

**COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK**



**OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK**

MARCH 2015

INVESTIGATION REPORT

SERVICE NEW BRUNSWICK (SNB)

**SENT TO: PREMIER
 THE PRESIDENT OF SNB
 THE DEPUTY MINISTER OF THE EXECUTIVE COUNCIL OFFICE
 THE COMPLAINANT**

**IN THE MATTER OF THE *OFFICIAL LANGUAGES ACT*
OF NEW BRUNSWICK, R.S.N.B. 2002, CHAPTER O-0.5**

**Subject: Complaint under the *Official Languages Act*
Service New Brunswick – Hampton Service Centre
Alleged deficiencies in the provision of services in French**

Investigation Report

1. The Complaint

On May 20, 2014, the complainant went to the Hampton Service Centre and noted the absence of communication in French when the agents called out the numbers.

Although the complainant said “Bonjour” to the person serving her, the latter made no active offer and the transaction was carried out in English. The complainant doubted, according to her observations, that there was anyone there at that time who was able to communicate in French.

2. The Investigation

In accordance with the provisions of subsection 43(13) of the *Official Languages Act* of New Brunswick (the “OLA”), a letter in lieu of a notice of investigation was sent to the Service New Brunswick (“SNB”) on May 22, 2014, informing it of this complaint. In our letter, we asked the institution to answer a few questions.

On May 30, 2014, SNB contacted us in order to obtain more details about the incident reported by the complainant, specifically, her name or at least the name of the person who served her during her visit on May 20, 2014. After forwarding that request to the complainant, we learned that the transaction took place at about 1:30 p.m. and was handled by an agent who was at the next to last window on the left. That information was transmitted on to SNB on June 2, 2014.

We received SNB’s reply on July 4, 2014, in a letter dated June 18, 2014. In that letter, SNB acknowledged “that unfortunately the complainant did not receive an active offer of service” on May 20, 2014. The institution also indicated the following: “As soon as she was informed of the incident, the Service Centre Manager immediately reminded all employees of their obligations under the *Official Languages Act* and she promised to continue to make them aware of their obligations.” Additionally, in response to the questions asked in our letter of May 22, 2014, SNB provided the following responses (for ease of reference, each answer is preceded by the corresponding question):

1. *What is the linguistic profile of the team manning the counter at the Service Centre concerned?*

The Hampton Service Centre is comprised of a unilingual linguistic team. This is based on past trends and the linguistic communities being served. The Hampton Service Centre receives less than a half-a-dozen requests a year from clients choosing to have their service in French. A plan is in place for clients who choose to have their service in French. If a change in trend is identified by the local management, a review of the linguistic team would take place to reflect the requirements for the Hampton Service Centre.

2. *On May 20, 2014, how many people were assigned to work at that counter?*

On May 20, 2014, seven Customer Service Representatives including the Customer Service Team Leader were scheduled to work. This is the busiest time of the year for all Service Centres across the province, due to various types of services such as property tax payments, registration renewals for trailers, tent trailers, motorcycles etc. We were also implementing a new motor vehicle system upgrade (MVAD) across the province, which had technical challenges that created confusion with our staff across all Service Centres.

3. *Of those people, how many had the capacities required to provide a bilingual service? [We note that SNB answered that question in replying to the first.]*
4. *What measures are being taken by this Centre to offer and provide clients with service in the official language of their choice?*

The plan for the Hampton Service Centre when a client requests service in French is as follow[s]:

1st option: Obtain the services of a bilingual resource from another unit within the Hampton office.

2nd option: In the event the bilingual on-site resource is not available, we have a list of contact names and phone numbers of all bilingual Customer Service Representatives within the Saint John Service Centre that are readily available to provide assistance to the Hampton Service Centre.

SNB closed its letter as follows: “Our goal is to provide quality service to all clients in both official languages and Service New Brunswick remains committed to fulfilling its obligation with respect to the *Official Languages Act*.”

