration

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

International Interests in Mobile Aircraft Equipment Act, S.N.W.T. 2009, c. 4

Schedule 1 – Convention on International Interests in Mobile Equipment

[…]

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Schedule 2 – Protocal to the Convention on International Interests on Mobile Equipment in Matters Specific to Aircraft Equipment

[…]

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

International Sale of Goods Act, R.S.N.W.T. 1988, c. I-7

Schedule – United Nations Convention on Contracts for the International Sale of Goods

Part IV – Final Provisions

[…]

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Interpretation Act, R.S.N.W.T. 1988, c. I-8

28. (1) General definitions

28. (1) In an enactment,

[…]

"Official Languages" means Official Languages as defined in the *Official Languages Act*; (*langues officielles*)

28. (2) Imperative and permissive construction

28. (2) The expression "shall" is to be construed as imperative and the expression "may" as permissive.

Jury Act, R.S.N.W.T. 1988, c. J-2

Persons Qualified to Serve as Jurors

4. Persons qualified as jurors

4. Subject to this Act, every person who

[…]

(c) is able to speak and understand an Official Language,

is qualified to serve as a juror in any action or proceeding that may be tried by a jury in the Northwest Territories.

R.S.N.W.T. 1988,c.125(Supp.), s.2; S.N.W.T. 1995,c.29,s.2; S.N.W.T. 2011,c.16,s.13(3).

ANNOTATIONS

HMTQ v. Beaverho, 2009 NWTSC 21 (CanLII)

Language:

[40] The defence submits that the accused has a right to have unilingual Tłı̨chǫ speakers available for selection as jurors. This requires me to consider whether the qualification criteria set out in s. 4 of the *Jury Act* (quoted earlier) is a right of the accused, or a right of the citizens of the Northwest Territories, or both. To do this it is necessary to examine the history and purpose of this provision.

[41] The recognition of the nine aboriginal languages (listed in s. 4 of the *Official Languages Act*) as "official languages" came about in 1984. Subsequently, in 1986, the Legislative Assembly passed an amendment to the *Jury Act* as follows:

> 5.2 An aboriginal person who does not speak and understand either the French language or the English language, but who speaks and understands an aboriginal language as defined in the *Official Languages Act* and is otherwise qualified under this Act, may serve as a juror in any action or proceeding that may be tried by a jury in the Territories,

[42] Prior to this, the *Jury Act* required all jurors to speak either English or French. The purpose behind this amendment was explained by the then territorial Minister of Justice:

> In the Northwest Territories aboriginal people are in the majority and in the majority of cases aboriginal persons are the accused. If we are to recognize the principle that a person is entitled to be tried by his or her peers, then surely we must do all that we can to make it possible in the Northwest Territories for aboriginal persons to sit on the jury. (Hansard, Northwest Territories, 7th Session, 10th Assembly, p. 1119)

[43] At that time, the Northwest Territories comprised an area of over 1.3 million square miles (combining both what is now Northwest Territories and Nunavut) with a population that was 65% aboriginal (the current population of the present Northwest Territories is approximately 50% aboriginal).

[44] The amendment was not proclaimed in force until it was studied by the Northwest Territories Committee on Law Reform. The amendment was viewed as an attempt to increase community involvement by allowing unilingual aboriginals to take part in the jury process. It was an attempt to increase the representativeness of juries. The amendment was supported by a wide array of aboriginal organizations.

[45] The Final Report of the Committee recommended, however, that the amendment be changed so as to replace the racial classification ("An aboriginal person who does not speak and understand either . . . ") with a purely linguistic test. The Committee thought it repugnant to our conception of equality to have

legislation reference race as the distinguishing characteristic. As a result of this recommendation, the amendment was changed to the current formulation ("every person who . . . is able to speak and understand an Official Language"). The amendment then came into force in 1988.

[46] As I noted previously, this provision is unique. Early on it was viewed as a measure aimed to benefit and preserve cultural pluralism in the north: see *R. v. Fatt*, [1986] N.W.T.R. 388 (S.C.). This follows the commitment to the preservation and enhancement of Canada's multicultural heritage articulated by s. 27 of the *Charter of Rights and Freedoms*. One appellate judge described the purpose of this provision as follows (in *R. v. Kaunak*, [1997] N.W.T.J. No. 71 (C.A.), per Berger J.A. at paras. 29-30):

> One can understand the geographic and cultural reasons for these legal provisions. The Northwest Territories covers a vast land area and includes a diverse group of Canadians of aboriginal descent . . .
>
> To assemble a jury in some of the sparsely-settled, remote communities in the Northwest Territories, it may be necessary to include unilingual aboriginal-language speaking persons. *This is to say nothing of the important Charter aboriginal and multicultural rights those persons have to participate in the legal process*, which are not issues before this Court. [...].

[47] When I consider these sources I conclude that s. 4 of the *Jury Act* provides a right to the citizens of the Northwest Territories – the pool of potential jurors – as opposed to providing a right to any particular accused person. Any person speaking an "official language" is eligible to serve on a jury. That language may be any one of the eleven official languages. There is nothing to suggest that an accused is entitled to have any particular language speaker on the jury.

[48] The purpose of the enactment was to increase and facilitate the opportunity for aboriginal citizens to serve on a jury. It is a participation right. It does not translate into a right of the accused to have a certain linguistic group on the jury, no more than the right to have a jury composed of a certain race or class.

[49] There is also a practical consideration, one that is illustrated in this case.

[50] In *Whatì*, out of the 86 people who were excused from jury selection, only six were excused because of language. If those six had not been on the original list, the jury panel would not have had any unilingual Tłicho speakers. It can hardly be said that the accused would then have had the right to have further potential jurors summonsed, further jurors who spoke only Tłicho. His only recourse would have been to challenge, if he could, the selection process used by the Sheriff. But that attack would have had to have been based on some irregularity in the selection process. There is nothing in the legislation to compel the Sheriff to select unilinguals. The only requirement is that the selection be random.

