



The Office of the Northwest Territories
Languages Commissioner
Annual Report 2009-2010



Know Your Language Rights – Use Your Language Rights

Message from the Languages Commissioner



Greetings.

This Annual Report provides an overview of the activities of the Office for the 2009-2010 fiscal year. The report also contains an overview of recent court decisions, and how they may impact on the provision of language services in the Northwest Territories. The report also deals with the proposed Official Languages Services Act, and the effect it may have on the Northwest Territories. The report also contains recommendations for consideration by the Legislative Assembly.

I strongly urge the Legislative Assembly of the Northwest Territories and the Government of the Northwest Territories to look at this report with a view to ensuring that the requirements of the *Official Languages Act* are met, to ensure the best possible service to the residence of the Northwest Territories, and to move forward in a positive fashion.

I want to thank the Members of the Legislative Assembly for allowing me the privilege and pleasure of serving in the role as the Language Commissioner of the Northwest Territories. I also want to thank Ms. Shannon Gullberg, the previous Languages Commissioner, for her contribution to this role.

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

Mahsi.

The Past

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

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

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

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

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

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



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

Section 35 of the *Official Languages Act* stipulates that the Act must be reviewed in 2008. The Standing Committee on Government Operations conducted this review, which included consultation with various stakeholders. That committee has now tabled its final report, entitled “Reality Check: Securing a Future for the Official Languages of the Northwest Territories”. The report includes numerous recommendations, including the development of an *Official Languages Services Act* to replace the *Official Languages Act*.

Recommendations Previously Made by the Languages Commissioner

A continued issue over the life of the Office has been the failure of the Legislative Assembly or the Government of the Northwest Territories to provide any response to the numerous recommendations made by Languages Commissioners. The Special Committee on Official Languages (SCOL) pointed this out. On page 15 of their summary report, they stated:

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

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

During the tenure of the previous Languages Commissioner, a number of recommendations have been made in annual reports. These recommendations were provided to the Legislative Assembly for consideration. Most of the recommendations were accepted by the Standing Committee on Accountability and Oversight (or Standing Committee on Government Operations). The rest were seen to be of interest, and the

Committee passed motions that they be given serious consideration by the Government of the Northwest Territories, with a comprehensive report to be provided within 120 days. These Committee reports were then tabled and approved by the Legislative Assembly.

The Languages Commissioner has never had any official response back in regard to any of these recommendations. However, many of the recommendations deal with amendments to the *Official Languages Act*, and so, by virtue of the review of the Act, one could claim that most of the recommendations have been considered. However, the continued failure of the Legislative Assembly to provide a concrete response to the recommendations put forth by Languages Commissioners over the years, jeopardizes the role of the Office. It must be remembered that the only “power” that the Languages Commissioner has is to make recommendations, and if these recommendations are ignored, it calls into question whether the Office has any real purpose.

The Present

Complaints and Inquiries

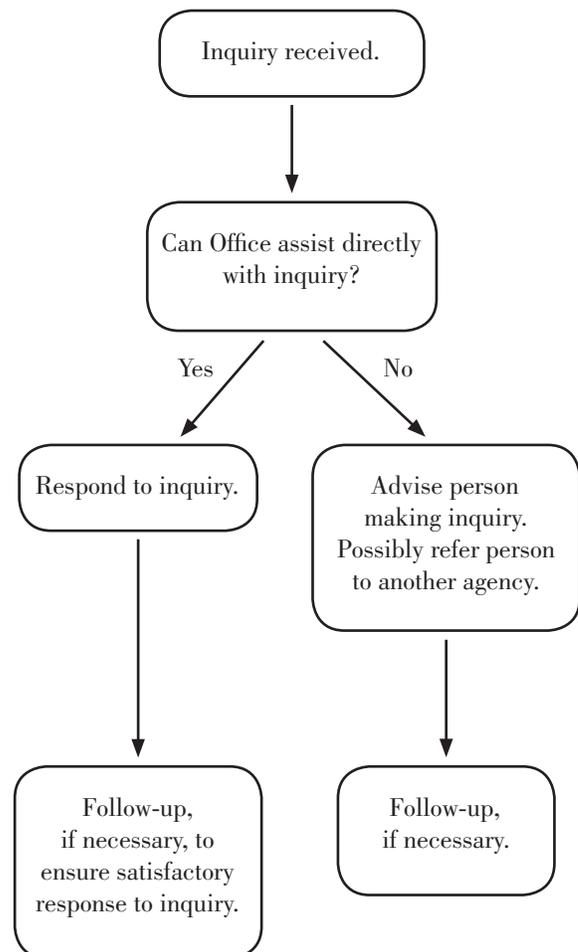
Definitions

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

Inquiry Process

The inquiry process established for the Office is as follows:

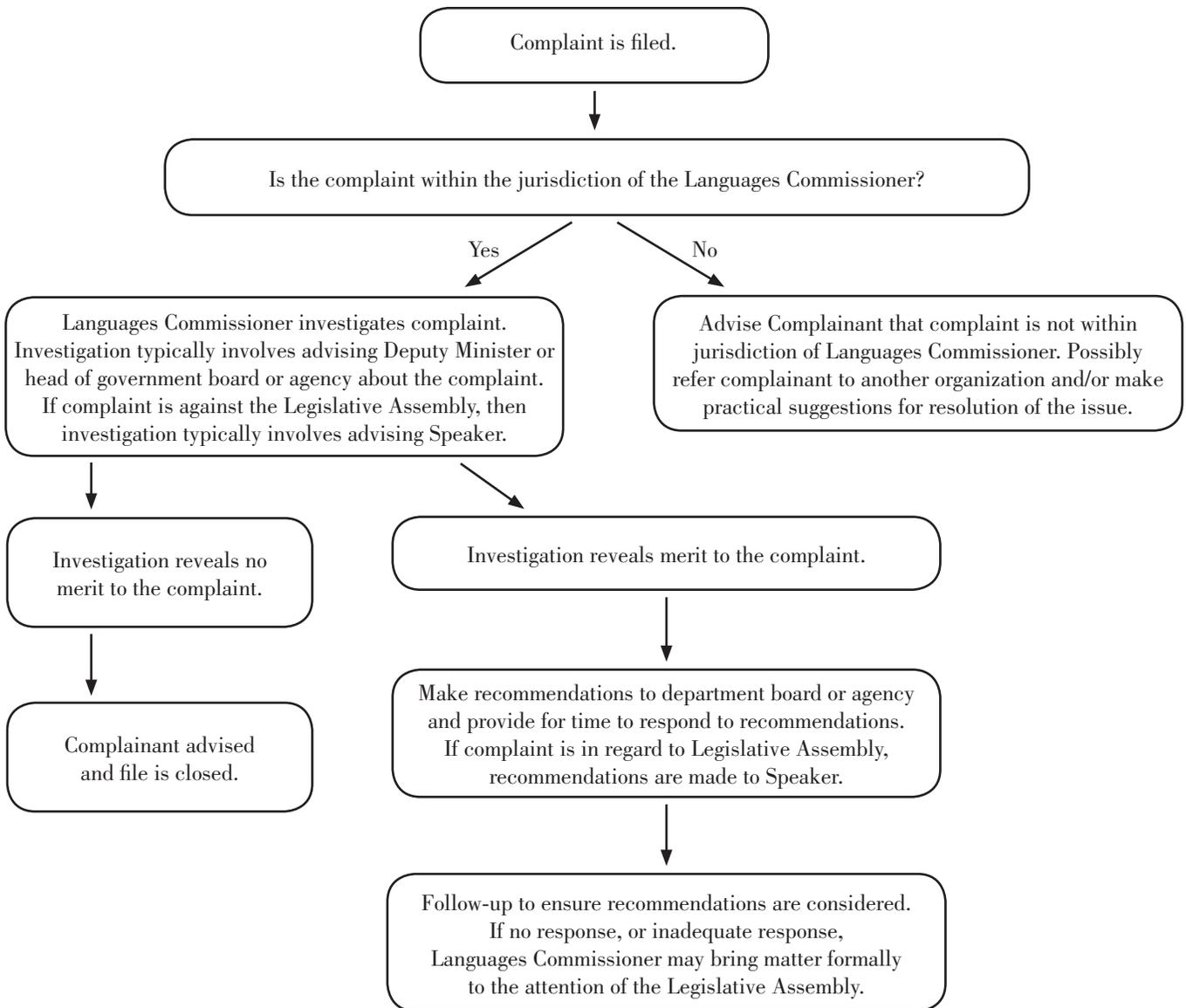
NWT *Official Languages Act* Inquiry Process



Complaint Process

The complaint process established for the Office is as follows:

