Chapter 9: New Brunswick

[LAST UPDATE: DECEMBER 2017]

N.B. – See case law on section 16.1 and subsections 16(2) to 20(2) of the *Canadian Charter of Rights and Freedoms*.

New Brunswick – Main Language Laws

Official Languages Act, SNB 2002, c O-0.5

Preamble

WHEREAS the Constitution of Canada provides that English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick;

AND WHEREAS the Constitution of Canada confers upon the public, in New Brunswick, the right to use English or French in the Legislature and in the courts of New Brunswick, as well as to have access to the laws of New Brunswick in both official languages;

AND WHEREAS the Constitution of Canada also provides for the right of any member of the public to communicate with and to receive available services from any office of an institution of the Legislature or Government of New Brunswick in either official language;

AND WHEREAS the Constitution of Canada also recognizes that the English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities;

AND WHEREAS the Constitution of Canada affirms, with respect to both official languages, the authority of the Legislature and Government of New Brunswick to advance the status, rights and privileges set out therein;

AND WHEREAS New Brunswick is committed to enacting an *Official Languages Act* that respects the rights conferred by the *Canadian Charter of Rights and Freedoms* and allows the Legislature and the Government to fulfill their obligations under the Charter;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly, enacts as follows:

ANNOTATIONS

Charlebois v. Saint John (City), [2005] 3 S.C.R. 563, 2005 SCC 74 (CanLII)

[13] In its preamble, the *OLA* proclaims the purposes of the Act are expressly tied to the language guarantees and obligations enshrined in the Canadian Constitution. There is no dispute that the *OLA* is the province's legislative response to its obligations under the *Canadian Charter of Rights and Freedoms* in relation to institutional bilingualism in New Brunswick. For ease of reference, I

reproduce here the *Charter* provisions on official languages that specifically target the province of New Brunswick: […]

Charlebois v. Town of Riverview, 2014 CanLII 68479 (NB CA)

[6] The New Brunswick government's response to the decision rendered in *Charlebois v. Moncton (City)* was to repeal the former Act entitled *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1, and to enact the new legislation which came into force on August 5, 2002. In *Charlebois v. Saint John (City)*, 2005 SCC 74 (CanLII), [2005] 3 S.C.R. 563, the Supreme Court of Canada considered the new legislation, but the issue it considered was limited to whether or not the City of Saint John was an "institution" for the purposes of section 22 of the Act. The constitutionality of the Act or parts of it were not in issue.

Kilrich Industries Ltd. v. Halotier, 2007 YKCA 12 (CanLII)

[47] The [Yukon] *Languages Act* represents a historic compromise between the governments of the Yukon and Canada to ensure the official recognition of Canada's bilingualism in governmental institutions. And while Parliament has excluded the Yukon Territory from the application of the federal *Official Languages Act*, the *Yukon Act* requires Parliament's consent to any change to the *Languages Act*. This requirement creates quasi-constitutional obligations. (See the discussion of "manner and form" requirements in *Mercure*, supra at 276-279 and *Reference Re Canada Assistance Plan (B.C.)*, 1991 CanLII 74 (SCC), [1991] 2 S.C.R. 525 at 561). Arguably, this renders the *Languages Act* more akin to a constitutional obligation than either the federal *Official Languages Act* or the New Brunswick *Official Languages Act*, S.N.B. 2002, c. O-0.5 (the "New Brunswick *Official Languages Act*"), both of which have been described as quasi-constitutional by the Supreme Court of Canada, despite being capable of amendment by their respective enacting body. (See *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII), [2002] 2 S.C.R. 773 at para. 23 and *Charlebois v. Saint John (City)*, 2005 SCC 74 (CanLII), [2005] 3 S.C.R. 563 at para. 30 ("*Charlebois*")).

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[7] New Brunswick is officially bilingual. In fact, it is the only officially bilingual province in Canada. Other provinces recognize some language rights and are subject to various obligations arising from legislative or constitutional provisions, but no other province has proclaimed itself bilingual. Legally speaking, the Province of New Brunswick is bilingual because in its legislation and in the Constitution it confers the status of official language on two languages, English and French. It also entrenches therein the principle of equality of the two official languages.

[8] Indeed, the recent history of the last thirty years shows that successive New Brunswick governments have, on four separate occasions during that period, enacted language rights legislation or have entrenched language rights in the Canadian Constitution which collectively provide the province with a constitutional language regime quite peculiar to New Brunswick and unique in the country. Obviously, these legislative and constitutional provisions impose obligations on the province which are also peculiar to New Brunswick.

[9] In short, the province pioneered by enacting in 1969 the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1, which recognizes that the English and French languages possess and enjoy equality of status and equal rights and privileges in all matters within the jurisdiction of the province and provides for the exercise of specific language rights. In 1981, the provincial government enacted An *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, S.N.B. 1981, c. O-1.1. This Act officially recognizes the existence and equality of the two official linguistic communities. The following year, 1982, when the federal government was proceeding to patriate the Canadian Constitution and enact the *Canadian Charter of Rights and Freedoms*, the New Brunswick government had certain language rights entrenched in the *Charter*; these rights apply specifically to the institutions of the legislature and government of New Brunswick. These language rights are contained in subsections 16(2) to 20(2) of the *Charter*. Finally, in 1993, by way of constitutional amendment under section 43 of the *Constitution Act,*

1982, the provincial government constitutionalized the principles of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* that the Legislative Assembly passed in 1981. This became section 16.1 of the *Charter*; it contains a declaration that the English linguistic community and the French linguistic community are equal, defines the role of preserving and promoting the equality of status of the official linguistic communities and specifically confers this role on the legislature and government of New Brunswick.

[10] The bilingualism regime established by law in New Brunswick is not personal bilingualism as its purpose is not to ensure that individuals will be proficient in both official languages. Rather, it establishes institutional bilingualism aiming for the use of both languages by the province and some of its institutions in the provision of public services. Under such a regime, individuals have the choice to use either English or French in their dealings with government institutions. On the other hand, certain state activities must necessarily be performed in both languages, legislative bilingualism being a case in point.

[11] Given the significant role played in the history of this province by the law and the Constitution in matters of language rights as I have just described, I think it is quite appropriate to recall, as recognized by Canadian language rights case law, that the recognition of the status of official languages is both a legal and a political act. Politically, the recognition of the constitutional principle of the equality of official languages in New Brunswick is the manifestation of a fundamental political choice based on a compromise between the two recognized official linguistic communities of our province. Legally, it is incumbent upon the courts to delineate the scope of *Charter*-guaranteed language rights by reference to the history and sources of these rights to determine their purpose and scope as well as to the constitutional documents themselves. A review of the historical evolution of minority rights in New Brunswick is one of the requirements that follow from the use of the broad and liberal method of interpretation that should be used in this matter.

R. v. Losier, 2011 NBQB 177 (CanLII)

[24] Section 16(3) of the [*Canadian*] *Charter* [*of Rights and Freedoms*] provides that Parliament as well as provincial legislatures may advance the equality of status of English and French. The *Official Languages Act* of New Brunswick flows from the authority conferred upon the Legislature of New Brunswick by s. 16(3).

[25] The preamble to the *Official Languages Act* refers to the Constitution of Canada and recognizes that English and French are the official languages of New Brunswick and affirms the right of the public to use English or French when dealing with any institution of the legislature or government of New Brunswick, to have access to the laws of the Province in both languages, to use either official language to communicate with any office of an institution of the legislature. The Act affirms the authority of the legislature and government to advance equality of status, rights and privileges. Finally, it is understood that the *Official Languages Act* respects the rights conferred by the *Canadian Charter of Rights and Freedoms* and fulfills the obligations [of the legislature and government] under the *Charter*.

[26] The *Charter* and the *Official Languages Act* recognize that New Brunswick is different from all of the other Canadian provinces with regard to language matters and impose significant obligations on the Province and its institutions to ensure that language rights are respected. In *R. v. McGraw*, 2007 NBCA 11 (CanLII), Drapeau, C.J.N.B. recognized that the rights under the *Official Languages Act* of New Brunswick are substantial and not procedural.

N.B. – These paragraphs were adopted by the New Brunswick Court of Appeal in **R. v. Losier, 2011 NBCA 102 (CanLII)** : "[8] That being said, we are in substantial agreement with the reasons given by the judge of the Court of Queen's Bench (see paras. 14-49 in particular). In our opinion, those reasons reflect a sound appreciation of the pertinent principles of law, particularly with respect to the meaning and scope to be given to s. 20(2) of the *Charter*."

R. v. Gaudet, 2010 NBQB 27 (CanLII)

[24] It is not enough for a linguistic guarantee to be offered on paper; it must be applied or put into practice in order to have meaning. In its Preamble, the *Official Languages Act* introduces a law that "respects the rights conferred by the *Canadian Charter of Rights and Freedoms* and allows the Legislature and the Government to fulfill their obligations under the *Charter*." The Province of New Brunswick passed legislation to satisfy its constitutional obligations under s. 20(2) and to thus ensure the respect and practical application of linguistic guarantees. As Chief Justice Drapeau stated in *McGraw*, at para. 22: "the adoption of s. 31 of the *Official Languages Act* which, having regard to the Act's Preamble, arguably adds invaluable clarifying insights into the intended effect of s. 20(2) of the *Charter*."

[25] The *Charter* contains special provisions for the province of New Brunswick. The *Official Languages Act* has a quasi-constitutional status because the said Act flows from the authority conferred upon the legislature of New Brunswick by s. 16(3) of the *Charter*.

[26] The *Official Languages Act* confirms and reinforces a social, political and legal commitment to true bilingualism and imposes substantive obligations on the province to ensure compliance with these linguistic rights.

[27] The *Canadian Charter of Rights and Freedoms* and the *Official Languages Act* of New Brunswick are vivid examples of the importance of linguistic rights in New Brunswick. The fact that only the province of New Brunswick is recognized in the *Charter* as a bilingual province must be kept in mind. It is also the only province to have voluntarily implemented linguistic obligations since they were entrenched in the Constitution in 1982.

[28] The special status established by the province of New Brunswick on its own behalf distinguishes it from other Canadian jurisdictions. It is evidence of New Brunswickers' strong commitment to language rights and commands a higher level of respect not found in other Canadian jurisdictions.

[29] It is impossible to appreciate the scope of *Charter* language rights without taking into account the fundamental principle at the heart of New Brunswick's language policy and the government's commitment to bilingualism and biculturalism. New Brunswick introduced a constitutional and legal system for the residents of this province that is unique in Canada. Section 20(2) of the *Charter* must be construed against this backdrop. The legislative and constitutional context of the application must be taken into account.

[...]

[37] Language rights must be construed in a manner attuned to the context. A proper interpretation must balance the necessity of taking into account the purpose of the guarantee in question and the preservation and flourishing of the official language communities.

[38] *Charlebois* is an excellent example of how a contextual approach in matters of construction may mean that similar provisions are interpreted differently from one jurisdiction to the next. Depending on the context, it is therefore possible that linguistic guarantees may be construed differently in New Brunswick even if they are framed in essentially the same manner in other provinces. It may well be necessary for different jurisdictions to adopt different interpretative approaches to take into account the unique blend of linguistic dynamics that have developed in each province.

[39] Language rights must be construed in a sensitive manner, informed by the prevailing context. They must retain their vibrant character and not be frozen in time by political accommodations of the past. As Michel Bastarache wrote at page 36 of Chapter 1, "Introduction" in Michel Bastarache, dir., *Les droits linguistiques au Canada*, 2nd Ed., Cowansville (QC), Éditions Yvon Blais, 2004: "[TRANSLATION] Judicial craftsmanship is not the work of an archeologist trying to

define exactly what the framers of the Constitution had in mind at the outset, but rather an effort to determine what the original enactment is meant to tell us today".

[40] An analysis of the history of linguistic rights in Canada, and more specifically in New Brunswick, reveals a subtle but steady development of language rights in New Brunswick. Language rights in New Brunswick are constantly changing and gains made by today's linguistic minority are the result of a long evolution.

R. v. Levesque, 2006 NBQB 399 (CanLII)

[8] The preamble of the *Official Languages Act* of New Brunswick provides that the objects of the *Act* are linked to the language rights guaranteed by the *Charter*.

Ville de Saint-Jean v. Charlebois and 042504 NB INC (February 25, 2004), Saint-Jean, No. 04939902 (NB PC), Vautour J. [hyperlink not available] [judgment available in French only]

[OUR TRANSLATION]

[pp. 13-14] It is very clear with respect to language rights set out in the *Official Languages Act* and their scope, considering the preamble and its subsection 3(1). Considering the case law in *Beaulac* and *Charlebois*, it seems apparent to me that the New Brunswick *Official Languages Act* is a quasi-constitutional piece of legislation enacted based on the government's obligation to protect and promote official languages equality in New Brunswick.

Charlebois v. Greater Moncton Planning District Commission, 2010 NBAPAB 12 (CanLII)

[pp. 20-1] The preamble to the *Official Languages Act* (the "Act") is clearly intended to be a recital of the delegation of the language provisions of the *Charter*, and in our opinion gives the legislature of the Province of New Brunswick the authority "….. to advance the equality of status and use of English and French." (Sec. 5 of the Act).

SEE ALSO:

Moncton Firefighters Association, International Association of Firefighters, Local 999 v. Moncton (City), 2015 CanLII 19678 (NB LA)

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1. In this Act

"city" means a city within the meaning of section 16 of the *Municipalities Act*; (*cité*)

"communication" and "communicate" mean any form of communication whether spoken, written or electronic; (*communication*) (*communiquer*)

"court" means any court or administrative tribunal in the Province (*tribunaux*)

"Crown corporation" means a corporation that is accountable, through a Minister, to the Legislative Assembly for the conduct of its affairs, and includes a parent Crown corporation or a wholly-owned subsidiary; (*sociétés de la Couronne*)

"department" means a department as defined in section 1 of the *Financial Administration Act*; (*ministère*)

"institution" means an institution of the Legislative Assembly or the Government of New Brunswick, the courts, any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of the Legislature or by or under the authority of the Lieutenant-Governor in Council, a department of the

Government of New Brunswick, a Crown corporation established by or pursuant to an Act of the Legislature or any other body that is specified by an Act of the Legislature to be an agent of Her Majesty in right of the Province or to be subject to the direction of the Lieutenant-Governor in Council or a minister of the Crown; (*institution*)

"linguistic community" means either of the English linguistic community or the French linguistic community of New Brunswick within the meaning of section 16.1 of the *Canadian Charter of Rights and Freedoms*; (*communauté linguistique*)

"municipality" means a municipality within the meaning of section 1 of the *Municipalities Act*; (*municipalité*)

"official languages" means the official languages of New Brunswick within the meaning of subsection 16(2) of the *Canadian Charter of Rights and Freedoms*; (*langues officielles*)

"peace officer" means a peace officer as defined under section 1 of the *Provincial Offences Procedure Act* who serves the public, whether on behalf of the Province, a municipality or under a contract for the delivery of policing services with the Province or its institutions and includes a police officer as defined under that Act; (*agent de la paix*)

"publication" and "published" mean all forms of publication, whether paper or electronic; (*publication*) (*publier*)

"public service" means those portions or divisions of the Public Service specified in the *First Schedule of the Public Service Labour Relations Act* that are prescribed by regulation. (*services publics*)

2011, c. 20, s. 11; 2013, c. 38, s. 1

ANNOTATIONS – DEFINITION OF "COMMUNICATION"

R. v. Mario Régis Mazerolle, 2008 NBPC 31 (CanLII)

[17] Section 1 of the *Official Languages Act* includes spoken communication in the definition of "communicate":

> "communication" and "communicate" mean any form of communication whether spoken, written or electronic[.]

ANNOTATIONS – DEFINITION OF "COURT"

Boisvert v. New Brunswick Federation of Labour Employer (Dispute Resolution Grievance), [2012] N.B.L.L.A. No. 15, 222 L.A.C. (4th) 128, (NB LA) [hyperlink not available]

[18] Are boards of arbitration "courts" within the meaning of the *OLA*? In Canada, board of arbitrations are invested by law with the power to make final and binding decisions in order to resolve disputes that may arise between parties to a collective agreement. In fact, in New Brunswick, arbitration is a procedure not only governed by collective agreements, but also by the *Industrial Relations Act*, RSNB 1973, c I-4. The process of arbitration, which is both a public and private function, can be characterised as "quasi-judicial". Arbitration is therefore an "administrative tribunal" within the meaning of the *OLA* and is subject to the obligations laid down in this Act.

ANNOTATIONS – DEFINITION OF "INSTITUTION"

Charlebois v. Saint John (City), [2005] 3 S.C.R. 563, 2005 SCC 74 (CanLII)

[9] As indicated at the outset, I agree with the courts below and conclude that municipalities are not included in the s. 1 definition of "institution" in the *OLA*. I am in substantial agreement with the thorough and lucid reasons of Daigle J.A. in support of this conclusion. I will therefore simply highlight the more salient points in his analysis and add comments of my own as I go along.

[…]

[16] A reading of the *OLA* reveals two main structural features. First, the word "institution", as defined in s. 1, acts as a central provision that identifies those public bodies on which the Legislature imposes particular language obligations in other provisions of the *OLA*. I will review those obligations shortly. Second, the *OLA* groups under various headings different areas of activity or services which fall under the purview of the public administration of the province and imposes specific language obligations under each heading. "Municipalities" (which by definition includes cities, towns and villages) is one such heading.

[17] The obligations imposed on those bodies comprised in the definition of "institution" fall under various headings and include the following:

> **Legislative and other instruments**
>
> …
>
> 15 Notices, announcements and other documents required to be published under this Act or any other Act by the Province or its institutions shall be printed and published in both official languages.
>
> **The administration of justice**
>
> …
>
> 22 Where Her Majesty in right of the Province or an institution is a party to civil proceedings before a court, Her Majesty or the institution concerned shall use, in any oral or written pleadings or any process issuing from a court, the official language chosen by the other party.
>
> …
>
> **Communication with the public**
>
> 27 Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.
>
> 28 An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.
>
> 28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.
>
> 29 Institutions shall publish all postings, publications and documents intended for the general public in both official languages.
>
> 30 The Province and its institutions are responsible for ensuring that all services offered to the public by third parties on their behalf are delivered in both official languages.

As noted by Daigle J.A., it is plausible that, following the opinion in *Charlebois v. Moncton*, the Legislature intended to include municipalities in the definition of "institution" even though they are not listed as such under s. 1. On a plain reading of the above-listed provisions, the Legislature would then be taken to have intended to impose those obligations on all municipalities regardless of the official language minority population of those communities.

[18] By contrast, the specific language obligations under the heading "Municipalities" are more restricted. They read as follows:

> **Municipalities**
>
> 35(1) A municipality whose official language minority population represents at least 20% of its total population is required to adopt and publish its by-laws in both official languages.
>
> 35(2) A city is required to adopt and publish its by-laws in both official languages irrespective of the percentage required under subsection (1).
>
> 35(3) A municipality or city to which subsection (1) or (2) applies that adopts a new by-law or amends an existing by-law after December 31, 2002, shall do so in both official languages.
>
> 35(4) Except in the case of a by-law referred to in subsection (3), a municipality or city to which subsection (1) or (2) applies, other than Moncton, shall adopt and publish its by-laws in both official languages on or before December 31, 2005.
>
> 35(5) Subsection (3) applies, with the necessary modifications, to the minutes of council proceedings.
>
> 36 A municipality or city to which subsection 35(1), (2) or section 37 applies shall offer the services and communications prescribed by regulation in both official languages.
>
> 37 A municipality may, by by-law of its municipal council, declare itself bound by the provisions of this Act and nothing in this Act shall be interpreted so as to limit the authority of municipalities to promote the equality of status and use of English and French.
>
> 38 The provisions of subsections 35(3), (4) and (5) apply, with the necessary modifications, to a municipality under section 37.

[19] If all municipalities, as institutions, are obliged to print and publish their by-laws in both official languages under s. 29, why would it matter what percentage was represented by the official language minority population in any given municipality? Likewise, what would be the sense of prescribing by regulation those services and communications required to be offered in both official languages if all municipalities, as institutions, were required under ss. 27 to 30 to provide them all? What is left for a municipality to declare itself bound under s. 37 if it is already bound by the general obligations imposed on institutions? Those are the "incoherent and illogical consequences" that Daigle J.A. found determinative in the search for the Legislature's intent. I agree, particularly because, if the opposite interpretation is adopted and "institution" is read as not including municipalities, the internal coherence is restored. Bastarache J. would read the specific obligations set out under the heading "Municipalities" as exceptions to the general provisions applying to institutions. With respect, this approach would require much reading in and reading out, none of which is consistent with the limited role that *Charter* values can play as an interpretative tool.

Charlebois v. The City of Saint John, 2004 NBCA 49 (CanLII)

[21] […] In light of this description of the framework of the Act, the Legislature undoubtedly structured the legislation in this manner with a view to establishing separate and varying

language rights or regimes having regard either to the very nature of such rights, or the bodies that would be subject to the language obligations therein prescribed. In my view, it is in the same vein that the Legislature deemed requisite to group together and to designate a number of institutions or bodies that would be subject to varying language obligations under different provisions of the Act under the term “institution”.

[…]

[23] As structured, the definition of the word “institution” lists courts, departments and Crown corporations, all bodies or institutions that are themselves defined in section 1 and that are covered by various provisions of the Act. At the same time, the Legislature omitted the terms “municipality” and “city” which are also defined in section 1 and are covered by specific provisions of the Act. […]

[25] In this case, the definition of the word “institution” sets out two criteria that should be applied to the notion of institution in order to delineate its scope and determine whether a body should be considered a government institution. To begin, the first relevant criterion necessarily applies to bodies established to perform governmental functions. Next, the second criterion requires that these functions be performed by or pursuant to a provincial statute, or by or under the authority of the Lieutenant-Governor in Council. In short, the requirements which emerge from this definition extend to functions or activities that are governmental in nature and call for an organic bond with the Crown and that the powers of the body be derived from a statute or an Order-in-Council.

[…]

[37] I have earlier articulated the broad outlines of the scheme of the Act in summing up the statutory framework in order to point out that the structure established by the Legislature for the Act as a whole is such that the word “institution” as defined in section 1 could be used to impose special language obligations in various provisions of the Act. In fact, in addition to section 22, the word “institution” is used in three other provisions – sections 15, 27 and 29 – of the Act to designate the institutions of the province that are subject to language obligations. Additionally, the word “institution” appears in four other provisions: sections 23, 28, 28.1 and 30, where the Legislature further specifies the nature or scope of the language obligations created in the above-mentioned four provisions. The Legislature patently uses the word “institution” defined in section 1 as a central provision to identify who or what institutions are subject to the language obligations created in various provisions of the Act and, at the same time, delineate the scope of the resulting rights. Two examples serve to buttress this approach. In section 4, the Legislature expressly excludes from the definition of the word “institution”, distinct educational institutions and distinct cultural institutions, including the school system and universities as these institutions cannot be subject to the language obligations embodied in the Act given their mission and the principle of linguistic duality. Taking a contrary approach, in section 33, the Legislature expressly extends the meaning of institution, notwithstanding the definition of “institution” in section 1, to health establishments, facilities and programs before imposing on the Department of Health and Wellness a specific language obligation.

ANNOTATIONS – DEFINITION OF “PEACE OFFICER”

R. v. Mario Régis Mazerolle, 2008 NBPC 31 (CanLII)

[18] The *Act* also provides that “peace officer” means “a peace officer as defined under section 1 of the *Provincial Offences Procedure Act* who serves the public, whether on behalf of the Province, a municipality or under a contract for the delivery of policing services with the Province or its institutions and includes a police officer as defined under that Act”.

[19] Section 1 of the *Provincial Offences Procedure Act* provides that “peace officer” means a “police officer”, including a police officer as defined in the Police Act of New Brunswick. The *Police Act* provides that “police officer” means a police officer appointed pursuant to section 10 of

the *Police Act*, under which, in my opinion, the members of the Miramichi Police Force are appointed.

Purpose (section 1.1)

1.1 The purpose of this Act is the following:

> **(a) to ensure respect for English and French as the official languages of New Brunswick;**
>
> **(b) to ensure that English and French have equality of status and equal rights and privileges as to their use in all institutions of the Province; and**
>
> **(c) to set out the powers and duties of the institutions of the Province with respect to the two official languages.**

2013, c. 38, s. 1

ANNOTATIONS

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[7] New Brunswick is officially bilingual. In fact, it is the only officially bilingual province in Canada. Other provinces recognize some language rights and are subject to various obligations arising from legislative or constitutional provisions, but no other province has proclaimed itself bilingual. Legally speaking, the Province of New Brunswick is bilingual because in its legislation and in the Constitution it confers the status of official language on two languages, English and French. It also entrenches therein the principle of equality of the two official languages.

[8] Indeed, the recent history of the last thirty years shows that successive New Brunswick governments have, on four separate occasions during that period, enacted language rights legislation or have entrenched language rights in the Canadian Constitution which collectively provide the province with a constitutional language regime quite peculiar to New Brunswick and unique in the country. Obviously, these legislative and constitutional provisions impose obligations on the province which are also peculiar to New Brunswick.

[9] In short, the province pioneered by enacting in 1969 the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1, which recognizes that the English and French languages possess and enjoy equality of status and equal rights and privileges in all matters within the jurisdiction of the province and provides for the exercise of specific language rights. In 1981, the provincial government enacted An *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, S.N.B. 1981, c. O-1.1. This Act officially recognizes the existence and equality of the two official linguistic communities. The following year, 1982, when the federal government was proceeding to patriate the Canadian Constitution and enact the *Canadian Charter of Rights and Freedoms*, the New Brunswick government had certain language rights entrenched in the *Charter*; these rights apply specifically to the institutions of the legislature and government of New Brunswick. These language rights are contained in subsections 16(2) to 20(2) of the *Charter*. Finally, in 1993, by way of constitutional amendment under section 43 of the *Constitution Act, 1982*, the provincial government constitutionalized the principles of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* that the Legislative Assembly passed in 1981. This became section 16.1 of the *Charter*; it contains a declaration that the English linguistic community and the French linguistic community are equal, defines the role of preserving and promoting the equality of status of the official linguistic communities and specifically confers this role on the legislature and government of New Brunswick.

Canadian Union of Public Employees, Local 1252 v. Horizon Regional Health Network, 2017 CanLII 61775 (NB LA)

[5] As we all know, the province of New Brunswick is an officially bilingual province. This status is confirmed constitutionally by the *Canadian Charter of Rights and Freedom* (sic) and legislatively by the *Official Languages Act*, SNB 2002, c. O-0.5. It is therefore not surprising that the various collective agreements entered into by the province are available in both official languages.

Canadian Union of Public Employees, Local 1190 v. New Brunswick (Transportation and Infrastructure), 2015 CanLII 38685 (NB LA)

[52] The *Charter*, s. 16(2) and the *Act*, s. 1.1(b) both address language of work indirectly by declaring the two official languages to have "equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick". The *Act*, as amended in 2013, goes further to address language of work by requiring the Province to develop and implement a plan to provide, per s. 5.1 (1):

> (c) measures to ensure the equality of use of the English and French language in the public service;
>
> (d) measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service....

Section 5.1 came into effect by Proclamation on 5 December 2013 (per Schedule D to the *Statutes of New Brunswick 2013*, which is after the events giving rise to the present grievance. But that does not mean, for example, that "language profiles" were somehow a new instrument in relation to organizing language of work for employees in the provincial public service. Profiles have long been an instrument of human resources management.

Interpretation (sections 2-5)

2. The Premier is responsible for the administration of this Act.

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3. (1) No act, or regulation under it, other than this Act, shall be interpreted so as to repeal, limit or contravene a provision of this Act and, in case of conflict, this Act prevails.

3. (2) Subsection (1) does not apply to the *Education Act* or any other act, legislative provision or measure which promotes the equality of the two linguistic communities or establishes distinct educational institutions or distinct cultural institutions.

SEE ALSO – SUBSECTION 3(1):

Ville de Saint-Jean v. Charlebois and 042504 NB INC (February 25, 2004), Saint-Jean, No. 04939902 (NB PC), Vautour J. [hyperlink not available] [judgment available in French only]

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4. Distinct educational institutions and distinct cultural institutions and, without limiting the generality of the foregoing, the school system in New Brunswick including the English and French sections of the Department of Education and Early Childhood Development including schools and their committees, councils and boards, community centres and

universities and, where applicable, community colleges are not included in the definition of "institution" in section 1.

2010, c. 31, s. 100

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5. Nothing in this Act limits the authority of the Legislature or the Government to advance the equality of status and use of English and French.

Implementation plan (section 5.1)

5.1 (1) The Province shall prepare a plan setting out how it will meet its obligations under this Act, and the plan shall include the following:

> **(a) goals and objectives with respect to its obligations under this Act;**
>
> **(b) measures to ensure the equality of status of the two linguistic communities;**
>
> **(c) measures to ensure the equality of use of the English and French language in the public service;**
>
> **(d) measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service;**
>
> **(e) measures to improve the bilingual capacity of senior management in the public service;**
>
> **(f) measures to provide for the review and the improvement, when necessary, of the public signage policies of the Province, which policies shall include consideration of the two linguistic communities and of the linguistic composition of a region; and**
>
> **(g) performance measures for evaluating the effectiveness of the measures implemented under the plan and time frames within which they must be implemented.**

5.1 (2) The Premier is responsible for ensuring central government coordination and oversight of the implementation of the plan prepared under subsection (1).

5.1 (3) Each portion of the public service shall prepare an action plan setting out how it will meet the goals and objectives included in the plan prepared under subsection (1) and how it will implement the measures included in that plan.

5.1 (4) As soon as practicable after the end of each fiscal year, each portion of the public service shall submit a report to the Premier with respect to the activities under its action plan.

5.1 (5) As soon as practicable after the end of each fiscal year and after receiving the reports under subsection (4), the Premier shall submit a report to the Legislative Assembly with respect to the activities under the plan prepared under subsection (1).

2013, c. 38, s. 1

ANNOTATIONS

Canadian Union of Public Employees, Local 1190 v. New Brunswick (Transportation and Infrastructure), 2015 CanLII 38685 (NB LA)

[52] The *Charter*, s. 16(2) and the *Act*, s. 1.1(b) both address language of work indirectly by declaring the two official languages to have "equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick". The *Act*, as amended in 2013, goes further to address language of work by requiring the Province to develop and implement a plan to provide, per s. 5.1 (1):

> (c) measures to ensure the equality of use of the English and French language in the public service;
>
> (d) measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service....

Section 5.1 came into effect by Proclamation on 5 December 2013 (per Schedule D to the *Statutes of New Brunswick 2013*, which is after the events giving rise to the present grievance. But that does not mean, for example, that "language profiles" were somehow a new instrument in relation to organizing language of work for employees in the provincial public service. Profiles have long been an instrument of human resources management.

[...]

[57] I conclude that bilingualism in the workplace, depending on the position in issue, has an established record of acceptance as a reasonable qualification for a position in the provincial public service.

Proceedings of the Legislative Assembly (section 6-8)

6. English and French are the official languages of the Legislature and everyone has the right to use either language in any debate and other proceeding of the Legislative Assembly or its committees.

7. Simultaneous interpretation of the debates and other proceedings of the Legislative Assembly shall be made available by the Legislature.

8. The records, journals and reports of the Legislative Assembly and its committees shall be printed and published in English and French and both language versions are equally authoritative.

Legislative and other instruments (sections 9-15)

9. English and French are the official languages of legislation.

ANNOTATIONS

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[10] The bilingualism regime established by law in New Brunswick is not personal bilingualism as its purpose is not to ensure that individuals will be proficient in both official languages. Rather, it establishes institutional bilingualism aiming for the use of both languages by the province and some of its institutions in the provision of public services. Under such a regime, individuals have the choice to use either English or French in their dealings with government institutions. On the other hand, certain state activities must necessarily be performed in both languages, legislative bilingualism being a case in point.

[...]

[92] The historical foundation of subsection 18(2) starts before the 1969 enactment of the *Official Languages of New Brunswick Act* culminating in the constitutionalization of language rights in the *Charter* in 1982 and 1993. The impetus behind the legal recognition of language rights in this province and at the federal level came from the *Report of the Royal Commission on Bilingualism and Biculturalism* published in 1967. The main recommendation of the Commission aimed at ensuring the equality of the two founding peoples as well as the equality of their respective languages and cultures. The Commission proposed that federal authorities expand the scope of section 133 to equip the country with the means likely to achieve true bilingualism and biculturalism. In enacting the *Official Languages of New Brunswick Act* on April 18, 1969, New Brunswick conferred an official character and an equal status to the French and English languages. The language rights recognized by the Act included the obligation to print laws in English and French. Prior to that time, this province used only English in its statutes and regulations. The evolution of compulsory legislative bilingualism would evolve at a relatively fast pace with the enactment and publication of the revised statutes in English and French followed by the adoption of consolidated regulations and new rules of court, also in bilingual format. It was on the basis of the evolution of the legislative and political history of this province and in recognition of the cultural heritage of the two official language communities of this province that the elected representatives felt it was time to constitutionalize these language guarantees by entrenching subsections 16(2) to 20(2) in the *Charter* in 1982 and section 16.1 in 1993.

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10. The English and French versions of legislation are equally authoritative.

ANNOTATIONS:

Robichaud et al. v. Pharmacie Acadienne de Beresford Ltée et al., 2008 NBCA 12 (CanLII)

[23] First, to avoid the attribution of different meanings to the very same clause, it behooves the interpreting court to perform its mandate on the assumption that, absent compelling indications to the contrary, the parties' intention matches that of the Legislature. The court must also factor into the equation the wording of the English and French versions of the corresponding legislative provision with a view, where possible, to identifying a meaning which is common to both (see s. 10 of the *Official Languages Act*, S.N.B. 2002, c.O-0.5, which establishes that both versions are equally authoritative, and *R. v. Daoust*, [2004] 1 S.C.R. 217, [2004] S.C.J. No. 7 (QL), 2004 SCC 6 (CanLII), at paras. 27-31, where Justice Bastarache offers a concise outline of the principles that inform the interpretation of bilingual legislation). However, if a conflict truly exists between the two versions, the meaning and effect of the controversial wording stand to be determined "by the language version in which the conveyance was executed unless a contrary intention is expressed in the conveyance": s. 2.2 of the *Standard Forms of Conveyances Act*. As will soon be apparent, equating the phrase "arising out of" to the word "for" conflicts with both the English and French versions of the legislative provision from which the wording of Clause 28 is drawn verbatim.

SEE ALSO:

New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc., [2008] 2 SCR 604, 2008 SCC 45 (CanLII)

Harvey's Travel Limited v. Superintendent of Pensions, 2010 CanLII 67880 (NB LEB)

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11. Bills shall be simultaneously introduced in both official languages before the Legislative Assembly and shall be simultaneously adopted and assented to in both official languages.

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12. The Acts of the Legislature shall be co-drafted, printed and published in both official languages.

2013, c.38, s.1

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13. Rules, orders, Orders-in-Council and proclamations required to be published in The Royal Gazette shall be printed and published in both official languages.

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14. Notices, advertisements and other announcements of an official nature, whether required to be published in The Royal Gazette or not, shall be printed and published in both official languages.

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15. Notices, announcements and other documents required to be published under this Act or any other Act by the Province or its institutions shall be printed and published in both official languages.

