



18th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of the 2015-2016
and 2016-2017 Annual Reports of the
Office of the Languages Commissioner
for the Northwest Territories

Chair: Mr. Kieron Testart

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SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its *Report on the Review of the 2015-2016 and 2016-2017 Annual Reports of the Office of the Languages Commissioner for the Northwest Territories* and commends it to the House.



Kieron Testart
Chairperson

**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE 2015-2016 AND 2016-2017
ANNUAL REPORTS OF THE OFFICE OF THE LANGUAGES
COMMISSIONER FOR THE NORTHWEST TERRITORIES**

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2015-2016 AND 2016-2017 ANNUAL REPORTS OF THE OFFICE OF THE LANGUAGES COMMISSIONER FOR THE NORTHWEST TERRITORIES

INTRODUCTION

The Northwest Territories' Official Languages Act ("the Act") was first passed in 1984 and came into force in 1988. This legislation establishes Chipewyan, Cree, English, French, Gwich'in, Innuinaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey, and Tłıchǫ as the eleven official languages of the Northwest Territories and, under section 5, provides that they "have equality of status and equal rights and privileges as to their use in all government institutions" "to the extent and in the manner provided [for] in this Act and any regulations under this Act."

The Act, which is jointly administered by the Department of Education, Culture and Employment and the Legislative Assembly, sets out the responsibilities of the Minister Responsible for Official Languages. The Minister has the overall responsibility for the Act and for the general direction and coordination of government policies and programs related to Official Languages. The Minister must:

- Encourage the maintenance and revitalization of Indigenous languages;
- Consider advice and recommendations from the Official Languages Board (OLB) and the Aboriginal Languages Revitalization Board (ALRB);
- Oversee the development of policies and regulations needed to implement the Act;
- Promote official languages education in schools, post-secondary, adult education and literacy training programs;
- Promote the use of official languages in the administration and delivery of programs and services by government institutions; and

- Prepare an annual report on official languages to be tabled in the Legislative Assembly.

The *Official Languages Act* also establishes the Office of the Languages Commissioner (“the Commissioner”) and provides for the Commissioner’s appointment, for a four-year term, as an independent officer of the Legislative Assembly. That appointment is currently held by Ms. Shannon Gullberg, whose current appointment became effective on October 8, 2015. Ms. Gullberg previously served as the Languages Commissioner from 2004 to 2008.

The Act requires the Commissioner to file an annual report on her activities and authorizes her to include recommendations for amending the legislation that are considered desirable or necessary in order to give effect to its spirit and intent.

On October 17, 2017, the Standing Committee on Government Operations (“the Committee”) conducted a public review of the *Office of the Languages Commissioner for the Northwest Territories Annual Report 2015-2016*, which was tabled in the Legislative Assembly on February 8, 2017.¹

On February 8, 2018, the Committee held a public review of the *Office of the Languages Commissioner for the Northwest Territories Annual Report 2016-2017*, which was tabled in the Legislative Assembly on October 20, 2017.²

Both of these reviews are summarized in this report.

THE ROLE OF THE LANGUAGES COMMISSIONER

The specific duties and responsibilities of the Languages Commissioner are set out in the *Official Languages Act*. The Languages Commissioner is appointed, at pleasure, by the Commissioner of the Northwest Territories on the recommendation of the Legislative Assembly and can only be removed or suspended “for cause or incapacity.” This enables the Languages Commissioner to make independent decisions free from any political influence.

¹ TD 270-18(2).

² TD 36-18(3).

The Languages Commissioner's is responsible to:

- Ensure that the rights, status and privileges of all official languages are recognized;
- Ensure sure that government institutions comply with the spirit and intent of the Act;
- Investigate complaints of the public related to the government's provision of language services mandated by the Act;
- Investigate language issues on her own initiative, and
- Provide an annual report to the Speaker, which may include proposed changes to the Act.

The Act gives the Commissioner the discretion to refuse or cease to investigate a complaint. Under Section 32(2) of the OLA, the Commissioner is also granted the discretion to appear before the Supreme Court of the Northwest Territories on behalf of a complainant.