NWT Official Languages Act Complaint Process



Statistics for 2009-2010

- **Complaints** – In the 2009-2010 fiscal year, the Office received two complaints. The first complaint was dealt with via teleconference with a French interpreter and the end result was that the complainant was satisfied. The other complaint was a patient not being provided a translator at one of the hospitals. This was resolved through a worker who provided information on the availability of translators and how to access them.
- **Inquiries** – There were about 100 inquiries over the course of the year. Most of the questions arose when I attended the regional council meetings, after my presentations and during the social gatherings. I spoke to people on my travels, at the airports, local stores and wherever I met people with concerns. The inquiries can be broken down as follows:
 - i) **Types of Inquiries:** 60% of the inquiries were in regard to obtaining general information about the *Official Languages Act*. 20% were in regard to obtaining interpretation and translation services. The other 20% were in regard to education issues as they relate to language.

- ii) **Location of Inquiry:**
 - 20% Yellowknife
 - 80% Other Jurisdiction in Canada
- iii) **Official Languages Involved in the Inquiry:**
 - 30% All Official Languages
 - 60% All Aboriginal Languages
 - 5% French
 - 5% Tłıchʔ



Investigation into Language Services at the Fort Smith Women’s Correctional Facility

- The Office received a call from a newspaper reporter about a woman in the Fort Smith Correctional Centre claiming that the woman was not allowed to speak to her husband in French. The Languages Commissioner gave general information about the Act to the reporter.
- The reporter did not give details, but when the Languages Commissioner found out the person’s name, sent a letter advising she was interested in speaking to her – no response
- Response from Corrections: Colin Gordon, the Director of Corrections, advised that the incident, as alleged, should not have happened. He clarified that the woman definitely had the right to speak to her husband in French.
- No further action was required, but this case serves to highlight that officials in the public service of the Government of the Northwest Territories need to understand the provisions of the *Official Languages Act* and ensure its provisions are honoured and respected. It is the view of the Languages Commissioner that section 11, which provides that a person can receive services in English and French from a central or head office, would apply to the case at hand, and that the woman had the right to visitation privileges in the French language.

Budget

Office of the Languages Commissioner

Fiscal Year 2009-2010
at March 31, 2010

	2009-2010 Main Estimates	2009-2010 Expenditures	Commitments	Free Balance
Compensation and Benefits	31,000.00	0.00	0.00	31,000.00
	0.00	0.00	0.00	0.00
	31,000.00	0.00	0.00	31,000.00
Travel and Transportation	18,000.00	19,158.25	0.00	(1,158.25)
Materials and Supplies	17,000.00	5,776.26	0.00	11,223.74
Purchased Services	9,000.00	13,306.84	0.00	(4,306.84)
Utilities	0.00	0.00	0.00	0.00
Contract Services	60,000.00	55,300.00	0.00	4,700.00
Fees and Payments	6,000.00	300.00	0.00	5,700.00
Other Expenses	1,000.00	0.00	0.00	1,000.00
Tangible Assets	0.00	0.00	0.00	0.00
Computer Hardware and Software	3,000.00	2,783.63	0.00	216.37
	114,000.00	96,624.98	0.00	17,375.02
TOTAL	145,000.00	96,624.98	0.00	48,375.02

Highlights

Web Site

The web site continues to be a fast and easy way to access information about the Office.

Promotion of the Office

Radio advertisements for the Office were run on CBC Radio, CJCD, Radio Taiga and CKLB (Aboriginal station). The advertisements, which promoted the Office, were heard in all 11 Official Languages.

May 5, 2009

Interview in Yellowknife for Languages Commissioners position – CBC with Paul Andrew.

May 6, 2009

Interview with CKLB on the role of the Languages Commissioner of the NWT.

May 5 to 8, 2009

Orientation meeting with Shannon Gullberg and Tim Mercer. Met France Benoit, who provides French translations to the position. Met with Bill Erasmus regarding regional council meetings.

May 12, 2009

Interview in the Gwich'in language with Ruth Carroll, CBC, on the role of the Languages Commissioner position.

May 11, 2009

Official start of the Language Commissioners job in Inuvik.

May 25 to 28, 2009

Release of the Review of the *Official Languages Act* of the NWT – attended with Shannon Gullberg.

May 28 to June 31, 2009

Leadership training program in Calgary.

June 8, 2009

Attended Dene leadership meeting in Inuvik and did a presentation on my role and responsibilities. Question and answer period followed.

