

REPORT OF THE LANGUAGES COMMISSIONER OF THE NORTHWEST TERRITORIES FOLLOWING AN INVESTIGATION INTO LANGUAGE SERVICES AT THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

THE ISSUE:

Language Services at the Legislative Assembly and whether those services comply with the spirit and intent of the *Official Languages Act*¹.

BACKGROUND:

In 2015, a reporter with News North contacted officials with the Legislative Assembly and the Office of the Languages Commissioner in regard to language services at the Legislative Assembly. The reporter wrote a story which is found at Appendix 1 to this report.

While the story was confusing, and lacked detail, it raised questions in regard to interpretation/translation services at the Legislative Assembly. As such, in accordance with section 20(2) of the *Official Languages Act*, a decision was made to investigate the matter.

The Speaker of the Legislative Assembly was asked to respond to specific questions in regard to interpretation/translation services at the Legislative Assembly. A copy of the response to those questions, as provided by the Speaker, is found at Appendix 2 to this report. Highlights of the response include:

- The Office of the Clerk of the Legislative Assembly consults with Members to “determine their linguistic abilities and the level of translation and interpretation services they require.”
- “[R]easonable and advance notice is required” to ensure that interpretation/translation services can be put in place when requested by a Member.
- Members may request interpretation/translation services by contacting the Office of the Clerk.

¹ R.S.N.W.T 1998, c. O-1

- The availability of “high level interpretation services”, particularly for some languages, has been a challenge for the Legislative Assembly. As a result of challenges in providing high level interpretation services, the Assembly moved to a “needs-based policy”, with languages being categorized as “essential”, “provisional”, and “non-essential”. “The availability of interpretation services has evolved over time based on the needs of the Members and the composition of any given Assembly.”
- Technological limitations have prevented the recording and rebroadcasting of the majority of interpretations to communities, as “the broadcaster who carried the Legislative Assembly proceedings at the time was only able to rebroadcast the language used on the floor and English.”
- The availability of translation is also guided by the “needs of the public” when meetings are held at the Legislative Assembly or in communities. The practice is to “invite members of the public to request interpretation services when such meetings are advertised.” In regard to community meetings, interpretation is also determined in consultation with the Member for that community.
- The Legislative Assembly does not keep statistics on the number of requests for interpretation/translation services.

ANALYSIS

GUIDING PRINCIPLES

There are certain inalienable principles when it comes to language rights and their use in Parliament and legislatures in Canada. Those principles are made clear through a review of legislation, case law and normative theory principles.

Legislation and Case Law

The Official Languages Act as Quasi-Constitutional Legislation

The *Official Languages Act* came in to effect in 1984. Modelled after the Federal *Official Languages Act*, the Act guaranteed equal status for the use of English and French by members of the public accessing programs and services, and it officially recognized the Aboriginal languages used in the Northwest Territories. In 1990, the Legislative Assembly made major amendments to the Act, giving greater status to northern Aboriginal languages. Recognizing the official status of Aboriginal languages was intended to preserve and promote Aboriginal cultures through the protection of their languages.

The Act was described by Justice Moreau as the “result of a delicate political compromise.”² The court noted that the Act was adopted to resolve uncertainty surrounding the status of official languages in the Northwest Territories. In part, its provisions were designed to resolve uncertainty surrounding the status of official bilingualism in the Northwest Territories. The court noted that through entrenchment, its provisions were sheltered from unilateral attack by a majority in the Legislative Assembly of the Northwest Territories.

Moreau confirmed the quasi-constitutional nature of the legislation and stated that the *Official Languages Act* of the Northwest Territories must be interpreted in a manner that recognizes:

- a. the underlying principles of the Constitution, in particular federalism and the protection of minorities;
- b. its remedial aspect, in light of the historic context of institutional unilingualism that persisted in the N.W.T. for over seventy years and in light of the federal bilingualism program at the national level reflected in the language provisions of the Charter; and
- c. the statement in para. 25 of *Beaulac* that language rights be “in all cases interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada” and in light of the importance of language rights as “a fundamental tool for the preservation and protection of official language communities where they do apply.”

In the *Beaulac* case, referenced in Moreau’s decision, the Supreme Court of Canada overturned a conviction and in doing so clarified its position on the protection of language rights:

“The objective of protecting official language minorities... is realized by the possibility for all members of the minority to exercise independent, individual rights[,] which are justified by the existence of the community. Language rights are not negative rights, or passive rights; they can only be enjoyed if the means are provided.”³

The case of *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, the Supreme Court of Canada confirmed that the Federal Official Languages Act is not ordinary legislation:

“The importance of these objectives and of the constitutional values embodied in the Official Languages Act gives the latter a special status in the Canadian legal framework. Its quasi-constitutional status has been recognized by the Canadian courts ... The constitutional roots of that Act, and its crucial role in relation to bilingualism, justify that interpretation.”⁴

The principles stated in the *Lavigne* and *Beaulac* cases would apply to the Northwest Territories *Official Languages Act*.