After considering the information provided by SNB in that letter, we decided to examine this matter in greater depth, particularly with respect to the linguistic profiles and the active offer of service. On September 3, 2014, we sent another letter to SNB in which we asked for clarifications in that regard. We received the reply from SNB on September 30, 2014. In addition to providing us with details on the linguistic profiles of all the Service Centres across the province, SNB answered the extra questions that were asked in our letter of September 3, 2014:

- 1) *Do the SNB Service Centres have guidelines concerning the active offer of services? If so, are those guidelines standardized across the province?*

Yes, we have guidelines that are standardized across the province concerning the active offer of services to clients who come into the service centres. The standards for greeting clients and making an active offer of service are as follows: “Hello/Bonjour” in person and “Good morning

or good afternoon, Service New Brunswick, bonjour” by phone. The order in which the two languages are used is unimportant.

If an employee does not understand a client’s request, he or she must say “un moment, s’il vous plaît,” or “one moment, please,” depending on the language used by the client, and redirect the client or transfer the call immediately to someone who can communicate in the client’s language of choice.

Employees must never apologize for their lack of language proficiency or start a conversation in a language not of the client’s choice.

2) *How is the active offer made (in person, posters, etc.)?*

The active offer of service is made in person, over the phone, or in the form of a poster in our Service Centres.

3) *Does your institution conduct random checks at various service centres to ensure that an active offer is made and that services are delivered in both official languages, as they should be?*

At the moment, we have no specific guidelines concerning random checks. However, to ensure that an active offer is made and that services are delivered in both official languages at all times, the managers of our Service Centres provide staff members with regular reminders of these obligations under the *Official Languages Act*.

On the basis of the above information, we are able to draw convincing conclusions without the need to continue our investigation or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

3. Observations and Analysis

The complaint in this case has to do with the alleged non-application of the following provisions of the OLA, which pertain to communications with the public:

27 Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.

28 An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.

28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

In this case, it is important to emphasize that the OLA, among other things, aims:

1.1 b) to ensure that English and French have equality of status and equal rights and privileges as to their use in all institutions of the Province.

It should be noted that section 28.1 refers to the application of the principle of the active offer of service, which consists in making it clear, at the first point of contact, that services are available in both official languages. That provision, which came into effect in 2002, replaced the one from the 1969 Act, according to which an individual had to “ask” to be served in one of the two official languages.

The active offer can therefore be seen as an outstretched hand to members of the public so they can avail themselves of the right to be served in the official language of their choice. That obligation is especially important for front-line staff, as they represent the point at which communication between the public and government institutions is initiated. By responding to the active offer, the public determines the language in which the communication will take place. The necessary mechanisms must be in place in order to ensure continuity in the delivery of services.

In this case, the complainant did not receive the active offer from the agent who served her, despite the relevant guidelines established by SNB, the standards of which were presented to us by the institution in its letter of September 23, 2014¹. The complainant therefore did not have the opportunity to choose the language in which he wanted to be served, which represents the first failure on the part of the agent. By greeting the agent in French, the complainant implicitly asked to be served in that language. We point out here that that responsibility did not rest with the complainant. However, that greeting should have made the agent understand that this person wanted to be served in French. Despite that, the agent continued with the transaction in English, thus committing a second failure.

Reading the information provided by SNB, it is clear that the Hampton Service Centre is not staffed so as to be able to serve customers in both official languages. Indeed, we are told that the team working at this Centre is unilingual Anglophone and that a “plan is in place” for Francophone clients. According to SNB, that practice is based on “past trends and the linguistic communities being served.”

In our opinion, such an approach does not respect the equal status enjoyed by French and English in all institutions of the Province. Contrary to most institutions of the federal government that must provide services in both official languages where demand warrants, provincial institutions are required to fully comply with the OLA throughout New Brunswick at all times. That obligation guarantees that official language minority communities will have access to services in the official language of their choice. Since SNB Service Centres serve a diverse clientele, which includes local residents and the travelling public, it stands to reason that they must have the resources necessary to equitably serve all clients in the official language of their choice.

