

# THE GOVERNMENT OF NEW BRUNSWICK

Language policy in New Brunswick has evolved steadily over the course of the last quarter century. The purpose of this paper is to trace the historical development of language rights, and to analyze the guarantees instituted by the government to ensure that each citizen is treated in a just and equitable way insofar as official languages are concerned.

In its *Declaration on the Equality of Linguistic Opportunities in New Brunswick*<sup>1</sup>, tabled December 4, 1968, the government of the Hon. Louis J. Robichaud established the basis upon which language legislation would draw over the course of the next 20 years. This ideal was expressed as follows:

The composition of the population of New Brunswick reflects, more than anywhere else, the ethnic makeup of the Canadian mosaic. That is why it is particularly appropriate for us to achieve, in our relations with one another, the important goal which our country has set for itself: that of equality of linguistic and cultural opportunity.

Inspired by the recommendations of the Laurendeau-Duntan Commission on Bilingualism and Biculturalism, made public in 1967, the Robichaud government unanimously adopted the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c.0-1. The *Act* received royal assent on April 18, 1969.

It is important to refer to the statements made at the time the Bill was tabled, as well as to the content of the *Act*. This will permit a better understanding of the gradual evolution of the language issue over the following years, as well as the more recent language debate.

The Robichaud government recognized that, in order to create a just society, it is essential to be able to count upon a spirit of public understanding and good will, two elements which in large measure were present within New Brunswick society. Granting official status to the two official languages did not remove rights from the majority, but rather, represented a recognition of the rights of the francophone minority within the province.

Why recognize "TWO" official languages? This was the question the Robichaud government asked itself a year earlier when the opposition party, led by Richard Hatfield, presented a resolution recognizing French as an official language in New Brunswick. The government had objected to this on the basis that English itself was not an official language and, therefore, that it was inappropriate to grant official language status "only" to French.

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<sup>1</sup>*Declaration on the Equality of Linguistic Opportunities in New Brunswick*, 1968.

The *Official Languages of New Brunswick Act* is quite straightforward, being made up of only 15 sections. Its wording is also very simple:

2. Subject to this Act, the English and French languages
- (a) are the official languages of New Brunswick for all purposes to which the authority of the Legislature of New Brunswick extends, and
  - (b) possess and enjoy equality of status and equal rights and privileges as to their use for such purposes.

This principle of equality of the official languages is translated elsewhere in the *Act* as follows:

- The official languages may be used in any proceeding of the Legislative Assembly or committee thereof (section 3);
- Records and reports of any proceeding of the Legislative Assembly, or committee thereof are to be printed in the official languages (section 4);
- Bills introduced into the Legislative Assembly are to be printed in the official languages (section 5);
- Every public officer or employee of the Province, any agency thereof or any Crown corporation shall provide or make provision for the public
  - a) to obtain the available services for which such public officer or employee is responsible, and
  - b) to communicate regarding those services, in either official language requested (section 10).

The *Official Languages Act* also provides that pupils must receive instruction in public schools, and in community colleges, in their mother tongue. The *Official Languages Act* does not, on the other hand, impose any obligation on municipalities to offer services in the official language, or languages, of their citizens. Another series of provisions gives any person appearing before the courts the right to be heard in his or her official language, and provides that such choice of language "is not to place that person at any disadvantage" (section 13).

It was thus, equipped with these principles, that New Brunswick entered the seventies. In 1969, the Robichaud government had proclaimed only those sections it felt capable of honoring. The government recognized that it lacked the qualified human resources necessary to offer the full range of services in question in the two official languages.

The Hatfield government, which took over in 1970, continued in the same spirit of social justice as the previous administration. Mr. Hatfield, as leader of the opposition, had been supportive of the language initiatives put forward by the Robichaud government.

As a result, during the 1970's, other sections of the *Official Languages Act* were proclaimed, including section 5 (bills introduced in the two official languages) in 1974, section 13 (the accused's right to his or her choice of language before the courts) in 1972, and sections 4, 8, 9, 10 and 12 in 1977.