[51] The only language rights enjoyed by an accused person, in terms of the composition of the court that tries the accused, are those found in the *Criminal Code*. Section 530 provides a right to the accused to have his or her trial conducted in his or her "official language". But that refers to one of the official languages of Canada, i.e., French or English.

[52] There is one more practical consideration, also illustrated by this case.

[53] In this case, those potential jurors who could not speak English were excused because the court did not have available two qualified interpreters. Court staff had lined up two interpreters but only one showed up at jury selection. As a result, it was my opinion that we could not select non-English speakers. The burden of interpreting a complete trial is too heavy for only one interpreter, no matter how qualified, to bear.

[54] In its review of the *Jury Act* amendment in 1986, the Committee on Law Reform also recognized the need to develop a trained corps of legal interpreters. It was necessary to develop acceptable terminology, in all the official aboriginal languages, so as to translate English (and French) legal terms. There were no common translations before this. And, since it is the Government of the Northwest Territories that has the responsibility for the administration of justice, it fell to the government to meet this need.

[55] The territorial Department of Justice instituted a legal interpreter training program in 1988. By 1991, a corps of interpreters had been "certified" as court interpreters. There were full-time staff persons responsible for co-ordinating the engagement of interpreters for the courts. In 1995, funding for the program was diminished and responsibility for the program was transferred to Arctic College. The program was eventually terminated in 1998.

[56] Since 1998, there has been no training of legal interpreters. Even for those aboriginal language speakers who are willing to provide interpretation services, there are no resources to develop skills specific to the courtroom. Court staff are required to track down interpreters. There is much competition for the services of skilled interpreters from private industry. So even when the court wants to utilize the provisions of the *Jury Act* to increase a potential jury pool it is often impossible to do so because of a lack of interpreters.

[57] This situation was foreshadowed in a comment found in a 1995 report from the Commissioner of Official Languages for Canada, "The Equitable Use of English and French Before the Courts in Canada", quoted in *Kaunak* (at para. 33):

> The issues relevant to the use of Aboriginal languages in the courts of the Northwest Territories are of a quite different order [as compared with the issues surrounding the use of the French language]. No reasonable prospect exists at the moment for providing judges or prosecutors who speak any of the Aboriginal languages fluently. The most pressing concern is the training and availability of interpreters who can assist a court to understand the testimony of witnesses or accused persons who speak an Aboriginal language. Until recently, the territorial Department of Justice maintained a Legal Interpreting Program (fully funded under the Canada-Northwest Territories Co-operation Agreement) whose aim was to train Aboriginal-language speakers as court interpreters. Without reliable interpretation, Aboriginal people appearing before the Territorial Courts face serious disadvantage. Moreover, a language barrier deepens the impression that the court system is foreign and not really an integral part of one's community. The need for the assistance of interpreters is apparent in the number of hours of interpretation logged during the fiscal year 1993-94, which ranges from 1,324 hours of Inuktitut, 366 of Dogrib, 265 of North Slavey, to 176 of Chipewyan. Cuts in funding under the Co-operation Agreement for French and Aboriginal Languages have affected this valuable program. In addition to decreased funding, responsibility for this program has been transferred to the Arctic College in Fort Smith and Iqaluit and is no longer assumed by the territorial Department of Justice,

[58] So, even if a trial is held in an aboriginal community, there is no guarantee that unilingual aboriginal speakers can be chosen as jurors if qualified interpreters are not available. This is something beyond the ability of the court to remedy. It is the government that must address this problem because, without interpreters, the purpose of s. 4 of the *Jury Act* is rendered meaningless.

[59] For these reasons, I conclude that the accused does not have a right to have unilingual Tłicho speakers on the jury. The ability to select unilinguals is certainly desirable. It is something that the citizens of the Northwest Territories should expect. But it is not something the accused can demand. It is not necessary to have unilinguals on a jury in order for the accused to have a fair trial.

[60] All this however is not to forget that, regardless of whether unilingual aboriginals are on a jury, there is often a need for competent interpretation for accused persons and witnesses. In such a situation the

issue does become a *Charter* right by virtue of s. 14 of the *Charter*, which provides that a party or witness who does not understand or speak the language in which the proceedings are conducted has the right to the assistance of an interpreter. The failure to provide adequate interpretation in such circumstances could lead to a stay of proceedings.

Compilation of Jury List

9. (1) Selection of jurors and jury list

9. (1) The Sheriff shall select persons who are apparently qualified to serve as jurors and compile a jury list in accordance with the regulations.

9. (2) Names and addresses of insured persons

9. (2) To enable compilation of the jury list, the Director of Medical Insurance appointed under the *Medical Care Act* shall, on the request of the Sheriff, provide the Sheriff with the names and addresses of those "insured persons", as defined in section 1 of the *Medical Care Act*, who have attained the age of 18 years.

R.S.N.W.T. 1988,c.63 (Supp.),s.3; S.N.W.T. 1999, c.6,s.6(2); S.N.W.T. 2006,c.20,s.2; S.N.W.T. 2015, c.5,s.3,8(1).

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10. French and bilingual jurors

10. Notwithstanding section 9, where a trial is to be conducted in French or in both French and English, the Sheriff may obtain the names and addresses of prospective jurors from a jury list that is compiled in accordance with the regulations.

S.N.W.T. 2015, c.5,s.4,8.

Selection of Jury Panel

12. (1) Notice to Sheriff from Clerk

12. (1) On receipt of a notice that a jury will be required for the sittings of the Court, the Clerk shall, within a reasonable time before the day fixed for the commencement of the sittings, notify the Sheriff in writing of the place, the date and the time at which a jury panel shall be required to attend, whether the trial will be conducted in English or French and any other relevant information, and shall issue to the Sheriff a precept in the prescribed form.