Therefore, when clients opt for service in French, every SNB Service Centre, regardless of its location, should be able to respond to that choice without undue delay. Although an

¹ *Doucet v. Canada*, [2005] 1 FCR 671, 2004 FC 1444 (CanLII)

accommodation, the plan adopted by the Hampton Service Centre in such circumstances does not allow it to comply fully with the OLA. The fact that the plan was not implemented on May 20, 2014, reveals the flaws. The time of year, technical challenges, and staff confusion cited by SNB cannot be considered as valid excuses for not serving members of the public in the official language of their choice. Indeed, in this case, the employee does not appear to have been concerned about the choice made by the complainant, as she did not make any effort to seek assistance from a person with the necessary language skills.

Looking at the plan that was supposed to be followed at the Hampton Service Centre when someone asked to be served in French, we note that it included the possibility of calling client service representatives in Saint John. That option leads us to invoke the remarks made by Mr. Justice Blanchard when he rendered a decision in a case involving the Royal Canadian Mounted Police (RCMP)² :

[43] Sgt. [...] testified with respect to the protocol established by the RCMP for meeting the needs of Francophone travellers. I would like to point out that, however well-intentioned it may be, the service is limited. Sgt. [...] testified that, on occasion, a unilingual English officer meets someone who speaks only French. Arrangements are made for such individuals to communicate via radio to a bilingual member who is on the air. In my view, such an arrangement is by no means sufficient for the RCMP to fulfill its obligations under the Charter and the OLA so that any member of the public is entitled to communicate with a federal institution in the official language of his or her choice.

[Our emphasis]

Following that same logic, relying on a telephone line is therefore not an acceptable measure that allows SNB to meet its obligations under the OLA. In fact, such a practice does not provide Francophone customers with service equal to what is available to English-speaking clients. Furthermore, given the wide-range of services provided by SNB and the fact that most of those services are offered over the phone or via the Internet, if someone makes the effort to go to a Service Centre, it's because they want to receive a service in person.

Although the complaint here concerns only the Hampton Service Centre, this case has aroused our interest in the language profiles of all service centres across the province, hence the questions we asked SNB in that regard.

The answers received reveal that a number of service centres are in the same situation as the one in Hampton, i.e., they have only a unilingual Anglophone staff. According to the information provided with regard to the linguistic composition on September 2, 2014, that is the case at the service centres in Chipman, Doaktown, Florenceville-Bristol, Gagetown, McAdam, Plaster Rock, and Woodstock. That is not surprising, since at those locations, the required linguistic profiles include only positions designated as "English essential." What is surprising, however, is that such profiles could have been established and approved without ever being questioned. Does that mean that it was concluded that those teams could, despite a

² Chipman, Doaktown, Florenceville-Bristol, Gagetown, Hampton, McAdam, Plaster Rock et Woodstock

complete lack of capacity in French, provide the public a service that complies with the requirements of the OLA? We doubt that and find such a situation unacceptable.

We note that SNB is able to deliver services in English throughout New Brunswick, which is not the case when it comes to the other official language. In other words, a person wishing to be served in English will obtain satisfaction at any of the service centres across the province, while obtaining service in French, in person, will be impossible in at least eight of these centres.³ Such a reality reflects an imbalance in SNB's ability to provide its customers with services of equal quality in both official languages throughout the province.

Our detailed analysis of the language profiles of SNB service centres raises an issue we want to address in this report. It is important to recall, as indicated in the "Language of Service" component of the *The Official Languages - Language of Service Policy* (AD-2919), that the purpose of linguistic profiles is "to ensure that [government departments subject to the OLA] have the capability to offer quality services in both official languages." The institutions concerned must therefore develop these profiles and meet them. The Policy established the following process for organizations belonging to Part I of the New Brunswick Public Service.