ANNOTATIONS

Communications, Energy and Paperworkers Union of Canada v. Miramichi Peat Moss Ltd., **2003 CanLII 64179 (NB LEB)**

[7] At the hearing, Mr. Basque raised the issue of official languages. Pursuant to the regulations, the Board directed that the notice to employees be posted to inform them that an Application for Certification had been filed by the union. The Board's practice is to forward a notice in English and a notice in French to be posted. The notices consist of forms issued in both official languages by the provincial government. Since the Board does not employ certified interpreters, the description of the bargaining unit proposed by the union is simply inserted into the notice to employees in the language in which the Application for Certification is filed.

[8] In this case, the Application for Certification was filed in English, so the description of the bargaining unit was reproduced in English, even in the French version of the notice to employees. According to Mr. Basque, this practice is a violation of the *Official Languages Act*, S.N.B. 2002, c. O-0.5.

[9] Here, the employees complained that the notice directed at Francophone employees was defective for the following reasons:

(a) it was not written completely in French;

(b) the notice did not describe the bargaining unit proposed by the union accurately;

(c) the French version did not correspond exactly to the English version (paragraph 8 of the notice was not reproduced in the French version).

[...]

[15] The Board's practice of directing that two notices to employees be posted, one in each official language, is well established. The notices are published in both official languages. They are completed by the Board using information provided by the applicant, that is, the description of the proposed bargaining unit, reproduced in the language in which the application was filed.

[16] The Board is of the opinion that this practice is in compliance with the *Official Languages Act*, S.N.B. 2002, c. O-0.5, and is consistent with our decision in *Hervé Pomerleau and the United Brotherhood of Carpenters and Joiners of America, Local 1386* [2000] D.L.E.B.N.B. No. 58. In paragraph 13 of that decision, Vice-Chairperson Couturier said:

"However, contrary to Pomerleau's application of August 31, 2000, the Board is not of the opinion that its current statutory context requires it to interpret any document to satisfy the request of a party. Instead, the duty involves, in the context of the matter at hand, and is limited to, supplying, on request, blank standard forms printed by it, relevant to the matter at hand, in English or French, depending on the request, and as indicated thereafter, communicated in the language chosen by the interested party. [Translation provided by the Bureau.]

[17] According to section 15 of the *Official Languages Act*, S.N.B. 2002, c. O-0.5: [...]

[18] The Board believes that its practice of publishing and printing the notices to employees (the forms) in both official languages and posting them with the information in one of the official languages as provided by the union is in compliance with the *Official Languages Act*. In our opinion, the notices are not void because of a violation of the *Official Languages Act*.

The administration of justice (sections 16-26)

16. English and French are the official languages of the courts.

ANNOTATIONS

Noble Securities Holding Limited c. Tremblay, 2006 NBBR 340 (CanLII) [decision available in French only]

[1] The Defendant, Daniel Tremblay, has made the following motion:

1. que Monsieur le juge George Rideout se récuse d'entendre toute procédure de cette affaire puisque Monsieur le juge Rideout ne comprend pas le français sans l'aide d'un interprète contrairement au paragraphe 16(1)b de la *Loi sur les langues officielles*, L.R. 1985, ch. 31 (4e suppl.) ;

[...]

[2] Initially Mr. Tremblay was unrepresented. However, he has since retained counsel who brought a second motion to set aside a default judgment which was heard by Mr. Justice Landry who ordered that I hear this matter. Counsel for Mr. Tremblay then wrote the Clerk of the Court

suggesting that I should not hear this matter because Mr. Tremblay was now proceeding in the French language. The Clerk advised counsel for Mr. Tremblay that Mr. Justice Landry had ordered that I hear the motion to set aside the default judgment and perhaps an appeal of Judge Landry's decision might be in order. Mr. Tremblay decided not to appeal and has now brought the within motion of recusal.

[...]

[11] The *Official Languages Act* R.S.N.B. 1973 c. O-0.5 was assented to on June 7, 2002. It contains the following sections namely 16, 17, 18 and 19: [...]

[17] As of a consequence, I am of the opinion that it is proper for me to consider the issue of my recusal as brought forward in the motion. The difficulty in this case is that the grounds for the request do not fit within the usual cases as outlined by Dean Bryden. Also, in this case I have an order from a brother judge stating that I must hear the matter. At the same time we have the *Official Languages Act* prohibiting me from dong so. In addition, we have the suggestions that Mr. Tremblay has already made his election of language; namely, English and because he has received some adverse rulings from me he wants a different judge.

[...]

[20] The argument of "judge shopping" is a difficult one to answer in most situations and that is particularly so in this matter. Mr. Tremblay prepared pleadings and affidavits in English, he elected to proceed in English and the documents he prepared in English are as good as many of the documents I see from English lawyers. Consequently, I have concerns with respect to the issue of "judge shopping" raised by the Plaintiff.

[21] That being said, I believe the language contained in sections 16, 17, 18 and 19 of the *Official Languages Act* are mandatory, and override the order of this Court and override the issue of "judge shopping". The use of the word "must" and the words "without the assistance of an interpreter" are clear given the plain meaning of these words. The wording does not limit when or how a person exercises this fundamental right. It therefore must have been the legislature's intention that citizens have an unfettered language right in court which is available to a citizen at any time.

[22] Consequently, even if Mr. Tremblay were "judge shopping", as I read the *Official Languages Act* it is still his right to proceed in the language of his choice. While I have concerns with an election to proceed in one language which is subsequently changed because this could cause delays, disrupt a trial or have an adverse effect on the other party, that issue is not before me. In this case, the present motion to set aide the default judgment is a new motion and Mr. Tremblay has made his election to proceed in French. As the Plaintiff has elected to proceed in English, subsection 19(2) of the *Official Languages Act* would be applicable. This subsection, in my opinion, precludes me from hearing the motion.

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17. Every person has the right to use the official language of his or her choice in any matter before the courts, including all proceedings, or in any pleading or process issuing from a court.

ANNOTATIONS

Société des Acadiens v. Association of Parents, [1986] 1 SCR 549, 1986 CanLII 66 (SCC)

[55] I am further reinforced in this view by the fact that those who drafted the *Charter* had another explicit model they could have used had they been so inclined, namely s. 13(1) of the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1:

> 13 (1) Subject to section 15, in any proceeding before a court, any person appearing or giving evidence may be heard in the official language of his choice and such choice is not to place that person at any disadvantage.

[56] Here again, s. 13(1) of the Act, unlike the *Charter*, has expressly provided for the right to be heard in the official language of one's choice. Those who drafted s. 19(2) of the *Charter* and agreed to it could easily have followed the language of s. 13(1) of the *Official Languages of New Brunswick Act* instead of that of s. 133 of the *Constitution Act, 1867*. That they did not do so is a clear signal that they wanted to provide for a different effect, namely the effect of s. 133. If the people of the Province of New Brunswick were agreeable to have a provision like s. 13(1) of the *Official Languages of New Brunswick Act* as part of their law, they did not agree to see it entrenched in the Constitution. I do not think it should be forced upon them under the guise of constitutional interpretation.

[…]

[74] I have no difficulty in holding that the principles of natural justice as well as s. 13(1) of the *Official Languages of New Brunswick Act* entitle a party pleading in a court of New Brunswick to be heard by a court, the member or members of which are capable of understanding the proceedings, the evidence and the arguments, written and oral, regardless of the official language used by the parties.

[…]

[76] I would answer the constitutional question as follows:

> A party pleading in a court of New Brunswick is entitled to be heard by a court, the member or members of which are capable by any reasonable means of understanding the proceedings, the evidence and the arguments, written and oral, regardless of the official language used by the parties; this entitlement is derived from the principles of natural justice and from s. 13(1) of the *Official Languages of New Brunswick Act* however, and not from s. 19(2) of the *Charter*.

N.B. – This judgment deals with paragraph 13(1) of the *Official Languages Act of New Brunswick* of 1969, provision that preceded s. 17 of the current *Official Languages Act* of New Brunswick.

Jones v. A.G. of New Brunswick, [1975] 2 SCR 182, 1974 CanLII 164 (SCC)

[p. 184] The questions that were referred for answer were as follows:

> […]
>
> 3. Is section 14 of the *Official Languages of New Brunswick Act*, S.N.B. 1969, c. 14, within the legislative competence of the Legislature of New Brunswick?
>
> […]

[pp. 186-7] And s. 14 of the *Official Languages of New Brunswick Act*, 1969 (N.B.), c. 14 is as follows:

> 14. (1) Subject to section 16, in any proceeding before a court, any person appearing or giving evidence may be heard in the official language of his choice and such choice is not to place that person at any disadvantage.
>
> (2) Subject to subsection (1), where
>
> (a) requested by any party, and

(b) the court agrees that the proceedings can effectively be thus conducted;

the court may order that the proceedings be conducted totally or partially in one of the official languages.

[…]

[p. 197] In my view, in the absence of federal legislation competently dealing with the language of proceedings or matters before provincial Courts which fall within exclusive federal legislative authority, it was open to the Legislature of New Brunswick to legislate respecting the languages in which proceedings in Courts established by that Legislature might be conducted. This includes the languages in which evidence in those Courts may be given. Section 92(14) of the *British North America Act*, 1867 is ample authority for such legislation. For the same reason, I would answer question 3, respecting the validity of s. 14 of the *Official Languages of New Brunswick Act*, in the affirmative.

N.B. – This judgment deals with s. 14 of the *Official Languages Act of New Brunswick* of 1969, provision that preceded s. 17 of the current *Official Languages Act* of New Brunswick.

Whelton v. Mercier et al., 2004 NBCA 83 (CanLII)

[2] The first procedural question requires an interpretation of Rule 39.05 of the *Rules of Court* ("Language of Proceeding"). The question is whether a respondent who intends to use at the hearing an official language other than the language specified in the Notice of Motion must, pursuant to Rule 39.05(1), notify the clerk accordingly, even if the respondent's choice of official language is revealed in his or her pleadings and the affidavits that he or she filed are drafted in that language. [...]

[7] As noted in my introductory remarks, Highland Transport brought a motion for summary judgment dismissing the action against it. In its Notice of Motion, Highland Transport advised that it intended to use the English language. For his part, Mr. Whelton had earlier indicated, more precisely in his Notice of Action, that he intended to proceed in the French language, and he sought to oppose Highland Transport's motion using affidavits drafted in that language. However, Mr. Whelton did not notify the clerk of his intention to proceed in French at the motion hearing. Since the clerk was not made aware of Mr. Whelton's intention to use an official language other than the language specified in the Notice of Motion, he did not take measures to ensure that an interpreter would be present at the hearing. Rule 39.05(1) provides that, "[o]n a motion or application, a party who intends to proceed in or present evidence in an official language other than the official language in which any other party intends to proceed or present evidence, shall so advise the clerk at least 7 days before the hearing" and Rule 39.05(2) states that the clerk, on being advised pursuant to Rule 39.05(1), shall arrange to have an interpreter present at the hearing.

[…]

[22] The wording of both Rule 39.05(1) and Form 37A leaves no room for doubt: it is the responding party who must notify the clerk if he or she wishes to use an official language other than the one that the moving party has identified in the Notice of Motion. Moreover, the notice to the clerk contemplated in Rule 39.05(1) is distinct from any language-related notice that might be contained in a Notice of Action or Statement of Claim. If a plaintiff's obligations under Rule 39.05(1) were fulfilled merely by indicating his or her choice of official language in the Notice of Action or Statement of Claim, Rule 39.05(1) would be worded so as to apply only to applications. However, as we have seen, Rule 39.05(1) unambiguously states that motions come within its scope. In addition, it is clear from the wording of Rule 39.05(1) and Form 37A that a respondent's filing of affidavits drafted in a given official language does not constitute notice to the clerk within the meaning of Rule 39.05(1). Lastly, in my respectful view, nothing contained in the *Official*

Languages Act (New Brunswick), the *Insurance Act* or the *Canadian Charter of Rights and Freedoms* supports a different interpretation of Rule 39.05(1).

[23] Since Mr. Whelton did not notify the clerk as required by Rule 39.05(1), he was not legally entitled to use a language other than English, the official language specified in Highland Transport's Notice of Motion. That said, what our Court stated in *Chiasson v. Chiasson* (1999), 222 N.B.R. (2d) 233 at paras. 4-5, bears repeating:

> In New Brunswick, the only province in Canada with two official languages, when a party indicates his wish to be heard in one official language and the judge's reaction is so hostile that the party ends up being heard in the other official language, the court's judgment cannot be allowed to stand. The right to use the official language of one's choosing is not a privilege; it is a fundamental right unrelated to trial fairness as such. See *R. v. Beaulac* (J.V.), 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, at pp. 799-800, paragraphs 45-47.
>
> In our view, judges ought to refrain from engaging in any conduct that might deter a person appearing or giving evidence in any proceeding before the court from being heard in the official language of his choice. In fact, it behooves judges to show the greatest of respect for that person's choice of official language.

[24] The judge who heard the motion for summary judgment in the instant case was not dealing with an urgent matter. A few weeks' adjournment would have enabled Mr. Whelton to comply with Rule 39.05(1). With the greatest respect, I am of the opinion that the motion judge erred in disregarding Mr. Whelton's wishes and in insisting that he employ the English language at the hearing. The judge should have raised the possibility of an adjournment and sought representations from the parties as to whether such a measure would be appropriate. Having said this, the judge's failure to hear the parties' representations on this issue is not mentioned as a ground in the Notice of Appeal (see Rule 62.09(2)) and it is preferable for all concerned that the appeal be disposed of for reasons susceptible of contributing to a fair resolution of the matter on its merits.

[25] Lastly, it should be noted that the intervener, l'Association des juristes d'expression française du Nouveau-Brunswick Inc., filed a submission in support of the proposition that Rule 39.05(1) fails to fulfil the provincial government's obligations under the *Canadian Charter of Rights and Freedoms* in relation to language rights. The Court refused to consider this issue because it was not raised and argued in the court below.

Chiasson v. Chiasson, 1999 CarswellNB 599, 1999 CarswellNB 600, [1999] N.B.J. No. 621, 222 N.B.R. (2d) 233 (NB CA) [hyperlink not available]

[1] This appeal under Rule 75.18 of the *Rules of Court* challenges a Small Claims judgment on the ground that the trial judge denied the appellant the right to testify in English. At the outset of the trial, the appellant informed the judge that he intended to testify in English. The judge appears to have been caught off guard by the choice of official language made by the appellant, a francophone, and he reacted by making an inappropriate comment. The appellant asserts that the judge's comment led him to conclude that it would be to his advantage to testify in French, which is what he did, occasionally using English words to express himself. After hearing the parties, we allowed the appeal from the bench and ordered a new trial. We indicated at the time that reasons for judgment would be filed at the earliest opportunity. Here are those reasons.

[...]

[3] As well, s. 13(1) of the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1 bears mention. It provides as follows:

> Subject to section 15, in any proceeding before a court, any person appearing or giving evidence may be heard in the official language of his choice and such choice is not to place that person at any disadvantage.

[4] In New Brunswick, the only province in Canada with two official languages, when a party indicates his wish to be heard in one official language and the judge's reaction is so hostile that the party ends up being heard in the other official language, the court's judgment cannot be allowed to stand. The right to use the official language of one's choosing is not a privilege; it is a fundamental right unrelated to trial fairness as such. See *R. v. Beaulac*, [1999] 1 S.C.R. 768 (S.C.C.), at pp. 799-800, paragraphs 45-47.

[5] In our view, judges ought to refrain from engaging in any conduct that might deter a person appearing or giving evidence in any proceeding before the court from being heard in the official language of his choice. In fact, it behoves judges to show the greatest of respect for that person's choice of official language.

[6] The appellant, although fluent in French, had the undoubted right to be heard in English, the official language of his choice. He asserts that he understood from the trial judge's comments that he would be at a disadvantage if he insisted on being heard in English. While there is nothing to suggest that the appellant would have been at a disadvantage if he had insisted on exercising his right to be heard in English, some of the trial judge's comments are confusing and are open to the interpretation placed upon them by the appellant, namely that it was to his advantage to be heard in French. In such circumstances, a new trial is required.

N.B. – This judgment deals with paragraph 13(1) of the *Official Languages Act of New Brunswick* of 1969, provision that preceded s. 17 of the current *Official Languages Act* of New Brunswick.

Noble Securities Holding Limited c. Tremblay, 2006 NBBR 340 (CanLII) [decision available in French only]

[1] The Defendant, Daniel Tremblay, has made the following motion:

> 1. que Monsieur le juge George Rideout se récuse d'entendre toute procédure de cette affaire puisque Monsieur le juge Rideout ne comprend pas le français sans l'aide d'un interprète contrairement au paragraphe 16(1)b de la *Loi sur les langues officielles*, L.R. 1985, ch. 31 (4e suppl.) ;
>
> [...]

[2] Initially Mr. Tremblay was unrepresented. However, he has since retained counsel who brought a second motion to set aside a default judgment which was heard by Mr. Justice Landry who ordered that I hear this matter. Counsel for Mr. Tremblay then wrote the Clerk of the Court suggesting that I should not hear this matter because Mr. Tremblay was now proceeding in the French language. The Clerk advised counsel for Mr. Tremblay that Mr. Justice Landry had ordered that I hear the motion to set aside the default judgment and perhaps an appeal of Judge Landry's decision might be in order. Mr. Tremblay decided not to appeal and has now brought the within motion of recusal.

[...]

[11] The *Official Languages Act* R.S.N.B. 1973 c. O-0.5 was assented to on June 7, 2002. It contains the following sections namely 16, 17, 18 and 19: [...]

[17] As of a consequence, I am of the opinion that it is proper for me to consider the issue of my recusal as brought forward in the motion. The difficulty in this case is that the grounds for the request do not fit within the usual cases as outlined by Dean Bryden. Also, in this case I have an

order from a brother judge stating that I must hear the matter. At the same time we have the *Official Languages Act* prohibiting me from dong so. In addition, we have the suggestions that Mr. Tremblay has already made his election of language; namely, English and because he has received some adverse rulings from me he wants a different judge.

[...]

[20] The argument of "judge shopping" is a difficult one to answer in most situations and that is particularly so in this matter. Mr. Tremblay prepared pleadings and affidavits in English, he elected to proceed in English and the documents he prepared in English are as good as many of the documents I see from English lawyers. Consequently, I have concerns with respect to the issue of "judge shopping" raised by the Plaintiff.

[21] That being said, I believe the language contained in sections 16, 17, 18 and 19 of the *Official Languages Act* are mandatory, and override the order of this Court and override the issue of "judge shopping". The use of the word "must" and the words "without the assistance of an interpreter" are clear given the plain meaning of these words. The wording does not limit when or how a person exercises this fundamental right. It therefore must have been the legislature's intention that citizens have an unfettered language right in court which is available to a citizen at any time.

[22] Consequently, even if Mr. Tremblay were "judge shopping", as I read the *Official Languages Act* it is still his right to proceed in the language of his choice. While I have concerns with an election to proceed in one language which is subsequently changed because this could cause delays, disrupt a trial or have an adverse effect on the other party, that issue is not before me. In this case, the present motion to set aide the default judgment is a new motion and Mr. Tremblay has made his election to proceed in French. As the Plaintiff has elected to proceed in English, subsection 19(2) of the *Official Languages Act* would be applicable. This subsection, in my opinion, precludes me from hearing the motion.

McGraw v. Oceanis Seafoods Ltd./Fruits de mer Oceanis Ltée, 2002 NBQB 31 (CanLII)

[2] The defendant opposes the motion on grounds that the amended statement of claim is in the English language, whilst the original notice of action and statement of claim prepared by the plaintiff's previous counsel are in the French language. The plaintiff has now retained a unilingual English counsel. The defendant argues that both parties are French, all the witnesses for the parties are French, hence the pleadings and the proceedings should be in the French language.

[3] It is trite law that in New Brunswick a person has the right to choose either of the two official languages of Canada before the courts.

[...]

[5] Section 13(1) of the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1 provides:
[...]

[7] In the case at hand the plaintiff has both the statutory right and the constitutional right to be heard through counsel of his choice in either the French or the English language and to file his pleadings in either official language of Canada. This case is to be distinguished from the decision in *Gagnon c. Rousselle*, [2000] N.B.J. No. 259 (N.B. Q.B.) where the Court dealt with the interpretation of s. 20.2 of the *Insurance Act* of New Brunswick. To compel the plaintiff to file his pleadings in the French language in the circumstances would be tantamount to denying him the right to be represented by counsel of his choice. That right, in my view, cannot be sacrificed on account of the inconveniences resulting from consecutive interpretation, the extra length of the proceedings or the cost.

N.B. – This judgment deals with paragraph 13(1) of the *Official Languages Act of New Brunswick* of 1969, provision that preceded s. 17 of the current *Official Languages Act* of New Brunswick.

Cormier v. Fournier, 1986 CanLII 92 (NB QB)

[p. 24] The legislature of New Brunswick uses simultaneous interpretation so as to conform with this subsection of the *Charter*. The Court intends to use these same means so as to conform not only with the *Charter* but also with subsection 13(1) of the *Official Languages of New Brunswick Act*.

N.B. – This judgment deals with paragraph 13(1) of the *Official Languages Act of New Brunswick* of 1969, provision that preceded s. 17 of the current *Official Languages Act* of New Brunswick. This judgment was confirmed on appeal: Fournier v. Cormier, 1987 CanLII 110 (NB CA).

R. v. Charlebois, 2004 NBPC 26 (CanLII)

[20] Here, under section 22 of the Act, when the government is involved in a civil matter, it has an obligation to provide pleadings and process, but not evidence, in the language chosen by the other party. What is more, in the case at bar, section 17 does not even contain this obligation.

[21] I therefore conclude that, in the judicial process, nothing compels officers to draft their notes or incident reports in the official language of the defendant, and nothing compels the Crown to provide a translation of such notes or incident reports. For all intents and purposes, the defendant has the right to choose his language twice: first, when detained at the scene before the peace officer; and later, upon his initial appearance in court. Two occasions, two official languages. So it is impossible for the officers to guess at the final result before drafting their notes. This is another reason for my determination regarding the issue of evidentiary disclosure and language rights.

Ville de Saint-Jean v. Charlebois and 042504 NB INC (February 25, 2004), Saint-Jean, No. 04939902 (NB PC), Vautour J. [hyperlink not available] [judgment available in French only]

[OUR TRANSLATION]

[pp. 14-6] Ironically, the branch of government responsible for protecting the *Charter* rights of the defendant is the one that has turned against him in order to deny them. Clearly, at the time of the first appearance on January 31, 2003, the learned judge was probably not aware of the provisions of the *Charter* and of the *Official Languages Act* and neither was the prosecutor. If he was, the injustice committed against the accused would be that much more serious. It is not only the judge's responsibility to inform the defendant of his or her language rights. The prosecutor who represented the Crown at this appearance had the duty to inform the judge of those provisions so that he could fulfill his obligations as guardian of the Constitution. In other words, it was not Ms. Tompkins who was there that day. In other words, I am not reflecting on here. I quote, in part, the provincial court judge at the January 31, 2003 appearance:

> "I do not speak French and I would ask that you give me a little bit of respect. I think you understand me, do you not?"
>
> Later, the judge states:
>
> "As I say, by proceeding in English today you have not prejudiced your point one little bit. Frankly, it adds to your credibility when you do that."
>
> Later, he continues:
>
> "You accommodate me and I will do whatever we can to accommodate you. That's the beauty of this province."

Such comments suggest that New Brunswick is still a unilingual Anglophone province and that rights enshrined in the Constitution for those who speak the other official language mean very little in reality. It is that much more surprising that these statements were made after *Beaulac* and *Chiasson v. Chiasson*.

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18. No person shall be placed at a disadvantage by reason of the choice made under section 17.

ANNOTATIONS

Noble Securities Holding Limited c. Tremblay, 2006 NBBR 340 (CanLII) [decision available in French only]

[1] The Defendant, Daniel Tremblay, has made the following motion:

> 1. que Monsieur le juge George Rideout se récuse d'entendre toute procédure de cette affaire puisque Monsieur le juge Rideout ne comprend pas le français sans l'aide d'un interprète contrairement au paragraphe 16(1)b de la *Loi sur les langues officielles*, L.R. 1985, ch. 31 (4e suppl.) ;
>
> [...]

[2] Initially Mr. Tremblay was unrepresented. However, he has since retained counsel who brought a second motion to set aside a default judgment which was heard by Mr. Justice Landry who ordered that I hear this matter. Counsel for Mr. Tremblay then wrote the Clerk of the Court suggesting that I should not hear this matter because Mr. Tremblay was now proceeding in the French language. The Clerk advised counsel for Mr. Tremblay that Mr. Justice Landry had ordered that I hear the motion to set aside the default judgment and perhaps an appeal of Judge Landry's decision might be in order. Mr. Tremblay decided not to appeal and has now brought the within motion of recusal.

[...]

[11] The *Official Languages Act* R.S.N.B. 1973 c. O-0.5 was assented to on June 7, 2002. It contains the following sections namely 16, 17, 18 and 19: [...]

[17] As of a consequence, I am of the opinion that it is proper for me to consider the issue of my recusal as brought forward in the motion. The difficulty in this case is that the grounds for the request do not fit within the usual cases as outlined by Dean Bryden. Also, in this case I have an order from a brother judge stating that I must hear the matter. At the same time we have the *Official Languages Act* prohibiting me from dong so. In addition, we have the suggestions that Mr. Tremblay has already made his election of language; namely, English and because he has received some adverse rulings from me he wants a different judge.

[...]

[20] The argument of "judge shopping" is a difficult one to answer in most situations and that is particularly so in this matter. Mr. Tremblay prepared pleadings and affidavits in English, he elected to proceed in English and the documents he prepared in English are as good as many of the documents I see from English lawyers. Consequently, I have concerns with respect to the issue of "judge shopping" raised by the Plaintiff.

[21] That being said, I believe the language contained in sections 16, 17, 18 and 19 of the *Official Languages Act* are mandatory, and override the order of this Court and override the issue of "judge shopping". The use of the word "must" and the words "without the assistance of an

interpreter" are clear given the plain meaning of these words. The wording does not limit when or how a person exercises this fundamental right. It therefore must have been the legislature's intention that citizens have an unfettered language right in court which is available to a citizen at any time.

[22] Consequently, even if Mr. Tremblay were "judge shopping", as I read the *Official Languages Act* it is still his right to proceed in the language of his choice. While I have concerns with an election to proceed in one language which is subsequently changed because this could cause delays, disrupt a trial or have an adverse effect on the other party, that issue is not before me. In this case, the present motion to set aide the default judgment is a new motion and Mr. Tremblay has made his election to proceed in French. As the Plaintiff has elected to proceed in English, subsection 19(2) of the *Official Languages Act* would be applicable. This subsection, in my opinion, precludes me from hearing the motion.

Ville de Saint-Jean v. Charlebois and 042504 NB INC (February 25, 2004), Saint-Jean, No. 04939902 (NB PC), Vautour J. [hyperlink not available] [judgment available in French only]

[OUR TRANSLATION]

[pp. 18-20] Although the Constitution does not necessary require all judges in New Brunswick to be bilingual, its government has the obligation to ensure that a defendant who wishes to use his or her right to speak in either official language is not disadvantaged by his or her choice by being forced like Mr. Charlebois to travel more than he or she would otherwise because he or she made that choice. The fact that the defendant must reply to a summons, in the absence of which a warrant for his or her arrest may be issued, requires that he or she has the right to expect that at the first appearance the judge would be able to communicate with him or her in the language of his or her choice without the help of an interpreter as provided in section 20 of the *Official Languages Act*.

Government institutions must establish mechanisms in order to prevent situations that could disadvantage a defendant only because he or she used his or her language rights. The fact that a defendant must wait for a certain amount of time on the same day because of his language choice could, depending on the circumstances, be a reasonable limit. In other words, this was argued by Ms. Tompkins in *Fournier*. In the present case, the information indicates that the defendant's address as well as that of his corporation is in Moncton, that is, 160 km from the Court at Saint John. Therefore, he had to make that trip twice. Thus, the real harm suffered by Mr. Charlebois prevails over the Crown's interest in completing the prosecution, apart from the violation of his language rights of being forced to speak the official language he did not choose. Such a violation intrinsically calls for a stay of proceedings as a remedy.

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19. (1) A court before which a matter is pending must understand, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, the official language chosen under section 17 by a party to the matter.

19. (2) A court before which a matter is pending must understand both official languages, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, if both English and French are the languages chosen by the parties to the proceedings.

ANNOTATIONS

Noble Securities Holding Limited c. Tremblay, 2006 NBBR 340 (CanLII) [decision available in French only]

[1] The Defendant, Daniel Tremblay, has made the following motion:

1. que Monsieur le juge George Rideout se récuse d'entendre toute procédure de cette affaire puisque Monsieur le juge Rideout ne comprend pas le français sans l'aide d'un interprète contrairement au paragraphe 16(1)b de la *Loi sur les langues officielles*, L.R. 1985, ch. 31 (4e suppl.) ;

[...]

[2] Initially Mr. Tremblay was unrepresented. However, he has since retained counsel who brought a second motion to set aside a default judgment which was heard by Mr. Justice Landry who ordered that I hear this matter. Counsel for Mr. Tremblay then wrote the Clerk of the Court suggesting that I should not hear this matter because Mr. Tremblay was now proceeding in the French language. The Clerk advised counsel for Mr. Tremblay that Mr. Justice Landry had ordered that I hear the motion to set aside the default judgment and perhaps an appeal of Judge Landry's decision might be in order. Mr. Tremblay decided not to appeal and has now brought the within motion of recusal.

[...]

[11] The *Official Languages Act* R.S.N.B. 1973 c. O-0.5 was assented to on June 7, 2002. It contains the following sections namely 16, 17, 18 and 19: [...]

[17] As of a consequence, I am of the opinion that it is proper for me to consider the issue of my recusal as brought forward in the motion. The difficulty in this case is that the grounds for the request do not fit within the usual cases as outlined by Dean Bryden. Also, in this case I have an order from a brother judge stating that I must hear the matter. At the same time we have the *Official Languages Act* prohibiting me from dong so. In addition, we have the suggestions that Mr. Tremblay has already made his election of language; namely, English and because he has received some adverse rulings from me he wants a different judge.

[...]

[20] The argument of "judge shopping" is a difficult one to answer in most situations and that is particularly so in this matter. Mr. Tremblay prepared pleadings and affidavits in English, he elected to proceed in English and the documents he prepared in English are as good as many of the documents I see from English lawyers. Consequently, I have concerns with respect to the issue of "judge shopping" raised by the Plaintiff.

[21] That being said, I believe the language contained in sections 16, 17, 18 and 19 of the *Official Languages Act* are mandatory, and override the order of this Court and override the issue of "judge shopping". The use of the word "must" and the words "without the assistance of an interpreter" are clear given the plain meaning of these words. The wording does not limit when or how a person exercises this fundamental right. It therefore must have been the legislature's intention that citizens have an unfettered language right in court which is available to a citizen at any time.

[22] Consequently, even if Mr. Tremblay were "judge shopping", as I read the *Official Languages Act* it is still his right to proceed in the language of his choice. While I have concerns with an election to proceed in one language which is subsequently changed because this could cause delays, disrupt a trial or have an adverse effect on the other party, that issue is not before me. In this case, the present motion to set aide the default judgment is a new motion and Mr. Tremblay has made his election to proceed in French. As the Plaintiff has elected to proceed in English, subsection 19(2) of the *Official Languages Act* would be applicable. This subsection, in my opinion, precludes me from hearing the motion.

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20. (1) A person who is alleged to have committed an offence under an Act or a regulation of the Province or under a municipal by-law has the right to have the proceedings conducted in the language of his or her choice and shall be informed of that right by the presiding judge before entering a plea.

20. (2) A person who is alleged to have committed an offence within the meaning of subsection (1), has the right to be understood by the court, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, in the official language chosen by the person.

ANNOTATIONS

R. v. Brewer, 2009 NBPC 5 (CanLII)

[30] It is also noted that the statutory obligations of police officers (s. 31 N.B. O.L.A. [New Brunswick *Official Languages Act*) and the court (s. 20(1) N.B.O.L.A.) to advise a subject of a charge of his right to be dealt with in the language of his choice are not applicable to the CRA [Canada Revenue Agency] official. Clearly, a provincial legislature can impose a similar obligation on such an official but in this case has not.

Ville de Saint-Jean v. Charlebois and 042504 NB INC (February 25, 2004), Saint-Jean, No. 04939902 (NB PC), Vautour J. [hyperlink not available] [judgment available in French only]

[OUR TRANSLATION]

[p. 19] The fact that the defendant must reply to a summons, in the absence of which a warrant for his or her arrest may be issued, requires that he or she has the right to expect that at their first appearance the judge would be able to communicate with them in the language of their choice without the help of an interpreter as provided in section 20 of the *Official Languages Act.*

Labourers' International Union of North America, Local 900 v. Fern-Co Building Concept Inc., 2010 CanLII 52022 (NB LEB)

[14] […] With respect to counsel's argument, I do not interpret section 20(1) of the *Official Languages Act* as governing the present hearing because of the use of the word "*infraction*" in the French version and "offence" in the English. While the Act clearly defines "court" to include an administrative tribunal such as this Board, it does not define the word "*juge*" / "judge" which also appears in section 20(1). In my view, the use of "*juge*"/"judge" limits the scope of the section, when read in context, to an "infraction" / "offence" which may result in a fine or other penalty. The subsection would seem applicable to proceedings commenced in respect of section 110(1) of the *Industrial Relations Act* which provides, for example, that a person who "violates sections 3 to 8, 50 or 51 is guilty of an offence and, on conviction, is liable" to a fine.

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21. Every court has the duty to ensure that any witness appearing before it can be heard in the official language of his or her choice and upon the request of one of the parties or the witness, the court has the duty to ensure that services of simultaneous translation or consecutive interpretation are available to the person who made the request.

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22. Where Her Majesty in right of the Province or an institution is a party to civil proceedings before a court, Her Majesty or the institution concerned shall use, in any oral or written pleadings or any process issuing from a court, the official language chosen by the other party.

ANNOTATIONS

Charlebois v. Saint John (City), [2005] 3 S.C.R. 563, 2005 SCC 74 (CanLII)

[4] Mr. Charlebois's objection raised two issues:

> […]
>
> 2. What is the scope of the obligation under s. 22? Must the party provide a translation of quotes from legal decisions included in its pleadings? Must the party provide a translation of the evidence?

[…]

[7] The second issue can be readily disposed of. I agree with Bastarache J. that the Court of Appeal was correct in holding that "oral or written pleadings" do not include evidence tendered in the course of the proceeding. Nor does s. 22 create an obligation to translate case law cited or incorporated in a book of authorities.

Town of Riverview v. Charlebois, 2014 NBQB 154 (CanLII)

[23] The Attorney General for the Province of New Brunswick points out that Form 16D [Notice of Application] is a bilingual form. The important elements in the form are all set out in both official languages. It is only when a litigant fills out their portion of the application setting out the relief sought and the grounds relied upon that they can choose the language in which to do so. In the event that the recipient such as Mr. Charlebois does not understand the contents of a Notice of Application, it is incumbent upon them to seek out assistance in order to understand fully what is involved. The form itself clearly explains, in both languages, what a responding party is to do if they wish to contest the application as well as the timeframes with which to do so. The form also advises the responding party what language the application will be heard and that they may request the services of an interpreter.