June 22 to 27, 2009

Travelled to Yellowknife to attend Akaitcho regional council meeting and to Jean Marie to attend Dehcho regional council meeting to introduce myself as the Languages Commissioner, and to provide information on the *Official Languages Act*. Question and answer period followed.

July 8 to 11, 2009

Attended Dene National Assembly in Lutselk'e. Met with individuals to discuss my role and responsibilities, and shared information on the *Official Languages Act* packages and complaints forms.

August 4 to 7, 2009

Attended Tłıchǫ Assembly in Behchoko. Spoke to individuals regarding my role and responsibilities of the position. Answered many questions and inquiries.

August 24 to 27, 2009

Attended Sahtu Secretariat Assembly in Fort Good Hope. Shared packages on the *Official Languages Act*, complaint forms and donated t-shirts, sweatshirts and pens.

September 8 to 11, 2009

YK 1 Public School presentation to the staff at Sir John Franklin on the residential school and its effects on the survivors today. The presentation hit the airwaves of CBC and many people commented on the streets and on my travels.

September 27 to 29, 2009

SCOROLA report presented to the Legislative Assembly. Shannon and I attended.

March 1 to 5, 2010

Residential school meeting in Deline regarding language lost in the residential schools. Did one-on-one with many people on the language issue.

March 15, 2010

Moved the Office into Capital Suites, room 116.

March 29 to April 2, 2010

Language Symposium held in Yellowknife hosted by ECE. Did a presentation with question and answers.

During my travels to the Regional Councils, Akaitcho, Dehcho, Tłı̨chǫ, Sahtu, Gwich'in and other meetings, I provided promotional packages, annual reports, complaint forms and donated t-shirts and sweatshirts for door prizes. I spoke to many people on my travels, and during these meetings, on inquires they had regarding language rights. Often, I met people at airports, and other locations throughout the communities, who had questions regarding my position and I would share my roles and responsibility with them. I do a weekly Gwich'in report for CBC and often share information on my travels and the roles and responsibilities of the position. I am also doing on-the-land programs with students from two schools in Inuvik and often share my experience with them regarding the language loss at residential schools.



Recent Court Cases of Interest

R. vs. Robichaud, 2009 NBPC 26 (CanLII)

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

In the *Robichaud* case, Mr. Robichaud was charged under the *Motor Vehicles Act* of New Brunswick for a speeding violation. The Constable who pulled Mr. Robichaud's vehicle over did not advise Mr. Robichaud that he had the right to communicate in the language of his choice. In this regard, section 31 of the *Official Languages Act* of New Brunswick states:

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

(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).

(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).”

And, section 20(2) of the *Canadian Charter of Rights and Freedoms* states:

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

Mr. Robichaud's counsel argued that the Constable violated his rights under section 31 and section 20 of the *Charter* by not advising him of his language rights.

The trial judge found that section 31(3) of the *Official Languages Act* of New Brunswick included a duty to inform the detainee of his right to use the language of his choice. The trial judge did not find that Mr. Robichaud's *Charter* rights had been violated. Despite this, the Gaudet decision came out in January 2010. In that case, the New Brunswick Court of Queen's Bench found that there was an implied term in section 20(2) of the *Charter* to make an active offer in regard to language services. The court found that the “freedom to choose given by s. 20(2) is meaningless in the absence of a duty to inform the citizen of this choice”.

These cases are of interest because they strongly suggest that a government MUST use the concept of active offer when providing language services.

In other words, it's not enough to be able to accommodate a language right – a government must ensure that members of the public know they can request services in the language of their choice.

Abbasi vs. Canadian (Citizenship and Immigration), 2010 FC 288 (CanLII)

In this case, a Visa Officer refused to grant a permanent resident visa to the Applicant, Mr. Abbasi, as a member of a family class. Two grounds were advanced for setting aside the Visa Officer's decision. One ground was that the process applied in reaching the decision offended the federal *Official Languages Act* because the interview was conducted in Urdu, and not English or French. In this case, the Visa Officer had the ability to provide services in Urdu.

The Federal Court found there was no breach of the *Official Languages Act*. The Court stated:

“Section 20(1) of the *Charter* provides a right to any member of the public in Canada to communicate with and receive services from federal institutions in English and French. As confirmed in *Lavigne*, this right imposes an obligation and practical requirements on federal institutions to comply with the right. I agree with Counsel for the Respondent that this rights based concept does not inhibit

federal institutions to offer services in languages other than English or French if the members of the public involved do not wish to exercise rights under section 20(1) of the *Charter*, and, indeed, wish to conduct business in any other language to which the institution's officials are capable...”

