

CUPE NB Submission in response to the 2021 review of the

Official Languages Act

Submitted by CUPE NB

Contact: Aditya Rao, Human Rights Representative, CUPE Maritimes at arao@cupe.ca

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Introduction

The Canadian Union of Public Employees - New Brunswick (CUPE NB) is pleased to make this submission in response to the call for public input on the review of the *Official Languages Act* of New Brunswick.¹

CUPE is Canada's largest union, with over 700,000 members across the country. In New Brunswick, CUPE represents close to 30,000 workers in hospitals, schools, municipalities, long-term care facilities, community services, recreational centers, group homes, universities, transportation, liquor stores and several other public-sector workplaces.

New Brunswick is unique in many respects as a province and its status as the country's only officially bilingual province is one of them. The linguistic diversity in New Brunswick is accompanied by a cultural diversity that strengthens our province and contributes to a sense of provincial identity that is like no other in our federation.

CUPE NB believes that supporting and strengthening official bilingualism in our province with French and English as the province's official languages is critical to fostering that sense of provincial identity.

Language rights are central to the protection and promotion of human rights. It is central to one's ability to express one's identity – cultural, linguistic, and even national. As the UN Handbook on Minority Issues notes, "language is central to human nature, culture and social identity."²

Indeed, there are international law obligations that New Brunswick must meet with respect to language rights. Article 27³ of the *International Covenant on Civil and Political Rights* states the following:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language

¹ *Official Languages Act*, SNB 2002, c O-0.5, online: <http://laws.gnb.ca/en/showfulldoc/cs/O-0.5//20210503> ["OLA-NB"]

² UN Special Rapporteur on Minority Issues, "Handbook by the United Nations Special Rapporteur on minority issues – Language rights of linguistic minorities: A practical guide for Implementation," March 2017, page 27, online: https://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf ["UN Handbook"]. CUPE NB urges the Commissioners to consider this handbook as part of the review process of the *Official Languages Act*. In the handbook, the Special Rapporteur notes 9 areas of concern for language rights protection: (1) threats to the existence of minority languages and linguistic minorities; (2) recognition of minority languages and linguistic rights; (3) the use of minority languages in public life; (4) minority languages in education; (5) minority languages in the media; (6) minority languages in public administration and judicial fields; (7) minority language use in names, place names and public signs; (8) participation in economic and political life; and (9) the provision of information and services in minority languages.

³ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), art 27 [ICCPR].

The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*⁴ states that

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

This means that it is not enough to protect official languages. There is also an obligation to protect minority languages in the province.⁵ This review offers the province an opportunity to consider steps that can be taken to protect minority languages in addition to official languages, particularly Indigenous languages.

CUPE NB makes the following recommendations to the *Official Languages Act* review:

Language rights as human rights

The struggle for official bilingualism has been long in this province. After decades of struggle, the *Official Languages Act* finally guarantees many protections for the province's two largest language groups. Still there is more to be done.

The Act does not specifically and explicitly state that language rights are human rights. As such, violations of one's right to access services in their official language of choice, is only considered a violation of the Act, but not a human rights violation in the province.

That language rights are human rights is well-established in International human rights law. It would be in keeping with the spirit of guaranteeing language rights to ensure that the Act specifically states that language rights are human rights.

CUPE NB recommends an amendment to the legislation be made to explicitly state that language rights are human rights.

⁴ *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UNGA, 47th Sess, 3 February 1993, online: <https://undocs.org/A/RES/47/135>.

⁵ See other international instruments that are binding on the province of New Brunswick: *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), art 2(2) [ICESCR]; *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), preamble; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 29-30.

Proportionality principle in municipal services

International best practices for guaranteeing language rights suggest that the principle of proportionality should be used. This means that when a certain proportion of the population speaks a certain language, public services should be made available in that language. In general, the threshold is between 5% to 20% of the population.⁶

New Brunswick currently adopts the lowest standard for this principle by requiring a municipality to only provide bilingual services when 20% of its population speaks the other official language.⁷ Such a high threshold is not in the spirit of protecting official bilingualism. It also risks creating disharmony by having the threshold so high for New Brunswickers to be able to access services in the official language of their choice.

New Brunswick should hold itself to a higher standard by lowering the proportion needed to trigger the obligation for bilingual municipal services to 5%. The province should provide language funding to municipalities to facilitate this. This would bring the province in line with federal standards as well, which is 5% of a census division, or 5000 people in a given city.⁸

CUPE NB recommends the threshold at which residents of a city should be entitled to services in their official language of choice be lowered to 5% or less.