[24] The Attorney General for the Province of New Brunswick submits that in contesting the validity of Form 16D, Mr. Charlebois is simply trying to relitigate the issues resolved by the Supreme Court of Canada in *Charlebois v. City of Saint John*. In *Charlebois v. City of Saint John*, the Supreme Court of Canada confirmed that it is the right of a municipality to choose the language they wish to use when instituting and prosecuting civil actions. The Form 16D remains unchanged regardless of the language selected by the municipality. The form itself is at all times bilingual.

[25] I agree with the responding parties on the motion that while Mr. Charlebois' challenge of the use of Form 16D is a creative way to bring back before the Courts the question of a municipalities' linguistic obligations in dealing with litigants in a civil procedure, the result remains the same. Just as *Charlebois v. City of Saint John* confirms without question the right of a municipality to choose the langue (sic) of proceeding in a civil matter, so can they choose the language with which to fill out Form 16D. As the form itself as prepared by the Province of New Brunswick is totally bilingual, there can be no complaint with the form itself. All information germane to the form is available on the face of the form in both official languages. The use of Form 16D by the Town of Riverview in these circumstances is entirely appropriate as was their choice to use the English language in preparing the Notice of Application.

N.B. The appeal from this judgment was dismissed from the bench: Charlebois v. Town of Riverview and Attorney General of New Brunswick, 2015 NBCA 45 (CanLII).

Constance Wooldridge-Vincent v. Assumption Mutual Life Insurance Company, 2008 NBQB 121 (CanLII)

[5] At the discovery the plaintiff asked for an undertaking for the disclosure of that document. It was disclosed. Now by motion before trial the plaintiff asks that the defendant be ordered to produce an English interpretation of the defendant's policy manual entitled "Procédures en invalidité" in completion of its undertaking pursuant to the Rules of Court and Section 20.1 of The Insurance Act.

[6] In the alternative, the plaintiff requests that the defendant's representative be ordered to attend further discovery and provide the defendant's understanding in English of each relevant provision of the manual and their application during interaction with the plaintiff.

[…]

[9] The other provision cited is the New Brunswick Rules of Court with respect to there having been an undertaking. The law is clear in a number of cases including Charlebois v. The City of Saint John, that evidence can be presented in documents in either official language. I do not see any duty at law in New Brunswick to provide documents in the official language requested by the party. As I see it, there is no merit in the objection that the policy manual is only produced in one official language.

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23. Where the parties to civil proceedings, other than Her Majesty in right of the Province or an institution, do not choose or fail to agree on the official language to be used in the proceedings, Her Majesty or the institution concerned shall use such official language as is reasonable, having regard to the circumstances.

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24. (1) Any final decision, order or judgment of any court, including any reasons given therefor and summaries, shall be published in both official languages where

(a) it determines a question of law of interest or importance to the general public, or

(b) the proceedings leading to its issuance were conducted in whole or in part in both official languages.

24. (2) Where a final decision, order or judgment is required to be published under subsection (1), but it is determined that to do so would result in a delay or injustice or hardship to a party to the proceedings, the decision, order or judgment, including any reasons given, shall be published in the first instance in one official language and, thereafter, at the earliest possible time, in the other official language.

ANNOTATIONS

McLeod v. Loughlin, 2017 NBCA 50 (CanLII)

[26] Given that the appeal in this matter is scheduled to be heard on November 16, 2017, and that my proposed disposition of this motion would render that hearing unnecessary, I am of the opinion this decision should be made available to the parties without delay. Therefore, I would invoke s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, and direct that this decision be published in one official language and, thereafter, at the earliest possible time, in the other official language.

Atkinson v. R., 2015 Nbca 48 (Canlii)

[47] For these reasons, while I would grant leave to appeal the sentence, I would dismiss the appeal. Since the hearing of this appeal, one of the panel members was appointed to the Federal Court and as Chief Justice of the Court Martial Appeal Court of Canada. According to s. 8(6.1) of the *Judicature Act*, R.S.N.B. 1973, c. J-2, he may continue to exercise his powers as a judge of this Court for six months from the date of his appointment. To ensure this time frame is respected, I would order pursuant to s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, that the English version of these reasons be published with the French version to follow.

R.L. V. J.L., 2017 CANLII 68516 (NB CA)

[7] Considering that it is in the best interests of the children that the question of their custody be resolved as soon as possible, and that further delay may result in an injustice or hardship, I would invoke s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, and direct that this decision be published in one official language and, thereafter, at the earliest possible time, in the other official language.

Her Majesty the Queen in Right of the Province of New Brunswick v. Brad Gould Trucking & Excavating Ltd. and Bird Construction Company, 2015 NBCA 47 (CanLII)

[61] Since the hearing of this appeal, I have been appointed to another Court. According to s. 8(6.1) of the *Judicature Act*, R.S.N.B. 1973, c. J-2, I may continue to exercise my powers as a judge of the Court of Appeal of New Brunswick for six months from the date of my appointment. To ensure this time frame is respected, I would order pursuant to s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, that the English version of these reasons be published first, with the French version to follow.

SEE ALSO :

Dynamic Transport Inc. (Re), 2016 CanLII 96984 (NB CA)

R. v. Tingley, 2015 NBCA 51 (CanLII)

DHP v. PLP (M), 2012 CanLII 78463 (NB CA)

D.E. v. B.G.E., 2012 NBCA 1 (CanLII)

P.R.H. v. M.E.L., 2009 NBCA 18 (CanLII)

Levasseur v. Autorité des Marchés Financiers, 2012 NBQB 409 (CanLII)

B.M.G. Farming Ltd v. New Brunswick, 2010 NBQB 151 (CanLII)

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25. All decisions of the Court of Appeal are deemed to fall within the scope of section 24.

ANNOTATIONS

Town of Caraquet et al. v. Minister of Health and Wellness, 2005 NBCA 34 (CanLII)

[1] Under s. 25 of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, final decisions of the Court of Appeal must be published in both official languages. A decision is published within the meaning of that provision when it is filed with the Registrar of the Court. However, s. 25 is not to be construed so as to prevent the oral delivery of a judgment, including the reasons in support of the judgment, in only one of the official languages. We are delivering a detailed oral judgment now so as to provide the means for an expeditious determination of the proceeding on its merits.

The decision and reasons therefor that we are delivering from the bench today will be published as soon as their English translation becomes available.

SEE ALSO :

Dynamic Transport Inc. (Re), 2016 CanLII 96984 (NB CA)

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26. Sections 24 and 25 shall not be construed so as to prevent the pronouncement of a judgment, including the reasons in support of the judgment, in either official language and in such a case, the judgment is not invalid by reason only that it was pronounced in one official language.

ANNOTATIONS

Town of Caraquet et al. v. Minister of Health and Wellness, 2005 NBCA 34 (CanLII)

[1] Under s. 25 of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, final decisions of the Court of Appeal must be published in both official languages. A decision is published within the meaning of that provision when it is filed with the Registrar of the Court. However, s. 25 is not to be construed so as to prevent the oral delivery of a judgment, including the reasons in support of the judgment, in only one of the official languages. We are delivering a detailed oral judgment now so as to provide the means for an expeditious determination of the proceeding on its merits. The decision and reasons therefor that we are delivering from the bench today will be published as soon as their English translation becomes available.

Communication with the public (sections 27-30)

27. Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.

ANNOTATIONS

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[10] The bilingualism regime established by law in New Brunswick is not personal bilingualism as its purpose is not to ensure that individuals will be proficient in both official languages. Rather, it establishes institutional bilingualism aiming for the use of both languages by the province and some of its institutions in the provision of public services. Under such a regime, individuals have the choice to use either English or French in their dealings with government institutions. On the other hand, certain state activities must necessarily be performed in both languages, legislative bilingualism being a case in point.

Canadian Union Of Public Employees, Local 1252 v. Service New Brunswick, 2016 CanLII 96056 (NB LA)

[27] McGraw noted that, when the grievor was awarded a cartage driver position in 2010 with Horizon Health, the language qualification had been expressed as “English is required”. That truck route served English language facilities in the Miramichi area but it was at Campbellton, where Vitalité facility provided the actual laundry service. At that time, Horizon Health was the client so the language of service provided by Campbellton was in the English language. The grievor benefitted from this policy of service. Now that situation has changed: Service NB is the service provider and the truck route includes bilingual and French language clients / customers who have the right to be served in their official language of choice in accordance with the *Official*

Languages Act, ss. 27 and 28. In other words, for the purposes of the *Official Languages Act*, the regional health authorities and the nursing homes are the "public" in relation to Service NB.

[...]

[45] New Brunswick has a great reputation as Canada's only officially bilingual province. At the federal level, local access to government services in the language of choice is based on a "numbers warrant" approach; not so in New Brunswick where the right to access is territorial. In this province, members of the public have a right to communicate with government in the official language of their choice wherever they are in the province. This is a strength of New Brunswick and its people and is guaranteed by both the *Official Languages Act*, S.N.B. 2002, c O-0.5 and the *Canadian Charter of Rights and Freedoms*, s. 20(2).

[46] As such, the grievance in this matter does not challenge the policy and law ensuring access to government services for all members of the public in New Brunswick. The grievance presents an interplay between the law, policy, and the Collective Agreement governing the employment relationship between an employee and a public sector employer. The law is paramount but an employer's policy is subject to the terms of a Collective Agreement.

[...]

[59] While deference is ordinarily given by arbitrators to management decisions regarding essential job qualifications, I find it difficult to characterize as "reasonable" or "relevant" an essential qualification of fluent bilingualism for a cartage driver with six clients and little, if any, direct communication with those clients. As expressed by a witness for the employer at the hearing, the employer's position is "bilingual is bilingual". In the context of the evidence in this matter, I conclude that the "BE" qualification is unreasonable and not "relevant"; it is used by the employer in as an absolute standard without real consideration of context in relation to "customer facing".

Canadian Union of Public Employees, Local 1190 v. New Brunswick (Transportation and Infrastructure), 2015 CanLII 38685 (NB LA)

[51] Official bilingualism has existed in New Brunswick for decades. Taking judicial notice, there is both a constitutional and a statutory obligation on the provincial government to provide services to members of the public in the official language of their choice. See: *Canadian Charter of Rights and Freedoms*, section 20(2) and *Official Languages Act*, S.N.B. 2002, c. O.5, s. 27, *et seq*. Neither the *Charter* nor the *Act* expressly declare an individual right to employment with a government department or agency and to work in the official language of one's choice. The right is held by members of the public and not the employees who provide services to them.

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28. An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.

ANNOTATIONS

Canadian Union Of Public Employees, Local 1252 v. Service New Brunswick, 2016 CanLII 96056 (NB LA)

[27] McGraw noted that, when the grievor was awarded a cartage driver position in 2010 with Horizon Health, the language qualification had been expressed as "English is required". That truck route served English language facilities in the Miramichi area but it was at Campbellton, where Vitalité facility provided the actual laundry service. At that time, Horizon Health was the client so the language of service provided by Campbellton was in the English language. The grievor benefitted from this policy of service. Now that situation has changed: Service NB is the

service provider and the truck route includes bilingual and French language clients / customers who have the right to be served in their official language of choice in accordance with the *Official Languages Act*, ss. 27 and 28. In other words, for the purposes of the *Official Languages Act*, the regional health authorities and the nursing homes are the "public" in relation to Service NB.

[...]

[45] New Brunswick has a great reputation as Canada's only officially bilingual province. At the federal level, local access to government services in the language of choice is based on a "numbers warrant" approach; not so in New Brunswick where the right to access is territorial. In this province, members of the public have a right to communicate with government in the official language of their choice wherever they are in the province. This is a strength of New Brunswick and its people and is guaranteed by both the *Official Languages Act*, S.N.B. 2002, c O-0.5 and the *Canadian Charter of Rights and Freedoms*, s. 20(2).

[46] As such, the grievance in this matter does not challenge the policy and law ensuring access to government services for all members of the public in New Brunswick. The grievance presents an interplay between the law, policy, and the Collective Agreement governing the employment relationship between an employee and a public sector employer. The law is paramount but an employer's policy is subject to the terms of a Collective Agreement.

[...]

[59] While deference is ordinarily given by arbitrators to management decisions regarding essential job qualifications, I find it difficult to characterize as "reasonable" or "relevant" an essential qualification of fluent bilingualism for a cartage driver with six clients and little, if any, direct communication with those clients. As expressed by a witness for the employer at the hearing, the employer's position is "bilingual is bilingual". In the context of the evidence in this matter, I conclude that the "BE" qualification is unreasonable and not "relevant"; it is used by the employer in as an absolute standard without real consideration of context in relation to "customer facing".

28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

ANNOTATIONS

Sonier v. Ambulance New Brunswick Inc., 2016 NBQB 218 (CanLII)

[6] In this instance, the facts of this action arise from a telephone call Murielle Sonier made to Ambulance New Brunswick on February 19, 2013, seeking their assistance for her brother, Danny Sonier, who was having a severe hypoglycemic episode. When two paramedics from Ambulance New Brunswick arrived, neither could speak French and both spoke English to the patient, who does not understand it. No active offer of service in either official language was made to the plaintiffs.

[7] In the course of this proceeding, Ambulance New Brunswick and the Province of New Brunswick have acknowledged failing to meet the active offer obligation assigned to Ambulance New Brunswick under s. 28.1 of the *Official Languages Act*, and to provide services in French for lack of paramedics on duty. Although the paramedic crew initially assigned for February 19, 2013, was bilingual, the crew was re-formed with another unilingual member, who replaced the bilingual member who was absent due to illness. The latter member was apparently replaced in accordance with the provisions of the collective agreement between the union and Ambulance

New Brunswick. Only the remedies sought by the plaintiffs in the Statement of Claim are in dispute.

[...]

[25] Ambulance New Brunswick and the Province of New Brunswick admitted in the Stated Case to breaching s. 28.1 of the *Official Languages Act* since they did not offer Mr. and Ms. Sonier ambulance service in French or make an active offer of service in French.

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29. Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

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

2013, c. 38, s. 1

Policing services (sections 31-32)

31. (1) Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.

31. (2) If a peace officer is unable to provide service in the language chosen under subsection (1), the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made under subsection (1).

31. (3) A police force or agency, as the case may be, shall ensure the availability of the means necessary to respond to the choice made by a member of the public under subsection (1) and to support the obligation placed on a peace officer under subsection (2).

31. (4) When determining if a peace officer has taken the measures necessary under subsection (2) within a reasonable time, a court shall consider the efforts made by the police force or agency to fulfil its obligations under subsection (3).

2013, c. 38, s. 1

ANNOTATIONS – SUBSECTION 31(1)

R. v. Losier, 2011 NBCA 102 (CanLII)

[5] In a remarkably detailed decision, the Court of Queen's Bench judge, sitting on appeal under Part XXVII of the *Criminal Code*, dismissed the Attorney General's appeal after ruling: (1) the trial judge had jurisdiction to decide the issue of whether the respondent's language rights had been violated after he was stopped; (2) the police officer's duty to inform the respondent of his right to be served in the official language of his choice arises not only from s. 31(1) of the *Official Languages Act*, but also from s. 20(2) of the *Charter*; and (3) the trial judge correctly concluded the rights conferred upon the respondent by these provisions had been violated and properly excluded the qualified technician's certificate pursuant to s. 24(2) of the *Charter*.

[...]

[8] That being said, we are in substantial agreement with the reasons given by the judge of the Court of Queen's Bench (see paras. 14-49 in particular). In our opinion, those reasons reflect a sound appreciation of the pertinent principles of law, particularly with respect to the meaning and scope to be given to s. 20(2) of the *Charter*.

R. v. Losier, 2011 NBQB 177 (CanLII)

[15] The trial judge in this case found that there had been a violation of s. 31(1) of the *Official Languages Act* and of s. 20(2) of the *Charter* when the police officer failed to inform Mr. Losier of his right to be served in the official language of his choice. The Attorney General does not dispute this fact or the seriousness of the violation but alleges that the Provincial Court does not have jurisdiction to rule on a language right violation.

[...]

[19] As we will see later, language rights in New Brunswick are substantive and not only procedural; to accept the Attorney General's argument would be to accept that language rights are of secondary importance. This argument is dismissed.

[...]

[21] The Attorney General admits that Officer Jordan did not inform Mr. Losier of his right under s. 31(1) of the *Official Languages Act* to communicate in the language of his choice. The right to be informed is not specified in s. 20(2) of the *Charter*. The trial judge nevertheless found that there had been a violation of this right not only under s. 31(1) of the *Official Languages Act*, but also under s. 20(2) of the *Charter*.

[...]

[27] To underline the importance of the right to use English and French, s. 31(1) provides that a police officer must inform members of the public of the right to use the language of their choice.

[...]

[29] I agree with my colleague Lavigne J. and with the trial judge that s. 20(2) of the *Charter* includes the officer's duty to inform the accused of his right to use the language of his choice, as does s. 31(1) of the *Official Languages Act*.

[...]

[37] In his assessment of the seriousness of the officer's conduct, the trial judge considered the following factors:

a) his observation that Mr. Losier had a strong French accent and that although he understood English, it should have been obvious that Mr. Losier's use of English was basic;

b) the officer was well aware of his duty under s. 31(1) of the *Official Languages Act*, yet he never informed Mr. Losier of his right to be served in the language of his choice until the latter told him that he would prefer a lawyer who could speak French;

c) more than 30 minutes had elapsed since Mr. Losier was initially detained and he had already provided a sample of his breath in an approved screening device; and

d) finally, the fact of being told by the Crown Prosecutor about similar incidents in three different instances where the Fredericton Police had failed to comply with s. 31(1) of the *Act*.

[38] The trial judge noted that the officer had shown a rather troubling lack of concern for Mr. Losier's linguistic rights, although he hastened to add that the officer did not act in bad faith.

[39] The trial judge found, and I agree with him, that the officer's conduct was a blatant violation of Mr. Losier's language rights under the *Official Languages Act* and the *Charter*.

R. v. McGraw, 2007 NBCA 11 (CanLII)

[1] Under s. 31(1) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice. Just as significantly, the section goes on to provide that members of the public must be informed of their right to receive service in the official language of their choice. Thus, the *Official Languages Act* recognizes, in explicit terms, a right that some, but not all judges have been willing to infer from a contextual reading of the constitutional provisions that pertain to linguistic rights and obligations in this Province (see ss. 16(2), 16.1 and 20(2) of the *Canadian Charter of Rights and Freedoms*, *The Constitution Act, 1982* as well as *R. v. Gautreau* (1989), 101 N.B.R. (2d) 1, [1989] N.B.J. No. 1005 (QL)(Richard, C.J.Q.B.) and *R. v. Haché*, (E.) (1993), 139 N.B.R. (2d) 81 (C.A.), [1993] N.B.J. No. 474 (QL)).

[2] Interestingly, the *Official Languages Act* makes plain that a peace officer's inability to communicate in the language chosen by the member of the public will not excuse a failure to respect the rights conferred by s. 31(1). Indeed, s. 31(2) obligates a peace officer who is unable to provide service in the language chosen by the member of the public to take whatever measures are necessary, within a reasonable time, to ensure "compliance with the choice made [Emphasis added]" under s. 31(1). Section 31(3) goes on to impose upon a police force or agency the obligation to ensure the availability of the means necessary to respond to the "choice made by a member of the public [Emphasis added]" and "to support the obligation placed on a peace officer" under s. 31(2).

[...]

[6] The Attorney General readily concedes that the summary conviction appeal judge was correct in finding that Mr. McGraw's rights under s. 31(1) of the *Official Languages Act* had been infringed, but he nonetheless seeks leave to appeal the verdicts of acquittal, arguing that neither of the courts below had jurisdiction to entertain what he frames as "a complaint of a breach of the *Official Languages Act*". In that regard, the Attorney General relies upon s. 43 of the *Official Languages Act* and the absence from the *Act* of any provision comparable to s. 24(1) of the *Charter* for the related contentions that only the Commissioner of Official Languages has original jurisdiction to deal with a complaint of a breach of s. 31(1) and that its violation is inconsequential in prosecutions governed by the *Provincial Offences Procedure Act*, S.N.B. 1987, c. P-22.1 ("*POPA*"). For the reasons that follow, I respectfully disagree. In short, I am of the view that any violation of s. 31(1) that brings about a flawed Notice of Prosecution brings into play s. 106 of *POPA*, subsection (7) of which ordains the withdrawal of any Notice of Prosecution that features an incurable "defect". The question whether s. 106 constitutes the sole source of the Provincial Court's remedial jurisdiction for violations of the *Official Languages Act* that do not implicate the *Charter* - assuming for the sake of argument and our present purposes, that such a state of affairs can exist - need not be answered to resolve the present litigation and, for that reason, I abstain from offering any views on the subject.

[...]

[11] On June 21, 2003, Mr. McGraw was pulled over by an RCMP officer on Main Street in Tracadie-Sheila, New Brunswick. The officer suspected that Mr. McGraw was not wearing his seat-belt. The officer addressed Mr. McGraw in French and all ensuing communications were in that language. The officer did not, at any time, inform Mr. McGraw of his right to be served in the official language of his choice. While Mr. McGraw, who is fluently bilingual, did not voice an objection to the use of the French language, he never chose that official language as the

language to be employed in his communications with the peace officer. As noted, the Attorney General concedes, rightly in my view, that Mr. McGraw's rights under s. 31(1) of the *Official Languages Act* were violated.

[...]

[17] The summary conviction appeal judge found that the record revealed "a clear breach of the [defendant's] right to be informed of his choice of language" under s. 31(1) of the *Official Languages Act*. He came to that conclusion after making the following observations, all of which I unhesitatingly agree with:

> (a) The right to choose
>
> 19 Section 31 of the *Official Languages Act* creates an absolute right of a member of the public in New Brunswick when communicating with a police officer to receive service in the official language of his choice. The section goes on to create a corresponding duty on police officers to inform the members of the public of that right. Section 31 creates a further obligation on a police force or agency "to ensure the availability of the means necessary to respond to the choice made by a member of the public." Section 31 therefore creates a dual right, a right to choice of language and a right to be informed of that right. The police officer has a further duty to make the means of communication available to the member of the public if he or she is unable to communicate in the language of choice.
>
> 20 In *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768; [1999] S.C.J. No. 25, the Supreme Court was dealing with the right of an accused to be tried before a court who speaks his language of choice and to be informed of that right (s. 530 C.C.C.). In a 7-2 majority decision, the Court held at paragraph 28 that the right created by section 530 of the *Criminal Code* is:
>
> [...] a substantive right and not a procedural one that can be interfered with.
>
> Similarly, the right to choice of language and the right to be informed of that right under section 31 of the *Official Languages Act* of New Brunswick are, in my view, substantive rights and not procedural ones.
>
> 21 The object of section 31 is found in the preamble to the statute. It is to advance the equality of status or use of English and French in New Brunswick as encouraged by subsections 16(2) and (3) of the *Charter* by conferring unto the members of the public in this Province the right to communicate with police officers in either French or English.
>
> 22 In order to give true meaning to the section 31 right of choice, the legislature imposes a corresponding duty on police officers to inform members of the public of the existence of that right.
>
> 23 The duty to inform imposed by section 31 was no doubt inserted to resolve by legislation the difficulties encountered by the courts in giving interpretation to subsection 20(2) of the *Charter*. Whereas subsection 20(2) of the *Charter* is silent as to the right to inform, subsection 31(1) of the *Official Languages Act* is clear. Police officers must inform of the right to choice of language.
>
> 24 The right to choose created by subsection 31(1) is that of the detainee not of the police officer. It is not within the discretion of the police officer to assume that because a person responds in the language chosen by him or because the person initiated the communication in a particular language that that is his or her language of choice. It may be, but then it may not. […]

(b) The duty to inform

[…]

26 By imposing on police officers an unequivocal duty to inform members of the public of the right to make a language choice, section 31 has eliminated the confusion between an absolute language right and the fairness of the process. [...]

[...]

[22][...] In any event, there have been significant developments in the law relating to language rights since *Haché*, including a number of authoritative judicial pronouncements favoring a more liberal approach to the interpretation of language rights legislation (e.g., *Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25 (QL) and *Charlebois v. Moncton (City)*) and the adoption of s. 31 of the *Official Languages Act* which, having regard to the *Act*'s Preamble, arguably adds invaluable clarifying insights into the intended effect of s. 20(2) of the *Charter*. [...]

[35] I would wrap up the proceedings by echoing the summary conviction appeal judge's emphasis on the importance of linguistic rights in New Brunswick, the only Province with two official languages. Language rights, whether sourced in the *Charter*, the *Official Languages Act* or *POPA*, set us apart in the Canadian federation; as time goes by, more and more of our citizens proudly view those rights as what defines them as New Brunswickers. Hopefully, the outcome of these proceedings will bring home to peace officers engaged in the enforcement of provincial legislation that language rights are infrangible.

R. v. Allen Brideau, 2016 NBQB 197 (CanLII)

[12] When confronted directly upon being stopped the defendant asked to be spoken to in French. Mr. Turcotte noted that Mr. Brideau seemed to have difficulty understanding English. Neither Officer Turcotte nor his partner Frank Dolan had much competence in French. The trial judge found that the evidence to that point, that is, when the officers came to the side of the vehicle and said "hello-bonjour" was admissible (T. p. 4, l. 17-18) including the fact that it had been proven beyond a reasonable doubt that the person stopped had simulated the call of a moose on four occasions that evening. (T. p.4, l. 18-23) He also found that the person stopped was looking for and was waiting for moose at night within the meaning attributed to "hunt" by the *Fish and Wildlife Act* S.N.B. 1980, c. F 14.1, Section 1(1) of the Act and was guilty of having hunted moose at night as alleged. (T. p. 5, l. 1-8)

[...]

a) The Legal Status of Language Rights Choice in New Brunswick

[33] It is settled law in this province that saying "Hello-Bonjour" to a New Brunswick citizen does not satisfy the requirements of s. 31(1) of the [*Official Languages*] *Act*. *R. v. Theriault* 2012 NBQB 184 (CanLII), 2012 NBQB 184 (N.B.Q.B.) per Leger J. at paragraph 13. In *Losier* the requirement of "active offer" of language rights choice was settled. A violation of language rights protected by the [*Canadian*] *Charter of Rights and Freedoms* and the *Act* gives rise to a s. 24(2) exclusion of evidence analysis. *Losier* at paragraph 11; *Theriault* at paragraph 22. The language rights of the defendant guaranteed by the *Act* and the *Charter* were thus violated.

[...]

[37] The trial judge found the opening comment of Officer Dolan, "Hello-Bonjour", a greeting he testified he was ordered to convey in such circumstances by the courts and the Department constituted a violation of s. 31 of the *Act*, also constituted extremely grave behaviour and was, as well, a flagrant violation of the *Charter* weighing heavily in favour of exclusion of the evidence under the first Grant principle. (Reasons for judgment p.10, l. 1-10 As well, the trial judge seemed

to be troubled by the fact that: 1) the Minister of Natural Resources had not put in place five years after the Court of Appeal's decision in *McGraw* policies that would address the right to language choice by anyone dealing with Conservation Officers in this province, and 2) had appointed Officer Woulds to a bilingual position when his competence in French was inadequate when dealing with citizens who wished to be communicate with in French and were anxious and spoke quickly. Thus, the seriousness of the *Charter*-infringing state conduct was such that it weighed heavily in favour of exclusion. [...]

[41] I am keenly aware of the principles set down in *Losier* at paragraph 10 relying on *R. v. Beaulac* 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768 (S.C.C.) where our Court of Appeal stated:

> As the majority pointed out in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25 (QL), it is incumbent upon courts to eschew a restrictive interpretation of legislative and constitutional provisions dealing with language rights. We draw additional guidance from that landmark decision. Indeed, among the interpretations that might reasonably be given to such provisions, courts must favour the one that is more likely to reflect the application of the following principles: (1) the right to use one or the other official language requires acknowledgement of a duty on the part of the state to take positive steps to promote the exercise of that right; and (2) the objective of the entrenchment of this right in the Charter was none other than to contribute to "the preservation and protection of official language communities":…

[42] However, what I believe differentiates this case from *Losier* is principally the officers continued to gather evidence against the detained defendant in that case while the violation of the accused's language continued and secondly the violation continued for thirty minutes. In this case that did not happen and indeed the officers appeared to be attempting to respect Mr. Brideau's right to be served in the language of his choice before any steps were taken to continue their investigation. In this instance the violation went on for only half that time and the officers made a deliberate decision not gather evidence against the defendant during that period of time.

[43] Bearing in mind Chief Justice McLachlin's admonition of taking both a purposive and generous approach to constitutional rights analysis, and allowing for generous interpretation of those rights, I cannot agree that a seventeen minute delay in the circumstances of this case as described warranted a rejection of the evidence of identity and the two seized electronic moose calls.

[...]

[47] Moreover, the officers waited before searching the vehicle, seizing any items they believed may have been used in the commission of the offence and refrained from questioning the defendant until his language rights and *Charter* right to legal counsel were administered seventeen minutes after his detention. Indeed, had those constitutional rights been administered immediately upon him being detained nothing would have changed because of the decision made by the officers to "hold off" doing anything until the *Act* and the *Charter* had been complied with by them.

[...]

[51] It is clear that the *Charter* infringing conduct was serious. A denial of the "active offer" of language rights is to be discouraged. However, the context in which the breach occurred saw the officers "hold off" doing anything with respect to their investigation by way of gathering evidence or conscripting the accused in the manufacture of self-incriminatory evidence against himself for the seventeen minutes it took to secure a person completely competent to administer the defendant his constitutional rights. The tactic employed by these conservation officers was the same as that employed by the police officers in *Couturier*. In *Couturier* the Court dealt with the manner in which the officers corrected the breach of the constitutional rights of the accused by

affording him the right to speak to counsel before they continued their investigation saying at paragraph 59:

> While there is a temporal connection between the infringement and the ensuing events in the case at bar, one can find no causal relationship, in my opinion, between the gathering of the incriminating evidence and the violation. Indeed, when the evidence of Mr. Couturier's guilt (i.e. his breath sample analysis results) was obtained, the peace officers had corrected the violation of his right to counsel. (In this regard, see the comments of Bastarache J.A., as he then was, on behalf of the Court of Appeal in *R. v. Ouellette* (A.) (1996), 1996 CanLII 4825 (NB CA), 182 N.B.R. (2d) 306, at para. 14.) However, as Robertson J.A. stated in *R. v. O'Donnell* (2004), 2004 NBCA 26 (CanLII), 19 C.R. (6th) 354, at paragraph 24 (N.B.C.A.): "Provided that the evidence is obtained as part of the "chain of events" involving a *Charter* breach, it is proper to conclude that the evidence was obtained as a result of the breach." In the case at bar, I must conclude that, even if there is no causal link with the infringement of the right to counsel, the temporal relationship is such that the evidence was obtained in violation of a constitutional right. (See Strachan, at p. 1005.)

[52] The same occurred in the instant where the officers “held off” continuing any aspect of their investigation until the defendant had been given his rights under the *Act* and the *Charter*.

[...]

[56] For the above reasons, I find that the evidence of identity should not have been excluded, nor should the electronic moose calls have been excluded pursuant to s. 24(2) of the *Charter* even although the language rights guaranteed by the *Act* and the *Charter* were violated if only for a short time.

McGraw v. R., 2012 NBQB 358 (CanLII)

[19] The appellant asks the Court to conclude that the use of the words “*Hello*/Bonjour, français/anglais, *French/English*” does not constitute an active offer within the meaning of the *Official Languages Act*. It follows that, according to the appellant, his linguistics rights have been violated, such violation warranting a remedy under subsection 24(2) of the *Charter*.

[20] To my knowledge, there is no caselaw directly on point. This is an important issue, which falls within the series of recent key judgments on linguistics rights that have been rendered in New Brunswick.

[21] Following the decision by our Court of Appeal in *R. v. Losier*, 2011 NBCA 102 (CanLII), it is well established that police officers have an obligation to make an active offer to the driver of any intercepted vehicle. Failure by a peace officer to make an active offer to any member of the public constitutes a violation of subsection 31(1) of the *Official Languages Act* and of subsection 20(2) of the *Charter of Rights*.

[...]

[23] The question here is whether or not the words used by the peace officer constituted an active offer within the meaning of subsection 31(1) of the *Official Languages Act* and subsection 20(2) of the *Charter*. During the hearing of this appeal, a variation between the French and English versions of subsection 31(1) was brought to the attention of the Court. For analytical purposes, the two versions of subsection 31(1) are reproduced below.

> 31(1) *Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and* ***must be informed of that right.***
>
> 31(1) Tout membre du public a le droit, lorsqu’il communique avec un agent de la paix, de se faire servir dans la langue officielle de son choix et il doit **être informé de ce choix.**

[24] According to the French version, members of the public have a right to receive service in the language of their choice and they must be informed of that **choice**, whereas, according to the English version, members of the public have a right to receive service in the language of their choice and they must be informed of that **right**. The two versions raise certain questions regarding the obligations imposed by the legislation on peace officers towards members of the public. In my view, the answer to that question can be found in the decision of the Court of Appeal in *R. v. McGraw*, 2007 NBCA 11 (CanLII).

[...]

[26] As a result of interpretation given by the courts of the applicable legislative provisions, peace officers have two obligations: 1) the obligation to inform members of the public of their right to receive service in either one of the official languages; and 2) the obligation to inform members of the public of the choice they have to receive service in either one of the official languages.

[27] In the circumstances of this case, are the words "*Hello*/Bonjour, Français/Anglais, *French/English*" sufficient to meet the obligations stated in article 31 of the *Official Languages Act*?

[28] With respect, I am of the opinion that the words used by Constable Lajoie do not meet the double obligation imposed under subsection 31(1) of the *Official Languages Act*. More precisely, the words used do not inform the appellant, as a member of the public, that they refer to a right to receive service in the language of his choice. Furthermore, at the hearing the representative for the Attorney General admitted that the words used by Officer Lajoie did not meet the informational requirement,that is the obligation to inform the appellant that the words meant he had the right to receive service in the language of his choice.

[29] I find that the words used by Constable Lajoie cannot constitute an active offer within the meaning of subsection 31(1) of the *Official Languages Act* and of subsection 20(2) of the *Charter*, therefore, I find that there was a violation of the appellant's linguistics (sic) rights.

R. v. Thériault, 2012 NBQB 184 (CanLII)

[8] Since the filing of the Notice of Appeal in this case, our Court of Appeal delivered a decision that is determinative of the issue of language rights in the province of New Brunswick. In *R. v. Losier*, 2011 NBCA 102 (CanLII), the Court of Appeal affirmed the decision of the Court of Queen's Bench judge sitting on appeal. Thus, the jurisdiction of the Provincial Court to rule on whether the language rights of a member of the public have been violated after he was stopped was affirmed, as was the police officer's duty to inform an individual of his right to be served in the official language of his choice: a duty that arises not only from s. 31(1) of the *Official Languages Act*, but also from s. 20(2) of the *Charter*.

[9] The Court of Appeal's decision in *Losier* therefore answers the Crown's first two grounds of appeal. The Court of Appeal added that *Charter*-guaranteed language rights were infrangible. The duty to make an active offer arising from s. 31(1) of the *Official Languages Act*, as well as from s. 20(2) of the *Charter* is now well established in New Brunswick. All peace officers working in New Brunswick must comply.

[...]