² *Fédération Franco-Ténoise v. Canada (Attorney General)* 2006 NWTSC 20

³ *R. v. Beaulac* [1999] 1 S.C.R. 768

⁴ (2002) 2 SCR 773, para. 23

These statements make it clear, that the *Official Languages Act* must be given a broad and purposive reading that respects the language rights of minorities and the need to preserve and protect Official Language communities. With this in mind, one must also look at the provisions in the preamble to the Official Languages Act relevant to this investigation:

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

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

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

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

Desiring to provide in law for the use of the Aboriginal language in the Northwest Territories including the use of the Aboriginal languages for all or any of the official purposes of the Northwest Territories at the time and in the manner that is appropriate;

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

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

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

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

One must also look at the specific provisions of the Act applicable to the complaint. Section 6 states:

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

It is important to note that the preamble and section 6 indicate that the Legislative Assembly and the Government of the Northwest Territories have made specific commitments regarding Official languages. Further, these sections are very clear in stating that, as part of the purpose of the Act, there is a positive obligation on the government to protect, promote and preserve the Official Languages. Section 6 provides for a specific right in regard to use of Official languages in the Legislative Assembly.

While more general in nature, it is also important to consider section 11 of the Act, which deals with communication with the public:

“11.(1) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where

- (a) there is a significant demand for communications with and services from the office in that language; or
- (b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French.

(2) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any regional, area or community office of a government institution in an Official Language other than English and French spoken in that region or community where

- (a) there is a significant demand for communication with and services from the office in that language; or
- (b) it is reasonable, given the nature of the office, that communications with and services from it be available in that language.

(3) In interpreting subsection (2), consideration shall be given to collective rights of Aboriginal peoples pertaining to Aboriginal languages and exercised within the traditional homelands of those peoples, consistent with any applicable lands, resources and self-government agreements, including land claim and treaty land entitlement agreements, and any other sources or expressions of those collective rights.”

In this regard, the case of *Quigley v. Canada (House of Commons)*⁵ is very important. The Federal Court found broadcasting to fall within the meaning of “service”, and held that the House of Commons “must if it uses another person or organization to deliver services that required to be provided in both official languages, ensure that the person or organization providing such services does so in both official languages. As will become clear in this report, the broadcasting of all assembly proceedings in all Official languages is reasonable and, arguably, required.

Parliamentarian Statements and Positions Regarding Official Languages

It is also important to look at how official languages have been considered by parliamentarians in Canada. Such sentiments are compelling and relevant.

On March 22, 2107, in Budget 2017, the federal government made commitments with respect to official languages in the context of parliament:

“Canadians have a right to communicate with, and be served by, Parliament in their preferred official language, ensuring that all citizens are able to fully participate in the Parliamentary process. In order to improve Parliamentary translation services, Budget 2017 proposes to invest \$7.5 million per year ongoing, starting 2017 - 18. This investment will ensure that Parliamentarians and Canadians continue to be served in the official language of their choice.”⁶

⁵ *Quigley v. Canada (House of Commons)*, 2002 FCT 645

⁶ Government of Canada, “Building A Strong Middle Class”, Budget 2017, 22 March 2017, p. 190

The notion that the Constitutional and statutory provisions regarding official languages are designed to grant rights to both parliamentarians and the public is supported by Doucet:

“The right to participate in the legislative process is one of the ‘minimum requirements for a language to be effective in the public as well as private realm.’ It helps make it possible for a minority linguistic group to participate in public life in its language.”⁷

It is also important to note that parliamentarians have considered more than just English and French in debates and proceedings regarding languages. During the 1st session of the 39th Parliament, in 2006 - 2007, Senator Eymard Corbin introduced the following motion regarding the right to use ancestral Aboriginal languages in Senate proceedings:

“That the Senate should recognize the inalienable right of the first residents of the land now known as Canada to use their ancestral language to communicate for any purpose; and

That, to facilitate the expression of this right, the Senate should immediately take the necessary administrative and technical measures so that senators wishing to use their ancestral language may do so.”⁸

The motion was debated and eventually referred to the Standing Committee on Rules. In turn, the committee interviewed witnesses, went on a fact finding trip to Iqaluit, did a cost-benefit analysis, prepared reports and made recommendations. These recommendations included recommendations for use of Aboriginal languages in the Senate chamber and in two committees. The committee’s report was tabled in April 2008. Despite a few debates being held in Inuktitut, the use of language in Parliament has not been reviewed since 2008.

Perhaps some of the strongest sentiments regarding language rights come from Prime Minister Diefenbaker, who stated:

“... this basic right has been secured and will be maintained as part of our constitutional freedom, and will be regarded as unchangeable and unchanging.... Because of this fact, everything we can do to ensure the preservation of those basic constitutional rights and the equality of those rights of language should be attained and implemented.”⁹

⁷ Doucet (2013), p. 199, citing *Blaikie c. P.G. Quebec* [1978] CS 37, pp. 44-45

⁸ Senate, Notice of Motion, 1st Session, 39th Parliament, 6 April 2006

⁹ House of Commons, Debates, 1st Session, 24th Parliament, 11 August 1958, p 3332 (J.G. Diefenbaker, Prime Minister), in Library of Parliament, House of Commons Debates 24th Parliament, 1st Session: Vol. 3, Canadian Parliamentary Historical Resources (database)

Normative Theory

In his paper, “Reflections on the Evaluation of Language Rights”¹⁰, Tierney states that you can have rights without an identifiable duty bearer. He refers to such rights as “negative rights” and indicates that the only obligation of the state or other actors, in such cases, is to not interfere with those rights. He contrasts that with “positive rights”, which demand a positive action from the state or other duty bearer, and he includes language rights in this second category. He states:

“... Most now accept that the negative model of construction is incoherent because it misses the fact that language is an inherently public activity, and that the social reality is that without positive protections a minority language as a viable system of communication for a fully functioning linguistic community will decay. In other words, the idea that the state can be neutral on the issue of language in the sense that it can be neutral towards religion is fanciful because there is no way for the state to avoid taking a stand on a whole series of language policy issues. ... meaningful language rights often need to be framed in terms of positive obligations. ...”