Following an internal study conducted in 1976, the government created a special budget to permit the implementation of these latter five sections. At the same time, it granted the Official Languages Directorate, then reporting to the Secretary to Cabinet, the mandate to enforce the provisions of the *Act*, to see to its interpretation and promotion, and to receive complaints from the public and civil servants, and to work with ministries and agencies to solve them.

The powers granted to the official Languages Directorate were solely those of persuasion or encouragement. Situated under the authority of a central agency, the Directorate had the power only to recommend changes or to bring situations requiring specific correction to the government's attention.

It was in this spirit that the government, in 1980, authorized the Official Languages Directorate to undertake an exhaustive study of the entire bilingualism issue, and in particular, to evaluate the *Official Languages Act* and its impact on the daily lives of citizens in the province. This study, *Towards Equality of Official Languages*, better known as the Poirier-Bastarache Report, (for Bernard Poirier, the president of the working group, and Michel Bastarache, the drafter of the report) showed the progress of bilingualism, and of acceptance or rejection of the principle of equality of the official languages. The frank description of certain situations and attitudes, as much within government as within New Brunswick society as a whole, brought the state of relations between the two official language communities to a head. A Consultative Committee on Official Languages, the Guérette-Smith Committee, took up the study of the issue, receiving briefs from the public on the recommendations in the Poirier Bastarache report, and on bilingualism generally.

### Education Services

In the evolution of a just and egalitarian society, one supported by a recognition of English and French as equal in rights and privileges, the right to education in one's language remains at the root of all progress. In 1963, the Robichaud government established the University of Moncton with a very clear mandate to ensure French language higher education for the Acadian and francophone population. Teachers had formed their own associations. Parent-teacher associations were very active, each dealing with preoccupations specific to their distinct language communities. Hence it was natural to officially recognize the existence of two educational systems based on distinct curricula: one English and one French.

Therefore, in 1973 the government undertook a reorganization to create a dual structure, with a homogeneous administration for each language community; the deputy ministers and directors for each remaining, however, under a single minister and a common department.

This was the beginning of a harmonious co-habitation within the Department of Education, and within the education system generally. Teacher training, having been assigned to the University of New Brunswick and the University of

Moncton in 1973, parent-teacher associations having organized themselves on a language basis, it was a logical further step to give responsibility for school administration to the language groups involved. Since 1980, French schools have been managed by homogeneous, publicly elected school boards. The same is true for the schools in English regions, which continue to be administered by English language school boards.

### Language Communities

The Acadians and francophones of New Brunswick hold to the notion of two founding cultures. Descendants of the first European settlers from 1604 onwards, they have always insisted on their territorial belonging, and their cultural and linguistic distinctness. During the Acadian Orientation Convention held in Edmundston in 1979, the Acadians and francophones, making up almost 35 per cent of the population, made a claim for formal recognition of equal status.

A few months later, the government tabled a bill "recognizing the equality of the two official linguistic communities in New Brunswick," which became known as Bill 88.

The legislation was proclaimed in 1981, and has not been amended. The Acadian and francophone communities have invoked the principles of the *Act* in asking the New Brunswick government to bring public and other services up to the level required for the orderly development of their community.

### The 1982 Canadian Constitution

In spite of several attempts to patriate our Constitution from the British Parliament, it was only in 1981 that the Government of Canada was able to reach agreement with the provinces (except Quebec) allowing the Parliament of Canada to grant this country its own "made in Canada" Constitution.

This exercise generated extensive debate across the country. The provinces were directly involved in the process of negotiating and drafting the provisions of this new constitution, and New Brunswick took advantage of this opportunity to entrench provisions which reflect its special linguistic situation. New Brunswick was the only province to undertake specific obligations in relation to English and French as the official languages of the Province, having equality of status and equal rights and privileges.

These constitutional provisions (subsections (2) of sections 16 through 20)) generally follow the principle of equality contained in the *Official Languages of New Brunswick Act, 1969*. These guarantees having been recognized since 1969, the New Brunswick government wanted to give them an even greater sanction and protection by entrenching them in the *Constitution Act, 1982*. This entrenchment recognizes the particular role which the government has assumed with respect to the treatment of English and French in the institutions under its authority. (see Appendix A)

## 1988 Language Policy

During the 1987 election campaign the Liberal party, led by Frank McKenna, committed itself to adopting and implementing an explicit language policy which would take into account constitutional obligations and commitments relating to language rights. This policy document was intended to clarify the scope of these obligations, and to define a clear plan of action.