In other words, a member of the public may choose not to avail himself or herself of a particular language right. However, a government official may choose to provide services in an unprotected language where the officer has that ability. Of interest is that this issue has now been referred to the Federal Court of Appeal – more to come!

Interesting Research

Since my appointment as the Languages Commissioner of the Northwest Territories on May 11, 2009, I have travelled to the regional council meetings in Dettah, Behchoko, Jean Marie River, Fort Good Hope and Lutselk'e. I presented information on my roles and responsibilities at the Dene leadership meeting in Inuvik and to the Akaitcho First Nations meeting in Dettah. There were many questions from the delegates during the presentations and during the social gatherings in the evenings. I realized that many of our Dene people are not comfortable in dealing with complaints. Perhaps the lack of communication from the residential school era has resulted in our people not being comfortable when dealing with complaints. There are concerns that the Aboriginal languages are on the decline, but this issue is not a priority with the leadership of the various organizations in the Northwest Territories. There seems to be an attitude that there are other more pressing issues to deal with. The decline of languages are left to those few people who are working to promote, revitalize and enhance languages in the community.

I attended the Language Symposium hosted by ECE in Yellowknife, March 29 to April 2, 2010. There were many concerns with the decline of languages and what efforts are in place to promote,

enhance and revitalize languages. References were made to the two Boards presently set up by Education, Culture and Employment by the Minister Responsible for Official Languages; the Official Languages Board and the Aboriginal Languages Revitalization Board. There were concerns expressed that one and the same person sat on both Boards and the meetings they attended were not well organized and, therefore, there were no concrete accomplishments.

One of the agenda items at the meeting was the Final Report on the Review of the *Official Languages Act* 2008-2009. One of the concerns which resulted from the report was the mandate of the Languages Commissioner devolved, on page 184. There were concerns that if the position was "done away with" there would be no accountability for the communities.

I attended an international "Language and Territory" meeting in Sudbury, Ontario, August 29 to September 1, 2010. I met the Languages Commissioners from New Brunswick (Michel A. Carrier) and Nunavut (Alexina Kublu), Ontario's French Services Commissioner (Francois Boileau) and the national Language Commissioner (Graham Fraser). There was a joint presentation from the Language Commissioners on the state of their languages and efforts to promote revitalize and enhance their languages in their territory.

More than 400 participants from every continent took part in the 200 papers touching on themes such as cohabitation and language conflicts, language as identity, languages in contact in the same territory, literature, theatre and many others. The conference participants had the opportunity to listen to six internationally renowned speakers.

One of the main concerns, which I heard throughout my travel and visits, was the training of interpreter/translators. The interpreter/translators who are presently working at the community level across the Northwest Territories are reaching retirement age and no effort has been made by the government to train people to take their places. There are people out there who are fluent in the Aboriginal languages, but they need training to interpret and to do translations.

A few people made references to the word “Regime” in the final report on the Review of the *Official Languages Act* 2008-2009. In the Oxford Dictionary of Current English, the definition of regime is “method or system of government”. Yes, the territorial government, under the direction of the Minister Responsible for Official Languages, will promote, enhance and revitalize the Aboriginal languages, but, to date, we have not seen any work accomplished in this area. The connotation of the word, for many survivors of residential schools, refers to the control of the government and how they will deal with language revitalization.

RECOMMENDATIONS:

That officials within the Government of the Northwest Territories ensure that members of the public service understand the provisions of the *Official Languages Act*, and ensure that the provisions of the Act are honoured and respected.

That government officials refrain from the use of the word ‘regime’ in written documentation, as the word has a negative connotation for residential school survivors.



The Future

Review of the *Official Languages Act*

The Standing Committee on Government Operations has now tabled its final report following the review of the *Official Languages Act*. The report, entitled “Reality Check: Securing a Future for the Official Languages of the Northwest Territories”, contains recommendations that call for major changes in how the Legislative Assembly and Government of the Northwest Territories deal with Official Languages. Some highlights are:

- The creation of an Official Languages Services Act to replace the *Official Languages Act*. The proposed legislation will contain provisions for working with language groups to determine priorities, and focuses on a services delivery model.
- Creation of the Official Languages Secretariat as the central agency to deal with implementation and accountability under the Official Languages Services Act.
- Creation of an Aboriginal Languages Protection Regime to deal with issues of Aboriginal language loss and endangerment, and the need for protection and revitalization of these languages. This includes the establishment of an Aboriginal Languages Authority and an Aboriginal Languages Advisory Committee.