This view is supported by Réaume¹¹, who states:

“... the most distinctive features of the Canadian language rights regime - the entrenchment of certain positive obligations to foster the ability to use one’s language... We have to go beyond understanding the importance of language as simply one of the things individuals choose as part of a conception of the good in order to provide a justification for a positive language rights regime. ...”

Réaume also states:

“... the importance of language that makes sense of the idea that protecting it can justify the imposition of duties on others.”¹²

Tierney also discusses who can claim such language rights, and proposes that language rights are not individual rights, but community rights. He states:

“... It seems categorizing language rights as individual rights, just as categorizing language as an issue of private life, misses the inherently communal nature of the activity for which protection is sought. There is vast literature within liberal theory which debates whether or not group rights are compatible with liberalism, etc. To a large extent, epistemological and methodological difficulties can be avoided by accepting that groups can make claims in practice. By accepting this, even the most devout individualist may concede that although the group does not possess the rights in and of itself, it can make claims as representative of an aggregation of individual claims. ...”¹³

This approach is also supported by Réaume, who states:

¹⁰Tierney, Stephen; “Reflections on the Evolution of Language Rights”; Proceedings of a conference held at the University of Ottawa, Nov. 12 - 13, 2004 (LexisNexis), pg. 11

¹¹Réaume, Denise; “Language Rights: Constitutional Misfits or Real Rights”; Proceedings of a conference held at University of Ottawa, Nov. 12 - 13, 2004; pg. 213

¹²*supra*, pg. 214

¹³*supra*, Tierney at pg. 12

“In order to put language rights on a sure constitutional footing, we must release language policy from the grip of the instrumental and aggregative logic embedded in territorialist thinking and provide an account of the interest in language that focuses not only on the individual speaker, but on the ongoing commitment of a community of language speakers to the maintenance of their collective life in particular language. This provides the foundation upon which meaningful set of constitutional protections for language can be built...”¹⁴

Réaume adds:

“This account of the value of language shifts away from a fully individualized understanding and reveals a collective interest capable of justifying the imposition of obligations. This presents the maintenance of a language community as a complex group practice. Individuals are, of course, involved in that practice and it is partly through their choices that the practice is either maintained or abandoned. But there is a “forest” as well as individual “trees.” At least part of what gives choices value is the fact that they collectively constitute participation in the larger, group enterprise. It is in and through participation with others in the creation and sustaining of language, and the cultural forms it is used to create, that value is created. The larger enterprise should take centre stage in the analysis.”¹⁵

Tierney also addresses the issue of against whom a language group can claim the right. He states:

“... if we accept that language rights claims are both quantifiable and positively enforceable, we still face the question: against whom can language groups claim these rights? ... Against the host state it is usually, at least by territorial minorities, a claim based on some notion of “union state” - in other words, that the state is composed of a plurality of national communities, each of moral worth, and each entitled to equal protection and accommodation of their language and culture. These claims are therefore based upon the particular constitutional or political commitments made between national societies within one state...The fact that many of these claims impose positive duties on the duty-bearer, as discussed above, as also the fact that they are often group rights claims...”¹⁶

Packer¹⁷ discusses the effects of the action, or inaction, on the part of the state in regard to language rights. He states:

“Certainly, choices made by States in the use of language - especially in the public sphere of governance - have a bearing on access to important goods, and constitute either a means to or an obstacle in the way of social integration. Problems arise when persons or groups feel that they are being excluded from certain processes or opportunities in the public sphere, including access to an equitable share of the State’s resources, derived from their lack of knowledge of the State language(s). Good policy would be to reduce as far as possible such situations and to create other accessible solutions where such effects cannot be avoided.”

¹⁴ *supra*, Réaume, pg. 203

¹⁵ *supra*, Réaume pg. 214

¹⁶ *supra*, Tierney pg. 13

¹⁷ Packer, John “Towards a Consistent Approach in the Management of Linguistic Diversity”; Proceedings of a conference held at University of Ottawa, Nov. 12 - 13. 2004; pg. 105

As part of analysing the interplay between language, governance, and the effect on the public, Tierney and Packer both address the issue of broadcasting and the ability of minority groups to access media¹⁸. There is also literature that examines the specific issue of broadcasting in the context of language rights. Packer states that:

“The field of radio and television broadcasting provides a good example of how good governance is required to address the varying needs of linguistic minorities and give practical effect to their rights. Access to the media in one’s own language is important both for the maintenance of cultural identity and for exercising one’s right to freedom of expression, including to impart and receive information... the medium of choice - including both the form chosen and the language of transmission or reception - are protected since “any restriction imposed on the means necessarily interferes with the right to receive and impart information”. In our complex and pluralist societies, the broadcast media constitutes an important source of both information and cultural transmissions, and are potentially powerful instrument in keeping persons belonging to minorities fully informed and in keeping minority languages alive and developing across a broad spectrum of interest areas. ...”¹⁹

It is also important to look at the concept of language rights in the context of good governance. Packer²⁰ states:

“... there are communities who will bring , legitimately and peacefully, demands that will exceed what can be satisfied in that context. Simply, they want more..., and why shouldn’t they? Here the notion of good governance is useful. In particular, it helps answer the question “why not?” and so directs fairness in policy and law-making to the maximum benefit of the whole population. In effect, the government is challenged to satisfy legitimate demands which may vary among groups and which may compete for public resources. In principle, the State should act to the maximum of its capacities taking account of varying needs, interests and general welfare. “

He then goes on to state:

“It is important to note that considerations of “good governance” employ a wholly different discourse than rights - talk. It imposes upon the authorities a completely different set of considerations and lead to different responses and outcomes. Fundamentally, it is not a question of what people are entitled to have. Instead, it asks what should be done to the benefit of each and all to the maximum extent of available public resources and capacities. ... While resources will always be limited, an important aspect of good governance is that available resources be used in an equitable fashion and to maximum effect - that is to the benefit of the largest number of persons and groups. Moreover, the value of equity implies that disadvantaged groups may merit support in proportion greater than their relative numbers would imply; indeed, small groups could well merit special attention and support. No doubt, cost-effectiveness and transparency are key elements in ensuring acceptance among majority opinion for minority - language policies.”

¹⁸ *supra*, Tierney at pg. 21

¹⁹ *supra*, Packer, at pg. 102

²⁰ *supra*, Packer pg. 100

APPLYING THE GUIDING PRINCIPLES

The response of the Legislative Assembly is informative and it is appreciated. However, the response raises serious concerns that the policy regarding language services at the Legislative Assembly does not reflect the guiding principles as stated above.

Quasi-Constitutional Status

There is no doubt that the *Official Languages Act* holds quasi-constitutional status. This status has been confirmed by the courts and supported by scholars and parliamentarians alike.

The *Official Languages Act* must not just hold quasi-constitutional status; it must be treated with such status. This means that the sentiments in the preamble in regard to recognizing, preserving and protecting languages cannot be given “lip service.” It means the rights expressed in section 6 and section 11 of the Act cannot be minimized. It means that the Act must be interpreted broadly and purposively and in a way that: protects minorities; makes it useful as a tool to protect language rights; and, emphasizes its remedial nature.

These principles establish that language rights are “positive rights” which are community based and place broad obligations on the government as part of good governance. These principles are important in the analysis of the issues at hand.

FINDING:

The *Official Languages Act* enjoys quasi-constitutional status.

RECOMMENDATION:

In interpreting the *Official Languages Act*, including section 6, there must be recognition and consideration of its quasi-constitutional status.

“Rights Based” not “Needs Based”

The words of Tierney and others are important in the context of the case at hand. Language rights impose positive obligations on the Legislative Assembly to ensure that those rights are respected, and are part of good governance. Further, such language rights belong to more than just the Members of the Legislative Assembly; they are the collective rights of language groups in the Northwest Territories who are represented by the Members. Despite this, the language policy of the Legislative Assembly appears to be based on a “needs” approach rather than a

rights - based approach to language services. In fact, the words “needs”, “essential”, “provisional” and “non-essential” appear throughout the policy. Dictionary.com defines these words as follows:

“need: require something

essential: absolutely necessary

provisional: arranged or existing for the present

non-essential: not absolutely necessary; unnecessary; expendable”

FINDINGS:

Language rights are positive rights which are community based and place broad obligations on the government as part of good governance.

That currently, the Legislative Assembly has chosen a needs-based approach to interpretation/translation services at the Legislative Assembly.

Regardless of whether a Member “needs” or “requires” interpretation/translation services, that Member may want to exercise his or language rights for a number of reasons, which might include:

- an increased comfort level when communicating at the Legislative Assembly in one’s language
- as a means of showing pride in one’s culture and background
- as a means of honouring elders
- to be most responsive and respectful to constituents
- a political motivation to garner supporting of community members

In other words, the issue is not whether interpretation services are “essential” or “non-essential”; the issue is whether a member is seeking to exercise a right. Further, the specific reason why a member chooses to exercise a right should not matter; a rights - based approach allows the right to be exercised for any number of reasons and motivations. The Legislative Assembly needs to change its approach regarding its language policy from one concerned about the “needs” of members to one focussed on concepts such as “claims”, “benefits”, “prerogatives” and “preferences” of Members. One is reminded of the words of Solis, wherein he states, “[a] human ‘needs’ approach appeals to charity, while a ‘human rights’ approach translates need into a matter of entitlement with dignity.”²¹

²¹ Solis, Manuel; “Rights vs. Human Needs”, Friday September 12, 2014
<https://www.adelaide.edu.au/news/mews73183.html>

RECOMMENDATIONS

That the language policy of the Legislative Assembly not be premised on a “needs” based model, but rather, on a rights-based model that includes consideration of concepts such as:

- the desire of MLAs to speak the various Official Languages in Legislative Assembly proceedings, regardless of need;
- the requirement for MLAs to understand, in a timely manner, what is said in the Legislative Assembly, regardless of the Official Language being used at any particular point in time; and
- the ability of the public to participate in the legislative process in a meaningful way through language services that allow communities to hear assembly proceedings in the various Official Languages.

That in developing a language policy, the Legislative Assembly avoid terms such as “need” in favour of terms that properly reflect a rights-based approach, such as “claim”, “benefit”, “prerogative” and “preference”.