[13] I agree with the finding of the trial judge that a peace officer who stops a member of the public, such as the respondent, and only says "Hello, Bonjour" does not meet the obligation described under s. 31(1) of the *Official Languages Act*. In my opinion, the peace officer's duty to inform the respondent of his right to be served in the official language of his choice, a duty that arises not only from s. 31(1) of the *Official Languages Act*, but also from s. 20(2) of the *Charter*, cannot be met merely by saying "Hello, Bonjour". I am of the opinion that the trial judge was

correct in finding that there was a violation of the respondent's language rights conferred by s. 31(1) of the *Official Languages Act* and by s. 20(2) of the *Charter*.

[14] That the conversation with the respondent continued solely in French does not reasonably allow us to maintain that the peace officer had met her obligations with respect to the respondent's language rights. The trial judge was correct in finding that the respondent's language rights had been breached in the circumstances of this case, and as a result it opened the way to an analysis under s. 24(2) of the *Charter*. For these reasons, the third ground of appeal is dismissed.

R. v. Robichaud, 2012 NBQB 359 (CanLII)

[18] There is no question that Officer Dulac breached his duty under s. 31(1) of the *Official Languages Act* and s. 20(2) of the *Charter* by failing to make to the respondent an active offer of service in the language of his choice and to inform him of this right. The Crown acknowledges that since the Court of Appeal decision in *R. v. Losier*, 2011 NBCA 102 (CanLII), s. 31(1) of the *Official Languages Act* and s. 20(2) of the *Charter* impose a duty on a peace officer to make an active offer as to choice of language. I would also add: and to inform of this right.

R. v. Gaudet, 2010 NBQB 27 (CanLII)

[7] The Attorney General readily admitted that the trial judge was correct in her finding that Mr. Gaudet's rights under s. 31(1) of the *Official Languages Act* were infringed in that the peace officer did not inform Mr. Gaudet of his right to be served in the official language of his choice when communicating with him. However, he submitted that the Provincial Court has no jurisdiction to rule on a language right violation, whether it be under the Charter or the *Official Languages Act*.

[8] The Attorney General correctly argued that linguistic rights are a special class of rights that are distinct from fundamental principles of justice and have a totally distinct origin and role. However, the principle of equality enunciated in s. 16 of the *Charter* must be given true meaning and the principle is in no way diminished by the fact that linguistic rights are the result of political compromise and constitute a special category of basic rights.

[9] The parties agreed that the fairness of the trial was not jeopardized and that the right to a fair trial was respected. However, linguistic rights must not be construed so narrowly that they are protected only to the extent of ensuring a person's ability to grasp what is being communicated. The linguistic abilities of a citizen are irrelevant in determining whether rights conferred by the *Official Languages Act* have been infringed. As Bastarache J. remarked at para. 41 of *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25 (QL), language rights are completely distinct from trial fairness and fairness of the trial is certainly not a threshold that, if satisfied, can be used to deny the accused his language rights. The choice of language is meant to assist members of the public in gaining equal access to a public service that is responsive to their linguistic and cultural identities.

[10] For reasons that I will explain shortly, I find that the trial judge did not err in law in concluding that the absence of an active offer on the part of the peace officer amounted not only to a violation of s. 31(1) of the *Official Languages Act* but also to a violation of s. 20(2) of the *Charter*. My ruling opens the way to remedial action under s. 24 of the *Charter*. Therefore it is unnecessary for the purposes of this appeal to determine the origin of the Provincial Court's jurisdiction to order a remedy for a violation of the *Official Languages Act* which does not bring the *Charter* into play. I will thus abstain from ruling on this issue.

[...]

[13] It is well-recognized that in New Brunswick, a peace officer who fails to inform a member of the public of his or her right to be served in the official language of his or her choice infringes that citizen's language rights under s. 31(1) of the *Official Languages Act*. However, there is no

consensus as to whether the absence of an active offer constitutes a violation of s. 20(2) of the *Charter*.

[...]

[22] Section 20(2) of the *Charter* establishes two distinct rights: the right to communicate and the right to receive services in French or English. Unlike s. 31(1) of the *Official Languages Act*, there is no express duty on the part of a peace officer to inform the public of their right to receive service in the official language of their choice.

[...]

[24] It is not enough for a linguistic guarantee to be offered on paper; it must be applied or put into practice in order to have meaning. In its Preamble, the *Official Languages Act* introduces a law that "respects the rights conferred by the *Canadian Charter of Rights and Freedoms* and allows the Legislature and the Government to fulfill their obligations under the *Charter*." The Province of New Brunswick passed legislation to satisfy its constitutional obligations under s. 20(2) and to thus ensure the respect and practical application of linguistic guarantees. As Chief Justice Drapeau stated in *McGraw*, at para. 22: "the adoption of s. 31 of the *Official Languages Act* which, having regard to the Act's Preamble, arguably adds invaluable clarifying insights into the intended effect of s. 20(2) of the *Charter*."

[...]

[32] In *McGraw*, Chief Justice Drapeau endorsed the view of the summary conviction appeal judge who stated that rights conferred by s. 31 of the *Official Languages Act* are "substantive rights and not procedural ones".

[...]

[42] People who speak a minority official language must be afforded linguistic guarantees. Providing services in the minority language only when the citizen makes such a request does not provide any serious guarantee. Linguistic minorities will not always ask for the services to which they are entitled. When a citizen is stopped by a peace officer who speaks to him in an official language that is not the language of his choice, that citizen will resign himself to speaking the peace officer's language for fear of worsening his lot if he asks the officer to speak to him in the other official language. The notion of "active offer" is of the utmost importance in terms of progression towards the equality of status of the two official languages. This coincides well with the notion that *Charter* language rights are remedial in nature having regard to past injustices.

[...]

[44] The fact that the provincial legislator adopted s. 31(1) of the *Official Languages Act* does not make the *Charter* inoperative. The rights protected by s. 31(1) of the *Official Languages Act* are not new. They are already *Charter* rights under s. 16(2) and under s. 20(2) in particular. The *Official Languages Act* is simply an illustration of the advancement of linguistic rights by statutory means under s. 16(3) of the *Charter*. In fact, I venture to say that s. 31 remedied the situation as it existed. As we know, many decisions handed down prior to the coming into force of s. 31(1) of the *Official Languages Act* came to the conclusion that the absence of an active offer did not automatically infringe *Charter* language rights.

R. v. Furlotte, 2010 NBQB 228 (CanLII)

[24] It is beyond dispute that the provisions of s. 31(1) of the *Official Languages Act of New Brunswick* recognize an obligation to make an "active offer" to anyone in New Brunswick who communicates with or receives a service from a peace officer to do so in the official language of their choice. That right is specifically codified in s. 31(1) of the Act. The same substantive right to

language choice is constitutionally recognized in s. 20(2) of the *Charter* and applies to anyone communicating with or receiving service from any "office of an institution of the legislature or government of New Brunswick." However, Section 20(2) of the *Charter* is silent with respect to whether the right contains "a duty of active offer" on the part of those state agents who fall within the curtilage of the section when a member of the public is communicating with or receiving service from them.

R. v. Gautreau, 2017 NBPC 5 (CanLII)

[8] After taking his name [of the accused], the constable asked him if he had had any alcoholic beverages and, when the detainee denied that he had been drinking, informed him that his friends had told them otherwise. He had him spell his name, got his date of birth and told him that he was going to read him his rights. It was only at this point that he addressed the choice of language for the first time. He asked him, "Do you want this in French?" The detainee replied that he did. The constable read him, in French, the right to retain and instruct counsel, the caution and the demand to provide a breath sample by means of an approved screening device.

[...]

[12] In my view, Constable Doucet did not inform Mr. Gautreau that he had the right to receive service in the official language of his choice. Instead, he asked him if he wanted to receive service in French. Asking the question the way Constable Doucet did does not meet the requirements of s. 31(1) of the Act. In fact, the detainee was never actively offered a choice as required by the provision in question. The constable simply assumed, because he had spoken to him in French and been understood, that the individual would simply want to continue speaking to him in French. I do not believe it was open to him to so conclude. He was required to actively offer a choice and to allow the individual, after being given the choice, to select his choice of language.

[13] Section 31(1) of the *Official Languages Act* was therefore breached. According to the Court of Appeal of New Brunswick, a breach of s. 31(1) of the Act is also a breach of s. 20(2) of the *Canadian Charter of Rights and Freedoms*: see para. 10 of *R. v. Losier* (2011) NBCA 102.

[...]

[34][...] Much like in *Landry*, [TRANSLATION] "the peace officer did not act deliberately or in bad faith in dealing with the respondent as he did. Rather, the respondent describes the peace officer's actions in relation to his language rights as careless" (at para. 27). In my view, Constable Doucet was well aware of his responsibility to advise the people with whom he communicated of their right to use the language of their choice but, in this case, was careless in dealing with the detainee. He did not treat him with disregard or disdain and was not disparaging. This is not misconduct on the part of the peace officer. The officer simply assumed that Mr. Gautreau would want to continue speaking to him in the language in which he had initially spoken to Mr. Gautreau and in which Mr. Gautreau had replied. This sort of obvious breach of the provisions of *the Official Languages Act* is a serious violation of a fundamental right, but it does not on every occasion require that a complete defence be granted to an accused as soon as the infringement of a language right has been established.

R. v. Lavoie, 2014 NBPC 43 (CanLII)

[31] The defendant contends that the SPCA [Society for the Prevention of Cruelty to Animals] officers infringed his language rights on October 25, 2011, and I agree. The period that is of concern here is the one lasting some 30 to 45 minutes before the bilingual RCMP [Royal Canadian Mounted Police] member reached the kennel. This was a gross violation of s. 31(1) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5 ("*Official Languages Act*"), in addition to being a violation of s. 20(2) of the *Charter*. As a result, these violations pave the way for a remedy under s. 24(2) of the *Charter*.

[…]

[35] The prosecution acknowledges that the SPCA officers infringed the defendant's language rights on October 25, 2011, during the period of some 30 to 45 minutes before the bilingual RCMP member arrived. This was, in my opinion, a sensible concession. However, it submits that this was merely a transient and trivial breach that had no impact on the evidence obtained. The prosecution adds that during the period in question, the unilingual English-speaking SPCA officers were making their observations at a place of business, a place where, by its very nature, the expectation of privacy is reduced. It, therefore, contends that the evidence obtained should not be excluded and that, in short, the interest of justice requires that the case be adjudicated on its merits.

[…]

[82] In this case, it is clear that the SPCA officers infringed the defendant's language rights by presenting him with an entry warrant written only in English. I repeat: it was incumbent upon the SPCA officers to present him with an entry warrant in Form 2 with the pre-printed portions in both official languages, in accordance with the *Forms Regulation*, 88-218. All the more reason, then, that the failure to do so resulted in the infringement of the defendant's language rights guaranteed under both s. 31(1) of the *Official Languages Act* and s. 20(2) of the *Charter*. Likewise, considering the obligations incumbent upon New Brunswick peace officers under s. 20(2) of the *Charter*, this was, to my mind, much more than a simple formal defect.

[…]

[84] However, there was nothing onerous for the SPCA officers in the obligation to fill out the entry warrant form in this way. Indeed, s. 31(3) of the New Brunswick *Official Languages Act* expressly provides that a police force or agency shall ensure the availability of the means necessary to respond to the choice made by a member of the public as to the official language in which he or she wishes to receive services. Of course, this in no way limited Corporal Parish's right to fill out Form 1, Application for Entry Warrant, in the official language of his choice. Unlike Form 2 (Entry Warrant), Form 1 (Application for Entry Warrant) was clearly not intended for the defendant; moreover, it cannot be likened to a "service" that a "member of the public" "receives" within the meaning of s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

[85] The prosecution contends that since the entry warrant was addressed only to the peace officers, they had no obligation to fill it out either in French or in both official languages. I consider that argument to be without merit. It bears repeating, once again, that the defendant was, in fact, the recipient of the entry warrant. He was also the owner of the premises mentioned in the warrant and, ultimately, the "member of the public" who was "receiving" the "services" of the peace officers. It also comes as no surprise that the defendant is identified in the entry warrant. Even more importantly, the defendant had advised the SPCA officers two days earlier that he wished to receive the services in French. It goes without saying that serving an entry warrant on a "member of the public" is a "service" falling within s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

[…]

[117] First, to answer the questions asked in the introduction, I am of the view that New Brunswick peace officers, including those from the SPCA, are required to use Form 2, Entry Warrant, as prescribed in the *Forms Regulation*, 88-218, i.e., with the pre-printed portions in both official languages. In fact, Form 2 itself is untouchable. Moreover, those pre-printed portions contain basic and valuable information that may have immediate and serious consequences for any member of the public affected, as well as for the owner of the premises. In my view, the failure to meet this requirement gives rise to much more than a simple formal defect given the constitutional nature of s. 20(2) of the *Charter* and the ensuing obligations of peace officers. In

light of all of the circumstances in this case, the SPCA officers also had an obligation to fill out the entry warrant form in both official languages, especially since the defendant had informed them two days earlier that he wanted to receive services in French. Any other interpretation, in addition to being an aberration, would, to my mind, stand for a restrictive interpretation of language rights and, more specifically, of s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

[118] It is also not surprising to note that s. 31(3) of the New Brunswick *Official Languages Act* expressly provides that a police force or agency shall ensure the availability of the means necessary to respond to the choice made by a member of the public as to the official language in which he or she has wishes to receive services. Of course, this in no way limits a peace officer's right to fill out the Application for Entry Warrant in the official language of his or her choice. Unlike Form 2 (Entry Warrant), Form 1 (Application for Entry Warrant) is clearly not intended for the defendant; moreover, it cannot be likened to a "service" that "the public receives" within the meaning of s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

[…]

[120] I am of the opinion that in this case, the SPCA officers breached the defendant's language rights on October 25 and 27, 2011, infringing the guarantees set out in s. 31(1) of the *Official Languages Act* and s. 20(2) of the *Charter*. In light of the very specific circumstances of this case, and with the exception of the statement by the accused, I am of the view that these breaches do not justify the exclusion of evidence under s. 24(2) of the *Charter*.

R. v. Robichaud, 2011 NBCP 2 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[20] Constable Dulac testified that, when Mr. Robichaud woke up in his truck and noticed his presence by the window, he said in French [TRANSLATION] "Ah, the RCMP". The constable then used French in all his interactions with Mr. Robichaud and Constable Fontaine did the same

[21] The Crown acknowledged that the police officers never raised the issue of language with Mr. Robichaud and that section 31 of the *Official Languages Act* was violated.

[22] In an earlier decision (*R c Gaudet*, 2009 NBCP), I found that the failure of a peace officer to inform the accused, at their first contact, of his or her right to communicate with the officer in the language of the accused's choice and to inquire about that choice is not only a violation of subsection 31(1) of the *Official Languages Act* but also a violation of subsection 20(2) of the *Charter* and as a result opens the door to an analysis under section 24 of the *Charter*. In other words, subsection 20(2) of the *Charter* implicitly imposes the obligation to inform that is expressly set out at subsection 31(1) of the *Official Languages Act*. In this respect, see also the findings of Justice LaVigne who heard the appeal of this decision (2010 NBBR 27 (CanLII), 2010 NBBR 027).

[23] Note that, in the case at bar, this finding is not disputed by the parties. Rather, they focused on the appropriate remedy, in this case, the implication of subsection 24(2) of the *Charter* and submitted facta on this issue.

[24] The issue to decide is whether a remedy should be granted when subsection 31(1) of the *Official Languages Act* is violated and so is subsection 20(2) of the *Charter*, and if so, what is the appropriate remedy.

[…]

[29] It seems relevant here to quote Chief Justice Drapeau's comments at paragraph 17 of McGraw with respect to the application of section 31 of the *Official Languages Act* (*R. v. McGraw*, 2007 NBCA 11 (CanLII))

> *The right to choose*
>
> *Section 31 of the Official Languages Act creates an absolute right of a member of the public in New Brunswick when communicating with a police officer to receive service in the official language of his choice. The section goes on to create a corresponding duty on police officers to inform the members of the public of that right. Section 31 creates a further obligation on a police force or agency "to ensure the availability of the means necessary to respond to the choice made by a member of the public." Section 31 therefore creates a dual right, a right to choice of language and a right to be informed of that right. The police officer has a further duty to make the means of communication available to the member of the public if he or she is unable to communicate in the language of choice.*
>
> *In R. v. Beaulac, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768; [1999] S.C.J. No. 25, the Supreme Court was dealing with the right of an accused to be tried before a court who speaks his language of choice and to be informed of that right (s. 530 C.C.C.). In a 7-2 majority decision, the Court held at paragraph 28 that the right created by section 530 of the Criminal Code is:*
>
> > *[...] a substantive right and not a procedural one that can be interfered with.*
>
> *Similarly, the right to choice of language and the right to be informed of that right under section 31 of the Official Languages Act of New Brunswick are, in my view, substantive rights and not procedural ones.*
>
> *The object of section 31 is found in the preamble to the statute. It is to advance the equality of status or use of English and French in New Brunswick as encouraged by subsections 16(2) and (3) of the Charter by conferring unto the members of the public in this Province the right to communicate with police officers in either French or English.*
>
> *In order to give true meaning to the section 31 right of choice, the legislature imposes a corresponding duty on police officers to inform members of the public of the existence of that right.*
>
> *….*
>
> *The right to choose created by subsection 31(1) is that of the detainee not of the police officer. It is not within the discretion of the police officer to assume that because a person responds in the language chosen by him or because the person initiated the communication in a particular language that that is his or her language of choice. It may be, but then it may not. […]*

[30] And at paragraph 35 of *McGraw*, Chief Justice Drapeau wrote the following:

> I would wrap up the proceedings by echoing the summary conviction appeal judge's emphasis on the importance of linguistic rights in New Brunswick, the only Province with two official languages. Language rights, whether sourced in the Charter, the Official Languages Act or POPA, set us apart in the Canadian federation; as time goes by, more and more of our citizens proudly view those rights as what defines them as New Brunswickers. Hopefully, the outcome of these proceedings will bring home to peace officers engaged in the enforcement of provincial legislation that language rights are infrangible.

[31] In my view, the message from our Court of Appeal is clear: language rights are inviolable and failure to respect these rights should above all be considered as a substantial breach of a duty that is clearly stated in section 31 of the *Official Languages Act*:

> *Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right.*

[32] In addition, it is reasonable to conclude that in a proceeding where language rights are at stake, it would be dangerous to try to establish a degree of [TRANSLATION] "seriousness" of the breach, to consider the good or bad faith of the police officer or to accept the argument that the accused [TRANSLATION] "was able to express himself in the language of his choice, and, consequently, there was no impact on his interests", (while he was never given that choice!). This is equivalent to minimizing linguistic requirements and the concept of the equality of both official languages in New Brunswick. In *Beaulac*, Justice Bastarache stated the following: (paras. 34, 39 and 45)

> *34 …The principles upon which the language right is founded, the fact that the basic right is absolute, the requirement of equality with regard to the provision of services in both official languages of Canada and the substantive nature of the right all point to the freedom of Canadians to freely assert which official language is their own language…*
>
> *39…As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages*
>
> *45 In the present instance, much discussion was centered on the ability of the accused to express himself in English. This ability is irrelevant because the choice of language is not meant to support the legal right to a fair trial, but to assist the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity.*

[33] The omission, negligence or simply the ignorance of the police officer with respect to implementing that right though the lack of active offer does not make the violation less serious. In the present case, it is the omission itself that is serious, the responsibility for which has to be assumed by the province and its agents.

[34] Our courts' decisions in cases where a language rights' violation exists should not result in the creation of different regimes in various regions of our province. That is why is it imperative to avoid having the [TRANSLATION] "circumstances" of the case justify the refusal to grant a remedy for a language rights violation because the existence of a positive obligation set out subsection 31(1) of the *Official Languages Act* and subsection 20(2) of the *Charter* would become futile and devoid of any real use if the violation of the right did not result in a remedy demonstrating its significance.

[35] In *Grant*, the Chief Justice reiterated the following principles, among others: (para. 80)

> *The concern for truth-seeking is only one of the considerations under a s. 24(2) application. The view that reliable evidence is admissible regardless of how it was obtained is inconsistent with the Charter's affirmation of rights. More specifically, it is inconsistent with the wording of s. 24(2), which mandates a broad inquiry into all the circumstances, not just the reliability of the evidence.*

[36] The *Official Languages Act* has existed since 2002; section 31 imposes on police officers an obligation that is clearly stated and thus should not still be debated in our courts today. In *McGraw*, Chief Justice Drapeau wrote the following:

> *Hopefully, the outcome of these proceedings will bring home to peace officers engaged in the enforcement of provincial legislation that language rights are infrangible.*

[…]

[39] In the context of constitutional language guarantees, which are particular to New Brunswick, the long-term goal is to impose on police officers to respect the language rights at issue. It would thus be contrary to that goal to not have evidence excluded after a violation of this right. If not, the police officers may understand that the violation has no real consequences, thus creating a long-term risk of encouraging repeated violations.

R. v. Brewer, 2009 NBPC 5 (CanLII)

[30] It is also noted that the statutory obligations of police officers (s. 31 N.B. O.L.A. [New Brunswick *Official Languages Act*] and the court (s. 20(1) N.B.O.L.A.) to advise a subject of a charge of his right to be dealt with in the language of his choice are not applicable to the CRA [Canada Revenue Agency] official. Clearly, a provincial legislature can impose a similar obligation on such an official but in this case has not.

R. v. Mario Régis Mazerolle, 2008 NBPC 31 (CanLII)

[16] In New Brunswick, the linguistic rights and obligations of the citizens are governed by constitutional provisions: see ss. 16(2), 16.1 and 20(2) of the *Canadian Charter of Rights and Freedoms*, *Constitution Act, 1982*. In addition, the *Official Languages Act* of New Brunswick, S.N.B. 2002, c. O-0.5, recognizes certain rights of the members of the public and imposes on police forces certain responsibilities with regard to the linguistic rights in question. On the subject, see section 31: […]

[17] Section 1 of the *Official Languages Act* includes spoken communication in the definition of "communicate":

> "communication" and "communicate" mean any form of communication whether spoken, written or electronic[.]

[18] The *Act* also provides that "peace officer" means "a peace officer as defined under section 1 of the *Provincial Offences Procedure Act* who serves the public, whether on behalf of the Province, a municipality or under a contract for the delivery of policing services with the Province or its institutions and includes a police officer as defined under that Act".

[19] Section 1 of the *Provincial Offences Procedure Act* provides that "peace officer" means a "police officer", including a police officer as defined in the Police Act of New Brunswick. The *Police Act* provides that "police officer" means a police officer appointed pursuant to section 10 of the *Police Act*, under which, in my opinion, the members of the Miramichi Police Force are appointed.

[20] Therefore, it is obvious that when he was stopped by Officer Arbeau on a New Brunswick road, Mr. Mazerolle had the right to communicate with an officer who spoke the language of his choice. In addition, Officer Arbeau was obligated, under section 31 of the *Official Languages Act* of New Brunswick, to inform Mr. Mazerolle of his right to communicate with a peace officer in the language of his choice.

[21] In the case at bar, Officer Arbeau did not inform Mr. Mazerolle of this right. However, he intended to respect it. He had noticed that Mr. Mazerolle had a French accent during their exchange, and for this reason he inquired as to his choice of language. Mr. Mazerolle's answer was interpreted by Officer Arbeau in a logical, reasonable and, in my view, correct manner to mean that he preferred French. Mr. Brien firmly maintains that his client's answer cannot be interpreted in this manner. He submits that Mr. Mazerolle's answer must mean either French or English, either one or the other, that both suited him. He alleges that as a result it would make no

sense to ascribe the delay to Mr. Mazerolle, who was ready to proceed in English to accommodate the English-speaking officer. I do not agree. In my opinion, the answer meant that Mr. Mazerolle preferred to be served in French but was ready to accommodate the English-speaking officer and speak to him in English since he could also speak this language. The importance of the right to choose a language is explained by Bastarache, J., in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, at paragraphs 34, 39 and 45:

> 34. ...The language of the accused is very personal in nature; it is an important part of his or her cultural identity. The accused must therefore be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The principles upon which the language right is founded, the fact that the basic right is absolute, the requirement of equality with regard to the provision of services in both official languages of Canada and the substantive nature of the right all point to the freedom of Canadians to freely assert which official language is their own language. . . .
>
> 39. ... As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages. . . .
>
> 45. In the present instance, much discussion was centered on the ability of the accused to express himself in English. This ability is irrelevant because the choice of language is not meant to support the legal right to a fair trial, but to assist the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity. . . .

[22] Officer Arbeau was unable to personally provide service in the language chosen. He does not speak French. Therefore, he was obligated to ensure that Mr. Mazerolle was provided service in French by another officer. It took 17 minutes for this to take place, during which time Mr. Mazerolle's rights under section 10(b) of the *Charter* to retain and instruct counsel continued to be suspended by police.

[23] In my view, the delay was reasonable and necessary. I use the word "reasonable" for the reason that the delay was "necessary". The peace officer was obligated to respect the linguistic choice of the detainee. He could no longer communicate with Mr. Mazerolle once the latter had chosen French. Subsection 31(2) provides that he had to "take whatever measure [was] necessary, within a reasonable time, to ensure compliance with the choice made . . .". Consequently, the Legislature obligates the police force to take the measures necessary, within a reasonable time, to comply with the choice made by the member of the public.

[…]

[25] Does the requirement of immediacy of section 254(2) [of the *Criminal Code*], which would obligate the police officer to obtain a breath sample for analysis in violation of the detainee's linguistic rights, take precedence over the detainee's linguistic rights? To my mind, this assertion could not be supported, and again I quote Bastarache, J., in *R. v. Beaulac*, supra, regarding the importance of linguistic rights:

> Para. 24: ... the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation. ...
>
> Para. 25: Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. …

[26] This was a review of the rights provided under section 530 of the *Criminal Code*, but I consider the fundamental principles to be the same as in the case at bar.

[…]

[29] In summary, compliance with the time-related requirement implicit in section 254(2) is contingent on the circumstances. A certain flexibility in the interpretation of the word "forthwith" is recognized and accepted, based on *Woods*, supra. The delay which will be tolerated cannot exceed what is reasonably necessary to allow a peace officer to perform his or her duties under section 254(2) of the *Criminal Code*, considering the circumstances: *R. v. Campbell* (1988), 44 C.C.C. (3d) 502 (Ont. C.A.). I would add to this principle the peace officer's obligation to perform his or her duties in compliance with the *Official Languages Act*, here in New Brunswick.

SEE ALSO:

R. v. Nde Soh, 2014 NBQB 14 (CanLII)

R. v. Landry, 2012 NBBR 185 (CanLII) [judgment available in French only]

R. v. Levesque, 2006 NBQB 399 (CanLII)

R. v. Robinson, 2014 NBPC 37 (CanLII)

R. v. McKenzie, 2012 NBPC 15 (CanLII)

R. v. Jacky Savoie, 2012 NBPC 10 (CanLII)

R. v. Doiron, 2011 NBPC 36 (CanLII)

ANNOTATIONS – SUBSECTION 31(2)

R. v. McGraw, 2007 NBCA 11 (CanLII)

[2] Interestingly, the *Official Languages Act* makes plain that a peace officer's inability to communicate in the language chosen by the member of the public will not excuse a failure to respect the rights conferred by s. 31(1). Indeed, s. 31(2) obligates a peace officer who is unable to provide service in the language chosen by the member of the public to take whatever measures are necessary, within a reasonable time, to ensure "compliance with the choice made [Emphasis added]" under s. 31(1). Section 31(3) goes on to impose upon a police force or agency the obligation to ensure the availability of the means necessary to respond to the "choice made by a member of the public [Emphasis added]" and "to support the obligation placed on a peace officer" under s. 31(2).

R. v. Allen Brideau, 2016 NBQB 197 (CanLII)

[41] I am keenly aware of the principles set down in *Losier* at paragraph 10 relying on *R. v. Beaulac* 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768 (S.C.C.) where our Court of Appeal stated:

> As the majority pointed out in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25 (QL), it is incumbent upon courts to eschew a restrictive interpretation of legislative and constitutional provisions dealing with language rights. We draw additional guidance from that landmark decision. Indeed, among the interpretations that might reasonably be given to such provisions, courts must favour the one that is more likely to reflect the application of the following principles: (1) the right to use one or the other official language requires acknowledgement of a duty on the part of the state to take positive steps to promote the exercise of that right; and (2) the objective of the entrenchment of this right in the Charter was none other than to contribute to "the preservation and protection of official language communities":…

[42] However, what I believe differentiates this case from *Losier* is principally the officers continued to gather evidence against the detained defendant in that case while the violation of the accused's language continued and secondly the violation continued for thirty minutes. In this case that did not happen and indeed the officers appeared to be attempting to respect Mr. Brideau's right to be served in the language of his choice before any steps were taken to continue their investigation. In this instance the violation went on for only half that time and the officers made a deliberate decision not gather evidence against the defendant during that period of time.

[43] Bearing in mind Chief Justice McLachlin's admonition of taking both a purposive and generous approach to constitutional rights analysis, and allowing for generous interpretation of those rights, I cannot agree that a seventeen minute delay in the circumstances of this case as described warranted a rejection of the evidence of identity and the two seized electronic moose calls.

R. v. Losier, 2009 NBPC 43 (CanLII)

[29] Mr. Losier was detained for a period of at least 32 minutes before Corporal Daigle made the demand to provide samples of his breath. During this time, his right to legal counsel was suspended by the peace officers. In *R. v. Mazerolle*, 2008 NBPC 31 (CanLII); (2008) 336 N.B.R. (2d) 80, a case where a breath sample demand for analysis with an approved screening device was made, I found that a delay of 17 minutes between a roadside detention and the arrival of a bilingual peace officer able to communicate with the detainee in his chosen language, was a reasonable delay within the meaning of s. 31(2) of the *Official Languages Act*. This decision also confirmed that the obligation imposed on a peace officer by New Brunswick's *Official Languages Act* justifies a certain amount of flexibility regarding the time-related requirement relative to the breath sample demand under s. 254(2) of the *Criminal Code*. In the case involving Mr. Mazerolle, there was a delay of 17 minutes between his detention and the demand to provide a sample of his breath. In these circumstances, the delay was a reasonable one.

[30] In the present case, I am of the opinion that a delay of 32 minutes was not a reasonable delay within the meaning of section 31(2) of the *Official Languages Act*. On the contrary, the delay was unreasonable. Mr. Losier was stopped, placed under arrest in the rear seat of the police vehicle and transported to the police station. At the police station, he was detained while awaiting the arrival of a peace officer who spoke his language. In my opinion, this 32-minute delay was excessive and unjustified in the circumstances of this case. The obligation under section 31(3) of the *Official Languages Act* requiring a police force or agency, as the case may be, to ensure the availability of the means necessary to respond to the choice of language made by a member of the public, and to support the obligation placed on a peace officer to provide service in the language chosen within a reasonable time was neither complied with nor fulfilled.

[31] What was the most efficient means available, in the circumstances, that is, arranging to have Corporal Daigle meet up with Mr. Losier, does not justify the lack of means or the failure of the police force or agency to provide the means necessary to respond to the choice made by Mr. Losier. In my view, there should be a better system to allow the exercise of linguistic rights. The fastest way to ensure communication between a detainee and a peace officer in the language chosen does not necessarily remedy a flaw in the system put in place to comply with this right. The 32-minute delay is evidence of this defect. Accordingly, I am of the opinion that there has been a breach of s. 31(2) of the *Official Languages Act*.

R. v. Mario Régis Mazerolle, 2008 NBPC 31 (CanLII)

[22] Officer Arbeau was unable to personally provide service in the language chosen. He does not speak French. Therefore, he was obligated to ensure that Mr. Mazerolle was provided service in French by another officer. It took 17 minutes for this to take place, during which time Mr. Mazerolle's rights under section 10(b) of the *Charter* to retain and instruct counsel continued to be suspended by police.

[23] In my view, the delay was reasonable and necessary. I use the word “reasonable” for the reason that the delay was “necessary”. The peace officer was obligated to respect the linguistic choice of the detainee. He could no longer communicate with Mr. Mazerolle once the latter had chosen French. Subsection 31(2) provides that he had to “take whatever measure [was] necessary, within a reasonable time, to ensure compliance with the choice made . . .”. Consequently, the Legislature obligates the police force to take the measures necessary, within a reasonable time, to comply with the choice made by the member of the public.

[24] In the present instance, was the delay reasonable? In this case, the call to Officer Goodfellow by Officer Arbeau was made at 2:37 am. Officer Goodfellow arrived on the scene at 2:48 am, a delay of 11 minutes. In my view, the delay was reasonable within the meaning of section 30 of the *Official Languages Act*.

ANNOTATIONS – SUBSECTION 31(3)

R. v. McGraw, 2007 NBCA 11 (CanLII)

[2] Interestingly, the *Official Languages Act* makes plain that a peace officer’s inability to communicate in the language chosen by the member of the public will not excuse a failure to respect the rights conferred by s. 31(1). Indeed, s. 31(2) obligates a peace officer who is unable to provide service in the language chosen by the member of the public to take whatever measures are necessary, within a reasonable time, to ensure “compliance with the choice made [Emphasis added]” under s. 31(1). Section 31(3) goes on to impose upon a police force or agency the obligation to ensure the availability of the means necessary to respond to the “choice made by a member of the public [Emphasis added]” and “to support the obligation placed on a peace officer” under s. 31(2).

R. v. Lavoie, 2014 NBPC 43 (CanLII)

[84] However, there was nothing onerous for the SPCA [Society for the Prevention of Cruelty to Animals] officers in the obligation to fill out the entry warrant form in this way. Indeed, s. 31(3) of the New Brunswick *Official Languages Act* expressly provides that a police force or agency shall ensure the availability of the means necessary to respond to the choice made by a member of the public as to the official language in which he or she wishes to receive services. Of course, this in no way limited Corporal Parish’s right to fill out Form 1, Application for Entry Warrant, in the official language of his choice. Unlike Form 2 (Entry Warrant), Form 1 (Application for Entry Warrant) was clearly not intended for the defendant; moreover, it cannot be likened to a “service” that a “member of the public” “receives” within the meaning of s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

[...]

[118] It is also not surprising to note that s. 31(3) of the New Brunswick *Official Languages Act* expressly provides that a police force or agency shall ensure the availability of the means necessary to respond to the choice made by a member of the public as to the official language in which he or she has wishes to receive services. Of course, this in no way limits a peace officer’s right to fill out the Application for Entry Warrant in the official language of his or her choice. Unlike Form 2 (Entry Warrant), Form 1 (Application for Entry Warrant) is clearly not intended for the defendant; moreover, it cannot be likened to a “service” that “the public receives” within the meaning of s. 31(1) of the New Brunswick *Official Languages Act* and s. 20(2) of the *Charter*.

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32. Section 31 does not limit the obligations placed on peace officers under any other Act or law to deliver services to the public in both official languages.

Health services (sections 33-34)

33. (1) For the purposes of the provision of health services in the Province and notwithstanding the definition of "institution" in section 1, an institution in sections 27 and 28 refers to the network of health establishments, facilities and programs under the jurisdiction of the Department of Health or the regional health authorities under the *Regional Health Authorities Act*.

33. (2) When establishing a provincial health plan under the *Regional Health Authorities Act*, the Minister of Health shall

> **(a) ensure that the principles upon which the provision of health services are to be based include the delivery of health services in both official languages in the Province, and**
>
> **(b) consider the language of daily operations under section 34.**

2006, c. 16, s. 128

ANNOTATIONS

New Brunswick Union of Public And Private Employees v. Horizon Health Network, 2015 CanLII 38678 (NB LA)

[55] Persons accessing Horizon Health's services have the right to service in the official language of their choice not solely by virtue of the Employer's policy in that regard; the right is also statutory by virtue of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, sections. 33-34 and, assuming that a regional health authority is an institution of the government of New Brunswick for the purposes of the *Canadian Charter of Rights and Freedoms*, section 20(2), the right is also constitutional.