Language of work in the public service

CUPE NB notes with concern that public sector workers in New Brunswick do not have the right to work in their official language of choice guaranteed in legislation. Federal public servants, on the other hand, have their right to work in their official language of choice guaranteed in federal law.⁹ The federal legislation does make allowances for public sector workers in regions that are dominated by one language. New Brunswick should adopt a similar approach.

CUPE NB recommends the law be amended to include the right to work in the official language of choice in the public sector.

⁶ See the UN Handbook, *supra* note 2, page 28.

⁷ *OLA-NB*, *supra* note 1, ss 35, 39.

⁸ Official Languages (Communications with and Services to the Public) Regulations (SOR/92-48), s 5, online: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-92-48/FullText.html>.

⁹ *Official Languages Act*, RSC 1985 c 31 (4th Supp), Part V (ss. 34-35) [“*OLA-Can*”].

Healthcare

While New Brunswickers can choose to access services either in English or French by using either Horizon or Vitalité, this is only true for some forms of healthcare that is publicly funded and delivered. New Brunswickers do not have their right to access healthcare in the official language of their choice while accessing forms of healthcare not currently publicly delivered.

For example, the Commissioner of Official Languages for New Brunswick made a recommendation in 2018 calling on the government to take legislative steps to address this gap in response to a complaint about lack of services in nursing homes for Francophones in the province.¹⁰

CUPE NB recommends all healthcare that is privately delivered but publicly funded, such as nursing homes, be required to be compliant with requirements under the legislation. In the absence of political will to bring the provision of long-term care back into public ownership, New Brunswickers should not have their language rights violated while trying to access care in the official language of their choice.

CUPE NB further recommends the legislation be amended to require all providers of healthcare, such as privately practicing physicians, dentists, and pharmacies, offer services in both official languages based on the composition of the community in which they are located. Continued privatization of essential services should not be used to deny New Brunswickers their language rights.

¹⁰ Office of the Commissioner of Official Languages for New Brunswick, Investigation Report (File No. 2018-3572), July 2018, pages 17-18, online: <https://officiallanguages.nb.ca/wp-content/uploads/2014/04/Investigation-report-2018-3572.pdf>.

Opportunities to learn official languages

To promote tolerance, acceptance and inclusion, all communities should have the opportunity to learn about each other and gain competency in the second official language.

CUPE NB recommends the Government of New Brunswick create a provincial exchange program similar to the federal Official Languages Programs¹¹ through which students of varying ages can have age-appropriate exchange experiences by living in a part of the province where they will be immersed in the other official language for a certain period of time. This will encourage bilingualism among New Brunswickers and provide an opportunity for cultural exchange between Anglophone, Francophone and newcomer communities.

CUPE NB recommends the creation of opportunities for adult education, open to all New Brunswickers, free of charge, to learn the province's official languages. With the prevalence of online education in the wake of COVID-19's transformation of educational methods, the province has access to modern tools to make virtual courses available to all adults. The Province of Quebec, for example, has an online resource for French language education that is specifically geared towards teaching learners about the culture of Quebec.¹²

CUPE NB recommends increased investment in schools across the province to ensure all children have an opportunity to learn the two official languages.

¹¹ See the Official Languages Programs website here: <https://englishfrench.ca/>

¹² See the website of the “Banque de dépannage linguistique” at <http://bdl.oqlf.gouv.qc.ca/bdl/>

Strengthening institutional oversight of language rights

There is a data collection gap in terms of understanding the needs of our communities to be served in their language of choice. There is also an enforcement gap. For example, the Commissioner of Official Languages for New Brunswick has limited jurisdiction to consider complaints and cannot make binding orders on the government.

CUPE NB recommends that the powers of the Commissioner should be increased so the Commissioner's decisions are binding on the Government. This could also be done by creating a quasi-judicial tribunal or creating a new provincial human rights tribunal with the power to adjudicate complaints relating to language rights.

CUPE NB recommends that the Premier establish a new Department for Official and Minority Languages so that New Brunswick's language needs can be better served as our communities become diverse, and so that the protection and promotion of Indigenous languages can be adequately prioritized.

CUPE NB recommends the legislature create a standing committee for official and minority languages with the mandate to study and monitor the government's efforts to protect language rights in the province.