- Profiles are developed in consultation with all levels of management.
- An initial draft is produced and submitted to the Department of Human Resources.
- The Department of Human Resources will review the draft and indicate any concerns.
- Once concerns are resolved, the profile will receive approval from the Deputy Minister or Deputy Head within the department, agency or corporation.
- A copy of the profile, signed by the Deputy Minister or Deputy Head, will be forwarded to the Department of Human Resources.
- For Part I Departments, the profile will be loaded and maintained on the Human Resources Information System (HRIS).

However, while SNB is a government agency belonging to Part I, it does not follow the process described above. According to the information from the Department of Human Resources ("DHR"), SNB manages its own human resources through a system based on the JD Edwards application suite, separate from the HRIS. That particularity gives SNB some independence in establishing its linguistic profiles. Nevertheless, once a year, SNB sends DHR information relating to the linguistic profiles for the purposes of the Annual Report. That information was confirmed by SNB's Official Languages Coordinator, who said that any changes made to linguistic profiles over the course of the year is highlighted in documents submitted to DRH. We were also told that SNB's needs in terms of language skills are determined internally, and that it is indeed the institution's President who approves the established linguistic profiles before they are sent to DHR. That Department then confirms that it received and examined the information sent by SNB. To date, that information would not appear to have been questioned by DHR.

³ <http://www.snb.ca/e/4000/4002e.asp>

By approving the linguistic profiles of various service centres, the SNB President deems that they are adequate in order for the staff concerned to comply with the OLA. In other words, SNB believes that a language profile that has no designated "French essential" or "bilingual essential" positions will still allow a service centre to offer the public services of equal quality in both official languages. However, such a linguistic profile means that the staff in question consists only of unilingual Anglophone employees. It is therefore difficult to believe that a service centre with such a language profile can meet the requirements of the OLA, but it is even more difficult to understand how such profiles have been, on one hand, approved by the SNB President, and on the other hand, not questioned by DHR. The linguistic profiles should be designed to reflect the needs, even if there is a discrepancy with existing staff. If those needs are not met, they remain a target.

New Brunswickers should be able to access SNB services in the official language of their choice regardless of where they are. The information collected is far from convincing in this regard. It is therefore vital that SNB take the necessary steps in order to correct the situation.

4. Conclusion

It is important to recall the SNB's special situation in that it offers the public one-stop access to many government services. Moreover, the institution's website presents SNB as the "provincial government's chief provider of front-line services to the public"⁴ and gives an overview of the services offered. As such, it is vital that SNB have the resources necessary to provide the public with a service that complies with the OLA and meets client expectations.

With respect to this case, given that SNB acknowledges that the complainant received no active offer of service when he arrived at the Hampton Service Centre May 20, 2014, we conclude that this complaint is founded.

We note the reminder issued by the Manager of that Service Centre following the incident reported as well as the measures planned in order to serve clients in French.

This office determined, however, that eight service centres, including the one in Hampton, are not in a position to comply with the OLA. In view of the above, we therefore believe it is appropriate to formulate the following recommendations:

Recommendation No. 1

That Service New Brunswick, in cooperation with the Department of Human Resources, review the linguistic profiles of all its service centres so that, regardless of their location, the established linguistic profiles provide enough capacity to serve the public in both official languages.

Recommendation No. 2

That Service New Brunswick, after identifying its needs in terms of human resources, adopt a targeted recruitment strategy in order to make up for shortcomings with respect to bilingual staff.

Recommendation No. 3

That Service New Brunswick, at regular intervals, give its front-line employees clear and firm instructions designed to ensure that service delivery complies with the OLA.

Recommendation No. 4

That, on a regular basis, Service New Brunswick conduct random checks on the active offer and the delivery of service in both official languages at its service centres.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the President of SNB, and the complainant. We also believe it is appropriate to forward this to the Deputy Minister of the Executive Council Office.

In the event that the complainant is not satisfied with our conclusions, he may apply to the Court of Queen's Bench of New Brunswick for a remedy under subsection 43(18) of the OLA.

[Original signed by]

Katherine d'Entremont
Commissioner of Official Languages for New Brunswick

Dated at Fredericton
In the Province of New Brunswick
this 31th day of March, 2015