Interpreted Broadly

As indicated, it is important to ensure language rights are interpreted broadly. In complying with the spirit and intent of the *Official Languages Act*, and s. 6 in particular, the Legislative Assembly should give serious consideration to providing ongoing interpretation/translation services in all Official Languages available to Members of the Legislative Assembly at all sittings and for all meetings of members.

It is recognized that there is a significant cost to providing such a service, and obviously, a cost-benefit analysis would need to be conducted. However, as part of that analysis, consideration should be given to the following:

- There is a significant cost to using contract interpreter/translators, and thought should be given to other ways of providing the service. This could include full time employee interpreter/translators who could provide services to other government agencies when not required by the Legislative Assembly. This could have an overall effect of improving language services within the government as a whole.
- The Legislative Assembly is an assembly for the people. Providing such a service has important symbolism; it makes it clear that the government values language and culture, and is committed to the people it serves. This is an important message.

- It is easy for measures designed to support languages in parliament and legislative assemblies to fall in to a “black hole”, never to be resurrected. Consider the Corbin motion before the Senate. While the Senate passed a motion referring to the right to use an Aboriginal language in the Senate as an “inalienable right”, measures to support that right never made it very far. Despite a fact-finding mission, cost analysis, and reports, and despite recommendations made by the Senate Standing Committee on Rules, little changed. In the case of the Northwest Territories, our *Official Languages Act* clearly provides for use of Aboriginal languages in the Assembly. However, supporting language rights is more than just expressing the sentiment in legislation; it means taking concrete measures to support the rights beyond fact-finding missions, cost analysis, reports, and recommendations. The Legislative Assembly clearly has an obligation to implement measures to support language rights.

Should it prove impossible, for compelling reasons, to provide ongoing interpretation/translation services at the Legislative Assembly, that is not the end of the issue. Clearly, the current system is inadequate and results in sporadic and infrequent availability of service. This is not in keeping with the spirit of the *Official Languages Act*. Services need to be enriched and expanded systematically, ensuring that there is interpretation/translation services for *all* official languages in a frequent and consistent manner without a member having to request the service.

Enriching and expanding interpretation/translation services would require serious discussions between Members of the Assembly and assembly administration to develop a framework. As part of this framework, there must be a mechanism to have interpretation services available to a member on short notice. Without this, the rights of members are not truly being met. There should also be dialogue with community members, including elders and local government officials, in regard to the expectations of communities in regard to broadcasting of Legislative Assembly meetings and meetings in communities. It is not sufficient to rely on the views of a Member in regard to community desires and expectations. This comment is not meant to be a slight on Members of the Assembly. Rather, it is a comment on the fact that language rights are community based and driven.

RECOMMENDATION:

That Members of the Legislative Assembly ensure that language services at the Legislative Assembly comply with the spirit and intent of the *Official Languages Act* by ensuring that the provisions of the *Official Languages Act* are interpreted broadly and in accordance with the principles outlined by Canadian courts. This means:

That members of the Legislative Assembly must give serious consideration to providing simultaneous interpretation services in all eleven (11) Official Languages for all proceedings of the Legislative Assembly. This will require an extensive cost-benefit analysis, with serious weight given to the inherent benefits to members of the assembly and the public by providing such ongoing interpretation services.

That if it proves impossible, for compelling reasons, to provide simultaneous interpretation in all eleven (11) Official Languages for all proceedings of the Legislative Assembly, then members of the Legislative Assembly, in conjunction with assembly administration, must develop a language policy that enriches and expands the interpretation services for assembly proceedings in a systematic fashion. In developing such a policy, consideration must be given to the following:

- * interpretation services should not be based on the needs of members or the make up of the assembly at any given point in time
- * there must be more hours of interpretation in each Official Language
- * interpretation should be provided on a consistent and frequent basis and ensuring that members know when such services are available so that members do not need to request such a service
- * ensuring that services can be made available to a member at any time, on short notice, where the member wishes to exercise his or her language rights
- * there should be consultation with community officials, including elders and community government officials, to assess the expectations of communities in regard to broadcasting of assembly proceedings and community meetings with assembly officials and Members of the Legislative Assembly.

These recommendations may be seen as too drastic or idyllic. However, consider the following. In Kosovo, when there was no Serbian member of the assembly for a number of years, Serbian translation was not seen as essential, and disappeared.²² Unlike the Kosovo example, the Legislative Assembly of the Northwest Territories has the ability to be the backbone of, and most proactive supporter of, the language rights it created.

²² Zivkovic, Jasmina; Serbian member of the Kosovo Assembly speaking at the International Association of Language Commissioners AGM and Conference in Kosovo May 3, 2018.

PERIPHERAL ISSUES RAISED IN THE INVESTIGATION

Technical Issues in Broadcasting

The response of the Legislative Assembly indicates that there are “technical limitations” that prevent the recording and rebroadcasting of the majority of interpretations of assembly proceedings to communities. While the Legislative Assembly did not provide details in regard to these issues, I accept that there are struggles in this regard.

FINDING:

That the Legislative Assembly has expressed there are technical limitations to the recording and broadcasting of assembly proceedings.