THE LANGUAGES COMMISSIONER'S ACTIVITIES

2015-2016

The Languages Commissioner received 9 complaints during the 2015-2016 fiscal year. One originated from the public sector and 8 from the private sector. Seven involved Indigenous languages, 2 involved French. Four complaints originated in Yellowknife, 1 each in Inuvik, Aklavik and Fort Resolution, and 2 came from outside of the NWT. The subjects of the complaints were as follows:

- 1 complaint, on behalf of a number of community residents, dealt with the receipt of health centre services in an Indigenous language;
- 2 complaints related to the refusal of the Vital Statistics Registry to allow parents to register baby names using Dene fonts;
- 1 related to the availability of interpreter-translators and one related to their competency;
- 1 dealt with the lack of emphasis on Indigenous language use in the GNWT workplace, and 1 with the competency of Indigenous language teachers in schools; and

- 1 dealt with the use of Indigenous languages by a federally regulated industry and was, thus, outside of the Commissioner's jurisdiction.

During the fiscal year, the Commissioner received 11 inquiries:

- 6 involved official languages or the Act generally; 1 involved French; 2 involved Indigenous official languages; and 2 related to the expansion of languages rights; 1 involved reviewing and providing input on the languages policy of a private organization.
- Location of inquiry: 8 came from Yellowknife; 1 each originated from Inuvik and Fort Smith; 1 came from outside the NWT.

The Commissioner reviewed 2 complaints regarding the use of Dene fonts in names. She found that The NWT's *Vital Statistics Act* is similar to most other Canadian jurisdictions in limiting the registration of birth names to Roman orthography. She expressed the view that, as a quasi-constitutional Act, the *Official Languages Act* takes precedence over the *Vital Statistics Act*, insofar as that Act may attempt to limit language rights. She expressed the view that the issues related to Dene fonts for names are not insurmountable and need to be dealt with on a national level and that double-sided identification may offer a solution. At the time the report was written, the Commissioner was awaiting a response from the Department of Health and Social Services.

Regarding languages when accessing basic needs such as housing, the Commissioner noted that she reviewed a complaint that a housing application form was not available in French. She found that Housing Authorities are absent from the list of government institutions detailed in the *Official Languages Act – Government Institution Regulations*.³ Nonetheless, the NWT Housing Corporation took swift action once the concerns of the member of the public were brought forward, which the Commissioner commended.

³ *Official Languages Act – Government Institution Regulations*³ (R-082-2006)

2016-2017

The Languages Commissioner received 2 complaints in 2016-2017, as compared with 9 during the previous year. Both originated from public sector employees in Hay River and related to Indigenous language rights. One complaint raised issues related to human resources and union-management labour relations matters. Consequently, and the complainant was directed to other resources. The other complaint dealt with interpretation-translation services in health care settings, particularly for patients who are required to travel to other communities for services. The Commissioner concluded that “the complainant was satisfied that the issues being identified would be dealt with in the context of a broader investigation into health care services in the Northwest Territories” being undertaken by the Commissioner.

The Commissioner received 6 inquiries in 2016-2017, as compared with 11 in the previous year. All 6 originated from the private sector, with 2 coming from Yellowknife, 1 from Łutsel K'e, 1 from Norman Wells and 2 from outside the NWT. Of these 6 inquiries, 3 involved Indigenous official languages generally, 1 involved French, 1 involved North Slavey and 1 involved Michif, which is not an NWT official language.

In addition to the Michif inquiry, 2 involved the health of all Indigenous official languages and statistics related to those languages; 1 involved the availability of funding for translation services in North Slavey; 1 related to French language resources; and 1 related to funding for attendance at a language conference. The Commissioner noted the following common themes in discussion with people during outreach activities:

- Lack of funding for language projects and participation in language conferences;
- Concern with the lack or calibre of Indigenous languages education;
- Lack of access to or formal training of interpreters-translators; and
- Lack of standardization of languages.

The Commissioner indicated that, in 2016-2017, she had initiated an investigation into language services at the Legislative Assembly and that her report on this investigation will be completed in the near future.

The Commissioner provided a positive update that arose as the result of 2 complaints, received in the previous year, regarding the GNWT's refusal to allow the registration, under the *Vital Statistics Act*, of baby names with Dene fonts. The Commissioner reported that the *Vital Statistics Act* was amended in October 2016 to: remove the requirement of names to be written in Roman orthography; to allow registration under a single name, in accordance with a child's culture; and to allow a person to amend the designation of sex without undergoing gender reassignment surgery.