In total, the report contains 48 recommendations. The proposed model has some attractive features. Most notably, it moves away from legislation based on the federal *Official Languages Act*, an Act that does not work well in a jurisdiction with 11

Official Languages, a large geographical area, and languages that are in danger of extinction. Further, the emphasis on a services based model helps ensure that members of the public will have the ability to communicate with the government in the various Official Languages.

Despite the positive features in the proposed legislation, concerns still exist. The current *Official Languages Act* already contains provisions that require the government to give a commitment to Official Languages. However, the Committee found, at page 10 of its report:

“People are also disillusioned and frustrated with the lack of accountability for implementing government commitments relating to Official Languages. Generally they found that the government is not fulfilling its obligations for Aboriginal languages as prescribed by the *Official Languages Act*. There is no plan in place that supports central, regional or community government offices and agencies to provide services in the Aboriginal languages. People also found that there is no accountability or reporting mechanism in place that assesses how the government provides these services.

... participants reminded the Members of the Committee that it was government policies of the past that contributed largely to the language loss experienced today.”

Simply changing legislation will not address these concerns. Rather, the government will have to make a concerted effort to work with the Official

Languages communities in order to protect and preserve Official Languages and to allow them to thrive. This process will necessarily include:

- Consultation with language communities to establish priorities.
- Training of interpreters and translators, especially in the areas of health and justice.
- A human resources strategy that includes the development of a plan to provide government services in French and Aboriginal languages.

There are other major issues with the proposed changes. The Committee is still recommending that services be based on designated areas. This is problematic, in that it assumes that all speakers of a particular Official Language are congregated in one place. While there are certainly areas where an Official Language is predominant, there are always speakers of that Official Language who reside outside that area. If the government is truly committed to the preservation and promotion of Official Languages, then it needs to ensure that services are available in all of the Official Languages of the Northwest Territories, regardless of the location of the person who is seeking the service. Given current and developing technology, such as audio and videoconferencing, this is not an unrealistic expectation. As well, the recommendations do not take into account that people in the Northwest Territories travel to receive services and, as such, it is unrealistic to limit Official Languages services to designated areas. Further, the recommendations are unclear in terms of the Aboriginal Languages

Protection Regime. The recommendations do not indicate that the “regime” will be part of legislation, and it may only form part of government policy or protocol. As stated by the Court of Appeal in the *Federation Franco-tenoise* case, government policies are not binding and, if the “regime” is not part of legislation, then there is no obligation on the Legislative Assembly or government to follow through with the “regime” or take any steps to promote and protect Official Languages.

RECOMMENDATIONS:

That the Legislative Assembly continue to move forward with the concept of a service based model as suggested by the development of the proposed Official Languages Services Act. However, in moving forward, consideration must be given to:

- The fact that not all speakers of an Official Language reside in a designated area;
- That residents of the Northwest Territories travel in order to receive services; and
- The Legislative Assembly of the Northwest Territories and the Government of the Northwest Territories have a positive obligation to promote and protect Official Languages.

That the Aboriginal Languages Protection Regime be contained in legislation, and not just become part of government policy or protocol.

Summary of Recommendations

1. That officials within the Government of the Northwest Territories ensure that members of the public service understand the provisions of the *Official Languages Act*, and ensure that the provisions of the Act are honoured and respected.
2. That government officials refrain from the use of the word ‘regime’ in written documentation, as the word has a negative connotation for residential school survivors.
3. That the Legislative Assembly continue to move forward with the concept of a service based model as suggested by the development of the proposed Official Languages Services Act. However, in moving forward, consideration must be given to:
 - The fact that not all speakers of an Official Language reside in a designated area;
 - That residents of the Northwest Territories travel in order to receive services; and
 - The Legislative Assembly of the Northwest Territories and the Government of the Northwest Territories have a positive obligation to promote and protect Official Languages.
4. That the Aboriginal Language Protection Regime be contained in legislation, and not just become part of government policy or protocol.

Official Languages of the Northwest Territories



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

How To Contact Us

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