As stated in *Quigley*²³, broadcasting is a service. Further, given the importance of communities being able to participate in the legislative process, as identified above, it is “reasonable, given the nature” of the Legislative Assembly that such services be available in *all* Official languages and in *all* communities in accordance with sections 11(1) and (2) of the Act. As well, section 11(3) refers to interpreting such rights to services in Aboriginal Official languages broadly, in accordance with “sources and expressions of collective rights.” The notion of language rights as collective rights has already been established herein. In addition, as stated above, the rights afforded to Members of the Legislative Assembly pursuant to s. 6 of the Act extend beyond them; they extend to the communities served by the Legislative Assembly. For all these reasons, it is imperative that, whatever the nature of the technical limitations to the recording and rebroadcasting of assembly proceedings, the issues must be rectified. In this way, members of the public can, in a more fulsome and meaningful way, participate in assembly proceedings.

RECOMMENDATION

That, in recognizing that language rights at the Legislative Assembly extend beyond the members of the Legislative Assembly, the Legislative Assembly give priority to rectifying any technical limitations to any recording and rebroadcasting of assembly proceedings.

²³ *supra*, at 5

Availability of Trained Interpreters/Translators

In its response, the Legislative Assembly concedes that there are a “limited number” of interpreter/translators available, “particularly for certain indigenous languages.” There is no disputing this point. The issue of a lack of properly trained interpreters/translators has been raised by each Languages Commissioner since the inception of the office. This includes a special report in 1996 with respect to the privatisation of the Language Bureau, and concerns about the impact of the closure on interpreter/translation services. In addition, concerns were expressed about the termination of the Aurora College Interpreter/Translator Training Program around the same time as the Language Bureau closure. There is no longer a formal program in the Northwest Territories for the training of interpreters/translators.

The concerns expressed in regard to accessing interpreters/translators appear to be ongoing. Now, the only resource the Department of Education, Culture and Employment provides in regard to interpreter/translator services for Aboriginal languages is a list of interpreter/translators on its website, with no verification of training or expertise.

FINDING:

That the response of the Legislative Assembly reinforces the concerns regarding a lack of properly trained interpreter/translators in the Northwest Territories, particularly for some Aboriginal languages, and the lack of a formal training program for interpreter/translators in the Northwest Territories.

It is a challenge to find properly trained interpreters/translators. However, the Legislative Assembly must confront this challenge in order to meet the requirements of the *Official Languages Act* and serve constituents in the best possible manner and honour the rights established pursuant to the *Official Languages Act*.

The Legislative Assembly, in conjunction with the Minister Responsible for Official Languages, must ensure that there are properly trained interpreters/translators that are accessible to the Legislative Assembly and GNWT departments on a continuous and ongoing basis. The training program should be comprehensive, and should be a program that can be promoted as a valued occupational option. The program must be methodical in nature, including core competencies, specialty areas and credentialing.

RECOMMENDATION:

That the Legislative Assembly, in conjunction with the Minister of Official Languages, ensure that there is a program(s) in place to create properly trained and competent interpreter/translators to meet the needs of the Legislative Assembly and GNWT on an ongoing basis. The program must be comprehensive and one that can be promoted as a valued occupational option. It must be methodical in nature, include core competencies and specialty area training, and must result in credentialing.

Statistics

The response of the Legislative Assembly indicates that there has not been a keeping of statistics in regard to requests for interpretation/translation services at the Legislative Assembly.

FINDING:

That the Legislative Assembly has not kept statistics of requests made by members of the Legislative Assembly for interpretation/translation services, or the nature of such requests.

The keeping of statistics is an important part of transforming the culture around language services at the Legislative Assembly. It allows for an analysis of trends and issues. In turn, that ensures that initiatives are supported and that proper processes and procedures are put in place to support language services at the Legislative Assembly.

RECOMMENDATION:

That the Legislative Assembly begin keeping statistics regarding requests for interpretation/translation services as part of an overall plan to shift the culture regarding interpretation/translation services at the Legislative Assembly.

SUMMARY OF FINDINGS

1. The *Official Languages Act* enjoys quasi-constitutional status.
2. Language rights are positive rights which are community based and place broad obligations on the government as part of good governance.
3. That currently, the Legislative Assembly has chosen a needs-based approach to interpretation/translation services at the Legislative Assembly.
4. That the Legislative Assembly has expressed there are technical limitations to the recording and broadcasting of assembly proceedings.
5. That the response of the Legislative Assembly reinforces the concerns regarding a lack of properly trained interpreter/translators in the Northwest Territories, particularly for some Aboriginal languages, and the lack of a formal training program for interpreter/translators in the Northwest Territories.
6. That the Legislative Assembly has not kept statistics of requests made by members of the Legislative Assembly for interpretation/translation services, or the nature of such requests.

SUMMARY OF RECOMMENDATIONS

1. In interpreting the *Official Languages Act*, including section 6, there must be recognition and consideration of its quasi-constitutional status.
2. That the language policy of the Legislative Assembly not be premised on a “needs” based model, but rather, on a rights-based model that includes consideration of concepts such as:
 - the desire of MLAs to speak the various Official Languages in Legislative Assembly proceedings, regardless of need;
 - the requirement for MLAs to understand, in a timely manner, what is said in the Legislative Assembly, regardless of the Official Language being used at any particular point in time; and
 - the ability of the public to participate in the legislative process in a meaningful way through language services that allow communities to hear assembly proceedings in the various Official Languages.
3. That in developing a language policy, the Legislative Assembly avoid terms such as “need” in favour of terms that properly reflect a rights-based approach, such as “claim”, “benefit”, “prerogative” and “preference”.