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34. Subject to the obligation to serve members of the public in the official language of their choice, section 33 does not limit the use of one official language in the daily operations of a hospital or other facility as defined in the *Regional Health Authorities Act*.

ANNOTATIONS

New Brunswick Union of Public And Private Employees v. Horizon Health Network, 2015 CanLII 38678 (NB LA)

[55] Persons accessing Horizon Health's services have the right to service in the official language of their choice not solely by virtue of the Employer's policy in that regard; the right is also statutory by virtue of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, sections. 33-34 and, assuming that a regional health authority is an institution of the government of New Brunswick for the purposes of the *Canadian Charter of Rights and Freedoms*, section 20(2), the right is also constitutional.

Municipalities (sections 35-38)

35. (1) A municipality whose official language minority population represents at least 20% of its total population is required to adopt and publish its by-laws in both official languages.

35. (2) A city is required to adopt and publish its by-laws in both official languages irrespective of the percentage required under subsection (1).

35. (3) A municipality or city to which subsection (1) or (2) applies that adopts a new by-law or amends an existing by-law after December 31, 2002, shall do so in both official languages.

35. (4) Except in the case of a by-law referred to in subsection (3), a municipality or city to which subsection (1) or (2) applies, other than Moncton, shall adopt and publish its by-laws in both official languages on or before December 31, 2005.

35. (5) Subsection (3) applies, with the necessary modifications, to the minutes of council proceedings.

ANNOTATIONS

Charlebois v. Saint John (City), [2005] 3 S.C.R. 563, 2005 SCC 74 (CanLII)

[18] By contrast, the specific language obligations under the heading "Municipalities" are more restricted. They read as follows: […]

[19] If all municipalities, as institutions, are obliged to print and publish their by-laws in both official languages under s. 29, why would it matter what percentage was represented by the official language minority population in any given municipality? Likewise, what would be the sense of prescribing by regulation those services and communications required to be offered in both official languages if all municipalities, as institutions, were required under ss. 27 to 30 to provide them all? What is left for a municipality to declare itself bound under s. 37 if it is already bound by the general obligations imposed on institutions? Those are the "incoherent and illogical consequences" that Daigle J.A. found determinative in the search for the Legislature's intent. I agree, particularly because, if the opposite interpretation is adopted and "institution" is read as not including municipalities, the internal coherence is restored. Bastarache J. would read the specific obligations set out under the heading "Municipalities" as exceptions to the general provisions applying to institutions. With respect, this approach would require much reading in and reading out, none of which is consistent with the limited role that *Charter* values can play as an interpretative tool.

Charlebois v. Town of Riverview and Attorney General of New Brunswick, 2015 NBCA 45 (CanLII)

[9] Section 35 is one of the provisions of the *Official Languages Act* whose validity is challenged in the Amended Notice of Motion. The provision creates an exception to the requirement that municipalities adopt and publish their by-laws in both official languages. It reads as follows: [...]

[20] That being so, one is led inexorably to the conclusion that the appeal does not take issue with the validity of s. 35(1) or any other provision of the *Official Languages Act*. It follows that the only pertinent questions at this stage of the proceeding are the following: (1) are there any non-constitutional reasons to invalidate Riverview's zoning and building by-laws and/or to require it to adopt and publish those by-laws in both official languages?; and (2) if so, what are those reasons and were they raised in first instance and on appeal in accordance with the *Rules of Court*? The answer to the second question suffices to dispose of the appeal. [...]

Charlebois v. Town of Riverview, 2014 CanLII 68479 (NB CA)

[1] Section 35 of the *Official Languages Act*, S.N.B. 2002, c. O-0.5 (the Act), establishes the requirements for the publication of municipal by-laws in bilingual format. Section 35 provides as follows: [...]

[2] Only 7.7% of the population of the Town of Riverview indicate that French is their first language. Consequently, the Town is not required to provide bilingual services as required by s. 35 of the *Act*.

[...]

[7] In the instant case, Mr. Charlebois disputes, on several fronts, the constitutionality of section 35 of the *Act*, which he believes to be a retreat from the decision rendered in *Charlebois v. Moncton (City)* and unconstitutional in light of subsections 16(2) and 18(2) of the *Charter*.

[8] In response to legal proceedings brought by the Town of Riverview against him for failure to conform to a municipal by-law enacted in English only, Mr. Charlebois filed a motion seeking various remedies. As a result of the hearing of a motion before the Court of Queen's Bench (*Riverview (Town) v. Charlebois*, 2014 NBBR 154 (CanLII), 421 N.B.R. (2d) 292) and the dismissal of a motion for leave to appeal (*Charlebois v. Riverview (Town)*, [2014] N.B.J. No. 28 (C.A.) (QL)), the remedies sought have been narrowed to the following:

[TRANSLATION]

> 1. That Form 16D of the New Brunswick *Rules of Court* be declared invalid and of no force or effect for use by the Town of Riverview;
>
> 2. That the Town of Riverview resolution dated May 13, 2013, concerning the property be declared invalid;
>
> 4. That any order issued by Andrew Newell concerning the property situated at 101 Hillsborough Road (PIN 00648824) be declared invalid;
>
> 5. That the Town of Riverview *Building By-law R300-10-1* and *Zoning By-law 300-5* be declared invalid and/or that the Town of Riverview proceed with the reading and adoption of *Building By-law R300-10-1* and *Zoning By-law 300-5* in both official languages within 30 days of the issuance of the order.

[...]

[12] I do not grant leave to appeal the decision of the trial judge to dismiss the other three orders sought by Mr. Charlebois, namely, numbers 1, 2 and 4.

Charlebois v. The City of Saint John, 2004 NBCA 49 (CanLII)

[42] It is important to point out at the outset that among the features of the language regime applicable to municipalities and cities is the establishment of two categories of municipalities: on the one hand, municipalities whose official language minority population represents at least 20% of their total population and, on the other hand, the other municipalities that do not have such a linguistic composition. By establishing such a distinction, the Legislature must obviously have intended to treat municipalities whose official language minority population represents at least 20% of their total population differently from the other municipalities which do not have such a minority language population. As such, this language regime is territorially-based, a component of which is the demographic and linguistic composition of the municipality. Secondly, in view of the distinction between the two types of municipalities, section 36 imposes only on the first category of municipalities and not on the second, as well as on cities, the obligation to offer, in both official languages, the communications and services prescribed by regulation. Finally, the subject matter of the section 36 language obligation is identical to that of the section 27 obligation, namely the provision of services and communications offered to the public. The applications judge seems to have relied on the latter point and the resulting divergent obligations to conclude that there was a conflict between the application of section 27 and the application of section 36.

Town of Riverview v. Charlebois, 2014 NBQB 154 (CanLII)

[27] Section 35 of the *Official Languages Act* sets out the requirements for municipalities to provide by-laws in bilingual format. Section 35 provides as follows: [...]

[33] As explained earlier, while the Court of Appeal's findings in *Charlebois v. Moncton* do at first blush appear supportive of Mr. Charlebois' position in the present matter, it is essential to recognize the context of the *Charlebois v. City of Moncton* decision. The 2001 decision of Chief Justice Daigle pre-dated the 2002 enactment of the *Official Languages Act* and, most significantly, was a challenge to the unilingual by-laws of the City of Moncton pursuant to sections 16(2) and 18(2) of the *Charter*. There is no *Charter* challenge of the *Official Languages Act*, which dictates the practice of the Town of Riverview concerning the issuance of by-laws, currently before this Court.

[34] The Town of Riverview is not required to provide its resolutions or by-laws in both official languages as it is not bound by either section 35 nor section 36 of the *Official Languages Act*. It is perhaps important to highlight that Riverview is a town, not a city. As Riverview does not have a francophone population of at least 20%, it is subject to neither section 35(1) or (2) of the Act.

[35] The Town of Riverview is not acting in contravention of the *Official Languages Act* by providing their by-laws and resolutions only in the English language.

N.B. The appeal from this judgment was dismissed from the bench: Charlebois v. Town of Riverview and Attorney General of New Brunswick, 2015 NBCA 45 (CanLII)

International Association of Fire Fighters (IAFF), Local 999 v. Moncton (City), 2017 CanLII 20335 (NB LA)

[72] There is no doubt that the Employer has the obligation to provide fire prevention services in both official languages (see section 35[1] and 36 of the *OLA* and section 39 [1] (sic) of its regulations). The legislation imposes this obligation on the Employer vis-à-vis the public. However, there is nothing in the provisions that provide for substantive rights or obligations fundamentally related to the present employment relationship between the Employer and the Association. The fact that the employer employs people to provide the services in question is peripheral; it does not make the legislation imposing the obligation "employment-related".

[...]

[109] As stated, the *OLA* is considered to be quasi-constitutional in effect, according to the Supreme Court of Canada, and must be interpreted according to the clear principles outlined in *Beaulac*. Section 35(1), 35(2) and 36 of the *OLA* states: [...]

[157] The Employer further argues that section 35(1) of the *OLA* applies to the City of Moncton, given its linguistic mix. This is not disputed by the Association and the Board is satisfied that it is the case. The Board takes notice that the City of Moncton is a "city" and as such section 35(2) also applies, irrespective of section 35(1). Section 35(1), (2) state: [...]

Moncton Firefighters Association, International Association of Firefighters, Local 999 v. Moncton (City), 2015 CanLII 19678 (NB LA)

[15] Also, the *Official Languages Act* of the Province of New Brunswick shows, under ss. 35 and 36, that a municipality, whose official language minority population represents at least 20% of its official total population was, as of the legislation's coming into force, August 5, 2002, required to adopt and publish bylaws in both official languages, and to offer "services and communications prescribed by regulation in both official languages.

[...]

[123] Further, there is no dispute that New Brunswick's *Official Languages Act* prescribes language requirements for a "municipality" as is the City of Moncton, by virtue of ss. 35(1), 35(2) and 36.

36. A municipality or city to which subsection 35(1), (2) or section 37 applies shall offer the services and communications prescribed by regulation in both official languages.

ANNOTATIONS

International Association of Fire Fighters (IAFF), Local 999 v. Moncton (City), 2017 CanLII 20335 (NB LA)

[72] There is no doubt that the Employer has the obligation to provide fire prevention services in both official languages (see section 35[1] and 36 of the *OLA* and section 39 [1] (sic) of its regulations). The legislation imposes this obligation on the Employer vis-à-vis the public. However, there is nothing in the provisions that provide for substantive rights or obligations fundamentally related to the present employment relationship between the Employer and the Association. The fact that the employer employs people to provide the services in question is peripheral; it does not make the legislation imposing the obligation "employment-related".

[...]

[109] As stated, the OLA is considered to be quasi-constitutional in effect, according to the Supreme Court of Canada, and must be interpreted according to the clear principles outlined in Beaulac. Section 35(1), 35(2) and 36 of the OLA states: [...]

[157] The Employer further argues that section 35(1) of the OLA applies to the City of Moncton, given its linguistic mix. This is not disputed by the Association and the Board is satisfied that it is the case. The Board takes notice that the City of Moncton is a "city" and as such section 35(2) also applies, irrespective of section 35(1). Section 35(1), (2) state: [...]

[158] This then triggers the provisions of section 36 of the OLA: [...]

[161] The OLA requirements, on their face, plainly obligate the City to provide fire prevention services in both official languages. To that end, does this statutory obligation supersede a provision of the Collective Agreement? The Association argues that it does not. It does however concede that labour arbitrators have the authority and responsibility to enforce substantive rights and obligations of employment-related statutes (see A.U.P.E.). This concept was originally affirmed in the seminal Supreme Court of Canada decision in Parry Sound. In that case, in addition to validating an arbitrator's jurisdiction over human rights violations, the Court also conferred jurisdiction to arbitrators to enforce substantive rights and obligations of "employment-related statutes". The Court did not define or explain in any significant detail what was meant by this expression.

[...]

[167] Although thin on the rights of an AFPO [Assistant Fire Prevention Officer] in pursuing tasks, the document [job description] is plain on what obligations the position entails. It lists two aspects of abilities and skills of the position that the incumbent must possess, which the Board finds of particular relevance.

-Ability to deal effectively with people

-Ability to function in both official languages

[168] Under the heading "Education", it also requires the holder of the position to be able to communicate, make public presentations, provide instructions to all segments of the population of the City of Moncton. Further, under the heading "Investigations" it requires the employee to

examine the “scene and physical evidence; interviews and take statements of responding fire suppression personnel, owners, occupants, witnesses, etc.”

[169] The “obligation” of the candidate functioning fluently “in both official languages” as an AFPO is, in the view of the Board, clearly substantive, considerable and meaningful to the position of AFPO, and correspondingly to the *OLA*, and its regulations. These traits are convincingly “employment-related”, in our opinion, as this expression is described in the Parry Sound analysis.

[...]

[173] Having determined that the *OLA* requirements of service in both official languages are not offensive, and are in fact, indeed compatible with the text of Article 11 of the Collective Agreement, the Board is of the opinion that the inclusion of the obligation of fluency in both official languages in the “Job Posting” is not a violation of the Collective Agreement.

Moncton Firefighters Association, International Association of Firefighters, Local 999 v. Moncton (City), 2015 CanLII 19678 (NB LA)

[15] Also, the *Official Languages Act* of the Province of New Brunswick shows, under ss. 35 and 36, that a municipality, whose official language minority population represents at least 20% of its official total population was, as of the legislation’s coming into force, August 5, 2002, required to adopt and publish bylaws in both official languages, and to offer “services and communications prescribed by regulation in both official languages.

[...]

[123] Further, there is no dispute that New Brunswick’s *Official Languages Act* prescribes language requirements for a “municipality” as is the City of Moncton, by virtue of ss. 35(1), 35(2) and 36.

[124] As such, I accept the argument of the City, in its written submission to this Board, at its paragraphs 78, 79 and 80, below:

> 78. As it is a city within the meaning of Section 16 of the *Municipalities Act* and as it has a population of which more than 20% is an official language minority population, the City of Moncton has to offer certain services as bilingual services pursuant to Section 36.
>
> 79. The relevant regulation is *Services and Communications Regulation – Official Languages Act*, NB Reg 2002-63. Section 10 of Schedule A reads:
>
> Public notices, information, educational programs and responses to inquiries related to fire prevention services
>
> 80. When read with Section 36 of the *Act*, this creates an obligation for the city of Moncton to offer those services in both official languages. The tasks of an AFPO include offering services prescribed under the Act, such as educational programs, information to the public and responses to inquiries.
>
> [Emphasis added]

[125] The “services prescribed” and at issue under Local 999’s Policy Grievance, as it is presented, are offered by the Fire Prevention Division of the City’s Fire Department. The City’s language obligation, therefore, is to offer the services of its AFPO [Assistant Fire Prevention Officer]’s in both official languages.

[...]

[130] I am satisfied that one of the "civic responsibilities" of the City of Moncton, flowing from New Brunswick's "quasi constitutional" *Official Languages Act* and its *Regulation 2002-63*, "incorporated into the Collective Agreement", is to offer the services of its fire prevention services in both official languages.

[...]

[133] Following from the above, and for reasons which follow, I accept the City's arbitration "position", abridged below:

(i) The City of Moncton has not violated the Collective Agreement;

(ii) In conformity with its legal obligations under the *Official Languages Act* of the Province of New Brunswick, the City has designated a bilingual language requirement for an Assistant Fire Prevention Officer, calling for an ability to function in both official languages;

(iii) In the circumstances of this case, this remains a *bona fide* qualification required of the City to service both its francophone and anglophone communities.

[...]

[136] To this result, and to my conclusion as to the application of Article 2.03, and the requirements set under New Brunswick's *Official Languages Act*, on the facts presented, I rely on the decision of the Supreme Court of Canada in *Parry Sound (District) Social Services Administration Board v. OPSEU Local 324*, 2003 SCC 42 (CanLII), [2003] 2 S.C.R. 157[2]. Here, the Court instructs on caselaw regarding the effect of so-called "employment-related" statutes as to the content of a collective agreement, which "Agreement", as stated, in this case, I find "incorporates" the quasi-constitutional terms of New Brunswick's *Official Languages Act*, and its *Regulation 2002-63*. As directed by the Court, at paragraph 28, S.C.R.:

As a practical matter, … the substantive rights and obligations of employment-related statutes are implicit in each collective agreement over which an arbitrator has jurisdiction. A collective agreement might extend to an employer a broad right to manage the enterprise as it sees fit, but this right is circumscribed by the employee's statutory rights. The absence of an express provision that prohibits the violation of a particular statutory right is insufficient to conclude that a violation of that right does not constitute a violation of the collective agreement. Rather, human rights and other employment-related statutes establish a floor beneath which an employer and union cannot contract.

[Emphasis added]

[137] Further, as instructed, at para. 29, S.C.R.:

"As a result, the <u>substantive rights and obligations of the parties to a collective agreement cannot be determined solely by reference to the mutual intentions of the contracting parties as expressed in that agreement</u>".

[138] As such, the City is called upon to act in accordance with its statutory obligations; i.e., here, the language "requirements" of the *Official Languages Act* and its *Regulation – 2002-63* for its "fire prevention services", or more precisely, as at issue, its entry classification for these services. As it speaks to the language requirements of fire prevention services of the City of Moncton, New Brunswick's *Official Languages Act* and its *Regulation 2002-63* is, to repeat, in this case, an "employment related" statute.

[...]

[146] As such, an acknowledgment is found in the *Canada Post* case that appears to have application to, and acts to elevate this Policy Grievance from other language "differences" that may arise with respect to other City fire employees, as heard in the testimony. To repeat, this Policy Grievance addresses a City fire classification which is addressed under New Brunswick's *Official Languages Act*, and its Regulation 2002-63. The civic obligation to ensure bilingual language services in this case is an "imperative" – because, as is acknowledged in Mr. Christie's Arbitral Award, the *Official Languages Act* "requires that". The "right question" here, to address Local 999's claim as to such is then: has the City complied with a language law imperative which, following the Supreme Court's directions in *Parry Sound*, is "incorporated into the collective agreement" and here "squarely within this Board's jurisdiction".

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37. A municipality may, by by-law of its municipal council, declare itself bound by the provisions of this Act and nothing in this Act shall be interpreted so as to limit the authority of municipalities to promote the equality of status and use of English and French.

ANNOTATIONS

Charlebois v. Saint John (City), [2005] 3 S.C.R. 563, 2005 SCC 74 (CanLII)

[18] By contrast, the specific language obligations under the heading "Municipalities" are more restricted. They read as follows: […]

[19] If all municipalities, as institutions, are obliged to print and publish their by-laws in both official languages under s. 29, why would it matter what percentage was represented by the official language minority population in any given municipality? Likewise, what would be the sense of prescribing by regulation those services and communications required to be offered in both official languages if all municipalities, as institutions, were required under ss. 27 to 30 to provide them all? What is left for a municipality to declare itself bound under s. 37 if it is already bound by the general obligations imposed on institutions? Those are the "incoherent and illogical consequences" that Daigle J.A. found determinative in the search for the Legislature's intent. I agree, particularly because, if the opposite interpretation is adopted and "institution" is read as not including municipalities, the internal coherence is restored. Bastarache J. would read the specific obligations set out under the heading "Municipalities" as exceptions to the general provisions applying to institutions. With respect, this approach would require much reading in and reading out, none of which is consistent with the limited role that *Charter* values can play as an interpretative tool.

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38. The provisions of subsections 35(3), (4) and (5) apply, with the necessary modifications, to a municipality under section 37.

Regional Service Commissions (sections 39-41)

39. A regional service commission covering a geographical area with an official language minority population of at least 20% of the total population is subject to the obligations imposed by section 41.

2012, c.44, s.15

SEE ALSO:

Charlebois v. Greater Moncton Planning District Commission, 2010 NBAPAB 12 (CanLII)

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40. Where the geographical area of a regional service commission includes a municipality or a city to which subsection 35(1) or (2) applies, the regional service commission is subject to the obligations imposed by section 41 irrespective of the percentage required under section 39.

2012, c. 44, s. 15

SEE ALSO:

Charlebois v. Greater Moncton Planning District Commission, 2010 NBAPAB 12 (CanLII)

---

41. A regional service commission to which section 39 or 40 apply shall offer the services and communications prescribed by regulation in both official languages.

2012, c. 44, s. 15

Professional associations (sections 41.1)

41.1 (1) In this section, "professional association" means an organization of persons that, by an Act of the Legislature, has the power to admit persons to or suspend or expel persons from the practice of a profession or occupation or impose requirements on persons with respect to the practice of a profession or occupation.

41.1 (2) When a professional association exercises a power referred to in subsection (1), the professional association

> **(a) shall provide services and communications related to the exercise of that power in both official languages, and**
>
> **(b) with respect to its power to impose requirements, shall ensure that a person is able to fulfil those requirements in the official language of his or her choice.**

41.1 (3) No person shall be placed at a disadvantage by reason of exercising his or her right to choose an official language in which to fulfil requirements imposed by a professional association.

41.1 (4) A professional association shall offer its services and communications to members of the public in both official languages.

2013, c.38, s.1; 2015, c.39, s.1

Review of Act (section 42)

42. (1) The Premier shall initiate a review of this Act, and the review shall be completed no later than December 31, 2021.

42. (2) A review under subsection (1) shall be in the form and manner prescribed by regulation.

2013, c. 38, s. 1

Commissioner of Official Languages (section 43)

43. (1) There shall be an Office of the Commissioner of Official Languages for New Brunswick, as well as a Commissioner of Official Languages for New Brunswick.

43. (2) Subject to subsections (2.1) to (2.4), the Commissioner shall be appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly, shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of the Commissioner and shall not hold any other office under Her Majesty or engage in any other employment.

43. (2.1) Before an appointment is made under subsection (2), a selection committee shall be established for the purpose of identifying persons as potential candidates to be appointed Commissioner.

43. (2.2) The selection committee shall be composed of

> **(a) the Clerk of the Executive Council or a person designated by the Clerk of the Executive Council,**
>
> **(b) the Clerk of the Legislative Assembly or a person designated by the Clerk of the Legislative Assembly,**
>
> **(c) a member of the judiciary, and**
>
> **(d) a member of the university community.**

43. (2.3) The selection committee shall develop a roster of qualified candidates and submit a list of names of qualified candidates to the Lieutenant-Governor in Council.

43. (2.4) The Premier shall consult with the leader of the opposition and the leaders of the other political parties having representation in the Legislative Assembly during the most recent sitting with respect to one or more qualified candidates from the selection committee's list of qualified candidates.

43. (2.5) The Commissioner is an officer of the Legislative Assembly.

43. (3) Subject to subsection (4), the Commissioner shall hold office for a term of seven years and is not eligible for reappointment.

43. (4) The Lieutenant-Governor in Council may extend the term of the Commissioner for a period of not more than 12 months.

43. (4.1) The Commissioner may resign from office by notice in writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the Province, to the Clerk of the Legislative Assembly.

43. (4.2) The Speaker or the Clerk, as the case may be, shall immediately inform the Lieutenant-Governor in Council of the Commissioner's resignation.

43. (4.3) The Commissioner shall hold office during good behaviour and may only be removed by the Lieutenant-Governor in Council for incapacity, neglect of duty or misconduct upon an address in which 2/3 of the members of the Legislative Assembly concur.

43. (4.4) The Lieutenant-Governor in Council, upon an address in which a majority of the members of the Legislative Assembly voting concur, may suspend the Commissioner, with or without pay, pending an investigation that may lead to removal under subsection (4.3).

43. (4.5) If the Legislature is not in session, a judge of The Court of Queen's Bench of New Brunswick may, on an application by the Lieutenant-Governor in Council, suspend the Commissioner, with or without pay, for incapacity, neglect of duty or misconduct.

43. (5) If the Lieutenant-Governor in Council makes an application under subsection (4.5), the practice and procedure of The Court of Queen's Bench of New Brunswick respecting applications applies.

43. (5.1) If a judge of The Court of Queen's Bench of New Brunswick suspends the Commissioner under subsection (4.5), the judge shall do the following:

> **(a) appoint an acting Commissioner to hold office until the suspension has been dealt with by the Legislative Assembly; and**
>
> **(b) table a report on the suspension with the Legislative Assembly within ten days after the commencement of the next session of the Legislature.**

43. (5.2) No suspension under subsection (4.5) shall continue beyond the end of the next session of the Legislature.

43. (5.3) If the Commissioner has been suspended under subsection (4.4), the Lieutenant-Governor in Council may appoint an acting Commissioner to hold office until the suspension has elapsed.

43. (5.4) An acting Commissioner, while in office, has the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant-Governor in Council may fix.

43. (5.5) The Lieutenant-Governor in Council may appoint an acting Commissioner for a term of up to one year if

> **(a) the office of Commissioner becomes vacant during a sitting of the Legislative Assembly, but the Legislative Assembly does not make a recommendation under subsection (2) before the end of the sitting, or**
>
> **(b) the office of Commissioner becomes vacant while the Legislative Assembly is not sitting.**

43. (5.6) The appointment of an acting Commissioner comes to an end when a new Commissioner is appointed under subsection (2).

43. (5.7) If the Commissioner is unable to act because of illness, the Lieutenant-Governor in Council may appoint an acting Commissioner, whose appointment comes to an end when the Commissioner is again able to act or when the office becomes vacant.

43. (5.8) An appointment under subsection (5.1), (5.3), (5.5) or (5.7) shall not impede a person's subsequent appointment under subsection (2).

43. (5.9) The Premier shall consult with the leader of the opposition before an appointment is made under subsection (5.3), (5.5) or (5.7).

43. (6) Notwithstanding the *Civil Service Act*, the Commissioner may appoint such persons to positions in the Office of the Commissioner as he or she considers necessary to enable the fulfillment of the Commissioner's responsibilities under this Act.

43. (6.1) The Commissioner shall be paid an annual salary as determined by the Lieutenant-Governor in Council within the deputy head pay plan, and is entitled to receive benefits similar to those received by deputy heads.

43. (7) The pension plan converted to a shared risk plan in accordance with *An Act Respecting Public Service Pensions* applies to the Commissioner and the employees of the Office of the Commissioner.

43. (8) The Commissioner may contract for such professional services, for limited periods of time or in respect of particular matters, as he or she considers necessary to enable the fulfillment of the Commissioner's responsibilities under this Act.

43. (9) In accordance with the authority provided to the Commissioner under this Act, it is the role of the Commissioner to investigate, report on and make recommendations with regard to compliance with this Act and to promote the advancement of both official languages in the Province.

43. (10) In order to fulfill the role under subsection (9), the Commissioner shall conduct and carry out investigations either pursuant to any complaint made to the Commissioner or on his or her own initiative and shall, as provided in this Act, report and make recommendations with respect to such investigations.

43. (10.1) Despite subsection (10), when the Commissioner considers it appropriate, the Commissioner may attempt to resolve a complaint without conducting an investigation.

43. (11) The Commissioner may refuse to investigate or cease to investigate any complaint if, in the opinion of the Commissioner,

> **(a) the subject-matter of the complaint is trivial,**
>
> **(b) the complaint is frivolous or vexatious or is not made in good faith, or**
>
> **(c) the subject-matter of the complaint does not involve a contravention or failure to comply with this Act or, for any other reason, does not come within the authority of the Commissioner under this Act.**

43. (12) If the Commissioner refuses to investigate or ceases to investigate any complaint, the Commissioner shall inform the complainant and provide reasons for the decision to do so.

43. (13) Before commencing an investigation under this Act, the Commissioner shall inform the deputy head or other administrative head of the institution concerned of his or her intention to carry out the investigation.

43. (14) Subject to this Act, the Commissioner may determine the procedure to be followed in carrying out an investigation under this Act.

43. (15) For the purposes of this Act, the Commissioner is a commissioner under the *Inquiries Act*.

43. (16) After carrying out an investigation pursuant to a complaint under this Act, the Commissioner shall communicate the results of the investigation and any recommendations, including any opinion and the reasons for the recommendations, to the Premier, the deputy head or other administrative head of the institution concerned and the complainant.

43. (17) After carrying out an investigation on his or her own initiative, the Commissioner shall communicate the results of the investigation and any recommendations, including any opinion and the reasons for the recommendations, to the Premier and the deputy head or other administrative head of the institution concerned.

43. (17.1) When the Premier, a deputy head or an administrative head receives the results of an investigation from the Commissioner under subsection (16) or (17), he or she shall acknowledge in writing receipt of the results and of any recommendations made by the Commissioner.

43. (17.2) After carrying out an investigation under subsection (10), if the Commissioner considers it to be in the public interest, the Commissioner may publish a report on the results of his or her investigation and on any recommendations made as a result of the investigation.

43. (18) If a complainant is not satisfied with the conclusions of the Commissioner received under subsection (16) or with the resolution of the complaint, the complainant may apply to The Court of Queen's Bench of New Brunswick for a remedy.

43. (19) The judge of a court referred to in subsection (18) may grant such remedy as he or she considers appropriate and just in the circumstances.

43. (20) This section does not affect any other right of action that a person may have.

43. (21) The Commissioner shall, within such time as is reasonably practicable after the end of each year, prepare and submit to the Legislative Assembly, a report concerning the activities of the Office of the Commissioner in the preceding year.

2013, c. 1, s. 6; 2013, c. 38, s. 1; 2013, c. 44, s. 34; 2016, c. 1, s. 1

ANNOTATIONS – PARAGRAPHE 43(18)

Charlebois v. Nouveau-Brunswick, 2003 CanLII 39829 (NB CA) [decision available in French only]

[OUR TRANSLATION]

[4] Justice Hugh McLellan refused to set a date for the motion hearing on the ground that Mr. Charlebois had to first file a complaint with the Commissioner of Official Languages of New Brunswick. Justice McLellan acknowledged, however, that Mr. Charlebois could apply to the

Court of Queen's Bench for a remedy under subsection 43(18) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, if he was not satisfied with the Commissioner's conclusions.

ANNOTATIONS – SUBSECTION 43(19)

Sonier v. Ambulance New Brunswick Inc., 2016 NBQB 218 (CanLII)

[20] Under s. 24(1) of the *Canadian Charter of Rights and Freedoms* and any provision that lends itself to it under the *Constitution Act* (Canada), or even under the *Official Languages Act*, a superior court may craft any remedy that it considers appropriate and just in the circumstances. To do this, it must exercise its discretion based on its careful perception of the nature of the right and of the infringement, the facts of the case, and the application of the relevant legal principles.

[21] In a claim aimed at protecting rights and freedoms enshrined in the constitutional scheme, the court's judicial approach to remedies must be flexible and responsive to the needs of the case.

[22] The court must also be sensitive to its role as judicial arbiter and not fashion remedies which usurp the role of the other branches of governance by taking on tasks to which other persons or bodies are better suited. The boundaries of the courts' proper role will vary according to the right at issue and the factual context of each case.

[23] A decision pertaining to an appropriate and just remedy in the circumstances must meaningfully vindicate the rights and freedoms of the claimant within the framework of our constitutional democracy. The remedy must also be fair to the party against whom the order is made.

ANNOTATIONS – SUBSECTION 43(20)

Town of Caraquet et al. v. Minister of Health and Wellness, 2005 NBCA 34 (CanLII)

[17] Secondly, even if the appellants were basing their claims solely on the *Official Languages Act*, their action could not be dismissed for not having exhausted the remedies provided in s. 43. Indeed, s. 43(20) expressly provides that s. 43 "does not affect any other right of action that a person may have." By so providing, the legislature has indicated in the clearest terms that the remedies set out in s. 43 are not the only ones available nor are they exclusive. The enactment in issue here is therefore completely different from the one the Supreme Court of Canada interpreted in *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, 1989 CanLII 73 (SCC), [1989] 2 S.C.R. 49. It should also be noted that the *Official Languages Act* contains no provision requiring a litigant to file a complaint under s. 43 or granting the court the power to compel a litigant to file one. The decision in *Charlebois* merely confirms that a judge, in exercising his or her discretionary power under the law, may decline to set a date for the hearing of an application that seeks solely the recognition of certain rights and relief under the *Official Languages Act*, until the Commissioner has had the opportunity to carry out his or her role under s. 43. The decision in Charlebois does not require a court to dismiss an application or an action on the grounds that the remedies set out in the *Official Languages Act* have not been exhausted.

Protection from reprisal (section 43.1)

43.1 No person shall take a reprisal against a person or direct that one be taken against a person because the person has made a complaint in good faith to the Commissioner or cooperated in an investigation under this Act.

2013, c.38, s.1

Immunity (section 43.2)

43.2 No proceedings lie against the Commissioner or against a person holding an office or appointment in the Office of the Commissioner for anything he or she may do, report or say in the course of the exercise or intended exercise of his or her functions under this Act regardless of whether that function was within his or her jurisdiction, unless it is shown the person acted in bad faith.

2013, c. 38, s. 1

Appointment of Official Translators (section 44)

44. The Lieutenant-Governor in Council may appoint such Official Translators as are necessary to enable a court to discharge the duties conferred on it by this Act.

ANNOTATIONS

R. v. McGraw, 2007 NBCA 11 (CanLII)

[14] The disregard for Mr. McGraw's language rights appears to have continued in the Provincial Court. Since the trial was to be conducted in English, the trial judge was required by s. 19(1) of the *POPA* to inform Mr. McGraw that, if he wished, "a translation of the [notices of prosecution] by an Official Translator under the *Official Languages of New Brunswick Act* will be provided" (presumably the reference to the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1, is to be taken as a reference to its successor, the *Official Languages Act*, which also contemplates the appointment of an Official Translator). No such advice was conveyed to Mr. McGraw.

Regulation-making authority (section 45)

45. The Lieutenant-Governor in Council may make regulations

(a) prescribing circumstances not otherwise provided for under this Act in which institutions have the duty to ensure that any member of the public can communicate with and obtain available services from the institutions in either official language;

(a.1) prescribing portions or divisions of the Public Service for the purposes of the definition "public service" in section 1;

(a.2) establishing public signage policies for the Province;

(b) respecting the procedure, as it concerns official languages, before any court, including

(i) the giving of notice as is necessary to enable the court to discharge the duty conferred upon it by section 21, and

(ii) the swearing or affirming of interpreters;

(c) respecting services and communications to be provided under sections 36 and 41 and the manner in which they are to be provided;

(d) identifying measures required to foster effective communications with and services from institutions in both official languages;

(e) respecting the form and manner of a review under section 42;

(f) respecting the functions of persons appointed under section 44 and the status and admissibility into evidence of translations prepared by them;

(g) establishing any other measure necessary for the better administration of this Act.

2013, c. 38, s. 1

Repeal (section 46)

46. The *Official Languages of New Brunswick Act*, chapter O-1 of the Revised Statutes, 1973, is repealed.

Commencement (section 47)

47. (1) This Act, except for section 43, comes into force on August 5, 2002.

47. (2) Section 43 comes into force on April 1, 2003.

N.B. This Act is consolidated to December 31, 2016.

General Regulation – Official Languages Act, N.B. Reg. 2015-67

Under section 45 of the *Official Languages Act*, the Lieutenant-Governor in Council makes the following Regulation:

1. Citation

1. This Regulation may be cited as the General Regulation – Official Languages Act.

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2. Definition of “Act”

2. In this Regulation, “Act” means the *Official Languages Act*.

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3. Public service

3. For the purposes of the definition "public service" in section 1 of the Act, the portions or divisions of the Public Service are those specified in Part 1 of the First Schedule of the *Public Service Labour Relations Act*.