12. (2) Jury panel selection

12. (2) On receipt of the precept the Sheriff shall select a jury panel in accordance with the regulations and certify the regularity of the selection process.

R.S.N.W.T. 1988,c.63(Supp.),s.5; S.N.W.T. 2011,c.16, s.13(4); S.N.W.T. 2015,c.5,s.5.

Regulations

29. Regulations

29. The Commissioner, on the recommendation of the Minister, may make regulations

> **[…]**
>
> **(c) respecting the means by which the Sheriff may ascertain the names and addresses of persons who are capable of serving as jurors where a trial is to be conducted in French or in both French and English;**

R.S.N.W.T. 1988,c.63(Supp.),s.9; S.N.W.T. 1995, c.29,s.10; S.N.W.T. 1999,c.6,s.6(9); S.N.W.T. 2008, c . 8 , s . 1 0 (5); S.N.W. T . 2 0 1 5 , c . 5 , s . 7 ; S.N.W.T. 2015,c.5,s.8(1).

Jury Regulations – Jury Act, N.W.T. Reg. 034-99

Compilation of French and Bilingual Jury List

3. The Sheriff may appoint a panel of three individuals familiar with the French-speaking community of Yellowknife to compile a list of prospective jurors for trials to be conducted in French or in both French and English.

R-004-2016,s.2.

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4. (1) The panel shall meet at the invitation of the Sheriff, and shall carry out its functions under the general direction of the Sheriff.

4. (2) The Sheriff shall give panel members access to the names and addresses provided under subsection 9(2) of the Act, to enable the panel to identify, for inclusion on a special French and bilingual jury list, the names and addresses of residents of Yellowknife who are likely to be qualified to serve as a juror for a trial to be conducted in French or in both French and English.

4. (3) The panel may include on the list any resident of Yellowknife whose name and address have been provided under subsection 9(2) of the Act, and who is likely to be qualified to serve as a juror for a trial to be conducted in French or in both French and English, based on

> **(a) information found in any list of electors maintained by the Commission scolaire Francophone for the purpose of the public election of its members;**
>
> **(b) information found in any list of individuals who are members of, or otherwise associated with, Territorial or Yellowknife based Francophone organizations;**
>
> **(c) personal knowledge of one or more members of the panel that the individual understands French; or**

(d) in the absence of such information or personal knowledge, an assumption that an individual is likely to understand French based on their name.

4. (4) The panel may include a name on the list based on the information referred to in paragraph (3)(a) or (b) only if the list containing the information has been provided to the panel by the relevant organization.

4. (5) A name may not be added to the list if a panel member has personal knowledge that the individual does not understand French.

4. (6) If the Sheriff considers it necessary to do so, he or she may request that the panel revise the list using the process set out in this section.

R-004-2016,s.2.

Liquor Act, S.N.W.T. 2007, c. 15

Part 3 – Community Control

45. Duties of Minister

45. Where a plebiscite is to be conducted, the Minister shall, by order,

[...]

(d) specify the languages in which the ballot is to be prepared; and

Local Authorities Elections Act, R.S.N.W.T. 1988, c. L-10

Language Options

16. (1) Definition: “Official Language”

16. (1) In this section, "Official Language" means an Official Language referred to in section 4 of the *Official Languages Act*.

16. (2) Use of Official Languages

16. (2) A local authority that considers it necessary or desirable may authorize the use of any Official Language, in addition to English, for any ballot or form required for an election.

R.S.N.W.T. 1988, c.125 (Supp.),s.3; S.N.W.T. 2006,c.23,s.7(6).

Maintenance Orders Enforcement Act, R.S.N.W.T. 1988, c. M-2

14. (1) Garnishment

14. (1) An obligation to pay money under a maintenance order, including arrears of payment under a maintenance order in an amount not exceeding one year's maintenance at the current rate of maintenance, may be enforced by garnishment in accordance with the *Territorial Court Civil Claims Rules*.

[…]

14. (3) Recognition of extra-territorial summons

14. (3) On the filing of a garnishee summons that

[…]

(c) is written in or accompanied by a sworn or certified translation into English or French,

the Clerk of the Territorial Court shall issue a garnishee summons.

S.N.W.T. 2008,c.7,s.15.

Marriage Act, R.S.N.W.T. 2017, c. 2

Marriage Licenses or Banns

Marriage Licenses

19. (1) Separate meeting

19. (1) The issuer shall meet with each of the parties separately, in order to ensure that each party fully understands the contents of the marriage license and the significance of that party's intended actions.

19. (2) Interpreter

19. (2) An independent interpreter shall be made available to explain the contents of the marriage license to any party who does not understand the language of the license.

Publication of Banns

24. (1) Separate meeting

24. (1) The registered cleric who is to effect publication of the banns shall meet with each of the parties separately, in order to ensure that each party fully understand the nature of the banns and the significance of that party's intended actions.

24. (2) Interpreter

24. (2) An independent interpreter shall be made available to explain the nature of the banns to any party who does not understand the language in which they are to be effected.

Marriage Ceremonies

30. (3) Interpreter

30. (3) An independent interpreter shall be made available to explain the meaning of the marriage ceremony to any party who does not understand the language in which the ceremony is to be performed or solemnized.

Mental Health Act, R.S.N.W.T. 1988, c. M-10

Interpretation

1. Definitions

1. In this Act,

"aboriginal language" means an official language other than English or French; (*langue autochtone*)

Involuntary Psychiatric Assessment

7. (1) Application

7. (1) This section applies notwithstanding any other provision of this Act.