4. That Members of the Legislative Assembly ensure that language services at the Legislative Assembly comply with the spirit and intent of the *Official Languages Act* by ensuring that the provisions of the *Official Languages Act* are interpreted broadly and in accordance with the principles outlined by Canadian courts. This means:
- That members of the Legislative Assembly must give serious consideration to providing simultaneous interpretation services in all eleven (11) Official Languages for all proceedings of the Legislative Assembly. This will require an extensive cost-benefit analysis, with serious weight given to the inherent benefits to members of the assembly and the public by providing such ongoing interpretation services.
 - That if it proves impossible, for compelling reasons, to provide simultaneous interpretation in all eleven (11) Official Languages for all proceedings of the Legislative Assembly, then members of the Legislative Assembly, in conjunction with assembly administration, must develop a language policy that enriches and expands the interpretation services for assembly proceedings in a systematic fashion. In developing such a policy, consideration must be given to the following:
 - * interpretation services should not be based on the needs of members or the make up of the assembly at any given point in time
 - * there must be more hours of interpretation in each Official Language
 - * interpretation should be provided on a consistent and frequent basis and ensuring that members know when such services are available so that members do not need to request such a service
 - * ensuring that services can be made available to a member at any time, on short notice, where the member wishes to exercise his or her language rights
 - * there should be consultation with community officials, including elders and community government officials, to assess the expectations of communities in regard to broadcasting of assembly proceedings and community meetings with assembly officials and Members of the Legislative Assembly.
5. That, in recognizing that language rights at the Legislative Assembly extend beyond the members of the Legislative Assembly, the Legislative Assembly give priority to rectifying any technical limitations to any recording and rebroadcasting of assembly proceedings.

6. That the Legislative Assembly, in conjunction with the Minister of Official Languages, ensure that there is a program(s) in place to create properly trained and competent interpreter/translators to meet the needs of the Legislative Assembly and GNWT on an ongoing basis. The program must be comprehensive and one that can be promoted as a valued occupational option. It must be methodical in nature, include core competencies and specialty area training, and must result in credentialing.

7. That the Legislative Assembly begin keeping statistics regarding requests for interpretation/translation services as part of an overall plan to shift the culture regarding interpretation/translation services at the Legislative Assembly.

All respectfully submitted this 25th day of May, 2018.

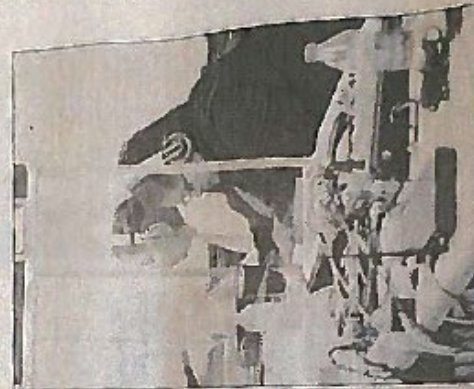


Shannon R. W. Gullberg
Languages Commissioner for the Northwest Territories

NEWS
NEWSPAPER/MT. MOODY, APRIL 30, 2015 AT

Lost in translation

Lack of funding prevents consistent language services in legislative assembly, says clerk



Protesters sit at a public hearing in Abitibi-Témiscamingue during the Montserrat Valley Land and Water Boards public hearings surrounding the Gahcho Kua mine.

Adding for each language is a cost that is not covered by the province, says the clerk. He says he has seen some cases where the fee has reached \$100,000 for a court case, but that is not the norm.

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[1]

1. Is English the language typically spoken during the sittings of the Legislative Assembly? Assuming this is the case, how did this practice develop?

Pursuant to the *Official Languages Act*, Members of the Legislative Assembly have the right to use any official language in the debates and other proceedings of the Legislative Assembly. At the outset of each Assembly, the Office of the Clerk consults with each Member to determine their linguistic abilities and the level of translation and interpretation services they require, if any.

In the current Assembly, there are four Members who regularly speak an official language other than English during the Legislative Assembly's proceedings. These languages are Chipewyan, South Slavey, Tlicho and French. As is explained below, these four languages are designated as "provisional" in the 18th Assembly based on the linguistic abilities of the Members who speak them.

2. Are translation/interpretation services available for all Official Languages at all times and for all sittings of the Legislative Assembly, as well as board and committee meetings? If not, what are the restrictions on receiving such services?

Yes, in theory, translation/interpretation services are available for all sittings of the Assembly and its committees. In practice, however, reasonable and advance notice is required to ensure such services can be put in place.

It is important to note that the Legislative Assembly has never offered interpretation in all eleven official languages at all times. The availability of interpretation services has evolved over time based on the needs of the Members and the composition of a given Assembly.

Prior to division of the Northwest Territories in 1999, the Legislative Assembly comprised 24 members, many of whom were Inuktitut speakers. Particularly in the 1980s and early 1990s, it was not uncommon for one or two Inuktitut-speaking Members to be unilingual and to require interpretation for all proceedings and meetings. As a result, the Legislative Assembly had Inuktitut interpreters on staff who were available to provide these services as needed. The composition of the Assembly changed following the creation of Nunavut, and since that time there has not been a unilingual speaker of any indigenous language elected.

When the Assembly first moved into its present location, interpretation was provided for eight of the official languages on a daily and rotational basis. This approach to language services lasted approximately five years and was ultimately not continued, as it was determined that this level of interpretation significantly exceeded the Assembly's ability to communicate the interpreted proceedings to the broader public. Technological limitations prevented the

Assembly from recording and rebroadcasting the majority of these interpretations to the communities, as the broadcaster who carried Legislative

Assembly proceedings at the time was only able to rebroadcast the language used on the floor and English.