She further noted the additional work required to implement these changes:

- The GNWT needs to ensure it has the technology to produce birth registrations in Dene fonts using the correct symbols and diacritical marks;
- There is a need for greater standardization of Indigenous languages to ensure written documents are accurate and consistent; and
- More work is needed with other governments to ensure the use of Indigenous languages does not create a barrier for those seeking passports and other important documents.

PUBLIC HEARINGS

2015-2016

As noted in the introduction, Committee held a public hearing on the Languages Commissioner's *2015-2016 Annual Report* on October 17, 2017.

The review commenced with the Commissioner thanking the Minister of Health and Social Services for his work to resolve the issue involving the use of Dene fonts on birth certificates, but noting her sense that the public service sees "language roadblocks" with respect to the provision of services. She feels that this would be best resolved by the development of an *Official Languages Act* that is northern-based, not the current one which is based on the federal model and uses outdated concepts such as "significant demand" and "nature of the office" which are difficult concepts to put into practice. She noted her optimism at

signals coming from the federal government, which has indicated its intention to make Indigenous languages official at the federal level.

The Commissioner noted that she had traveled to Inuvik, Aklavik and Kakisa and was encouraged by the fact that the communities had welcomed her visit and that she had received an invitation to return from the Gwich'in Tribal Council.

When asked what part of the Act she would most like to see changed, the Commissioner replied, "section 11 is the most critical," elaborating that this is the section of the Act that sets out how members of the public can communicate in the official languages with GNWT headquarters, versus regional or community offices. She noted that this is the section of the Act incorporating the concepts of "significant demand" and "nature of the office" which, in her view, have the impact of isolating dying languages such as Gwich'in by relegating them to use in specific designated areas.

2016-2017

As noted in the introduction, Committee held a public hearing on the Languages Commissioner's *2016-2017 Annual Report* on February 8, 2018.

The review commenced with a discussion of how the Languages Commissioner works with Indigenous governments and community leaders to build on momentum with respect to language preservation occurring at the community level, for example, in the community of Délı̄ne, which is known for its accomplishments in the area of language preservation. The Commissioner replied that Délı̄ne was on her list of upcoming trips, in part because of the phenomenal things happening there. She noted that she has given some thought to her role in the context of self-government and noted that "acting in silos will not help the preservation of languages."

When asked about the drop in the number of complaints from the previous year, the Commissioner said that she is not sure there is a specific reason, but that she has been more stringent than previous Commissioners in defining a complaint. She noted that, generally, most of the concerns she hears are related to the provision of translation in the health and social services sector. Noting that not much has changed in this area since she last served as Languages Commissioner in 2008, the Commissioner indicated that she had undertaken an

investigation on her own initiative regarding these concerns and was working on her report, which would be provided to the Speaker of the Legislative Assembly.

When asked about the nature of the complaint originating from outside of the Northwest Territories, the Commissioner advised Committee that this complaint came from a former NWT resident who was seeking services outside of the NWT.

The Commissioner was asked about the inquiry she received about Michif, a Métis language spoken by the grandfather of a Committee Member. The Commissioner indicated that the inquiry reminded her of the importance of considering whether the eleven languages designated as official languages under the Act are the only ones that should be included. She observed that there would be costs associated with such a change, just as there would be costs associated with her recommendation to require contractors providing services on behalf of the GNWT to provide those services in official languages, noting that language preservation “cannot be all about the costs.”

RECOMMENDATIONS OF THE LANGUAGES COMMISSIONER

In each of the Commissioner’s annual reports, she has made recommendations for the consideration of the Legislative Assembly. The recommendations from both reports are amalgamated below and have been numbered for the purposes of this report. The Standing Committee’s response to each of the recommendations is set out below:

Recommendation 1:

“That the Legislative Assembly develop a formal process for responding back to the Languages Commissioner on recommendations presented by the Office. The process should include that the response be in writing addressed to the Languages Commissioner, with specific timeline for response.”

Committee Response 1:

The Legislative Assembly’s formal process for responding to the Languages Commissioner’s annual reports is set out in Section 23 of the *Official Languages Act* and Rules 100(1)-(5) of the *Rules of the Legislative Assembly*. The same process is used to respond to recommendations from all statutory officers of the

Legislative Assembly. Where the Standing Committee makes recommendations to the Government of Northwest Territories, it will continue to request that government provide a formal response to the Standing Committee's recommendations within 120 days.