7. (2) Consultation with elder

7. (2) Where a medical practitioner is conducting

(a) a psychiatric assessment under section 8,

(b) an examination under section 13, of an aboriginal person who

(c) does not speak English or French fluently,

the medical practitioner shall, if practicable, and with the consent of the aboriginal person where that person is mentally competent to give a valid consent,

(e) consult with an elder who is from the same community and of the same cultural background as the aboriginal person and who knows the aboriginal person, and

(f) obtain the opinion of the elder referred to in paragraph (e) as to whether the aboriginal person is suffering from a mental disorder of a nature or quality that will likely result in

(i) serious bodily harm to that aboriginal person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of that aboriginal person.

Treatment

19.1 (4) Language of information

19.1 (4) Where a patient does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the information provided to the patient under paragraph (3)(b) is explained to the patient in a language that the patient understands.

R.S.N.W.T. 1988, c.64 (Supp.), s.9.

19.2 (8) Language of information

19.2 (8) Where a patient does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the information provided to the patient under subsection (4) and paragraphs (7)(c) and (d) is explained to the patient in a language that the patient understands.

R.S.N.W.T. 1988, c.64(Supp.), s.9; S.N.W.T. 2005, c.16, s.34.

19.4 (6) Language of explanation

19.4 (6) Where a proposed substitute consent giver does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the explanation required under subsection (5) is provided to the proposed substitute consent giver in a language that he or she understands.

19.5 (8) Language of notice

19.5 (8) Where a patient does not speak or understand the same language as the medical practitioner or the person in charge, the person in charge shall ensure that the notice provided to the patient under subsections (3) and (4) is explained to the patient in a language that the patient understands.

R.S.N.W.T. 1988, c.64 (Supp.), s.9.

Rights of a patient

35. (1) Reason for admission and explanation of need for care and treatment

35. (1) A medical practitioner shall inform a voluntary or involuntary patient and the patient's substitute consent giver orally, in a language which the patient and the patient's substitute consent giver can understand, of the reason for the admission of the patient to a hospital and the need for care and treatment before admitting the patient to a hospital.

[…]

35. (3) Interpreter

35. (3) Where the voluntary or involuntary patient does not speak or understand the same language as the medical practitioner, the hospital shall obtain a suitable interpreter and provide the reason for the admission of the patient to a hospital and the need for care and treatment referred to in subsection (1) or the written notice referred to in subsection (2) in the language spoken by the voluntary or involuntary patient and the patient's substitute consent giver.

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36. (2) Explanation of notice

36. (2) Where a patient does not understand the language of the notice posted under subsection (1), the hospital shall ensure that the patient's rights are explained to the patient in a language the patient understands.

Mental Health Regulations – Mental Health Act, N.W.T. Reg. 018-92

14. (1) Where a patient asks for assistance in applying for a review under section 26 or 26.1 of the Act, the person in charge shall, within two days of the request, provide reasonable assistance in

(a) applying for legal aid;

(b) completing Form 23;

(c) completing Form 4, and

(d) filing documents with the appropriate court.

14. (2) Where a patient who is not fluent in the language spoken in the hospital wishes to apply for review under section 26 or 26.1 of the Act, the person in charge shall ensure that the assistance referred to in subsection (1) is provided to the patient in a language the patient understands.

Motor Vehicles Act, R.S.N.W.T. 1988, c. M-16

Examinations

76. (2) Non-English speaking applicant

76. (2) Where the examiner is satisfied that an applicant for a theoretical or practical examination does not understand or speak English, the examiner may require the examination to be conducted with the assistance of an interpreter approved by the examiner.

76. (3) Assistance by interpreter

76. (3) No interpreter referred to in subsection (2) shall provide the person being examined with an answer to a question on an examination.

Northwest Territories Act, S.C. 2014, c. 2, s. 2

Legislative Power

Legislative Powers

32. (1) *Official Languages Act*

32. (1) The ordinance entitled the Official Languages Act — made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986 or by an Act referred to in sction 33 — must not be amended, repealed or rendered inoperable by the Legislature without the concurrence of Parliament by way of an amendment to this Act.

32. (2) Additional rights and services

32. (2) Nothing in subsection (1) is to be construed as preventing the Commissioner, the Legislature or the Government of the Northwest Territories from granting rights in respect of, or providing services in, English, French or a language of an Aboriginal people of Canada — in addition to the rights and services provided for in the Official Languages Act referred to in subsection (1) — whether by amendment, without the concurrence of Parliament, or by any other means.

ANNOTATIONS – GENERAL

Caron v. Alberta, [2015] 3 S.C.R. 511, 2015 SCC 56 (CanLII)

[48] In sum, contemporaneous guarantees of language rights were explicit and clear: legislative bilingualism was provided for expressly in the *Constitution Act, 1867* and the *Manitoba Act, 1870*. And, as we shall see, the subject of legislative bilingualism was addressed — explicitly — in the amendments to *The North-West Territories Act* in 1877 and 1891 (*The North-West Territories Act*, 1877, S.C. 1877, c. 7; *An Act to amend the Acts respecting the North-West Territories*, S.C. 1891, c. 22). Never in Canada's constitutional history have the words "legal rights" been understood to confer linguistic rights. These facts considerably undermine the appellants' position.

[…]

[75] Before agreement was reached with the enactment of the *Manitoba Act, 1870* and before the *1870 Order*, Parliament had enacted in 1869 the *Temporary Government of Rupert's Land Act*, 1869, which said nothing about legislative bilingualism. Following 1870, this Act continued to govern the North-Western Territory, outside the province of Manitoba, until *The North-West Territories Act, 1875* governed it. When the latter was amended in 1877, Parliament added a section providing for (among other things) legislative bilingualism, once again in terms very similar to those found in s. 133 of the *Constitution Act, 1867*:

> 11. Either the English or the French language may be used by any person in the debates of the said Council, and in the proceedings before the Courts, and both those languages shall be used in the

records and journals of the said Council, and the ordinances of the said Council shall be printed in both those languages.