CUPE NB recommends provincial Hansard be published publicly in an easily searchable and accessible manner so that all New Brunswickers have access to the debates of the legislature in the official language of their choice with a view to being able to participate more meaningfully in our provincial democracy.

Public broadcasting

New Brunswick has a media concentration problem. Independent investigations have recognized that the concentration of media in the hands of just one owner in the province – J.D. Irving Limited – is a threat to democracy.¹³ Still, there has been no movement to break up the Irving media monopoly. English language corporate media have no obligation to promote official bilingualism. Indeed, the corporate media are often actively hostile towards official bilingualism in their editorials.

CUPE NB recommends the establishment of a provincial broadcaster like TVO in Ontario or TVQ in Quebec with the mandate to promote bilingualism through provincial content focused on the diverse culture of this province. The broadcaster would also carry live feeds of the legislature while in session in both official languages.

Indigenous language rights

Although the scope of this review has its focus on the *Official Languages Act*, the commissioners are not prohibited from making broader recommendations with respect to language rights in the province. Indigenous rights, including the right of Indigenous peoples to their language and culture, must be protected by the provincial government.

As such, CUPE NB urges the Commissioners to call for an approach to language rights in New Brunswick that strengthens official bilingualism while guaranteeing language rights for Indigenous people.

Call to Action 43¹⁴ of the Truth and Reconciliation Commission of Canada calls on the province to implement the *UN Declaration on the Rights of Indigenous Peoples*.¹⁵ Articles 13, 14 and 16 of *UNDRIP* guarantee language rights for Indigenous Peoples.

As recommended above, the creation of a public broadcaster to promote bilingualism would also allow the province to further the goal of Article 16 of the *UN Declaration on the Rights of Indigenous Peoples*¹⁶

¹³ In 1981, the Kent Commission specifically recommended breaking up the Irving monopoly over newspapers in New Brunswick. To date, no such action has been taken. See Joseph Jackson, “Newspaper Ownership in Canada: An overview of the Davey Committee and Kent Commission studies,” Parliamentary Research Bureau, PRB 99-35E, 17 December 1999, online: <https://publications.gc.ca/Pilot/LoPBdp/BP/prb9935-e.htm>.

¹⁴ “Truth and Reconciliation Commission of Canada: Calls to Action”, Truth and Reconciliation Commission of Canada, 2015, online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf [“TRC Calls to Action”].

¹⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, 2 October 2007, UN Doc A/RES/61/295, online: <https://www.refworld.org/docid/471355a82.html> [“UNDRIP”].

¹⁶ Article 16(2) of *UNDRIP*, *ibid*, states: “States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.”

and Call to Action 42¹⁷ of the Truth and Reconciliation Commission of Canada which call for the protection of Indigenous culture, representation, and languages in broadcasting.

Call to Action 16 from the Truth and Reconciliation Commission states: “We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.”¹⁸

According to the UN Handbook¹⁹, Bolivia in 2008 set up 3 public Indigenous universities for the three largest Indigenous minorities which develop and use minority languages for tertiary education. Bolivia’s GDP is only about 25% larger than that of the province of New Brunswick. In India, according to the UN Handbook, more than 30 minority languages are used as the medium of instruction in public schools with Hindi or English gradually introduced in later years of schooling.²⁰

Under Jordan’s principle, Indigenous children have the right to access services, including education, that they need when they need them regardless of jurisdictional considerations. As such, the province of New Brunswick has an obligation to ensure that Indigenous children have access to education in Indigenous languages.

CUPE NB therefore calls on the Government of New Brunswick to implement a strategy in consultation with Indigenous communities to ensure that language rights of Indigenous people in this province are protected. The strategy should include implementing UNDRIP provincially and creating opportunities for education and broadcasting in Indigenous languages.

Conclusion

CUPE NB is pleased to make these recommendations to the review of the *Official Languages Act*. Our union is proudly bilingual and believes that our province is strengthened by the protection of official bilingualism. We urge the commissioners to make bold recommendations to the province that advance the strongest possible vision for a truly bilingual province.

¹⁷ TRC Calls to Action, *supra* note 14. The Call to Action number 84 calls on the federal government to increase funding for the federal public broadcaster (CBC) to allow the broadcaster to better reflect Indigenous realities and rights. It would be in the spirit of this call to action for the province to adequately fund a provincial public broadcaster “to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples.”

¹⁸ TRC Calls to Action, *supra* note 14.

¹⁹ UN Handbook, *supra* note 2, page 20.

²⁰ *Ibid.*