Recommendation 2:

"That the Legislative Assembly and government officials carefully review the 2016 Census, once results are available, with a critical eye on language issues in the Northwest Territories."

Committee Response 2:

The Department of Education, Culture and Employment's *NWT Aboriginal Languages Framework: A Shared Responsibility*,⁴ references statistics from the 2011 Census. The Standing Committee trusts that the Department will make use of the most current available statistical information in any updates to this document or any future plans that replace it.

The Standing Committee notes that the 19th Legislative Assembly will be required to undertake a statutory review of the *Official Languages Act*. The Committee will be tabling a transition report offering suggestions to its successor Committee in the incoming 19th Legislative Assembly. Through this report, Committee will encourage its successor committee to incorporate an analysis of the 2016 census data into its *Official Languages Act* review.

Recommendation 3:

"That the Legislative Assembly review, on a regular basis, the structure and resources for the proper functioning of the Office of the Languages Commissioner."

Committee Response 3:

The Board of Management of the Legislative Assembly annually considers the resources required for the functioning of all statutory offices reporting to the Legislative Assembly, including the Office of the Languages Commissioner for the Northwest Territories, during preparation of the Assembly's business plan and main estimates.

⁴Education, Culture and Employment, *NWT Aboriginal Languages Framework: A Shared Responsibility* [TD 132-18(2), tabled May 26, 2017..

Recommendations 4 through 11:

Recommendations 4 through 11 involve amendments to the *Official Languages Act*, its regulations, or supporting policy documents. Committee's response follows those recommendations:

Recommendation 4:

"That the Legislative Assembly review the preamble to the Official Languages Act to determine if it accurately reflects the language rights set out in the Act, including the status of Aboriginal languages and any language of work rights."

Recommendation 5:

"That the Legislative Assembly should amend the Government Institution Regulations to add housing authorities to the list of bodies bound by the Official Languages Act. It should also review the Government Institution Regulations to ensure the adequately cover those institutions that should be subject to the provisions of the Official Languages Act."

Recommendation 6:

"That the Official Languages Act of the Northwest Territories be amended to include a provision that binds all contractors with the Government of the Northwest Territories. Suggested wording is: Every government institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in the Northwest Territories or elsewhere can communicate with and obtain those services from that person or organization in any particular Official Language in any case where those services, if provided by the institution, would be required to be provided in that Official Language."

Recommendation 7:

"That the Legislative Assembly reconsider what languages should be given the status of "Official Languages" of the Northwest Territories and provided with the protection of the provisions of the Official Languages Act" (p. 20).

Recommendation 8:

"That section 6 of the Official Languages Act be amended to read: Everyone has the right to use any Official Language in the debates and proceedings of the Legislative Assembly, and every Member of the Legislative Assembly has the right to translation of those debates in another Official Language."

Recommendation 9:

“That section 11 of the Official Languages Act be amended such that, instead of language rights based on the concepts of ‘significant demand’ and ‘nature of the office,’ language rights in the area of communication with the public are based on the following principles: That the approach be simple and holistic, with accessibility of services to the public being the focus; In order to understand and benefit from the government’s programs and services, the public requires information in the official languages; A government’s provision of services in its official languages recognizes and supports the efforts of communities in maintaining and developing those languages.”

Recommendation 10:

“That, in consultation with stakeholders and service providers, consideration be given to expanding section 11 of the Official Languages Act to deal with the issue of communicating with service providers when receiving services outside the jurisdiction.”

Recommendation 11:

“That the Legislative Assembly and the GNWT, in consultation with stakeholders, review the Official Languages Policy and Guidelines: To ensure the Official Languages Policy and Guidelines are consistent with the Official Languages Act; To include a definition of active offer that refers to a series of measures that are taken to ensure that language services in the various official languages are clearly communicated to the public and include a number of measures that will be taken to ensure that language rights are visible, available at all times, easily accessible and of high quality; That the issue of dissemination of information and materials to the public, including forms, notices, and public information material, be reviewed.”