[76] That section was subsequently re-enacted to become s. 110 of *The North-West Territories Act*, R.S.C. 1886, c. 50, and was amended in 1891 to expressly place legislative bilingualism under the competence of the territorial legislature:

> 110. Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those languages: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect.

[…]

[79] In *Mercure*, the Court concluded that the provisions of s. 110 of *The North-West Territories Act* continued to be part of the law of Saskatchewan by virtue of s. 16 of the *Saskatchewan Act*, but that the new province had the legislative authority to amend it. La Forest J. said this:

> The appellant took the position that s. 110 can only be repealed by virtue of an amendment to the Constitution of Canada made under s. 43 of the *Constitution Act, 1982*, i.e., by resolutions of the Parliament of Canada and of the legislature of the province to which the amendment applies. I do not think this proposition can stand in the face of the express words of ss. 14 and 16(1) of the *Saskatchewan Act*, which clearly provide that the laws continued under the Act are subject to being repealed by the appropriate legislature. Not only is the province empowered to legislate respecting procedure in the courts under s. 92(14) of the *Constitution Act, 1867*; it is also given power under s. 45 of the *Constitution Act, 1982* to amend the constitution of the province. But that is not all. Parliament knew full well how to entrench a provision if it wished to do so, namely, by expressly providing for language rights in the Saskatchewan Act as it did in the case of s. 23 of the *Manitoba Act, 1870*. Such provisions, in common with s. 133 of the *Constitution Act, 1867*, are constitutionally protected and do not fall within the province's legislative capacity to amend its constitution or otherwise .... [Emphasis added; pp. 270-71.]

[80] The appellants' argument is that legislative bilingualism was entrenched for all of the annexed territories in 1870. However, accepting that position would make s. 110 redundant and, presumably, its amendment in 1891 invalid. Their position would also require us to hold that the understanding of the status of legislative bilingualism in the new province of Alberta was fundamentally misunderstood by virtually everyone involved in the debate in the House of Commons at the time the province was created.

[…]

[89] In sum, Parliament put an end to the joint administration of the North-West Territories only five years after the *1870 Order*. There was no guarantee of legislative bilingualism contained in *The North-West Territories Act, 1875*. When legislative bilingualism was enacted as part of the amendment process in 1877, nothing suggested that the House of Commons adopted the amendment out of a sense of constitutional obligation. Rather, there is some indication the government thought this was a matter best left to the Council of the North-West Territories.

ANNOTATIONS

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

[51] In 1988, the Parliament of Canada adopted the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.). Under section 98 of that Act, the *Northwest Territories Act* was amended through the insertion of Part II.1, entitled "Official Languages" and including sections 43.1 and 43.2:

43.1 Subject to section 43.2, the ordinance entitled the *Official Languages Act*, made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986, may be amended or repealed by the Commissioner in Council only if the amendment or repeal is concurred in by Parliament through an amendment to this Act.	43.1 Sous réserve de l'article 43.2, le commissaire en conseil ne peut modifier ou abroger l'ordonnance sur les langues officielles prise par lui le 28 juin 1984, et modifiée le 26 juin 1986, que si le Parlement donne son agrément à cet effet par voie de modification de la présente loi.
43.2 Nothing in this Part shall be construed as preventing the Commissioner, the Commissioner in Council or the Government of the Territories from granting rights in respect of, or providing services in, English and French or any languages of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in section 43.1, whether by amending the ordinance, without the concurrence of Parliament, or by any other means.	43.2 La présente partie n'a pas pour effet d'empêcher le commissaire, le commissaire en conseil ou le gouvernement des territoires d'accorder des droits à l'égard du français et de l'anglais ou des langues des peuples autochtones du Canada ou de fournir des services dans ces langues, en plus des droit et services prévus par l'ordonnance mentionnée à l'article 43.1, que ce soit par modification de celle-ci, sans le concours du Parlement ou par tout autre moyen.

[…]

[55] Counsel for the Franco-ténois informed the Court, at the hearing, that the 1988 amendments to the Territories' *Official Languages Act* were not ratified by the Parliament of Canada and, he said, did not need such ratification because they were considered an enhancement of the existing provisions. Section 43.2 of the *Northwest Territories Act* (supra, para. 51) provides, in fact, that the Commissioner, the Commissioner in Council or the Government of the Territories may grant rights or provide additional services "without the concurrence of Parliament". I need not determine here whether counsel is right in thinking that these amendments could be made without the concurrence of Parliament.

Northwest Territories (Attorney General) v. Fédération Franco-Ténoise, 2008 NWTCA 6 (CanLII)

[9] The *Northwest Territories Act*, R.S.C. 1985, c. N-27 ("*NWTA*") largely governs the relationship between the Government of Canada ("GOC") and the Government of the NWT ("GNWT"). The NWT (and the two other territories) have a different constitutional status than the provinces. Whereas the Constitution of Canada (*Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, "*Constitution Act, 1867*"), is the source of provincial legislative authority, the NWTA is the source of the GNWT's legislative authority.

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33. (1) Amendments concurred in

33. (1) Parliament concurs in *An Act to amend the Official Languages Act*, made on October 29, 1990 by the Commissioner in Council.

33. (2) March 12, 1992

33. (2) Parliament concurs in *An Act to amend the Official Languages Act*, made on March 12, 1992 by the Commissioner in Council.