---

4. Offence

4. A person who violates or fails to comply with section 43.1 of the Act commits an offence punishable under Part 2 of the *Provincial Offences Procedure Act* as a category D offence.

2016-74

N.B. This Regulation is consolidated to December 31, 2016.

Documents Regulation – Official Languages Act, N.B. Reg. 85-165

Under section 45 of the *Official Languages Act*, the Lieutenant-Governor in Council makes the following Regulation:

1. This Regulation may be cited as the *Documents Regulation - Official Languages Act*.

2009-147

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2. In this Regulation

"document" includes the transcript of a preliminary inquiry or of a proceeding;

"judge" means

(a) the Chief Justice of New Brunswick,

(b) the Chief Justice of The Court of Queen's Bench of New Brunswick,

(c) a judge of The Court of Appeal of New Brunswick,

(d) a judge of The Court of Queen's Bench of New Brunswick, or

(e) a judge or deputy judge of the Provincial Court;

"Official Translator" means a person appointed by the Lieutenant-Governor in Council under section 44 of the *Official Languages Act*;

"proceeding" means a proceeding respecting an offence under an Act or regulation of the Province or under a municipal by-law;

"translation" means a translation from one of the official languages into the other official language by an Official Translator.

2009-147

3. Before entering upon the duties of his office, an Official Translator shall

(a) take and subscribe the following oath of office, or

(b) make and subscribe the following affirmation:

"I, _____, do swear (*or* solemnly affirm) that I will impartially, and to the best of my skill, knowledge and ability, translate any document which I may be called upon to translate from the French language to the English language, or from the English language to the French language. (In the case where an oath is taken add "So help me God")"

---

4. (1) A translation of a document, in whole or in part, certified as a true and accurate translation by an Official Translator may be adduced in evidence or otherwise used in a proceeding.

4. (2) A certificate signed by an Official Translator, or purporting to be so signed, stating that the translation of the document is true and accurate is evidence of the statements contained in the certificate without proof of the appointment, signature or authority of the Official Translator.

91-60

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5. (1) Subject to subsection (2), a certified translation may be adduced in evidence or otherwise used in a proceeding and when so adduced or used is equally authentic and of equal weight in evidence as the text of the document of which it is a translation.

5. (2) A party who objects to the translation of a word or words in a document shall notify the judge of his objection at the first available opportunity and the judge shall make a ruling on such objection.

91-60; 2009-147

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6. New Brunswick Regulation 76-47 under the *Official Languages of New Brunswick Act* is repealed.

N.B. This Regulation is consolidated to December 1, 2009.

Interpreters Regulation – Official Languages Act, N.B. Reg. 86-2

Under section 45 of the *Official Languages Act*, the Lieutenant-Governor in Council makes the following Regulation:

1.This Regulation may be cited as the *Interpreters Regulation - Official Languages Act*.

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2. In this Regulation

“court” includes judicial, quasi-judicial and administrative tribunals;(*tribunal*)

“interpreter” means a person who interprets orally in a manner to be heard by every person present;(*interprète*)

“proceeding” means a proceeding in or before a court or before a judge in any matter to which the jurisdiction of the Government or the Legislature of New Brunswick extends.(*instance*)

---

3. A person may request an interpreter in a proceeding to enable him to proceed or to present evidence in the official language of his choice or to enable his solicitor to represent his interests effectively.

ANNOTATIONS

Cormier v. Fournier, 1986 CanLII 92 (NB QB)

[pp. 22-3] On January 2, 1986, however, the defendant filed a Notice of Discontinuance regarding his appeal. Regulation 86-2, made under the *Official Languages of New Brunswick Act*, was enacted on January 10. The following are the relevant sections of that regulation:

> 2. In this regulation
>
> "court" includes judicial, quasi-judicial and administrative tribunals;
>
> "interpreter" means a person who interprets orally in a manner to be heard by every person present;
>
> "proceeding" means a proceeding in or before a court or before a judge in any matter to which the jurisdiction of the Government or the Legislature of New Brunswick extends.
>
> 3. A person may request an interpreter in a proceeding to enable him to proceed or to present evidence in the official language of his choice or to enable his solicitor to represent his interests effectively.
>
> 4(1). In a proceeding to which the Rules of Court apply, a request under section 3 shall be made in accordance with the Rules of Court and an interpreter shall be sworn or affirmed in accordance with section 5.
>
> 6. This regulation comes into force on February 1, 1986.

In light of Regulation 86-2, I notified the clerk of the court to obtain simultaneous interpretation services for the trial of this action. On February 3, 1986, counsel for both parties appeared before me to fix a date for trial. The clerk had just informed me that same morning that the request for simultaneous interpretation had been refused on the grounds that the Deputy Minister of Justice and the Director of Translation Services had adopted the policy that simultaneous interpretation for trials was inappropriate.

The province may enact regulations under the *Official Languages of New Brunswick Act* (sic) insofar as they conform with the Act and the provisions contained in the *Charter*. However, the province cannot impose its policy upon the Court in the interpretation of these regulations. Furthermore, the regulation must be construed in accordance with the Act and the *Charter*.

Consecutive interpretation slows down the proceedings considerably. It makes concentration particularly difficult for the listener who understands both languages, since it is impossible to prevent a good part of his attention from focusing on the quality of the interpretation itself. For the parties, consecutive interpretation entails additional fees and costs. Regulation 86-2 does not provide a mechanism for the payment of these additional expenses. Is it fair that a party be required to bear these costs if they are for the sole benefit of counsel of the opposite party?

[...]

[p. 26] The law on evidence does not allow the Court to accept a photocopy of a document unless it can be established that the original is unavailable. Yet, a photocopy is much more accurate than an interpretation. When the Court has the ability to understand the testimony in the witnesses' language, it should not allow an interpreter to suggest his interpretation of that testimony. The best evidence is necessarily that given by the witness himself. I therefore ordered that I would hear the witnesses directly and that I would not allow the interpreters to suggest an intepretation [sic] to me. On the other hand, under Regulation 86-2 those who wanted the interpretation could hear it with individual headsets.

Consequently, we proceeded with the entire trial without consecutive interpretation and without any great difficulty. In fact, when the defendant himself took the witness stand he procured a headset so as to hear the simultaneous interpretation and he answered in French the questions put to him by his own lawyer in English. Testimony could be heard much more rapidly than through consecutive interpretation.

N.B. – This judgment was confirmed on appeal: Fournier v. Cormier, 1987 CanLII 110 (NB CA).

4.(1) In a proceeding to which the Rules of Court apply, a request under section 3 shall be made in accordance with the Rules of Court and an interpreter shall be sworn or affirmed in accordance with section 5.

4.(2) In a proceeding other than a proceeding referred to in subsection (1), a request under section 3 shall be made to the judge or the presiding officer of the tribunal who shall cause an interpreter to be sworn or affirmed in accordance with section 5.

---

5. Before commencing interpretation in a proceeding, an interpreter shall take the following oath or make the following affirmation:

> **"I, _____, do swear (*or* solemnly affirm)" that I will impartially, and to the best of my skill, knowledge and ability, interpret from one official language to the other official language, those aspects of the proceeding that are presented orally and for which interpretation is required. (In the case where an oath is taken add "So help me God")"**

---

6. This Regulation comes into force on February 1, 1986.

Services and Communications Regulation – Official Languages Act, N.B. Reg. 2002-63

Under section 45 of the *Official Languages Act*, the Lieutenant-Governor in Council makes the following regulation:

1. Citation

1. This Regulation may be cited as the Services and Communications Regulation - Official Languages Act.

---

2. Definitions

2. In this Regulation

"Act" means the *Official Languages Act*. (*Loi*)

---

3. Municipalities

3. (1)The services and communications set out in Column I of Schedule A are prescribed for the purposes of section 36 of the Act.

3. (2) If a municipalité to which section 36 of the Act applies offers a service or communication set out in Column I of Schedule A, it shall do so in both official languages on or before the date set out opposite the service or communication in Column II of Schedule A.

ANNOTATIONS

International Association of Fire Fighters (IAFF), Local 999 v. Moncton (City), 2017 CanLII 20335 (NB LA)

[72] There is no doubt that the Employer has the obligation to provide fire prevention services in both official languages (see section 35[1] and 36 of the *OLA* and section 39 [1] (sic) of its regulations). The legislation imposes this obligation on the Employer vis-à-vis the public. However, there is nothing in the provisions that provide for substantive rights or obligations fundamentally related to the present employment relationship between the Employer and the Association. The fact that the employer employs people to provide the services in question is peripheral; it does not make the legislation imposing the obligation "employment-related".

[...]

[161] The *OLA* requirements, on their face, plainly obligate the City to provide fire prevention services in both official languages. To that end, does this statutory obligation supersede a provision of the Collective Agreement? The Association argues that it does not. It does however concede that labour arbitrators have the authority and responsibility to enforce substantive rights and obligations of employment-related statutes (see A.U.P.E.). This concept was originally affirmed in the seminal Supreme Court of Canada decision in Parry Sound. In that case, in addition to validating an arbitrator's jurisdiction over human rights violations, the Court also conferred jurisdiction to arbitrators to enforce substantive rights and obligations of "employment-

related statutes". The Court did not define or explain in any significant detail what was meant by this expression.

[...]

[167] Although thin on the rights of an AFPO [Assistant Fire Prevention Officer] in pursuing tasks, the document [job description] is plain on what obligations the position entails. It lists two aspects of abilities and skills of the position that the incumbent must possess, which the Board finds of particular relevance.

-Ability to deal effectively with people

-Ability to function in both official languages

[168] Under the heading "Education", it also requires the holder of the position to be able to communicate, make public presentations, provide instructions to all segments of the population of the City of Moncton. Further, under the heading "Investigations" it requires the employee to examine the "scene and physical evidence; interviews and take statements of responding fire suppression personnel, owners, occupants, witnesses, etc."

[169] The "obligation" of the candidate functioning fluently "in both official languages" as an AFPO is, in the view of the Board, clearly substantive, considerable and meaningful to the position of AFPO, and correspondingly to the *OLA*, and its regulations. These traits are convincingly "employment-related", in our opinion, as this expression is described in the Parry Sound analysis.

[...]

[173] Having determined that the *OLA* requirements of service in both official languages are not offensive, and are in fact, indeed compatible with the text of Article 11 of the Collective Agreement, the Board is of the opinion that the inclusion of the obligation of fluency in both official languages in the "Job Posting" is not a violation of the Collective Agreement.

Moncton Firefighters Association, International Association of Firefighters, Local 999 v. Moncton (City), 2015 CanLII 19678 (NB LA)

[16] Further, pursuant to New Brunswick *Regulation 2002-63*, under the *Official Languages Act*, which Regulation also came into force on August 5, 2002, provision is stipulated that if a municipality to which section 36 of the Act applies (the City of Moncton is just such a municipality) which "offers a service or a communication" set out in Column I of Schedule A to the Regulation, it is to do so in both official languages as of the date opposite the service or communication described. Schedule A to the Regulation, under Municipalities-Services and Communication, at number 10, Column 1, specifies the following as to services to be provided in both official languages:

Public notices, information, educational programs and responses to inquiries related to fire prevention services.

At Column II, the date specified is December 31, 2005.

[...]

[124] As such, I accept the argument of the City, in its written submission to this Board, at its paragraphs 78, 79 and 80, below:

78. As it is a city within the meaning of Section 16 of the *Municipalities Act* and as it has a population of which more than 20% is an official language minority population, the City of Moncton has to offer certain services as bilingual services pursuant to Section 36.

79. The relevant regulation is *Services and Communications Regulation – Official Languages Act*, NB Reg 2002-63. Section 10 of Schedule A reads:

> Public notices, information, educational programs and responses to inquiries related to fire prevention services

80. When read with Section 36 of the *Act*, this creates an obligation for the city of Moncton to offer those services in both official languages. The tasks of an AFPO include offering services prescribed under the Act, such as educational programs, information to the public and responses to inquiries.

[Emphasis added]

[125] The "services prescribed" and at issue under Local 999's Policy Grievance, as it is presented, are offered by the Fire Prevention Division of the City's Fire Department. The City's language obligation, therefore, is to offer the services of its AFPO's in both official languages.

[...]

[130] I am satisfied that one of the "civic responsibilities" of the City of Moncton, flowing from New Brunswick's "quasi constitutional" *Official Languages Act* and its *Regulation 2002-63*, "incorporated into the Collective Agreement", is to offer the services of its fire prevention services in both official languages.

[...]

[133] Following from the above, and for reasons which follow, I accept the City's arbitration "position", abridged below:

> (i) The City of Moncton has not violated the Collective Agreement;
>
> (ii) In conformity with its legal obligations under the Official Languages Act of the Province of New Brunswick, the City has designated a bilingual language requirement for an Assistant Fire Prevention Officer, calling for an ability to function in both official languages;
>
> (iii) In the circumstances of this case, this remains a bona fide qualification required of the City to service both its francophone and anglophone communities.

[…]

[136] To this result, and to my conclusion as to the application of Article 2.03, and the requirements set under New Brunswick's *Official Languages Act*, on the facts presented, I rely on the decision of the Supreme Court of Canada in *Parry Sound (District) Social Services Administration Board v. OPSEU Local 324*, 2003 SCC 42 (CanLII), [2003] 2 S.C.R. 157[2]. Here, the Court instructs on caselaw regarding the effect of so-called "employment-related" statutes as to the content of a collective agreement, which "Agreement", as stated, in this case, I find "incorporates" the quasi-constitutional terms of New Brunswick's *Official Languages Act*, and its *Regulation 2002-63*. As directed by the Court, at paragraph 28, S.C.R.:

> As a practical matter, … the substantive rights and obligations of employment-related statutes are implicit in each collective agreement over which an arbitrator has jurisdiction. A collective agreement might extend to an employer a broad right to manage the enterprise as it sees fit, but this right is circumscribed by the employee's statutory rights. The absence of an express provision that prohibits the violation of a particular statutory right is insufficient to conclude that a violation of that right does not constitute a violation of the collective agreement. Rather,

human rights and other employment-related statutes establish a floor beneath which an employer and union cannot contract.

[Emphasis added]

[137] Further, as instructed, at para. 29, S.C.R.:

"As a result, the substantive rights and obligations of the parties to a collective agreement cannot be determined solely by reference to the mutual intentions of the contracting parties as expressed in that agreement".

[138] As such, the City is called upon to act in accordance with its statutory obligations; i.e., here, the language "requirements" of the *Official Languages Act* and its *Regulation – 2002-63* for its "fire prevention services", or more precisely, as at issue, its entry classification for these services. As it speaks to the language requirements of fire prevention services of the City of Moncton, New Brunswick's *Official Languages Act* and its *Regulation 2002-63* is, to repeat, in this case, an "employment related" statute.

[...]

[146] As such, an acknowledgment is found in the *Canada Post* case that appears to have application to, and acts to elevate this Policy Grievance from other language "differences" that may arise with respect to other City fire employees, as heard in the testimony. To repeat, this Policy Grievance addresses a City fire classification which is addressed under New Brunswick's *Official Languages Act*, and its Regulation 2002-63. The civic obligation to ensure bilingual language services in this case is an "imperative" – because, as is acknowledged in Mr. Christie's Arbitral Award, the *Official Languages Act* "requires that". The "right question" here, to address Local 999's claim as to such is then: has the City complied with a language law imperative which, following the Supreme Court's directions in *Parry Sound*, is "incorporated into the collective agreement" and here "squarely within this Board's jurisdiction".

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4. Regional service commissions

4. (1)The services and communications set out in Column I of Schedule B are prescribed for the purposes of section 41 of the Act.

4. (2) If a regional service commission to which section 41 of the Act applies offers a service or communication set out in Column I of Schedule B, it shall do so in both official languages on or before the date set out opposite the service or communication in Column II of Schedule B.

2012, c. 44, s. 16

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5. Commencement

5. This Regulation comes into force on August 5, 2002.

Schedule A

Municipalities – Services and Communications

Column I	Column II
1. Subject to sections 2 to 10,	
(a) public notices of a general nature, including tender notifications, advertisements, public education material and council agendas	**December 31, 2002**
(b) new electronic websites	**December 31, 2002**
(c) existing electronic websites	**December 31, 2003**
(d) new building and facility signs	**December 31, 2002**
(e) existing building and facility signs	**December 31, 2003**
(f) new traffic signs	**December 31, 2002**
(g) existing traffic signs	**December 31, 2005**
(h) responses to public inquiries, whether verbal, written or electronic, including reception services, complaints and reported incidents	**December 31, 2003**
(i) invoices and responses to inquiries related to billing services	**December 31, 2003**
2. Tickets, warnings and public notices, information and responses to inquiries related to by-law enforcement services	**December 31, 2003**
3. Public notices, information and responses to inquiries related to recreational, leisure and cultural services	**December 31, 2003**
4. Licences, licence applications and public notices, information and responses to inquiries related to municipal licensing services	**December 31, 2003**
5. Public notices, information and responses to inquiries related to public works and utilities services	**December 31, 2003**

6. Public notices, information and responses to inquiries related to public transit services	**December 31, 2003**
7. Inspection services, permits, permit applications and public notices, information and responses to inquiries related to building inspection services	**December 31, 2003**
8. Public notices, information, educational programs and responses to inquiries related to crime prevention services	**December 31, 2005**
9. Public notices, information and responses to inquiries related to community planning and development services and services related to the administration of the *Community Planning Act*	**December 31, 2005**
10. Public notices, information, educational programs and responses to inquiries related to fire prevention services	**December 31, 2005**

ANNOTATIONS

International Association of Fire Fighters (IAFF), Local 999 v. Moncton (City), 2017 CanLII 20335 (NB LA)

[72] There is no doubt that the Employer has the obligation to provide fire prevention services in both official languages (see section 35[1] and 36 of the *OLA* and section 39 [1] (sic) of its regulations). The legislation imposes this obligation on the Employer vis-à-vis the public. However, there is nothing in the provisions that provide for substantive rights or obligations fundamentally related to the present employment relationship between the Employer and the Association. The fact that the employer employs people to provide the services in question is peripheral; it does not make the legislation imposing the obligation "employment-related".

[...]

[161] The *OLA* requirements, on their face, plainly obligate the City to provide fire prevention services in both official languages. To that end, does this statutory obligation supersede a provision of the Collective Agreement? The Association argues that it does not. It does however concede that labour arbitrators have the authority and responsibility to enforce substantive rights and obligations of employment-related statutes (see A.U.P.E.). This concept was originally affirmed in the seminal Supreme Court of Canada decision in Parry Sound. In that case, in addition to validating an arbitrator's jurisdiction over human rights violations, the Court also conferred jurisdiction to arbitrators to enforce substantive rights and obligations of "employment-related statutes". The Court did not define or explain in any significant detail what was meant by this expression.

[...]

[167] Although thin on the rights of an AFPO [Assistant Fire Prevention Officer] in pursuing tasks, the document [job description] is plain on what obligations the position entails. It lists two aspects

of abilities and skills of the position that the incumbent must possess, which the Board finds of particular relevance.

-Ability to deal effectively with people

-Ability to function in both official languages

[168] Under the heading “Education”, it also requires the holder of the position to be able to communicate, make public presentations, provide instructions to all segments of the population of the City of Moncton. Further, under the heading “Investigations” it requires the employee to examine the “scene and physical evidence; interviews and take statements of responding fire suppression personnel, owners, occupants, witnesses, etc.”

[169] The “obligation” of the candidate functioning fluently “in both official languages” as an AFPO is, in the view of the Board, clearly substantive, considerable and meaningful to the position of AFPO, and correspondingly to the *OLA*, and its regulations. These traits are convincingly “employment-related”, in our opinion, as this expression is described in the Parry Sound analysis.

[...]

[173] Having determined that the *OLA* requirements of service in both official languages are not offensive, and are in fact, indeed compatible with the text of Article 11 of the Collective Agreement, the Board is of the opinion that the inclusion of the obligation of fluency in both official languages in the “Job Posting” is not a violation of the Collective Agreement.

SEE ALSO:

Charlebois v. Greater Moncton Planning District Commission, 2010 NBAPAB 12 (CanLII)

Schedule B

Regional Service Commissions – Services and Communications

1. All public notices of a general nature, including building and facility signs, tender notifications, advertisements and public education material	**December 31, 2003**
2. Repealed: 2012, c.44 , s. 16	
3. Minutes and agenda of regular and special meetings of a regional service commission	**January 1, 2013**
4. Responses to public inquiries, whether verbal, written or electronic, including reception services, complaints and reported incidents	**December 31, 2003**
5. Invoices and responses to inquiries related to billing services	**December 31, 2003**

2012, c. 44, s. 16

N.B. This Regulation is consolidated to January 1, 2013.

An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick, R.S.N.B. 2011, c. 198

WHEREAS the Legislative Assembly of New Brunswick acknowledges the existence of two official linguistic communities within New Brunswick whose values and heritages emanate from and are expressed through the two official languages of New Brunswick; and

WHEREAS the Legislative Assembly of New Brunswick desires to recognize the equality of these official linguistic communities; and

WHEREAS the Legislative Assembly of New Brunswick seeks to enhance the capacity of each official linguistic community to enjoy and safeguard its heritage for succeeding generations; and

WHEREAS the Legislative Assembly of New Brunswick desires to affirm and protect in its laws the equality of status and the equal rights and privileges of the official linguistic communities; and

WHEREAS the Legislative Assembly of New Brunswick desires to enshrine in its laws a declaration of principles relating to this equality of status and these equal rights and privileges which shall provide a framework for action on the part of public institutions and an example to private institutions;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1981, c. O-1.1, Preamble.

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1. Recognition of English linguistic community and French linguistic community and affirmation of equality of status and equal rights and privileges of each

1. Acknowledging the unique character of New Brunswick, the English linguistic community and the French linguistic community are officially recognized within the context of one province for all purposes to which the authority of the Legislature of New Brunswick extends, and the equality of status and the equal rights and privileges of these two communities are affirmed.

1981, c.O-1.1, s.1.

ANNOTATIONS

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[63] Indeed, subsection 16(2) constitutionalizes the principle of the equality of status of English and French and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. Subsection 16(3) states that nothing in the *Charter* limits the authority of the Parliament of Canada or a provincial legislature to adopt measures to advance the equality of status or use of English and French. Even though this provision does not impose a

positive obligation on the Parliament of Canada or the provinces, it nonetheless recognizes the possibility for the lawmaker to create language rights other than those entrenched in the *Charter*. Finally, subsection 16.1(1) declares, on the one hand, that the English linguistic community and the French linguistic community have equality of status and equal rights and privileges and, on the other hand, that they have the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities. Subsection 16.1(2) recognizes the role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection 16.1(1). In short, this section constitutionalizes the principles of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, supra. The equality provided under section 16.1 is based, not on the equality of the languages as provided for in subsection 16(2), but on the equality of New Brunswick's English linguistic community and French linguistic community. Unlike subsection 16(2), this provision therefore includes collective rights whose holders are the linguistic communities themselves.

[...]

[78] Lastly, we have to consider the scope of section 16.1. To the same extent as subsection 16(2), the principle of the equality of the English linguistic community and the French linguistic community in New Brunswick entrenched in section 16.1 of the *Charter* is a telling indication of the purpose of language guarantees and a source of guidance in the interpretation of other *Charter* provisions, including subsection 18(2). By deciding in 1993 to entrench the principle of the equality of the two communities in the *Charter* as a fundamental characteristic of the province, the framers intended to show their commitment towards the equality of official language communities. This provision reaffirms and embodies the commitment made by the lawmakers of this province in 1981 when they enacted *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. (See Journals of the Legislative Assembly of the Province of New Brunswick, 1992 Session, December 4, 1992, at pages 4708 to 4721.)

Canadian Union Of Public Employees, Local 1252 v. Service New Brunswick, 2016 CanLII 96056 (NB LA)

[61] Finally, I draw to the parties' attention to the following statement by Hon. Fernand Dubé (M.L.A. for Campbellton and Minister of Finance) during debate on Bill 88, *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* (enacted as S.N.B. 1981, c. O-1.1; now R.S.N.B. 2011, c 198):

> Je crois dans le principe de la *Loi sur les langues officielles* au Nouveau-Brunswick. On doit reconnaître qu'une personne au Nouveau-Brunswick ne doit pas se voir refuser un emploie parce qu'elle n'est pas bilingue. Et je vais continuer à appuyer ce principe, et j'ai l'appui de mon Premier ministre et du gouvernement à ce sujet. Je crois en l'article 1 du projet de loi qui reconnaît l'égalité du statut et l'égalité des droits et privilèges. Quant à moi, madame la Présidente, je considère que l'égalité de statut aussi donne droit à l'emploi ici au Nouveau-Brunswick et qu'une personne ne doit pas se voir refuser un emploi parce qu'elle n'est pas bilingue. Enfin, c'est un plaisir pour moi de voir que le chef de l'Opposition et sone parti donnent leur appui total au projet de loi 88, et je puis leur dire en toute sincérité.
>
> [1981*] Hansard (NB)* at 6668 (16 July 1981)

A statement in the Legislative Assembly by the Minister, though perhaps subject to qualifications, is telling of government policy in relation to implementation of language of service in the public sector in the sense that some appropriate level of accommodation should be expected in a situation such as that of the grievor.

---

2. Protection of the equality of status and equal rights and privileges of official linguistic communities

2. The Government of New Brunswick shall ensure protection of the equality of status and the equal rights and privileges of the official linguistic communities and in particular their right to distinct institutions within which cultural, educational and social activities may be carried on.

1981, c.O-1.1, s.2.

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3. Promotion of cultural, economic, educational and social development

3. The Government of New Brunswick, in its proposed laws, in the allocation of public resources and in its policies and programs, shall take positive actions to promote the cultural, economic, educational and social development of the official linguistic communities.

1981, c.O-1.1, s.3.

ANNOTATIONS

Charlebois v. Mowat, 2001 NBCA 117 (CanLII)

[115] At the same time, subsection 16.1(2) of the *Charter* expressly provides that it is "the role of the legislature and government of New Brunswick to preserve and promote" the status, rights and privileges of the two official language communities. This provision encompasses, like section 23 of the *Charter*, a collective dimension and imposes on the government the obligation to act positively to ensure the respect and substantive application of these language guarantees. In addition, section 3 of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, the principles of which were entrenched in section 16.1 of the Charter, is more explicit about the commitment of the government and states that the government "*shall, in its proposed laws, in the allocation of public resources and in its policies and programs, take positive actions to promote the cultural, economic, educational and social development of the official linguistic communities*".

[116] This provision is the legislative confirmation of the obligation of the provincial government to act positively. By its legislative and constitutional commitments, New Brunswick has accepted that is has the responsibility to take all possible steps for the preservation and development of the two official language communities. By that, it recognizes that the two languages and the two cultures they transmit constitute the common heritage of all persons in New Brunswick, and they must be able to enjoy an atmosphere conducive to development. (See: Government of New Brunswick, *Towards Equality of Official Languages in New Brunswick*, supra, at page 413.)

N.B. This Act was proclaimed and came into force September 1, 2011.

N.B. This Act is consolidated to September 1, 2011.

New Brunswick – Other Language Laws

Adult Education and Training Act, R.S.N.B. 2011, c. 101

3. Duties of Minister

3. (1) The Minister

[…]

(g) shall determine the official language of each institution;

3. (2) Despite paragraph (1)(g), the Minister may use the facilities of an institution for the purpose of providing post-secondary non-university programs in the official language which is not the official language of the institution.

Apprenticeship and Occupational Certification Act, S.N.B. 2012, c. 19

Standing committee

19. Standing committee established

19. (1) There is established a standing committee that shall

(a) provide advice to the Minister on how to best ensure the equality of the French linguistic community within the areas of responsibility of the Minister and the Director,

(b) provide advice to the Board on how to best ensure the equality of the French linguistic community within the areas of responsibility of the Board, and

(c) monitor the response to the advice referred to in paragraphs (a) and (b).

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20. Standing committee membership

20. (3) For the purpose of paragraphs (1)(a) and (b), the Lieutenant-Governor in Council shall appoint persons who represent the French linguistic community and who have the competencies determined by the Minister as necessary to ensure the appropriate skills for the standing committee.

Archives Act, S.N.B. 1977, c. A-11.1

10.9 (2) Where a request to inspect a public record is granted, the public record shall only be provided in the language or languages in which it is made.

Business Corporations Act, S.N.B. 1981, c. B-9.1

Part II – Incorporation

8. (3) Subject to subsection 10(1), 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 it may use and may be legally designated by any such form.

8. (4) Subject to subsection 10(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may use and may be legally designated by its name in any such form outside Canada.

Part XVII – Extra-provincial corporations

197. (3) If all or any part of any material or information required by the Director is not in the English or French language, the Director may require the submission to him of a translation of the material or information, verified in accordance with section 210.1, before he registers the extra-provincial corporation.

1983, c. 15, s. 26; 1985, c. 5, s. 4; 2000, c. 9, s. 26; 2004, c. 6, s. 1; 2014, c. 50, s. 21

Common Business Identifier Act, R.S.N.B. 2011, c. 128

3. Assigning a common business identifier

3. (1) For the purpose of assigning a common business identifier to a business entity, when the business entity provides information to a public body under a designated Act, the public body or a person acting for the public body may request from the business entity, and may disclose to the Government of Canada, the following information:

> **[…]**
>
> **(e) the name of the person to contact when dealing with the entity, the English or French language preference of the person and the telephone number, facsimile number and e-mail address for the person;**

Companies Act, R.S.N.B. 1973, c. C-13

Part I – Formation of new companies

6. (3) If the company has a name consisting of a separated or combined French and English form, it may from time to time use, and it may be legally designated by, either the French or English form of its name or both forms.

R.S., c. 33, s. 6; 1966, c. 40, s. 1; O.C. 64-312; 1972, c. 5, s. 2; 1977, c. 11, s. 1; 1978, c. D-11.2, s. 7; 1991, c. 27, s. 10; 2002, c. 15, s. 5; 2002, c. 29, s. 3

Reissuance of letters patent in the other official language

34.1 (1) Where letters patent have been issued to a company under section 16 or 18 in one of the official languages and that company is desirous of obtaining like letters patent in the official language other than that in which they were originally issued, the company may make application for the reissuance of the letters patent and any supplementary letters patent by providing the Director with

> **(a) a copy of a by-law authorizing the application, and**
>
> **(b) a translation of the letters patent and any supplementary letters patent issued to the company verified in a manner satisfactory to the Director.**

34.1 (3) The Director may, on being satisfied with the evidence provided in accordance with subsection (2), reissue the letters patent and any supplementary letters patent in the official language other than that in which the letters patent and any supplementary letters patent were originally issued.

Co-operative Associations Act, S.N.B. 1978, c. C-22.1

10. (1) Notwithstanding sections 6 and 7, an association may have a name consisting of a separated or combined French and English form and may be legally designated by either the French or English form of its name or both forms.

Credit Unions Act, S.N.B. 1992, c. C-32.2

Part II – Incorporation of credit unions

12. (2) Subject to section 14, a credit union 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 it may use and may be legally designated by any such form.

2010, c.36, s.3; 2015, c.45, s.1; 2016, c.10, s.6

Cross-Border Policing Act, S.N.B. 2016, c. C-100

3. Request for appointment

3. (3) A request for appointment shall include the following information:

> **[…]**

(i) a statement that the extra-jurisdictional police officer has read and understood the provisions of sections 31 and 32 of the *Official Languages Act*; and

Custody and Detention of Young Persons Act, R.S.N.B. 2011, c. 137

2. Declaration of special needs and guarantees respecting young persons

2. It is recognized and declared that

(a) young persons who commit offences require supervision, discipline and control but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;

(b) young persons have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms*, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms; and

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

(i) be meaningful for the individual young person given his or her needs and level of development and, when appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

(ii) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.

1985, c. C-40, s. 2; 2004, c.11, s. 2.

General Regulation – Custody and Detention of Young Persons Act, N.B. Reg. 92-71

Admissions

4. When a young person is being admitted to a youth custodial facility, the supervisor shall

(a) assign the young person to a living area,

(b) explain to the young person the regulations, rules and procedures respecting the operation of the youth custodial facility, the programs available and the duties, rights and privileges of the young person while detained in custody,

(c) arrange for the young person to undergo such medical, psychiatric, psychological and dental examinations and treatment as appear necessary,

(d) explain to the young person the rules and procedures respecting contact with parents and other persons and the particulars of visiting hours, mail delivery and other available services respecting communication with the young person,

(e) ensure that the young person is searched and showered,

(f) direct that the young person's clothing be catalogued, cleaned where necessary and stored, and

(g) issue appropriate institutional clothing and toiletries to the young person.

---

5. Information referred to in section 4 shall be communicated to the young person

(a) in English or French, as requested by the young person, or

(b) where the young person does not understand English and French, in a language understood by the young person.

Education Act, SNB 1997, c E-1.12

Interpretation

1. Definitions

1. In this Act

[…]

"education plan" means a detailed plan establishing priorities for the improvement of pupils' educational performance towards the achievement of prescribed learning goals for the official linguistic community; (*plan éducatif*)

Language

4. Organization of school districts, schools and classes

4. (1) Two distinct education sectors are established consisting of

(a) school districts organized throughout the Province in the English language, and

(b) school districts organized throughout the Province in the French language.

4. (2) Schools and classes of a school district shall be organized in the official language of the school district.

4. (3) The language of instruction in schools and classes of a school district, other than second language instruction, shall be the official language of the school district.

4. (4) For each of the two education sectors established under subsection (1), there shall be a dedicated division within the Department of Education and Early Childhood Development to develop and oversee the implementation and evaluation of educational programs and educational services.

4. (5) The educational programs and educational services provided within a school district, other than second language instruction, shall be developed, implemented and delivered by persons who speak the official language of the school district and so as to preserve and promote that language and culture.

4. (6) Notwithstanding any other provision of this Act, the educational programs and educational services provided within a school district organized in one official language shall not be provided in the other official language for persons who speak that other official language.

2010, c. 31, s. 34

N.B. – The province of New Brunswick submitted a reference question to the New Brunswick Court of Appeal in November 2015 in which it asked the question: " Is there, in New Brunswick, a constitutional obligation to provide distinct school transportation in relation to one or the other official language?" The province, however, withdrew its request in November 2016.

SEE ALSO:

School Districts and Subdistricts Regulation – Education Act, N.B. Reg 2001-24

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5. Entitlement based on linguistic proficiency

5. (1) A person entitled to free school privileges under section 8 is entitled

> **(a) if the person has sufficient linguistic proficiency in only one of the official languages of New Brunswick, to receive those privileges in a school district, school and class organized in that official language,**
>
> **(b) if the person has sufficient linguistic proficiency in both of the official languages of New Brunswick, to receive those privileges in a school district, school and class organized in either of the official languages,**
>
> **(c) if the person does not have sufficient linguistic proficiency in either of the official languages of New Brunswick, to receive those privileges in a school district, school and class organized in either of the official languages, or**

(d) notwithstanding paragraph (a), if the person's parent has rights under section 23 of the *Canadian Charter of Rights and Freedoms*, to receive those privileges in a school district, school and class organized in the French language.

5. (2) Where a superintendent has a doubt as to the linguistic proficiency of a person, the superintendent shall administer such tests as the Minister considers necessary to determine the linguistic proficiency of the person.