As a result of these and other practical challenges in providing such a high level of interpretation services, the Legislative Assembly has moved to a needs-based policy for providing interpretation that continues to this day. This policy is set out in the Member' Handbook, which classifies official language usage into three categories.

"Essential" languages are those spoken by a Member who either (a) has limited or no ability in English, or (b) has some fluency in English but prefers to use another official language where possible. If a language is deemed to be essential, simultaneous interpretation services will be made available for all sittings of the House and all Committee meetings at which the Member is scheduled to attend. In the 18th Assembly, no non-English languages have received this designation.

"Provisional" languages are those spoken by a Member who is fluent in English but who indicates a desire to use another official language at times during Assembly proceedings. Interpretation of such languages is provided when reasonable advance notice is provided to the Office of the Clerk that such services are desired. The Members' Handbook stipulates that such notice must be provided at least four hours prior to the House or Committee proceeding, and that every effort will be made to provide a qualified interpreter following such a request. In practice, more notice is required due to the practical challenges of arranging to have an interpreter present, as discussed below. In the 18th Assembly, Chipewyan, South Slavey, Tlicho and French are designated as "provisional".

"Non-Essential" languages are those Official Languages that no Member indicates the ability to use during Assembly proceedings. The Members' Handbook provides that interpretation of such languages will not be provided as a matter of course.

The three interpretation booths at the Legislative Assembly permit simultaneous interpretation into three different languages. The practice in the 18th Assembly is for Tlicho interpretation to be offered the first two hours of all daily sittings of the Assembly, and for other languages to be offered in similar fashion on a weekly rotating basis. The scheduling of interpretation depends on the requests of Members and on the availability of interpreters, of which there are a limited number, particularly for certain indigenous languages.

[3]

During the most recent session of the Legislative Assembly, interpretation was provided at some point into all Official Languages except Cree, as finding a Cree interpreter has proven challenging. Tlicho interpretation was provided during every sitting pursuant to the request of the Speaker of the Assembly.

The availability of interpretation is also guided in part by the needs of the public. Where the subject matter of a proceeding suggests that interpretation will be needed into a

particular Official Language, efforts will be made to arrange appropriate interpretation. This is true both for proceedings on the floor of the Legislative Assembly and for public meetings, such as standing committee meetings, both at the Legislative Assembly in Yellowknife and in the communities. The Legislative Assembly's practice is to invite members of the public to request interpretation services when such meetings are advertised. Where a meeting is taking place in a community, whether or not interpretation is required for a particular meeting is also determined based on consultation with the Member that represents that region.

3. How does a Member of the Legislative Assembly go about requesting interpretation/translation services? Are there any written procedures in this regard and, if so, can you please provide me with a copy of those procedures?

Members may request interpretation or translation services by notifying the Office of the Clerk, verbally or in writing, of their request. This process is set out in the Members' Handbook. The process is not a particularly formal one, and the Office of the Clerk makes every effort to accommodate a request, however it is received. This process is explained to all Members at the orientation sessions offered at the beginning of each new Assembly.

4. When translation or interpretation services are requested, is the request always to interpret/translate from an Aboriginal Official Language or French to English? Or, are there requests to have interpretations/translations from English to other Official Languages? Any statistics in this regard would be appreciated.

The Legislative Assembly does not currently keep statistics on the number of requests received for interpretation/translation services and the particular languages sought to be translated. The Assembly receives fewer than five such requests on an annual basis. Requests for interpretation/translation are typically from another Official Language to English, but there are occasions in which translation is requested from English to other Official Languages, although these requests are less common.

[4]

5. Over the term of the 18th Legislative Assembly, to date, and for the last two Legislative Assemblies (16th and 17th Assemblies), do you have any records of the number of requests for interpretation/translation services? Further, are there any incidents where a Member wanted to use his or her language and interpretation/translation was not available? Can you please provide details and statistics, if possible.

As the Legislative Assembly does not keep statistics regarding requests for translation services, the specific numbers of requests made are not available. However, a few general principles and trends can be identified which may assist in responding to this question

First, because of the Legislative Assembly's practice of offering interpretation into all Official Languages on a rotating, weekly basis, Members often do not request interpretation into a particular language unless it is required for a particular proceeding. Members are aware that, subject to practical constraints, every effort will be made to offer this service for all languages at some point. This practice reduces the need for Members to request interpretation, as efforts are made to ensure this service is provided for each Official Language at some point in each session.

Second, while efforts are made to provide interpretation into each Official Language on an equitable basis, interpretation into certain languages is provided much more regularly because of ongoing requests from Members. Tlicho interpretation is offered on a daily basis in the current Assembly, as the Speaker uses his language during proceedings each day.

Third, the Legislative Assembly is generally able to arrange interpretation or translation upon request, provided that reasonable advance notice is given by the requesting Member. Such notice is essential because interpreters often have to be brought into Yellowknife from the communities, and the pool of interpreters for a given Official Language may be small.

6. Has there ever been a time when interpretation/translation services were available in *all* Official Languages *all* the time? If so, please provide details and explain the circumstances in regard to a decrease in services.

As is explained above, at no time has this level of service been offered in the Legislative Assembly of the Northwest Territories.