Public Service Act, R.S.N.W.T. 1988, c. P-16

Schedule A

(Subsection 1(1))

The following are declared to be portions of the public service:

[…]

(c.1) Commission scolaire francophone de division, established by the *Commission scolaire francophone de division Regulations* made under the *Education Act;*

Reciprocal Enforcement of Judgments Act, R.S.N.W.T. 1988, c. R-1

3. Where judgment in language other than English or French

3. Where a judgment sought to be registered under this Act is in a language other than English or French, an English language translation of the judgment shall be attached to the original, a certified copy or an exemplification of the judgment and, upon approval of the Court, the judgment is deemed to be in the English language.

R.S.N.W.T. 1988,c.111(Supp.),s.2; S.N.W.T. 2011,c.16,s.20(3).

Reciprocal Enforcement of Judgments (Canada-U.K.) Act, R.S.N.W.T. 1988, c. R-2

Schedule (Section 1)

Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

Part IV – Procedures

Article VI

4. The registering court may require that an application for registration be accompanied by

[…]

(b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;

[…]

DONE in duplicate at Ottawa this 24th day of April, 1984 in the English and French languages, each version being equally authentic.

Settlement of International Investment Disputes Act, S.N.W.T. 2009, c. 15

Schedule (Subsection 1(1))

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

[…]

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

Species at Risk (NWT) Act, S.N.W.T. 2009, c. 16

Part 5 – Enforcement

Officers and Guardians

89. (1) Peace officer

89. (1) For the purposes of this Act and theregulations, an officer is a peace officer and has the powers and protections provided to a peace officer by law.

89. (2) Oath and affirmations

89. (2) An officer may administer all oaths and affirmations and take and receive all affidavits and statutory declarations required under this Act or the regulations, other than an oath or affirmation referred to in subsection (3), and may certify the administration or taking or receiving of them.

89. (3) Oath or affirmation of office

89. (3) An officer shall take and subscribe to an oath or affirmation in the following form, translated, if he or she so requests, into an Official Language of the Northwest Territories other than English or French:

> **I, ..., solemnly (swear/affirm) that I will diligently, impartially and to the best of my ability, execute and perform the duties required of me as an officer, and will follow all lawful instructions that I receive as an officer, without fear of, or favour or affection toward any person.**

(So help me God/I so affirm).

Statute Revision Act, S.N.W.T. 1996, c. 16

Part I – Revised Statutes of the Northwest Territories, 2000

6. (2) Powers

6. (2) In the performance of the duties of the Statute Revision Commissioner under this Part, the Statute Revision Commissioner may

[...]

(n) make such minor improvements in the language of the Acts as may be required to make the form of expression of the Act in English or French more compatible with its expression in any other Official Language without changing the substance of any enactment;

Part II – Revised Statutes of Nunavut, 1999

29. (2) Powers

29. (2) In the performance of the duties of the Statute Revision Commissioner under this Part, the Statute Revision Commissioner may

[...]

(n) make such minor improvements in the language of the Acts as may be required to make the form of expression of the Act in English or French more compatible with its expression in any other Official Language of Nunavut without changing the substance of any enactment;

Territorial Court Act, R.S.N.W.T. 1988, c. T-2

8. (1) Oaths or affirmations

8. (1) A territorial judge shall, before commencing the duties of office, take and sign, in either English or French, the following oaths or affirmations:

OATH OR AFFIRMATION OF ALLEGIANCE

I, ..., do swear (*or* affirm) that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second (*or the reigning sovereign for the time being*), her (*or* his) heirs and successors according to law. So help me God. (*omit last sentence in an affirmation*)

OATH OR AFFIRMATION OF OFFICE

I, ..., do swear (*or* affirm) that I will truly and faithfully according to the best of my skill and knowledge, execute according to law the office of territorial judge (or deputy territorial judge), and that I will do right to all people according to law, without fear or favour, affection or ill will. So help me God. (*omit last sentence in an affirmation*)

8. (2) Transmission of oaths or affirmations

8. (2) The Clerk of the Territorial Court shall send the duly subscribed oaths or affirmations to the Deputy Minister of the Department of Justice.

S.N.W.T. 2006, c.8,s.6.

Tłı̨chǫ Community Services Agency Act, S.N.W.T. 2005, c. 7

4. (1) Eligibility for appointment

4. (1) To be eligible for appointment as a board member, a person must be recognized by the person or body appointing him or her as

[…]

(b) being prepared to respect and promote the Tłı̨chǫ language, culture and way of life.

Wildlife Act, S.N.W.T. 2013, c. 30

Part 7 – Enforcement

Superintendent and Officers

109. (1) Peace officer

109. (1) For the purposes of this Act and the regulations, an officer is a peace officer and has the powers and protections provided to a peace officer by law.

109. (2) Oath and affirmations

109. (2) An officer may administer all oaths and affirmations and take and receive all affidavits and statutory declarations required under this Act or the regulations, other than an oath or affirmation referred to in subsection (3), and may certify the administration or taking or receiving of them.

109. (3) Oath or affirmation of office

109. (3) An officer shall take and subscribe to an oath or affirmation in the following form, translated, if he or she so requests, into an Official Language of the Northwest Territories other than English or French:

I, ..., solemnly (swear/affirm) that I will diligently, impartially and to the best of my ability, execute and perform the duties required of me as an officer, and will follow all lawful

instructions that I receive as an officer, without fear of, or favour or affection toward any person.

(So help me God/I so affirm).

Youth Justice Act, S.N.W.T. 2003, c. 31

Declaration of Purpose and Principles

8. (1) Purpose

8. (1) The purpose of this Act is to provide procedures for persons 12 years of age or older, but under 18 years of age, who violate or are alleged to have violated Territorial laws, and to recognize that the following special considerations apply in respect of proceedings against young persons: […]

8. (2) Principles

8. (2) The following principles apply in this Act:

[…]

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

[…]

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.