On August 26, 1988, the McKenna government unveiled its language policy, which included two main components, "language of service" and "language of work." The policy clarifies the government's language obligations, and establishes a timetable for putting the plan into action.

The general objective which the governments sets for itself in the policy is to guarantee the provision of services of equal quality in both official languages, by provincial departments, agencies, institutions, and crown corporations.<sup>2</sup>

The commitment includes health care institutions, and publicly funded provincial hospitals providing services to the public.

A five year timetable was adopted for full implementation of the policy, and each ministry, crown corporation, government agency and health care institution must be in a position to offer its services in both official languages no later than September 1st, 1993.

This represents the first time since the adoption of the *Official Languages of New Brunswick Act* in 1969 that a government has required its ministries and agencies to develop a plan taking into account their ability to offer quality services in both official languages, and identifying the means to be employed to ensure attainment of the plan by the target date.

The most important component of this policy is to assure service in the language of choice (language of service). This is the first and foremost undertaking of the policy; it is also a constitutional requirement.

A second, complementary, objective is that of offering its civil servants the possibility of making a maximum contribution, by working in their language of choice, when it is possible to do so (language of work).

## 1990 Profile

In February 1990, the government unveiled the results of 18 months of study and planning by its departments and agencies to ensure that the language of service objective would be reached by September 1993. This exercise enabled ministries,

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<sup>2</sup>1988 Official Languages Policy.

agencies and institutions to become aware of the full scope of constitutional commitments and the further measures required to meet them. Information programs provided an opportunity to explain the policy and helped public service employees to understand their obligations in serving the public.

The government did not specifically identify "bilingual" positions; it opted instead for the concept of "teams" within which sufficient language capacity would exist to provide an adequate service to the clientele. In regions where a single official language strongly predominates, and where such a capacity is lacking, a system for communicating with another office having the desired language capacity has been, or will be, put in place.

Thus, the new policy can be expected to give the New Brunswick government the ability to offer all its public services in the two official languages. The Board of Management has the responsibility for following up on these commitments, and making appropriate recommendations to ensure that the plans are respected.

### **Being Understood in One's Language**

Speaking during the annual meeting of the Association of francophone lawyers in New Brunswick in 1989, Premier McKenna announced that his government would introduce amendments during the 1990 legislative session giving the principal parties appearing before any court or administrative tribunal the right, not only to be heard, but to be understood by the judge or tribunal in his or her official language.

In a decision on May 1st, 1986, the Supreme Court of Canada had refused to reverse a Court of Appeal decision in a case between the SANB and a group of parents from Grand Falls (English school board) relating to the admission of francophone students into the English school board's French immersion program. The Supreme Court recognized that francophones had the constitutional right to use French before the courts, but held that there was no right to be understood by the judge directly.

The New Brunswick government is committed to rectifying this situation by clarifying in legislation the individual's right to be understood by the courts, boards and commissions without the aid of an interpreter.

### **Dialogue**

For over two hundred years, anglophones and francophones have inhabited and developed this land which is New Brunswick. Each language group has, in accordance with the means at its disposal, provided itself with services, and institutions. Each has been able to do so without worrying to any great extent about its neighbour, who is often distinguishable only by language.

Living in an era of advanced communications, it is only natural that new tensions would develop.

As well, the language controversy in Quebec has spilled over provincial boundaries, and in recent years we have witnessed a hardening of positions. In order to understand one another, it is necessary to have a good dialogue. In New Brunswick, however, there often is insufficient exchange between official language communities.

This situation is due in part to the fact that the anglophone population is concentrated primarily in the southern part of the province, and the francophone population primarily in the north, north-east and north-west, with a strong presence in the south-east. Another explanation is that, in general, francophones tend to be bilingual and anglophones much less so. Therefore, historically speaking, the anglophone has not felt the same need to learn the other official language in order to communicate or to do business with his or her bilingual francophone neighbour.