5. (3) A District Education Council shall provide supplementary educational programs and services for a pupil admitted by virtue of paragraph (1)(d) to a school organized in the French language if, in the opinion of the superintendent concerned, such supplementary educational programs and services are required to improve the linguistic skills of that pupil to a level necessary to satisfactorily participate in the instructional program in which that pupil is placed under section 11.

2000, c. 52, s. 7

Governance

33. Duties of the Parent School Support Committees

2000, c.52, s.22

33. (1) A Parent School Support Committee shall advise the principal of the school respecting the establishment, implementation and monitoring of the school improvement plan which may include

(a) strategies for ensuring the language and culture of the school preserve and promote the language and culture of the official linguistic community for which the school is organized,

(b) the school mission,

(c) strategies for establishing school policies related to education, language and culture,

(d) strategies for providing communication between the school and families residing in the area served by the school, and encouraging family involvement in the school,

(e) strategies for establishing partnerships with the community to improve the quality of learning within the school,

(f) strategies for developing a school climate and conditions to improve the quality of learning and teaching within the school,

(g) strategies for establishing a positive pupil climate within the school, and

(h) strategies for improving school property and facilitating use of the school by the community.

36.5 Declaration of language

36.5 A candidate for the office of councillor shall certify on the candidate's nomination paper that the candidate is willing to discharge the duties of the office of councillor in the official language on the basis of which the school district, for which the candidate is offering, is organized.

2000, c.52, s.30

Administration

36.9 Authority and responsibility of the District Education Councils

2000, c.52, s.30

36.9 (2) A district education plan shall be consistent with the provincial education plan and shall include

> **(a) a vision, including a mission statement, goals and values,**
>
> **(b) a strategy respecting the delivery and evaluation of educational programs and services within the school district, including educational priorities, objectives and a work plan,**
>
> **(c) accountability measures for evaluating pupil achievement, monitoring school district performance and monitoring the achievement of strategic objectives, and**
>
> **(d) strategies to ensure the preservation and promotion of the language and culture of the official linguistic community for which the school district is organized.**

---

44. Division of financial resources between linguistic sectors

44. (1) The financial resources voted by the Legislative Assembly for school operations shall be divided by the Minister on an equitable basis between the two distinct education sectors established under subsection 4(1).

44. (2) The equitable division of financial resources under subsection (1) shall seek to assure to each of the education sectors established under subsection 4(1) an equivalent standard of education taking into account the needs and particular circumstances of each sector.

2000, c.52, s.44

Parent school support committees

18. Declaration of office

18. Each member of a Parent School Support Committee shall subscribe to a declaration of office, on a form provided by the Minister, before conducting business as a member of the Parent School Support Committee to signify that the member is aware of

(a) the duties of the Parent School Support Committee under the Act,

(b) any code of conduct to which the member is expected to adhere, and

(c) the requirement that the member discharge his or her duties in the official language of the school district.

District education councils

21. Number of councillors

21. The number of elected councillors for each District Education Council is as follows:

(a) Anglophone North School District.....7;

(b) Anglophone East School District.....9;

(c) Anglophone South School District.....12;

(d) Anglophone West School District.....13;

(e) Francophone nord-ouest school district.....8;

(f) Francophone nord-est school district.....9;

(g) Francophone sud school district.....10.

2001-87; 2012-12

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22. Mi'kmaq or Maliseet representation

22. The following school districts are prescribed for the purposes of subsection 36.2(3) of the Act:

(a) School District No. 14;

(b) School District No. 15;

(c) School District No. 16;

(d) School District No. 17; and

(e) School District No. 18.

2001-87

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24. Oath of office

24. (1) Each member of a District Education Council shall subscribe to an oath of office by way of affidavit or solemn declaration before conducting business as a member of the District Education Council and shall signify that the member is aware of

(a) the duties of the District Education Council under the Act,

(b) any code of conduct to which the member is expected to adhere, and

(c) the requirement that the member discharge his or her duties in the official language of the school district.

24. (2) An affidavit for the purposes of subsection (1) shall be in Form 1.

24. (3) A solemn declaration for the purposes of subsection (1) shall be in Form 2.

School Administration Regulation – Education Act, N.B. Reg. 97-150

Provincial Curriculum and Evaluation Advisory Committees

31. Provincial curriculum and evaluation advisory committees

31. (1) There are established two provincial curriculum and evaluation advisory committees to the Minister, one anglophone and one francophone, for the purposes of consultation, liaison, communication and the provision of advice with respect to the development and implementation of curriculum and instruction in public schools in the Province and with respect to the implementation of provincial testing and evaluation programs.

Teacher Certification Regulation – Education Act, N.B. Reg. 2004-8

Fundamental requirements

4. Language requirement

4. The Minister may require an applicant for a teacher's certificate or an interim teacher's certificate to demonstrate proficiency in the English language or the French language.

Appeal Board on Teacher Certification

21. Composition of the Appeal Board

21. (1) For the purposes of subsection 31(1) of the Act, the Lieutenant-Governor in Council shall appoint to the Appeal Board.

(a) a chair,

(b) 2 vice-chairs each representing 1 of the official languages of New Brunswick,

(c) 3 persons from a list of no fewer than 5 persons submitted to the Minister by the New Brunswick Teachers' Association to represent anglophone teachers,

(d) 3 persons from a list of no fewer than 5 persons submitted to the Minister by l'Association des enseignantes et enseignants francophones du Nouveau-Brunswick to represent francophone teachers,

(e) 3 persons from the list of persons submitted under subsection (2) to represent the public, and

(f) 3 persons from the list of persons submitted under subsection (3) to represent the public.

21. (2) The District Education Council for each school district organized in the English language shall, for the purposes of paragraph (1)(e), submit to the Minister the name of 1 member of the District Education Council.

21. (3) The District Education Council for each school district organized in the French language shall, for the purposes of paragraph (1)(f), submit to the Minister the name of 1 member of the District Education Council.

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23. Panels of the Appeal Board

23. (1) Where an appeal or review is to be conducted in the English language, a panel of the Appeal Board shall be convened to conduct the appeal or review on behalf of the Appeal Board and shall consist of

(a) the chair or, at the discretion of the chair, the vice-chair who represents the English language,

(b) 1 member, selected by the chair, from among the members appointed under paragraph 21(1)(c), and

(c) 1 member, selected by the chair, from among the members appointed under paragraph 21(1)(e).

23. (2) Where an appeal or review is to be conducted in the French language, a panel of the Appeal Board shall be convened to conduct the appeal or review on behalf of the Appeal Board and shall consist of

(a) the chair or, at the discretion of the chair, the vice-chair who represents the French language,

(b) 1 member, selected by the chair, from among the members appointed under paragraph 21(1)(d), and

(c) 1 member, selected by the chair, from among the members appointed under paragraph 21(1)(f).

23. (3) Where no chair has been appointed or the chair is unable for any reason to exercise his or her discretion under paragraph (1)(a), the vice-chair who represents the English language shall serve on the panel convened to hear the appeal.

23. (4) Where no chair has been appointed or the chair is unable for any reason to exercise his or her discretion under paragraph (2)(a), the vice-chair who represents the French language shall serve on the panel convened to hear the appeal.

---

24. Absence of the chair

24. (2) Where no chair has been appointed or the chair is unable for any reason to make a request under subsection (1),

(a) the vice-chair who represents the English language shall act for the chair where an appeal or review is to be conducted in the English language, and shall, when so acting, have all the powers and duties of the chair, and

(b) the vice-chair who represents the French language shall act for the chair where an appeal or review is to be conducted in the French language, and shall, when so acting, have all the powers and duties of the chair.

---

25. Initiation of appeal or review

25. (4) On receipt of a notice of an appeal within the time limit set out in subsection (2) or, where the time limit is extended under subsection (3), within the extended time limit, or on receipt of a notice of a referral, the chair shall

(a) convene a panel of the Appeal Board in accordance with section 26 in the official language of the person in respect of whom the appeal or review is to be conducted, and make the necessary arrangements to conduct the appeal or review, and

(b) notify the person in respect of whom the appeal or review is to be conducted and the Minister, by registered mail or personal service, at least 20 days before the appeal or review is to be conducted, of the date, time and place of the appeal or review.

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31. Teacher education coordinating committees

31. (1) The Minister shall establish an English language teacher education coordinating committee and a French language teacher education coordinating committee to assist the Minister with the Minister's responsibilities for providing for a system of teacher education.

31. (2) The members of the English language teacher education coordinating committee are

> **(a) the Vice-President (Academic) of each university with which the Minister has entered into an agreement for the establishment, maintenance and conduct of English language teacher education programs,**
>
> **(b) the Assistant Deputy Minister - Educational Services (Anglophone) of the Department of Education and Early Childhood Development, and**
>
> **(c) other members as appointed by the co-chairs of the committee.**

31. (3) The members of the French language teacher education coordinating committee are

> **(a) the Vice-President (Academic) of each university with which the Minister has entered into an agreement for the establishment, maintenance and conduct of French language teacher education programs,**
>
> **(b) the Assistant Deputy Minister - Educational Services (Francophone) of the Department of Education and Early Childhood Development, and**
>
> **(c) other members as appointed by the co-chairs of the committee.**

31. (4) The Vice-Presidents (Academic) referred to in paragraphs (2)(a) or (3)(a) shall select from among themselves 1 person who shall co-chair the respective committee with the Assistant Deputy Minister referred to in paragraph (2)(b) or (3)(b);

31. (8) Changes proposed by the Faculty of Education of a university in the development, content and organization of the programs or courses of instruction for the education of teachers it offers shall be submitted to the English or French teacher education coordinating committee, as the case may be, for the committee's consideration and advice before any recommendation is made by the faculty to the university.

2010, c. 31, s. 36

Elections Act, R.S.N.B. 1973, c. E-3

85. Interpreter

85. (1) If an elector speaks neither English nor French, the poll supervisor, if possible, shall appoint an interpreter who shall be the means of communication between the election officers and the elector with respect to all matters required to enable the elector to vote.

85. (2) The Interpreter shall take the oath following:

> **"I swear (or affirm) that I will faithfully translate such oaths, declarations, questions and answers as an election officer shall require of me to translate at this election. So help me God."**

1967, c. 9, s. 85; 2010, c. 6, s. 85

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128. Forms

128. (4) The Chief Electoral Officer shall ensure that every form is available in both official languages.

Electoral Boundaries and Representation Act, S.N.B. 2014, c. 106

4. Composition of Commission

4. (1) A Commission shall be composed of the following persons:

> **(a) two co-chairs, one representing the English linguistic community and one representing the French linguistic community; and**
>
> **(b) three to five members.**

---

11. Electoral quotient

11. (1) Subject to subsections (3), (4), (5) and (6), when dividing the Province into electoral districts, a Commission shall ensure that the number of electors in each electoral district is as close as reasonably possible to the electoral quotient.

11. (2) When dividing the Province into electoral districts, a Commission shall consider the effective representation of the English and French linguistic communities in complying with section 3 of the *Canadian Charter of Rights and Freedoms*.

11. (3) In order to comply with its obligations under subsection (2), a Commission may depart from the principle of voter parity as set out in subsection (1).

11. (4) A Commission may depart from the principle of voter parity as set out in subsection (1) in order to achieve effective representation of the electorate as guaranteed by section 3 of the *Canadian Charter of Rights and Freedoms* and based upon the following considerations:

> **(a) communities of interest;**
>
> **(b) municipal and other administrative boundaries;**

(c) the rate of population growth in a region;

(d) effective representation of rural areas;

(e) geographical features, including the following:

(i) the accessibility of a region;

(ii) the size of a region; and

(iii) the shape of a region; and

(f) any other considerations that the Commission considers appropriate.

11. (5) If a Commission is of the opinion that it is desirable to depart from the principle of voter parity when establishing an electoral district, the number of electors in the electoral district shall deviate by no greater than 15% from the electoral quotient.

11. (6) If a Commission is of the opinion that it is desirable to depart from the principle of voter parity when establishing an electoral district, in extraordinary circumstances the number of electors in the electoral district may deviate by no greater than 25% from the electoral quotient.

11. (7) For greater certainty, "extraordinary circumstances" in subsection (6) includes the effective representation of the English and French linguistic communities.

2005, c. E-3.5, s. 12; 2011, c. 50, s. 10; 2012, c. 42, s. 1; 2015, c. 37, s. 1

Electricity Act, S.N.B. 2013, c. 7

3. Amalgamated corporation

3. (1) Despite the *Business Corporations Act*, the amalgamating corporations are amalgamated and shall continue as a corporation with share capital under the name New Brunswick Power Corporation in English and *Société d'énergie du Nouveau-Brunswick* in French.

3. (2) The Corporation may use and be legally designated by the English or French version of its name.

Employment Standards Act, S.N.B. 1982, c. E-7.2

Foreign workers

38.9 (4) An employer shall register by providing to the Director the following information:

(a) with respect to the employer,

[…]

(vii) the preferred official language of correspondence;

Foreign Resident Corporations Act, S.N.B. 2014, c. 109

3. Documents required to accompany application

3. (3) If all or a part of the documents submitted to the Minister under subsection (1) are not in the French or English language, the Minister may require a submission to him or her of a translation of the documents or any part of them, verified in a manner satisfactory to him or her, before he or she considers the application.

---

7. Filing of documents before application for certificate

7. (1) A foreign corporation may file any or all of the documents referred to in section 3 with the Minister before making an application to operate within New Brunswick as a foreign resident corporation.

7. (2) If all or any part of the documents filed with the Minister under subsection (1) are not in the French or English language, the Minister may require a submission to him or her of a translation of the documents or any part of them, verified in a manner satisfactory to him or her, before the documents are filed under subsection (1).

1984, c. F-19.1, s. 7; 1990, c. 10, s. 3

---

10. Name of foreign resident corporation

10. A foreign resident corporation shall continue to conduct business in any of the following names followed by the initials "F.R.C.":

(a) in its corporate name;

(b) in the name of the foreign resident corporation that is a translation into English or French; or

(c) in a name approved by the Minister that describes or identifies the foreign resident corporation.

1984, c. F-19.1, s. 10

Heritage Conservation Act, S.N.B. 2009, c. H-4.05

Interpretation and application

1. Definitions

1. The following definitions apply in this Act.

[…]

"First Nation" means an aboriginal people sharing a common traditional territory and having a common traditional language, culture and lands. (*Première nation*)

Insurance Act, R.S.N.B. 1973, c. I-12

Official languages

20.1 (1) No insurer carrying on business in the Province shall use any form or document relating to a contract of insurance and which is to be provided to an applicant for insurance, an insured, a beneficiary or a claimant unless that form or document is provided or made available in both official languages; and every insurer shall, if the Superintendent so requests, file a copy of the form or document in each official language in the office of the Superintendent.

20.1 (2) The Superintendent may require an insurer to change a form or document filed under subsection (1) and, when the Superintendent so requires, he shall specify in writing his reasons for requiring the change.

20.1 (3) An insurer who violates subsection (1) or who fails to comply with a requirement issued by the Superintendent under subsection (2) commits an offence.

1982, c.32, s.1

ANNOTATIONS

Constance Wooldridge-Vincent v. Assumption Mutual Life Insurance Company, 2008 NBQB 121 (CanLII)

[4] The examination for discovery disclosed that the internal administration of the Assumption [Mutual Life Insurance Company] is in the other official language. The people who were dealing with the plaintiff used an internal policy manual entitled "Procédures en invalidité". They used that internal manual in French to manage her claims and to request further medicals or specialist's reports and other steps.

[5] At the discovery the plaintiff asked for an undertaking for the disclosure of that document. It was disclosed. Now by motion before trial the plaintiff asks that the defendant be ordered to produce an English interpretation of the defendant's policy manual entitled "Procédures en invalidité" in completion of its undertaking pursuant to the Rules of Court and Section 20.1 of The Insurance Act.

[6] In the alternative, the plaintiff requests that the defendant's representative be ordered to attend further discovery and provide the defendant's understanding in English of each relevant provision of the manual and their application during interaction with the plaintiff.

[7] That provision of The Insurance Act says:

> "20.1 No insurer carrying on business in the Province shall use any form or document relating to a contract of insurance and which is to be provided to an applicant for insurance, an insured, a beneficiary or a claimant unless that form or document is provided or made available in both official languages; and every insurer shall, if the Superintendent so requests, file a copy of the form or document in each official language in the office of the Superintendent."

[8] The first question is whether there is a violation of that provision. In my view the internal policy of the defendant is not a document "which is to be provided to an applicant for insurance, an insured, a beneficiary or a claimant". That was an internal policy manual for dealing with claims, not something to be provided to a beneficiary or claimant. Accordingly in my view that section does not apply.

20.2 (1) No insurer carrying on business in the Province shall engage a solicitor to act on behalf of an insured unless the insured has indicated to the insurer the official language he wishes to be used by the solicitor acting on his behalf.

20.2 (2) Where an insurer is required or wishes to engage a solicitor to act on behalf of an insured, the insurer shall, after the insured has indicated the official language he wishes to be used by the solicitor acting on his behalf, engage a solicitor who uses that official language.

20.2 (3) Repealed: 2008, c. 11, s. 14

1986, c. 48, s. 1; 2008, c. 11, s. 14

ANNOTATIONS

Gagnon v. Rouselle, [2000] N.B.J. No. 259, 227 N.B.R. (2d) 180 (NB QB) [hyperlink not available]

[8] As a direct consequence of the *Fournier* case, the Province had to assume the relatively high costs of simultaneous interpretation solely to accommodate a unilingual anglophone lawyer whose services had been retained by an insurer to act on behalf of a Francophone insured. It is as a result of the *Fournier* case that s. 20.2 of the Act was enacted in November 1986. It would appear that the Legislature's goal in enacting s. 20.2 was to prevent this rather strange scenario which had taken place in *Fournier* from occurring again.

[…]

[11] It is in this context that s. 20.2 of the Act must be interpreted.

[…]

[15] The insurer cannot and must not retain the services of a solicitor to act on behalf of an insured before the insurer has obtained same indication from the latter of the official language the insured wishes the solicitor to use. Once the insurer has obtained the insured's choice, the insurer must retain a solicitor who is able and willing to use the official language chosen by the insured and who will in fact use it. The solicitor whose services have been retained must master the official language the insured has chosen to a degree such that he or she will never jeopardize the insured's interests by reason of his or her linguistic ability. If an insurer subsequently has to negotiate with an insured to obtain a waiver of the rights conferred by subsection 20.2(1) of the Act because of a lack of linguistic ability, it is obvious to me that the insurer has not fulfilled its statutory duty under subsection 20.2(1) of the Act. In my opinion, the insurer cannot and must not negotiate with an insured in order to obtain a waiver of the right conferred by subsection 20.2(1), because the insurer has engaged or wishes to engage a solicitor who does not have the linguistic ability to adequately represent the insured in the official language of his or her choice under subsection 20.2(1) of the Act.

[16] In my opinion, if the solicitor the insurer intends to engage does not sufficiently master the official language of the insured's choice, the insurer cannot retain his or her services and the solicitor himself or herself must refuse to act if the insurer has failed in its duty.

[17] In short, I believe that the purpose of s. 20.2 of the Act is to make available for the insured a solicitor who will effectively use the official language of the insured's choice. This amendment merely respects the spirit of subsection 16(2) of the *Charter of Rights and Freedoms* which recognizes French and English as the two official languages of New Brunswick, as well as the *Official Languages of New Brunswick Act*. This amendment to the Act is one way both linguistic groups in this Province, English and French, can encourage insurers to provide them with services in the official language of their choice (i.e., the insured's choice) and is an example of the use of a statutory provision to promote linguistic rights.

Interjurisdictional Support Orders Act, S.N.B. 2016, c. 102

6. Submission of application to designated authority

6. (1) A claimant shall submit a support application in the prescribed manner to a designated authority in New Brunswick, along with a certified translation of the application if one is required by the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent ordinarily resides.

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24. Submission of application to designated authority

24. (1) An applicant shall submit a support variation application in the prescribed manner to a designated authority in New Brunswick, along with a certified translation of the application if one is required by the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent ordinarily resides.

2002, c.I-12.05, s.24

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37. Translation

37. (1) If a designated authority forwards an order or other document to a reciprocating jurisdiction that requires that it be translated into a language other than French or English, the order or document shall be accompanied by

(a) a translation of the order or document into the other language, and

(b) a certificate of the translator authenticating the accuracy of the translation.

37. (2) A person for whom an order or document is being forwarded under subsection (1) shall provide the translation and the translator's certificate to the designated authority.

37. (3) An order or other document from a reciprocating jurisdiction that is written in neither French nor English shall be accompanied by

(a) a translation of the order or document into either French or English, and

(b) a certificate of the translator authenticating the accuracy of the translation.

2002, c.I-12.05, s.37

International Child Abduction Act, R.S.N.B. 2011, c. 175

Schedule A – Convention on the Civil Aspects of International Child Abduction

Chapter V – General Provisions

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.B. 2011, c. 176

Schedule A – Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Article IV

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.

Chapter V. Conduct of Arbitral Proceedings

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.

Chapter VIII. Recognition and Enforcement of Awards

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 Sale of Goods Act, R.S.N.B. 2011, c. 177

Article 101

DONE at Vienna, this day of 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.

International Trusts Act, R.S.N.B. 2011, c. 178

Chapter V – Final clauses

Article 32

[…]

Done at The Hague, on the day of , 19 , in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

1988, c.I-12.3, Schedule.

International Wills Act, R.S.N.B. 2011, c. 179

Schedule A – Convention Providing a Uniform Law on the Form of an International Will

Article I

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

Annex – Uniform Law on the Form of an Internaitonal Will

Article 3

3. It may be written in any language, by hand or by any other means.

Interpretation Act, R.S.N.B. 1973, c. I-13

13. Where an Act or regulation establishes a corporation and in each of the English and French versions of the Act or regulation the name of the corporation is in the form only of the language of that version, the name of the corporation shall consist of the form of its name in each of the versions of the Act or regulation.

1973, c. 74, s. 45; 1982, c. 33, s. 4; 2011, c. 19, s. 3

---

14. Words in an Act or regulation establishing a corporation having a name consisting of an English and a French form or a combined English and French form shall be construed to vest in the corporation power to use either the English or French form of its name or both forms and to show on its seal both the English and French forms of its name or to have two seals, one showing the English and the other showing the French form of its name.

1973, c. 74, s. 45; 1982, c. 33, s. 4; 2011, c. 19, s. 4

Judicature Act, R.S.N.B. 1973, c. J-2

Rules of Court

73. (1) The Lieutenant-Governor in Council may at any time amend or repeal the provisions of the Rules of Court, and may make other, further and additional Rules for carrying this Act into effect, and in particular, but without restricting the generality of such powers by enumeration, for all or any of the following matters:

> **[…]**
>
> **(k) respecting the use of either or both of the official languages of New Brunswick in the pleading, practice and procedure in the Court of Appeal and the Court of Queen's Bench;**

Rules of Court – Judicature Act, N.B. Reg. 82-73

Rule 3

By a Person who does not Understand the Language

(9) Where it appears to a person before whom an affidavit is sworn that the deponent does not understand the language used in the affidavit, he shall certify in the jurat that the affidavit was interpreted to the deponent by him or in his presence by a named interpreter sworn by him to interpret the affidavit correctly.

Rule 5

(3) The following forms prescribed in the Appendix of Forms shall be used as prescribed in bilingual format but need to be completed in only English or French: 7A, 8A, 16A, 16B, 16D, 27C-2, 27I, 33B, 33C, 37A, 37B, 42A, 42B, 42C, 42D, 53A, 53B, 55A, 55B, 55C, 55D, 61A, 61B, 61C, 61F, 62J, 62K, 69.1A, 69.1B, 69.1D, 70A, 70C, 72A, 72U, 73A, 73AA, 73B, 76A, 76B, 81A and 81F.

85-5; 86-87; 92-3; 92-107; 98-45; 2006-46; 2010-99; 2010-135; 2012-51; 2012-102; 2014-76

Rule 33

33.06 Persons Examined to Be Sworn

(2) Where the person being examined understands neither of the official languages, or is deaf or mute, the examining party shall provide a competent and independent interpreter who shall be sworn to accurately interpret the administration of the oath and the questions to be put to the person being examined and his answers.

(3) Where the examination is to be carried out in an official language other than the official language understood by the witness, the examining party shall advise the clerk of the judicial district in which the examination is to be held; the clerk shall then appoint an interpreter, at no cost to the parties, who shall be sworn to accurately interpret the administration of the oath and the questions to be put to the person being examined and his answers.

Rule 39

39.05 Language of Proceeding

(1) On a motion or application, a party who intends to proceed in or present evidence in an official language other than the official language in which any other party intends to proceed or present evidence, shall so advise the clerk at least 7 days before the hearing.

(2) On being advised pursuant to paragraph (1), the clerk shall arrange to have an interpreter present at the hearing.

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ANNOTATIONS

Whelton v. Mercier et al., 2004 NBCA 83 (CanLII)

[2] The first procedural question requires an interpretation of Rule 39.05 of the *Rules of Court* ("Language of Proceeding"). The question is whether a respondent who intends to use at the hearing an official language other than the language specified in the Notice of Motion must, pursuant to Rule 39.05(1), notify the clerk accordingly, even if the respondent's choice of official language is revealed in his or her pleadings and the affidavits that he or she filed are drafted in that language. [...]

[7] As noted in my introductory remarks, Highland Transport brought a motion for summary judgment dismissing the action against it. In its Notice of Motion, Highland Transport advised that it intended to use the English language. For his part, Mr. Whelton had earlier indicated, more precisely in his Notice of Action, that he intended to proceed in the French language, and he sought to oppose Highland Transport's motion using affidavits drafted in that language. However, Mr. Whelton did not notify the clerk of his intention to proceed in French at the motion hearing. Since the clerk was not made aware of Mr. Whelton's intention to use an official language other than the language specified in the Notice of Motion, he did not take measures to ensure that an interpreter would be present at the hearing. Rule 39.05(1) provides that, "[o]n a motion or application, a party who intends to proceed in or present evidence in an official language other than the official language in which any other party intends to proceed or present evidence, shall so advise the clerk at least 7 days before the hearing" and Rule 39.05(2) states that the clerk, on being advised pursuant to Rule 39.05(1), shall arrange to have an interpreter present at the hearing.

[…]

[22] The wording of both Rule 39.05(1) and Form 37A leaves no room for doubt: it is the responding party who must notify the clerk if he or she wishes to use an official language other than the one that the moving party has identified in the Notice of Motion. Moreover, the notice to the clerk contemplated in Rule 39.05(1) is distinct from any language-related notice that might be contained in a Notice of Action or Statement of Claim. If a plaintiff's obligations under Rule 39.05(1) were fulfilled merely by indicating his or her choice of official language in the Notice of Action or Statement of Claim, Rule 39.05(1) would be worded so as to apply only to applications. However, as we have seen, Rule 39.05(1) unambiguously states that motions come within its scope. In addition, it is clear from the wording of Rule 39.05(1) and Form 37A that a respondent's filing of affidavits drafted in a given official language does not constitute notice to the clerk within the meaning of Rule 39.05(1). Lastly, in my respectful view, nothing contained in the *Official*

Languages Act (New Brunswick), the *Insurance Act* or the *Canadian Charter of Rights and Freedoms* supports a different interpretation of Rule 39.05(1).

[23] Since Mr. Whelton did not notify the clerk as required by Rule 39.05(1), he was not legally entitled to use a language other than English, the official language specified in Highland Transport's Notice of Motion. That said, what our Court stated in *Chiasson v. Chiasson* (1999), 222 N.B.R. (2d) 233 at paras. 4-5, bears repeating:

> In New Brunswick, the only province in Canada with two official languages, when a party indicates his wish to be heard in one official language and the judge's reaction is so hostile that the party ends up being heard in the other official language, the court's judgment cannot be allowed to stand. The right to use the official language of one's choosing is not a privilege; it is a fundamental right unrelated to trial fairness as such. See *R. v. Beaulac* (J.V.), 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, at pp. 799-800, paragraphs 45-47.
>
> In our view, judges ought to refrain from engaging in any conduct that might deter a person appearing or giving evidence in any proceeding before the court from being heard in the official language of his choice. In fact, it behooves judges to show the greatest of respect for that person's choice of official language.

[24] The judge who heard the motion for summary judgment in the instant case was not dealing with an urgent matter. A few weeks' adjournment would have enabled Mr. Whelton to comply with Rule 39.05(1). With the greatest respect, I am of the opinion that the motion judge erred in disregarding Mr. Whelton's wishes and in insisting that he employ the English language at the hearing. The judge should have raised the possibility of an adjournment and sought representations from the parties as to whether such a measure would be appropriate. Having said this, the judge's failure to hear the parties' representations on this issue is not mentioned as a ground in the Notice of Appeal (see Rule 62.09(2)) and it is preferable for all concerned that the appeal be disposed of for reasons susceptible of contributing to a fair resolution of the matter on its merits.

[25] Lastly, it should be noted that the intervener, l'Association des juristes d'expression française du Nouveau-Brunswick Inc., filed a submission in support of the proposition that Rule 39.05(1) fails to fulfil the provincial government's obligations under the *Canadian Charter of Rights and Freedoms* in relation to language rights. The Court refused to consider this issue because it was not raised and argued in the court below.

Rule 55 – Evidence at Trial

55.01 Evidence by Witnesses

(5) Where a witness understands neither of the official languages, or is a deaf or mute person, the party calling that witness shall provide a competent and independent interpreter who, before the witness is sworn, shall be sworn to interpret accurately the administration of the oath, the questions to be put to the witness and his answers thereto.

Rule 73

73.02.01 Definition

99-71

(1) In this Rule

responding document means a respondent's affidavit in opposition to an application or motion under this Rule or a respondent's affidavit asserting a right or claim provided for under this Rule.

(2) A responding document shall contain

[…]

(h) the language in which the respondent intends to proceed,

Jury Act, S.N.B. 1980, c. J-3.1

Exemptions

5. The following persons may be exempted from serving as jurors:

[…]

(c) a person who is unable to understand, speak or read the official language in which the proceeding is to be conducted;

1994, c. 74, s. 7

Jury panel

13. (2) Subject to subsection (2.1), the persons to be summoned may be selected

(a) at random in accordance with the regulations from the names of persons on a list provided for in the regulations who are apparently resident in the judicial district or the district part of it in which the proceeding is to be conducted, or

(b) if a list provided for in the regulations indicates the linguistic preference of the persons named on the list,

(i) in accordance with paragraph (a),

(ii) at random in accordance with the regulations from the names of persons on the list who are apparently resident in the judicial district or the distinct part of it in which the proceeding is to be conducted and whose linguistic

preference, according to the list, is the official language in which the proceeding is to be conducted, or

(iii) partly in accordance with subparagraph (ii) and partly in accordance with paragraph (a).

1982, c.35, s.4; 1994, c.74, s.18; 2007, c.9, s.1; 2009, c.50, s.1

General Regulation – Jury Act, N.B. Reg. 95-126

4. The lists referred to in subsection 13(2) of the Act are:

(a) the list of beneficiaries and their dependents who are nineteen years of age or over under the *Medical Services Payment Act* that contains the surname, given names, mailing address, date of birth and linguistic preference of each of the beneficiaries and dependents and the location code and unique identifier number for each of the beneficiaries and dependents;

Le Centre communautaire Sainte-Anne Act, S.N.B. 1977, c. C-1.1

2. (2) The Community Board shall be appointed in the following manner:

(a) two persons appointed by the Lieutenant-Governor in Council, each of whom shall be nominated by the Minister; and

(b) nine persons appointed by the Minister,

(i) two of whom shall be trustees from the School Board, nominated by the School Board, and

(ii) seven of whom shall be persons elected at large by members of the French linguistic community within the boundaries of the geographic area designated under the Schools Act in respect of École Sainte-Anne at a public meeting called for the purpose of such election.

2. (3) Each member of the Board appointed under paragraph (2)(a) shall hold office for a period of three years or until

(a) a successor is appointed,

(b) the appointment is sooner revoked by the Lieutenant-Governor in Council, or

(c) the person dies or resigns.

2. (3.01) Each member of the Board appointed under paragraph (2)(b) shall hold office for a period of three years or until

(a) a successor is appointed,

(b) the appointment is sooner revoked by the Minister, or

(c) the person dies or resigns.

2. (3.1) Notwithstanding subsection (3), of the members of the first Board appointed in accordance with subsection (2)

(a) one of the members nominated by the Premier shall be appointed to hold office for two years;

(b) one of the members nominated by the School Board shall be appointed to hold office for two years;

(c) two of the members elected by the members of the French linguistic community shall be appointed to hold office for two years; and

(d) two of the members elected by the members of the French linguistic community of Fredericton shall be appointed to hold office for one year.

---

3. (1) The Corporation is an agency of Her Majesty in right of the Province of New Brunswick and is deemed to be a Crown Corporation under the *Proceedings Against the Crown Act*.

3. (2) The objects of the Corporation shall be

(a) to provide, on land and in buildings and structures referred to in subsection 6(3)

(i) educational facilities to allow the School Board to offer instruction of the regular school curriculum in the French language in accordance with the Schools Act, and

(ii) community facilities operated by the Board;

(b) to plan, develop, administer and coordinate the overall community development of the French linguistic community within the boundaries of the geographic area designated under the Schools Act in respect of École Sainte-Anne;

(c) to facilitate the organizing of primarily French-language cultural presentations, and other community activities primarily in French, by offering development, promotional, technical, support and other similar services;

(d) to provide facilities for the purposes of carrying out the objects referred to in paragraphs (b) and (c);

(e) to administer grants and funds from various sources, including revenues referred to in subsection 8(2).

1986, c. 19, s. 3; 1992, c. 5, s. 21

Legal Aid Act, S.N.B. 2014, c. 26

Commission and Board

5. Criteria

5. (1) In recommending persons under section 4, the Minister or the Law Society shall ensure that the Board as a whole

(a) has knowledge, skills and experience in the following areas:

(i) business, management and financial matters of public or private sector organizations;

(ii) law and the operation of courts and tribunals;

(iii) the special legal needs of and the provision of legal services to low-income individuals and disadvantaged communities; and

(iv) the social and economic circumstances associated with the special legal needs of low-income individuals and of disadvantaged communities, and

(b) reflects the cultural and geographic diversity of the Province and its English and French linguistic duality.

5. (2) This section applies on and after June 30, 2016.

Loan and Trust Companies Act, S.N.B. 1987, c. L-11.2

Part II – Incorporation and Continuation and Changes by Supplementary Letters Patent

17. (3) Subject to subsection 19(1), the instrument of incorporation may set out the name of the company in an English form, a French form, an English form and a French form or in a combined English and French form and it may use and may be legally designated by any such form, but where the name is set out in an English form and a French form or in a combined English and French form, the company may use and may be legally designated by any one of those forms.

17. (4) Subject to subsection 19(1), the instrument of incorporation may, for use outside Canada, set out the name of the company in any language form and it may use and may be legally designated by its name in any such form outside Canada.

Maritime Economic Cooperation Act, S.N.B. 2014, c. 118

Maritime Cooperation

3. Principles and strategic goals

3. (1) In the future actions that affect the economy of the Maritime Provinces, the governments of the Maritime Provinces are to be guided by the following principles:

(a) maintain the authority of each government and legislature;

(b) protect and enhance the right of all residents of the Maritime Provinces to participate fully in the economy of the Maritime Provinces regardless of language and geographic location and in accordance with the *Human Rights Act*;

(c) protect and enhance the linguistic rights and cultural identities of the people of the Maritime Provinces;

(d) meet the needs of future generations by following the principles of sustainable development; and

(e) work together for a strong and united Canada.