Northwest Territories – Other Regulations

Appeals Tribunal Rules of Procedure – Workers' Compensation Act, N.W.T. Reg. 049-2010

39. (1) If a language interpreter or sign language interpreter is required for an oral hearing, the party requiring the service shall notify the Tribunal as soon as the party becomes aware that the appeal or application is proceeding by way of oral hearing.

39. (2) The Tribunal shall arrange and pay for required interpretation services.

39. (3) Subject to the Tribunal's discretion, an interpreter may not be a friend or relative of the individual requiring the service.

Apprenticeship and Trade Certification Regulations – Apprenticeship, Trade and Occupation Certification Act, N.W.T. Reg. 056-2012

5. Examinations

5. (2) A person who does not possess a sufficient knowledge of English or French may take an examination, required under these regulations, with the assistance of an interpreter.

5. (3) An interpreter who provides assistance must not have any training or experience in the trade being examined.

Occupation Certification Regulations – Apprenticeship, Trade and Occupation Certification Act, N.W.T. Reg. 057-2012

3. Examinations

3. (2) A person who does not possess a sufficient knowledge of English or French may take an examination required under these regulations with the assistance of an interpreter.

3. (3) An interpreter who provides assistance must not have any training or experience in the occupation being examined.

Court Security Regulations – Court Security Act, N.W.T. Reg. 057-2007

4. Restricted Personnel Zone

4. (1) A part of a court area that has its entrance marked with a sign described in subsection (2) is designated as a restricted personnel zone.

4. (2) A sign identifying an entrance to a restricted personnel zone must read "Authorized Personnel Only/Réservé au personnel autorisé".

4. (3) A sign referred to in subsection (1) may also include the required information in another language.

---

6. Restricted Equipment Zone

6. (1) A part of a court area designated in section 1 is also designated as a restricted equipment zone if it is so identified by a sign described in subsection (2).

6. (2) A sign referred to in subsection (1) must

(a) be in English and French;

[…]

6. (3) A sign described in subsection (2) may also include

(a) the required information in another language; and

7. (1) A part of a court area that is not designated as a court area in section 1, is designated as a restricted equipment zone if it is so identified on a sign described in subsection (2).

7. (2) A sign referred to in subsection (1) must

> **(a) be in English and French;**
>
> **[…]**

7. (3) A sign described in subsection (2) may also include

> **(a) the required information in another language; and**

Forest Management Regulations – Forest Management Act, R.R.N.W.T. 1990, c. F-14

63. Oath for Officer

63. An officer, other than an *ex officio* officer, shall, before acting as such, take and subscribe an oath or affirmation in the following form, translated, where applicable, into his or her native language:

> **I, ...,, do solemnly swear/affirm that I will diligently, impartially and to the best of my ability, execute and perform the duties required of me as a forest management officer, and will follow all lawful instructions that I receive as such, without fear of, or favour towards, any person. So help me God/I so affirm.**

Inquiry Establishment Order (Missing and Murdered Indigenous Women and Girls) – Public Inquiries Act, N.W.T. Reg. 114-2016

[…]

Therefore the Commissioner, on the recommendation of the Executive Council, under sections 2 and 3 of the *Public Inquiries Act* and every enabling power:

[…]

3. directs the Commissioners to conduct an inquiry in conjunction with and under the name of the National Inquiry, and specifically to

> **[…]**
>
> **(d) take into account, in conducting the National Inquiry, that the Inquiry process is intended, to the extent possible,**
>
> > **[…]**

(iii) to be culturally appropriate and to acknowledge, respect and honour the diverse cultural, linguistic and spiritual traditions of Indigenous peoples, and

Medical Profession Regulations – Medical Profession Act, N.W.T. Reg. 021-2010

1. (3) An applicant for Part One of the Medical Register who has not received a portion of the medical training referred to in subsection (1) either in English or at a Canadian institution shall, on the request of the Medical Registration Committee, submit evidence satisfactory to the Committee that he or she has a sufficient competency and fluency in oral and written English to meet his or her professional obligations.

---

2. (2) An applicant for Part Two of the Medical Register who has not received a portion of the medical training referred to in subsection (1) either in English or at a Canadian institution shall, on the request of the Medical Registration Committee, submit evidence satisfactory to the Committee that he or she has a sufficient competency and fluency in oral and written English to meet his or her professional obligations.

R-009-2012,s.2.

Midwifery Profession General Regulations – Midwifery Profession Act, N.W.T. Reg. 002-2005

3. (1) On application to be registered as a registered midwife under subsection 8(1) of the Act, an applicant shall provide the Registrar with a completed application form and other supporting material, including the following:

[…]

(e) information on the languages written and spoken by the applicant;

Mine Health and Safety Regulations – Mine Health and Safety Act, N.W.T. Reg. 125-95

Part VI – Training

6.04 Training Program

6.04 (1) The manager shall ensure that training includes provision for the instruction of persons who may have a poor understanding of the language commonly used in the operation of the mine.

6.04 (2) Where a person has a poor understanding of the language commonly used in the operation of the mine, the person shall be trained by means of pictures and diagrams with verbal reinforcement.

Part VII – Certification

7.30. (1) Hoist Operator's Certificate

7.30. (1) The chief inspector may issue a hoist operator's certificate to a person who

[...]

(g) is fluent in the language commonly used at the mine.

7.31. Blasting Certificate

7.31. The chief inspector may issue a blasting certificate to a person who

[...]

(b) is able to give and receive orders in the language commonly used in the mine; and

Oil and Gas Drilling and Production Regulations, N.W.T. Reg. 027-2014

19. Safety and Environmental Protection

19. The operator shall take all reasonable precautions to ensure safety and environmental protection, including ensuring that

[...]