Recent progress by New Brunswick Acadians, due in part to the development of the universit  de moncton and certain financial institutions (the Acadian cooperative movement, "l'Assomption"), encouraged them to aspire to a more equitable participation. This equity is sought, not only at the level of the economy and resource development, but also at the level of decision making and public administration.

This climate of distrust and misunderstanding, fostered by a certain geographic isolation, has resulted in insufficient dialogue between the two main language communities in the province. The McKenna government realized early on that leadership had to be exercised in order to bring the people of New Brunswick to a better understanding of themselves, and to a respect for their cultural and linguistic diversity.

In the autumn of 1989, Dialogue New Brunswick brought together people from different political backgrounds, representatives of organizations, and individuals playing a leading role in society. The conclusions which emerged were extremely positive, and a number of initiatives followed.

Already, a number of municipalities, encouraged by a provincial government financial aid program, have twinned, and have met in a spirit of comraderie, of tolerance and exchange between the two different language groups. Beresford-Wood Stock; St. John and Caraquet, are only examples of an effort towards better mutual understanding.

Exchange programs also generate excellent results at the level of senior citizens, youth and school children. Other initiatives of this type will be encouraged by the creation of a permanent structure to follow up on Dialogue 1989.

### **The Meech Lake Accord**

The 1987 Constitutional Accord, intended to allow Quebec's reintegration into the Canadian constitution, must be ratified by each of the provincial legislatures

before it can come into force. In order to give the public a better understanding of what is at stake in the Accord, and also to improve it to take into account preoccupations of New Brunswickers and Canadians living elsewhere, the McKenna government decided to hold public hearings to receive comments and suggestions from the public.

In the autumn of 1989, the Special Legislative Committee on the 1987 Constitutional Accord released the product of its lengthy deliberation and consultation with interested groups and members of the public. It formulated a series of recommendations reflecting the aspirations of the people of New Brunswick. These recommendations dealt with, among other things, the linguistic implications of the Accord.

In this regard, the Committee recommended that the Accord be improved so that:

- 1) the linguistic duality of Canada not be expressed in a fashion that is geographically qualified;
- 2) the federal role to not merely preserve but to promote linguistic duality be affirmed; and
- 3) that the governments of New Brunswick and Canada immediately initiate the process for the entrenchment of the principles contained in Bill 88.<sup>3</sup>

### 1990 Companion Resolution

Because the McKenna administration had, since 1987, expressed reservations about the acceptability of the Accord as framed in June of 1987, and because it wished to improve the measures dealing with linguistic duality, among others, it was fitting that it should put forward the amendments it wished to see included in the text of the Accord.

On March 21, 1990, Premier Frank McKenna introduced a "Companion Resolution," for the consideration of the New Brunswick Legislature and the provincial and federal governments. The Companion Resolution did not in any way detract from the five conditions put forward by Quebec in the 1987 Accord, including the notion of Quebec as a distinct society. It did, however, propose entrenchment of the principles underlying *An Act Recognizing the Equality of the Two Official Linguistic communities in New Brunswick*, S.N.B. 1981, c.0-1.1, and provides for the affirmation of the federal role, not only in preserving the existence of minority official language communities, but also in promoting them.

The New Brunswick document was, referred a few days later by the Federal government to a Special Committee on the Meech Lake Accord.

New Brunswick's position on this issue created an opportunity for all governments to make certain concessions, so that the future of Canada not be

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<sup>3</sup>Final Report on the *Constitution Amendment 1987*.



threatened by rejection of the Accord. Once again, New Brunswick recognizes the immense advantage of supporting the full development of its official language communities, without removing fundamental freedoms from anyone. In New Brunswick, the notions of "justice" and "equality" are objectives dear to the heart of the entire population. These values should continue to underlie the legislative and constitutional positions of the Government of New Brunswick for years to come.

**APPENDIX A***Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*

**Section 16(2):** English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and governments of New Brunswick.

**Section 17(2):** Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

**Section 18(2):** The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

**Section 19(2):** Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

**Section 20(2):** Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.