General

8. Language rights

8. Any resident of the Maritime Provinces has the right to communicate with and to receive service, in English and French, from any institution established specifically in pursuance of the purpose, principles and strategic goals of this Act.

1992, c. M-1.11, s. 8

Marriage Act, R.S.N.B. 2011, c. 188

Application for marriage licence

17. (5) When the proof of divorce or death required to be filed under subsection (4) or any part of that proof is not in the English or French language, it shall be accompanied by a translation of it satisfactory to the Registrar.

R.S.1973, c.M-3, s.16; 1983, c.50, s.7; 1986, c.52, s.12; 1991, c.9, s.4; 1995, c.10, s.8; 2000, c.13, s.4; 2017, c.10, s.1

Municipalities Act, R.S.N.B. 1973, c. M-22

11. (1) In addition to any other powers given by this Act, a municipality may make by-laws for the following purposes:

[…]

(j.2) requiring commercial signs to be displayed in both official languages;

---

12. (1.2) Notwithstanding any Act or a regulation under it, a by-law which only repeals a by-law in one official language and substitutes it with the same by-law in both official languages or a by-law in one official language which is amended only by adopting a version of the by-law in the other official language is valid if it is

(a) read three times by title,

(b) distributed in printed form in its entirety to council and to members of the public present at its first reading by title,

(c) filed with the clerk for a period of not less than fourteen days subsequent to its first reading by title,

(d) sealed with the corporate seal of the municipality,

(e) signed by the clerk and the mayor or, in the mayor's absence, the presiding officer of the council who presided at the meeting at which it was enacted, and

(f) stated thereon that it was enacted by the council of the municipality.

12. (1.3) A by-law referred to in subsection (1.2) may be amended at any time prior to third reading by title without having to further file the by-law pursuant to paragraph (1.2)(c).

68.2 (1) The council of a municipality may recommend to the Minister that the name of the municipality be changed by the Lieutenant-Governor in Council where the change in the name of the municipality relates to the word "city", "town" or "village" in either or both official languages.

68.2 (2) Notwithstanding any other Act, upon the recommendation of the Minister, the Lieutenant-Governor in Council may by order change the name of a municipality where the change relates to the word "city", "town" or "village" in either or both official languages.

1997, c. 38, s. 4

New Brunswick Advisory Council on Youth Act, S.N.B. 2003, c. N-3.06

3. Duties and powers of Council

3. (2) The Council, in carrying out its duties under subsection (1), may

[…]

(b) receive and hear petitions and suggestions from individuals and groups from both official language communities concerning matters relevant to young persons,

New Brunswick Community Colleges Act, S.N.B. 2010, c. N-4.05

5. Language

5. The New Brunswick Community College (NBCC) shall be organized in the English language and the *Collège communautaire du Nouveau-Brunswick* (CCNB) shall be organized in the French language.

New Brunswick Health Council Act, S.N.B. 2016, c. 104

3. Objects and purposes of Council

3. The objects and purposes of the Council are as follows:

[…]

(i) to take into account the particular needs of the two official linguistic communities in the exercise of the activities referred to in paragraphs (a) to (h); and

2010, c. 30, s. 2

New Brunswick Women's Council Act, S.N.B. 2016, c. 33

5. Appointment of members

5. (3) The membership of the Council as a whole shall reflect the diversity, geography and official languages of New Brunswick.

Personal Health Information Privacy and Access Act, S.N.B. 2009, c. P-7.05

9. Official languages

2016, c. 7, s. 1

9. (1) If an individual makes a request under section 7 and the individual's record containing personal health information is not available in his or her official language of choice, a custodian to whom the *Official Languages Act* applies shall provide the individual with access to a physician or other health care provider to assist the individual in interpreting the record.

9. (2) If a custodian to whom the *Official Languages Act* applies considers it appropriate, the custodian may translate or cause to be translated the relevant provisions of an individual's record containing personal health information for the purpose of a unilingual physician treating the individual if the record is in an official language the physician cannot understand.

2016, c. 7, s. 2

---

10. (6) The custodian may extend the time for responding to a request for up to an additional 30 days if

> **[…]**
>
> **(c) the relevant provisions of the individual's record are being translated for a unilingual physician treating the individual if the record is in an official language the physician cannot understand,**

Pipeline Act, 2005, S.N.B. 2005, c. P-8.5

79. Regulations by the Board

79. (1) The Board may make regulations

> **[…]**
>
> **(n) providing for the marking of pipelines with signs in both official languages and the replacement, repair or removal of such signs;**

Pre-arranged Funeral Services Act, S.N.B. 2012, c. 109

31. Regulations

31. The Lieutenant-Governor in Council may make regulations

[…]

(k) respecting the display on pre-arranged funeral plans of notice of termination, cancellation or discontinuance rights, including the placement, format and wording of the notice and the form, size, type and colouring of the lettering used in the notice and respecting the use in any such notice of both official languages of the Province in specified circumstances;

R.S.1973, c.P-14, s.14; 1986, c.66, s.15; 1994, c.26, s.13; 1995, c.30, s.9; 2006, c.20, s.22; 2013, c.31, s.25; 2016, c.36, s.13

General Regulation – Pre-arranged Funeral Services Act, N.B. Reg. 88-32

16. Cancellation rights

16. (2) The notice referred to in subsection (1) shall

[…]

(b) be in both official languages,

(c) have the language versions arranged in a side by side format,

Provincial Court Act, R.S.N.B. 1973, c. P-21

22.03 (3.1) The Commission shall publish in one or more newspapers having a general circulation in the Province a notice in both official languages

(a) stating the name of the Commission,

(b) stating that the inquiry is in progress and the purpose of the inquiry,

(c) inviting the public to make oral or written submissions in relation to the inquiry,

(d) stating what action is to be taken by people who wish to make submissions, and

(e) providing additional information if the Commission so decides.

SEE ALSO:

Inquiry and Formal Hearing Procedure Regulation – Provincial Court Act, N.B. Reg. 2004-132, Form 1 – Summons to Witness

Provincial Offences Procedure Act, S.N.B. 1987, c. P-22.1

7. Proceedings By Way Of Information

7. (1) A summons and an appearance notice shall

[…]

(d) state that the defendant has the right to choose the official language in which the proceedings will be conducted,

10. Ticket Procedure

10. (1) A ticket shall

[…]

(d) state that the defendant has the right to choose the official language in which the proceedings will be conducted,

ANNOTATIONS

R. v. Paul Robichaud, 2009 NBPC 26 (CanLII)

41. The "Defendant Copy" of the ticket is based on Form 10 of the Regulations under the Provincial Offences Procedure Act. The Notice of Prosecution, the copy submitted to the Court, is based on Form 11 of the Regulations. The ticket is prescribed by s. 12, and the Notice of Prosecution by s. 13 of N.B. Regulation 91-[5]7, adopted by the Lieutenant-Governor in Council by Order in Council 91-255. The headers of both documents bear, in the very same place, the words "Chosen Language / Langue choisie" followed by two check boxes: one marked "English/Anglais" and the other marked "French/Français."

42. Section 10(1)(d) of the Provincial Offences Procedure Act provides as follows:

> 10(1) A ticket shall
>
> (d) state that the defendant has the right to choose the official language in which the proceedings will be conducted[.]

43. The reverse of the ticket contains the following French statement, which complies with that provision of the Act:

Vous avez le droit de choisir le français ou l'anglais en tant que langue dans laquelle les procédures se dérouleront.

44. Counsel for the Defendant submits that the purpose of these little check boxes is to determine the language in which the individual chooses to communicate with the peace officer based on his or her right under s. 31(1) of the Official Languages Act. The Crown disagrees. I share the Crown's position.

45. First of all, Regulation 91-57 was tabled on April 2, 1991, ten years prior to the adoption of s. 31(1) of the Official Languages Act. A form cannot have an effect resulting from statutory requirements that were not in force when the form was drafted.

46. Moreover, it is my opinion that the little check boxes were prescribed by reason of the duty to inform an individual of his right to choose the language in which the proceedings will be conducted, as provided by s. 10(1)(d) of the Provincial Offences Procedure Act. This is therefore consistent with the statement, on the back of the Notice of Prosecution, advising of the individual's right to choose the language. Thus, the peace officer, by virtue of the choice made by the defendant, notifies the judge, before whom the defendant is to appear, of his choice of the language to be used in the court proceedings. The judge must then act in accordance with the defendant's right to choose the language of the proceedings before the court: see ss. 17 to 20 of the Provincial Offences Procedure Act.

47. In this manner, the peace officer prepares the ticket based on the official language chosen by the defendant, and this helps to ensure that the Notice of Prosecution goes to a court that has the desired language ability. The court then asks the defendant for the language in which he would like the trial to be conducted, as required by s. 17(1)(b) of the Act.

48. This interpretation therefore requires the peace officer to ask for a language choice twice when issuing a ticket: a first time when the officer communicates with the defendant in accordance with s. 31(1) of the Official Languages Act, and a second time when the officer decides to hand the defendant a ticket in accordance with s. 10(1)(b) of the Provincial Offences Procedure Act. In my opinion, this procedure respects every individual's right to communicate with a peace officer in the language of his choice, as well as his right to choose the language of the proceedings in the court where he is to appear if he is issued a ticket. These two rights are distinct. The legislator therefore recognized every citizen's right to choose a language in which to communicate with the police, and every citizen's right to choose the language of their trial. The first choice does not automatically dictate the second.

17.-21. First Appearance and Plea

17. (1) When a defendant first appears before a judge, the judge shall

(a) advise the defendant that the defendant has the right to have the proceedings conducted in the official language of the defendant's choice, and

(b) establish the defendant's choice of official language.

17. (2) For the purposes of subsection (1), the judge may use the procedure set out in section 18 or such other means as the judge considers appropriate.

18. (1) The judge may, in one of the official languages, read or cause to be read to the defendant a statement, the wording of which is prescribed by regulation, advising the defendant of the right to have the proceedings conducted in the official language of the defendant's choice and asking the defendant to choose the official language in which the proceedings are to be conducted.

18. (2) Where the defendant does not indicate a choice of official language when asked to do so by the judge under subsection (1), the judge may read or cause to be read to the defendant in the other official language the statement referred to in subsection (1).

18. (3) Where the defendant does not indicate a choice of official language when asked to do so by the judge under subsection (2), the judge may read or cause to be read to the defendant, in both official languages, a statement, the wording of which is prescribed by regulation, specifying one of the official languages as the language in which the proceedings will be conducted and asking if the defendant objects to the proceedings being conducted in that language.

18. (4) Where the defendant does not object to the official language specified by the judge under subsection (3), the defendant shall be deemed to have chosen the official language specified under subsection (3).

18. (5) Where the defendant objects to the official language specified by the judge under subsection (3), the defendant shall be deemed to have chosen the other official language.

---

19. (1) Where the official language in which the proceedings are to be conducted is not the official language in which the information has been sworn or the notice of prosecution completed, the judge shall inform the defendant that if the defendant so chooses a translation of the information or notice of prosecution by an Official Translator under the *Official Languages of New Brunswick Act* will be provided.

19. (2) Where the defendant indicates to the judge that a translation of the information or notice of prosecution by an Official Translator will be required, the judge shall adjourn the proceedings to allow the translation to be obtained.

19. (3) Subsections (1) and (2) do not prevent a translation other than a translation prepared by an Official Translator from being used in proceedings under this Act.

1990, c. 18, s. 8

ANNOTATIONS

R. v. Leblanc, 2007 NBPC 30 (CanLII)

[44] There is a second reason to dismiss the Notice of Prosecution, and it is based on a ground that the parties did not raise.

[45] Let us go back to the day of Ms. LeBlanc's trial. She had a Notice of Prosecution drafted in English and chose a French-language trial. Mr. McGraw had a notice drafted in French and chose an English-language trial. At the beginning of the trial, Mr. Pitre, a qualified interpreter, was sworn

in for the purpose of translating the police officer's testimony, and he carried out that duty admirably.

[47] Drapeau C.J.N.B. discussed this right in the following terms in *R. v. McGraw* at paragraph 14:

> The disregard for Mr. McGraw's language rights appears to have continued in the Provincial Court. Since the trial was to be conducted in English, the trial judge was required by s. 19(1) of the *POPA* to inform Mr. McGraw that, if he wished, "a translation of the [notices of prosecution] by an Official Translator under the *Official Languages of New Brunswick Act* will be provided" . . .

[48] On the morning of the trial in the instant case, the Crown did not ask for a translation of the Notice of Prosecution from the interpreter in the courtroom. I did not offer Ms. LeBlanc such a translation. The error was mine.

[49] The failure to offer her such a translation was an injustice and results in the obligation to acquit Ms. LeBlanc.

---

20. Where the judge's ability in the official language chosen by the defendant is, in the opinion of that judge, not such as to enable that judge to conduct the proceedings in the official language chosen, the judge shall adjourn the proceedings so that they can be resumed before a judge who is able to conduct the proceedings in the official language chosen.

---

21. (1) Where proceedings are not adjourned under section 20 or where proceedings adjourned under section 20 are resumed before a judge who is able to conduct the proceedings in the official language chosen by the defendant, the judge shall

(a) where the defendant is not represented by counsel, inform the defendant of the right to retain and instruct counsel,

(b) cause the information or the notice of prosecution, as the case may be, to be read to the defendant,

(c) take reasonable steps to establish that the defendant understands the charge set out in the information or the notice of prosecution,

(d) explain to the defendant that the defendant may plead guilty or not guilty to the charge, and

(e) call upon the defendant to plead.

21. (2) A defendant may waive the requirement under paragraph (1)(b) where the defendant is represented by counsel.

1990, c.18, s.9

General Regulation – Provincial Offences Procedure Act, N.B. Reg. 91-50

5. (1) The statement that may be read to a defendant under subsection 18(1) of the Act is as follows:

> **You have the right to be tried in English or in French. Which do you choose?**

5. (2) The statement that may be read to a defendant under subsection 18(3) of the Act is as follows:

> **You will be tried in English (or French) unless you object. If you object, you will be tried in French (or English). Do you object to being tried in English (or French)?**
>
> **Votre procès se déroulera en anglais (ou en français) à moins que vous ne vous y objectiez. Si vous vous y objectez, le procès se déroulera en français (ou en anglais). Vous objectez-vous à ce que le procès se déroule en anglais (ou en français)?**

---

11. The oath or solemn affirmation taken or made under subsection 103(2) of the Act by a person authorized to act as an interpreter shall be as follows:

> **I, , do swear (or solemnly affirm) that I will impartially, and to the best of my skill, knowledge and belief, translate into the English (or French) language the evidence of , including any document that may be produced during the course of giving that evidence. (In the case where an oath is taken, add "so help me God".)**

Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, S.N.B. 2016, c. 109

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;**

Article XIV

DONE in duplicate at Ottawa, this 24th day of April, 1984 in the English and French languages, each version being equally authentic.

Recording of Evidence Act, S.N.B. 2009, c. R-4.5

6. Translation of transcript

6. (1) In this section, "Official Translator" means a person appointed as an Official Translator under section 44 of the *Official Languages Act*.

6. (2) Subject to subsection (4), if a transcript is prepared in accordance with section 5 in one official language and the affidavit required under subsection 5(2) is attached to the transcript, a translation of the transcript or portion of the transcript into the other official language by an Official Translator that is certified as a true and accurate translation by the Official Translator may be adduced in evidence or otherwise used in a proceeding, and when so adduced or used is equally authentic and of equal weight in evidence as the text of the transcript or portion of the transcript of which it is a translation.

6. (3) A certificate signed by an Official Translator, or purporting to be so signed, stating that the translation of the transcript or portion of the transcript is true and accurate is proof of the statements contained in the certificate without proof of the appointment, authority or signature of the Official Translator.

6. (4) A party to a proceeding who objects to the translation of a word or words in a transcript shall notify the judge of his or her objection at the first available opportunity and the judge shall make a ruling on the objection.

Referendum Act, S.N.B. 2011, c. 23

3. Laying referendum question before Legislative Assembly

3. (2) A referendum question may only be laid before the Legislative Assembly under subsection (1) if the referendum question is accompanied by a certificate in writing by the Attorney General stating that the implementation of the result of the referendum will not require the government to take any action that could detract from, remove or deny a right or freedom protected under the *Canadian Charter of Rights and Freedoms*, the *Human Rights Act*, the *Official Languages Act* and *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

---

6. Adoption of referendum question

6. (2) A motion under subsection (1) may only be introduced if the motion is accompanied by a certificate in writing by the Attorney General stating that the implementation of the result of the referendum will not require the government to take any action that could

detract from, remove or deny a right or freedom protected under the *Canadian Charter of Rights and Freedoms*, the *Human Rights Act*, the *Official Languages Act* and *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*.

---

7. Order for referendum

7. (3) An order made under subsection (1) shall include the following:

> **(a) the referendum question adopted by the Legislative Assembly in accordance with section 6;**
>
> **(b) a certificate from the Attorney General stating that the implementation of the result of the referendum will not require the government to take any action that could detract from, remove or deny a right or freedom protected under the *Canadian Charter of Rights and Freedoms*, the *Human Rights Act*, the *Official Languages Act* and *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*;**
>
> **(c) the date on which the referendum is to be held; and**
>
> **(d) whether the referendum is to be held in conjunction with a provincial general election, quadrennial elections under the *Municipalities Act* or on a separate date.**

Regional Development Corporation Act, R.S.N.B. 2011, c. 216

1. Continuation of Corporation

1. (1)The body corporate constituted under the English name Community Improvement Corporation and under the French name *Société d'aménagement régional* is continued as a body corporate under the English name Regional Development Corporation and under the French name *Société de développement régional*, and is referred to in this Act as the "Corporation".

1. (2) The change of the English name of the Corporation does not affect the rights and obligations of the Corporation, and all proceedings that might have been continued or commenced by or against the Corporation under its former name may be continued or commenced by or against the Corporation under its new name.

1. (3) The change of the French name of the Corporation does not affect the rights and obligations of the Corporation, and all proceedings that might have been continued or commenced by or against the Corporation under its former name may be continued or commenced by or against the Corporation under its new name.

R.S. 1973, c. C-11, s. 1; 1987, c. 13, s. 2; 2000, c. 51, s. 2.

Regional Health Authorities Act, R.S.N.B. 2011, c. 217

Part 3 – Regional Health Authorities

Division A – Establishment of health regions and regional health authorities

19. Language and health services

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

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

> **(a) respect the language of daily operations of the facilities under its responsibility, and**
>
> **(b) provide health services to members of the public in the official language of their choice through the regional health authority's network of health establishments, facilities and programs.**

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

2010, c. 30, s. 1

Division B – Structure and administration

20. Board of regional health authority

20. (1.1) In making appointments under subparagraph (1)(a)(i), the Minister shall determine the competencies necessary to fulfil the mandate of the board and shall have regard to gender, representation from urban and rural areas, aboriginal representation and the overriding interests of the official linguistic communities.

[…]

20. (8) A board and its members shall conduct their affairs in the language of operation of the regional health authority.

2002, c. R-5.05, s. 19; 2008, c. 7, s. 6; 2010, c. 30, s. 1; 2011, c. 55, s. 1, s. 2; 2011, c. 6 (Supp.), s. 7

Division C – Powers, duties and responsibilities of regional health authorities

40. Translation services

40. A regional health authority shall ensure that simultaneous translation services in both official languages are provided to members of the public who attend a board meeting that is open to the public or a meeting conducted by the authority that is open to the public.

2002, c. R-5.05, s. 40

Part 5 – General Provisions

71. Regulations

71. (1) The Lieutenant-Governor in Council may make regulations

[…]

(i) respecting board minutes and by-laws, including the requirement to provide the minutes or by-laws in both official languages;

Board Regulation – Regional Health Authorities Act, N.B. Reg. 2012-7

5. Meetings

5. (1) A board shall meet a minimum of four times per year.

5. (2) A board shall ensure that the minutes of its meetings are made available in both official languages to members of the public.

5. (3) Subsection (2) does not apply to minutes that derive from portions of a meeting that are not open to members of the public.

Right to Information and Protection of Privacy Act, S.N.B. 2009, c. R-10.6

8. Request for access

8. (3) An applicant may make an oral request for access to a record if the applicant

(a) has a limited ability to read or write in English or in French, or

(b) has a disability or condition that impairs his or her ability to make a written request.

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16. How access will be given

16. (3) The head of a public body shall only be required to give access to a record in the language or languages in which the record was made.

Special Corporate Continuance Act, S.N.B. 1999, c. S-12.01

2. Application for a certificate of authorization

2. (4) Where all or any part of the documents included in an application under subsection (2) are not in the French or English language, the Minister, before considering the application, may require that a translation, verified in a manner satisfactory to the Minister, be submitted to him or her.

Standard Forms of Conveyaces Act, S.N.B. 1980, c. S-12.2

0.1. The purpose of this Act is to standardize the form and content of conveyances of land, to simplify the English language version of common law legal terms and provide French language equivalents for these terms, and to provide shortened equivalents in both official languages for traditional long form legal clauses.

1984, c. 63, s. 1

2.2 Where a conflict exists between the English version and the French version of wording prescribed hereunder, the meaning and legal effect of such wording in a conveyance shall be determined by the language version in which the conveyance was executed unless a contrary intention is expressed in the conveyance.

1984, c. 63, s. 3

ANNOTATIONS

Robichaud et al. v. Pharmacie Acadienne de Beresford Ltée et al., 2008 NBCA 12 (CanLII)

[23] First, to avoid the attribution of different meanings to the very same clause, it behooves the interpreting court to perform its mandate on the assumption that, absent compelling indications to the contrary, the parties' intention matches that of the Legislature. The court must also factor into the equation the wording of the English and French versions of the corresponding legislative provision with a view, where possible, to identifying a meaning which is common to both (see s. 10 of the *Official Languages Act*, S.N.B. 2002, c.O-0.5, which establishes that both versions are equally authoritative, and *R. v. Daoust*, [2004] 1 S.C.R. 217, [2004] S.C.J. No. 7 (QL), 2004 SCC 6 (CanLII), at paras. 27-31, where Justice Bastarache offers a concise outline of the principles that inform the interpretation of bilingual legislation). However, if a conflict truly exists between the two versions, the meaning and effect of the controversial wording stand to be determined "by the language version in which the conveyance was executed unless a contrary intention is expressed in the conveyance": s. 2.2 of the *Standard Forms of Conveyances Act*. […]

Leases Regulation – Standard Forms of Conveyances Act, N.B. Reg. 83-132

Schedule C

Column One

45. Where a conflict exists between the English and the French version of any provision hereof, this lease shall be construed as if it had been executed entirely in English.

Column Two

45. The lessor and the lessee mutually covenant and agree that, this lease having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the English version shall prevail.

Column One

45.1 Where a conflict exists between the English and the French version of any provision hereof, this lease shall be construed as if it had been executed entirely in French.

Column Two

45.1 The lessor and the lessee mutually covenant and agree that, this lease having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the French version shall prevail.

Debentures Regulation – Standard Forms of Conveyances Act, N.B. Reg. 84-137

Schedule C

Column One

1012. Where a conflict exists between the English version and the French version of any provision hereof, this debenture shall be construed as if it had been executed entirely in English.

Column Two

1012. The corporation and the lender mutually covenant and agree that, this debenture having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the English version shall prevail.

Column One

1012.1 Where a conflict exists between the English version and the French version of any provision hereof, this debenture shall be construed as if it had been executed entirely in French.

Column Two

1012.1 The corporation and the lender mutually covenant and agree that, this debenture having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the French version shall prevail.

Mortgages Regulation – Standard Forms of Conveyances Act, N.B. Reg. 83-133

Schedule C

Column One

134. Where a conflict exists between the English version and the French version of any provision hereof, this mortgage shall be construed as if it had been executed entirely in English.

Column Two

134. The mortgagor and the mortgagee mutually covenant and agree that, this mortgage having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the English version shall prevail.

Column One

134.1. Where a conflict exists between the English version and the French version of any provision hereof, this mortgage shall be construed as if it had been executed entirely in French.

Column Two

134.1. The mortgagor and the mortgagee mutually covenant and agree that, this mortgage having been executed in both English and French, where a conflict exists between the English version and the French version of any provision hereof, the meaning and legal effect of the French version shall prevail.

Statute Revision Act, R.S.N.B. 2011, c. 224

4. Revision powers

4. (1) In preparing a revision, the Committee may do any or all of the following:

[…]

(j) make improvements in the language of an Act to make the form of expression of the Act in one of the official languages more compatible with its expression in the other official language;

Support Enforcement Act, S.N.B. 2005, c. S-15.5

23. Payment order issued outside New Brunswick

23. (1) The Director may issue a payment order under subsection 15(1) if the following are filed with the Director:

(a) a support order made by a competent authority outside the Province; and

(b) a document that

(i) is of similar effect to a payment order,

(ii) is issued by a competent authority outside of the Province,

(iii) is issued with respect to the accompanying support order, and

(iv) is written in or accompanied by a sworn or certified translation in English or French.

Vital Statistics Act, S.N.B. 1979, c. V-3

40. The Registrar General, may, upon request and upon payment of the prescribed fee, issue certificates of birth, death or marriage containing the following items in either official language, regardless of the language in which the items appear in the registration:

(a) month of birth,

(b) place of birth,

(c) month of registration.

Women's Institute and Institut féminin Act, S.N.B. 2014, c. 136

4. The *Institut féminin francophone du Nouveau-Brunswick*

4. There shall be a provincial organization called the *Institut féminin francophone du Nouveau-Brunswick* that shall have the power, subject to the approval of the Minister, to make a constitution and provide by-laws not inconsistent with this Act for its own government on provincial, district and branch levels.

1990, c. 11, s. 5

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5. *Institut féminin* a body corporate

5. The *Institut féminin* is a body corporate

1990, c. 11, s. 5

SEE ALSO:

Assessment Reduction Regulation – Assessment Act, N.B. Reg. 98/47, article 4(2).

Workplace Health, Safety and Compensation Commission Act, S.N.B. 1994, c. W-14

20.2 Aptitude and eligibility requirements of members of the Appeals Tribunal

20.2 (3) The Appeals Tribunal shall reflect regional, linguistic and gender diversity.

2014, c. 49, s. 15

New Brunswick – Other Regulations

General Regulation – Aquaculture Act, N.B. Reg. 91-158

24. (5) Upon approving and signing a site development plan, the Minister shall

> **(a) file the site development plan at the regional office of the Department of Agriculture, Aquaculture and Fisheries where the proposed aquaculture site is located,**
>
> **(b) send by ordinary mail a letter to all persons identified in paragraph (3)(c), informing them of their right to submit written comments to the Minister with respect to the location of the proposed aquaculture site within the time period specified in the letter, and**
>
> **(c) send by ordinary mail to the person who is applying to have the boundaries of land altered under an aquaculture lease or aquaculture occupation permit or is**

applying for an aquaculture lease or an aquaculture occupation permit, a notice for the purpose of giving public notice under subsection (6) that is

(i) on a form provided by the Minister,

(ii) written in both official languages, and

(iii) signed by the Minister.

General Regulation – Agricultural Operation Practices Act, N.B. Reg. 2002-94

3. Designation of farm organizations

3. The following are designated as farm organizations for the purposes of the definition "farm organization" in section 1 of the Act:

[…]

(e) ***la Fédération des Agriculteurs et Agricultrices Francophones du Nouveau-Brunswick;***

Environmental Impact Assessment Regulation – Clean Environment Act, N.B. Reg. 87-83

12. (1) Where notification of the acceptance of an environmental impact assessment report is given, the proponent shall, if he wished to proceed, prepare and submit to the Minister, in both official languages, thirty copies of the report.

12. (2) No later than thirty days after receiving from the proponent the copies referred to in subsection (1),

(a) the Minister shall prepare a summary of the report in both official languages, and

(b) the review committee shall prepare and submit to the Minister, in both official languages, a review statement setting out any comments upon the report that the committee considers should be brought to the attention of the Minister and the public.

General Regulation – Direct Sellers Act, N.B. Reg. 84-151

9. (2) The direct sales contract shall include a statement of cancellation rights, in both official languages, that contains the wording set out in Schedule A and that shows

(a) the heading "BUYER'S RIGHT TO CANCEL" in not less than 12 point bold type,

(b) the statement of ten day cancellation rights in 12 point type, and

(c) the remainder of the statement in not less than 10 point type.

9. (3) Where the statement of cancellation rights does not appear on the face of the direct sales contract, there shall be a notice on the face of the direct sales contract, in both official languages, in not less than 12 point bold type, referring to the location of the statement of cancellation rights.

97-108; 2002, c. C-28.3, s. 67

General Regulation – Economic and Social Inclusion Act, N.B. Reg. 2010-137

4. Local plan

4. For the purposes of paragraph 32(1)(a) and section 35 of the Act, a local plan must contain the following information:

[…]

(e) information that demonstrates that the needs of both official linguistic communities have been taken into consideration in the development of the local plan.

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5. Criteria for recognition

5. For the purposes of paragraph 32(1)(b) of the Act, the criteria for recognition of a group as a community inclusion network are as follows:

[…]

(d) the group has the ability to address the linguistic needs of both official linguistic communities in the geographic area in which the group will operate; and

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6. Grounds to suspend or cancel recognition

6. For the purposes of section 36 of the Act, the Corporation may suspend or cancel the recognition of a group as a community inclusion network if the group

[…]

(c) does not address the needs of both official linguistic communities in the geographic area in which the group operates, or

General Regulation – Family Income Security Act, N.B. Reg. 95-61

28. Proceedings at Hearings

28. (1) The Chair of the Board shall from time to time assign the members of the Board to its various hearings, taking into account the official language chosen by the appellant and the region in which the hearing of the appeal is to take place.

Film Regulation – Film and Video Act, N.B. Reg. 89-80

4. (6) For the purposes of paragraph 6(1)(a) of the Act

(a) the Province of Nova Scotia is the jurisdiction for films in the English language, and

(b) the Province of Quebec is the jurisdiction for films in the French language.

91-71; 92-144; 2002, c. 8, s. 11; 2008-132

Videofilm Regulation – Film and Video Act, N.B. Reg. 91-95

5. For the purposes of paragraph 6(4)(a) of the Act,

(a) the Province of Nova Scotia is the jurisdiction for videofilms in the English language, and

(b) the Province of Quebec is the jurisdiction for videofilms in the French language.

92-145

5.1 For the purposes of paragraph 6(5.1)(a) of the Act, the Province of Nova Scotia is the jurisdiction for video games in the English and French language.

2008-131

General Regulation – Land Titles Act, N.B. Reg. 83-130

17. (1) All instruments presented for registration or filing may be in either or both of the official languages.

17. (2) Any instrument presented for registration or filing in a language other than an official language shall be accompanied by a translation of that instrument into an official

language, duly authenticated in a manner approved by the Registrar General; and in such case, effect shall be given to the version in the official language.

17. (3) When any instrument is presented for registration or filing in more than one language and only one of the languages used is an official language, effect shall be given to the version in the official language.

Naming Conventions Regulation – Land Titles Act, N.B. Reg. 2000-39

Conventions for the Name of an Enterprise

6. Body corporate

6. (2) Where the name of a body corporate that is a party to an instrument is in more than one of the following forms, the party may be identified by any or all of them:

(a) an English form;

(b) a French form;

(c) a combined English-French form.

General Regulation – Medical Services Payment Act, N.B. Reg. 84-20

33.004 (2) The notice of appeal shall include the reasons for the appeal and the official language chosen by the appellant.

Mental Health Services Advisory Committee Regulation – Mental Health Services Act, N.B. Reg. 97-127

5. When appointing members to the Committee, the Minister shall take into consideration gender, language and experience in relation to mental health services of the members and representation on the Committee from various areas of the province.

General Regulation – Midwifery Act, N.B. Reg. 2010-113

3. Application for registration

3. (1) Subject to subsection (3), the holder of a baccalaureate degree under paragraph 21(a) of the Act must meet the following requirements in order to be entered on the active practice register for midwives:

[…]

(e) be proficient in English or French;

3. (2) Subject to subsection (3), a person possessing the educational qualifications under paragraph 21(b) of the Act must meet the following requirements in order to be entered on the active practice register for midwives:

[…]

(c) be proficient in English or French;

3. (3) A person practising midwifery in another jurisdiction must meet the following requirements in order to be entered on the active practice register for midwives:

[…]

(b) be proficient in English or French;

Administration Regulation – Occupational Health and Safety Act, N.B. Reg. 84-26

7. Arbitrator

7. (1) Subject to subsection (2), an arbitrator who is able to conduct a hearing in the language selected by the employee shall be appointed on a rotating basis from a list kept by the Commission.

7. (2) No person shall be appointed as arbitrator who is directly affected by the matter to be arbitrated or who has been involved in an attempt to negotiate or settle the matter.

First Aid Regulation – Occupational Health and Safety Act, N.B. Reg. 2004-130

Schedule C

Contents of first aid kit:

1 standard first aid manual (English and French)

[…]

General Regulation – Personal Property Security Act, N.B. Reg. 95-57

Body Corporate

21. Debtor (Enterprise) Name Information

21. (2) The registrant shall 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.

General Regulation – Prescription and Catastrophic Drug Insurance Act, N.B. Reg. 2014-27

13. Information provided by an entitled person

13. (1) For the purposes of subsection 13(2) of the Act, the information to be provided is as follows:

[…]

(d) the preferred official language of the family unit.

General Regulation – Procurement Act, N.B. Reg. 2014-93

9. Translation and interpretation services

9. (1) A Schedule A entity shall obtain translation and interpretation services through the Translation Bureau of Service New Brunswick, regardless of the estimated value of the service, unless the Act or this Regulation provides otherwise.

9. (2) Subsection (1) applies only with respect to translation and interpretation between the Province's official languages.

9. (3) Subsection (1) does not apply to the following Schedule A entities:

(a) Regional Health Authority A; and

(b) Regional Health Authority B.

2015, c. 44, s. 104; 2015-65

General Regulation – Salvage Dealers Licensing Act, N.B. Reg. 84-107

3. (1) A record of every purchase or receipt of salvage required to be kept under section 6 of the Act shall be on a form provided by the Minister.

[…]

3. (4) All entries on the record referred to in subsection (1) shall be legibly written in English or French and shall be entered on the record at the time of purchase or receipt.

2016, c.28, s.187

Specified Services Regulation – Service New Brunswick Act, N.B. Reg. 2015-64

2. Definitions

2. The following definitions apply in this Regulation.

[…]

"translation services" means the translation of written documents and the consecutive interpretation or simultaneous interpretation of oral proceedings from one official language into the other official language. (*services de traduction*)

General Regulation – Small Claims Act, N.B. Reg. 2012-103

Procedure

4. Filing of claim

4. (3) In a claim, a claimant shall set out

[…]

(i) the language in which the claimant intends or the claimants intend, as the case may be, to proceed.

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7. Response to claim

7. (5) In a response, a defendant shall provide his or her mailing address, residential address and telephone number, and his or her e-mail address and fax number, if any, and set out the language in which the defendant intends to proceed.

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14. Response to third party claim

14. (3) In a response, a third party shall provide his or her mailing address, residential address and telephone number, and his or her e-mail address and fax number, if any, and set out the language in which the third party intends to proceed.