(d) differences in language or other barriers to effective communication do not jeopardize safety or environmental protection;

Order Approving the Preferential Employment Program in the Diavik Diamonds Project Socio-economic Monitoring Agreement – Fair Practices Act, N.W.T. Reg. 103-99

Part VI – Monitoring and Mitigation

Article 6.2 Monitoring program

6.2.2. The GNWT will report the following public data to the Advisory Board, including analysis and interpretation of that data:

[...]

(l) ratio of home-language use to mother tongue, by major age groups;

Appendix D – Cultural and Community Well-Being

2. DDMI will introduce and maintain the following measures to assist Northerner employees to perform well in their jobs and to help their local communities cope with any potential effects of the Project:

> **(a) ensure that all Employee Relations Personnel will be able to communicate in at least one Aboriginal language spoken in the NWT;**
>
> **(b) pay for aboriginal language interpreters at community meetings;**
>
> **(c) encourage Aboriginal language speakers at the mine site to communicate in their mother-tongue, bearing in mind practical and safety requirements;**
>
> **[…]**
>
> **(e) in cooperation with Aboriginal Authorities, provide and maintain Dene, Métis and Inuit reading and video materials on-site;**

Personal Property Security Regulations – Personal Property Security Act, N.W.T. Reg. 066-2001

20. Debtor (Enterprise) Name Information

20. (1) Where the debtor is an enterprise that is a body corporate, the registrant must enter the name of the body corporate.

20. (2) The registrant must enter, under separate "Debtor (Enterprise)" headings in the registration, all forms of the name of a debtor that is a body corporate if the name of the debtor is in more than one of the following forms:

> **(a) an English form;**
>
> **(b) a French form;**
>
> **(c) a combined English-French form.**

Pharmacy Regulations – Pharmacy Act, N.W.T. Reg. 018-2007

1. Registration and Renewal

1. On application to be registered as a pharmacist under subsection 5(1) of the Act, an applicant shall, in addition to providing the information required by the Act, provide the Registrar with

> **[…]**
>
> **(d) information on the languages written and spoken by the applicant;**

Regional Council Regulations – Hospital Insurance and Health and Social Services Administration Act, R-086-2016

7. (1) Appointment of Chairperson and Members

7. (1) The Minister shall, when reviewing the nominations for appointment of the chairperson and other members of a regional council, consider the importance of reflecting the following factors on the regional council, to ensure that membership adequately represents the area served by the regional council:

[…]

(c) fluency of one or more members in official languages of the Northwest Territories spoken in the area;

Estate Administration Rules – Judicature Act, N.W.T. Reg. 123-2016

18. (1) Proving signing of will

18. (1) This rule applies if the deceased, at the time a will was made,

[…]

(c) did not fully understand English or French;

---

19. Will not in English or French

19. If a will is written in a language other than English or French, an applicant shall include an Affidavit of Verification for Translated Will in Form 37 verifying the will's translation into English or French.

Rules of the Supreme Court of the Northwest Territories – Judicature Act, N.W.T. Reg. 010-96

Part 28 – Evidence

359. Delivery of letter of request

359. (1) Where an order is made in respect of a person referred to in subrule 358(2), the party who obtained the order shall send to the Deputy Minister of Foreign Affairs of Canada, or to the Deputy Attorney General for the Northwest Territories if the evidence is to be taken in Canada,

[…]

(d) a translation, into the appropriate language of the jurisdiction where the examination is to take place, of the letter of request and the interrogatories, which translation bears the certificate of the translator

(i) stating that it is a true translation, and

(ii) setting out the translator's full name, address and qualifications to produce the translation.

359. (2) The solicitor for the party obtaining the order shall file with the Deputy Minister of Foreign Affairs of Canada or the Deputy Attorney General for the Northwest Territories as the case may be, an undertaking to be personally responsible for all the charges and expenses incurred by the Deputy Minister of the Deputy Attorney General, as the case may be, in respect of the letter of request and to pay the charges and expenses on receiving notification of the amount due.

R-066-2012,s.10.

Part 30 – Affidavits

372. Where deponent does not understand English

372. Where it appears to an officer taking an affidavit that the deponent does not understand the English language

(a) a competent interpreter shall be sworn to faithfully interpret the contents of the affidavit, and the interpreter shall interpret the entire contents of the affidavit and the oath to the deponent; and

(b) the officer shall in the jurat certify that, in his or her belief, the affidavit was faithfully interpreted to the deponent by the sworn interpreter and that the deponent understood it.

Part 45 – Service of Foreign Process

608. Translation of letter of request

608. A letter of request for service shall be accompanied by

(a) an English language translation of the letter, where the letter is in a language other than the English or French language; and

(b) two copies of the process or citation to be served and, where the process or citation is in a language other than the English or French language, an English language translation of it.

[Social Work Profession General Regulation – Social Work Profession Act, N.W.T. Reg. 105-2011]

3. (1) Registration

3. (1) On application to be registered as a registered social worker or a licensed social worker under subsection 6(1) of the Act an applicant shall, in addition to providing the information required by the Act, provide the Registrar with the following:

[…]

(d) information about the languages written and spoken by the applicant;]

Student Financial Assistance Regulations – Student Financial Assistance Act, R.R.N.W.T. 1990, c. S-20

2. (1) For the purposes of these regulations, a course, course load of studies or program is at a post-secondary level if it is

(a) at a level that is higher than a secondary school level and is offered for credit by an approved institution; or

(b) is a program or a course in a program at Aurora College that is called an access program by the College, that a student may want to or be required to complete before taking a course, course load of studies or program for a trade or for a profession.

2. (2) For greater certainty, for the purposes of these regulations, the following courses or programs are not at a post-secondary level:

(a) an English as a second language course or program;

(b) an adult basic education, bridging, preparatory, transitional or upgrading course or program, other than one referred to in paragraph(1)(b).

R-018-93,s.3; R-046-2003,s.3.