Committee Responses 4-11:

As required by section 35(1) of the *Official Languages Act*, a Standing Committee of the 19th Legislative Assembly will be required to undertake a review of the *Official Languages Act*. This review “shall include an examination of the administration and implementation of the Act, the effectiveness of its provisions, the achievement of the objectives stated in its preamble, and may include any recommendations for changes to the Act.” In its transition report, the Standing Committee on Government Operations will encourage the standing committee tasked with this review to consider each of the recommendations for

changes to the Act or its supporting policy documents, made by the Languages Commissioner in the context of that review.

Recommendations 12 through 18:

Recommendations 12 through 18 involve matters of departmental administration that fall squarely within the mandate of the Minister of Education, Culture and Employment. Committee's response follows those recommendations:

Recommendation 12:

"That the Legislative Assembly and the Minister Responsible for Official Languages ensure that the focus for both the Francophone Affairs Secretariat and the Aboriginal Languages Secretariat be on service to the public and that there be continued consultation with language communities to seek input on the best way to provide such services."

Recommendation 13:

"That the Legislative Assembly and GNWT officials consider language rights and issues as national concerns and actively work with other jurisdictions in Canada in the development and advancement of language rights. This includes, to the greatest extent possible, sharing experiences regarding official language legislation and issues, and becoming active participants in Federal government initiatives to create new language legislation including the proposed Federal Canadian Indigenous Languages Act."

Recommendation 14:

"That the Legislative Assembly and GNWT officials take steps to ensure the health of all Official Languages in the Northwest Territories including: ensuring that all action items in the Aboriginal Language Action Plan and Strategic Plan on French Language Communication Services are taken; and ensuring all steps are taken in conjunction with community leaders."

Recommendation 15:

"That GNWT officials, in conjunction with Aurora College, interpreters/translators, community leaders and other stakeholders, consider the development of a new interpreter/translator program. This program should include: development of standards for interpreter/translators; certification of interpreter/translators; and specialized training for interpretation/translation in certain domains, such as the courts and health."

Recommendation 16:

“That GNWT officials give serious consideration to reopening the Language Bureau to provide interpretation/translation support and services to the Legislative Assembly, the GNWT and its boards and agencies.”

Recommendation 17:

“That, in this digital age, the GNWT takes steps to develop its technological capabilities to support and expand Official Language promotion, preservation and communication activities.”

Recommendation 18:

“That the GNWT continue to work with Aboriginal language groups to develop standardized orthographies for Aboriginal official languages.”

Committee Responses 12 through 18:

Management and administration of the Francophone Affairs Secretariat and what is now called the Indigenous Languages and Education Secretariat falls squarely within the mandate of the Minister of Education, Culture and Employment, as does the responsibility for intergovernmental relationships with offices in other jurisdictions having responsibility for language rights and services, including those at the community level.

The Department is also directly responsible for ensuring the commitments made in its strategic planning documents are met. Committee expects that any decisions having to do with the Aurora College curriculum would have to be made within the context of the College’s transition to a polytechnic institution. Any decision to reopen the languages bureau could be proposed by the Minister and resourced by the Legislative Assembly during the business planning process.

The Standing Committee encourages the Languages Commissioner to raise any concerns or suggestions for improvement related to program delivery and intergovernmental work on language matters directly with the Minister. Committee further encourages the Languages Commissioner to keep Committee apprised of this dialogue in order to ensure that Committee is aware of any progress made or lessons learned that may inform the upcoming review of the *Official Languages Act*.

CONCLUSION

During the 18th Legislative Assembly the Government of the Northwest Territories brought forward bills making important, substantive changes to both the *Human Rights Act* and the *Access to Information and Protection of Privacy Act*. Both of these Acts provide for statutory officers reporting to the Legislative Assembly; namely, the Human Rights Commission and the Information and Privacy Commissioner respectively. While the Committee is pleased that this work that has been done, Committee acknowledges that it has, in some respects, diverted attention from Committee's oversight role with respect to the *Official Languages Act*, which resulted in the delayed delivery of this report.

Committee notes that upcoming review of the *Official Languages Act*, which must be undertaken early in the term of the 19th Legislative Assembly, will ensure that this important statute also gets the attention it deserves.

Committee would like to take this opportunity to thank Commissioner Gullberg for her thoughtful reports and her appearances before the Committee and for her commitment to the use and preservation of all of the Northwest Territories' official languages.