

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



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

MAY 2015

INVESTIGATION REPORT

FILE NO.: 2014-2137

AMBULANCE NEW BRUNSWICK (ANB)

SENT TO: **THE PREMIER
THE DEPUTY MINISTER OF HEALTH
THE PRESIDENT OF ANB
THE CLERK OF THE EXECUTIVE COUNCIL
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*
Ambulance New Brunswick (ANB)
Alleged deficiencies in the provision of services in French**

INVESTIGATION REPORT

File No.: 2014-2137

1. Complaint

On June 23, 2014, the complainant contacted our office to file a complaint, the particulars of which are as follows:

On March 17, 2014, at approximately 1:30 a.m., the complainant was urgently admitted to Moncton Hospital due to a heart attack. Between 2:00 and 3:00 a.m., the complainant was informed that the complainant had to be transported to the Saint John Regional Hospital to undergo surgery.

Having chosen service in French at the time of admission, the complainant was surprised to note that the paramedics responsible for taking the complainant to Saint John did not speak French. The complainant was consequently obliged to communicate with them in English.

The surgery was performed later that day, and at approximately 3:00 p.m., an ambulance arrived at the Saint John Regional Hospital to transport the complainant back to Moncton. Once again, the paramedics were unable to serve the patient in French (one of them stated that he had Level 1 proficiency in French), and the complainant was obliged to communicate in English.

On the way to Moncton, the complainant began to feel unwell, and the paramedics decided to stop at Sussex Health Centre. Another ambulance came to pick up the patient at around 8:00 p.m. Yet again, the paramedics were unable to communicate with the patient in French.

2. Investigation

Under subsection 2(1) of the *Ambulance Services Act* (S.N.B. 1990, c. A-7.3), "The Minister [of Health] is responsible for the administration of this Act and shall endeavour through this Act to ensure the development throughout the Province of a balanced and effective system of ambulance services." In light of the central role of the Department of Health in regulating

ambulance services in New Brunswick, we now forward all complaints concerning Ambulance New Brunswick (ANB) to that department.

Insofar as the situation reported by the complainant involved transfers between health facilities within the Horizon Health Network (hereinafter "Horizon"), the latter was also advised of this complaint.

In accordance with the provisions of subsection 43(13) of the *Official Languages Act* of New Brunswick ("OLA"), a letter in lieu of notice of investigation was sent to the Department of Health (hereinafter "Department" or "institution") on July 24, 2014. In that letter, we asked the institution to respond, in consultation with Horizon, to the complainant's allegations. We also asked the institution to respond to certain questions to establish the specific context of the complaint.

The Department's response was received on December 5, 2014, in the form of a letter dated November 14, 2014, in which it stated:

The investigation included a review of the recordings from Ambulance New Brunswick's (ANB) Medical Communications Management Centre (MCMC) and interviews with five of the six paramedics who were responsible for transporting the complainant on March 17, 2014. One of the paramedics could not be interviewed as he is no longer an employee of ANB.

The first crew who transported the complainant from the Moncton City Hospital to the Saint John Regional Hospital consisted of a bilingual paramedic whose primary language was French and a unilingual paramedic whose primary language was English. The two paramedics were accompanied by a nurse escort from the Moncton City Hospital. The paramedic who was responsible for patient care was the unilingual paramedic who is no longer employed with ANB. Based on the interview of the bilingual paramedic who is still employed with ANB, the normal practice for her and her partner would be for her to assume the patient care responsibility if they had a patient who requested to be spoken [to] in French. However, the review of the recordings between ANB's MCMC and the Moncton City Hospital did not indicate the language preference of the patient either being offered by the transferring facility (the Moncton City Hospital) or being requested by MCMC staff.

The second crew transported the complainant from the Saint John Regional Hospital to the Sussex Health Centre. This crew consisted of two unilingual paramedics whose primary language was English. When they were interviewed, both paramedics had only a vague recollection of the call due to length of time that has passed. They do remember conversing with the patient in English with no issue or concerns. The normal process as stated by this crew is that if they were to have a patient unable to speak English, they would ask MCMC to dispatch a new crew with the proper language capability. Again, the review of recordings did not indicate the language preference of the patient either being offered by the transferring facility (the Saint John Regional Hospital) or being requested by MCMC staff.

The third crew transported the complainant from Sussex Health Centre to the Moncton City Hospital. This crew consisted of two paramedics whose primary language is English. One

paramedic has no recollection of the call. The second paramedic remembered the call and recalled the patient speaking English to the staff at the Sussex Health Centre. The attending paramedic is quite comfortable in speaking French, as she has a provincial proficiency certificate for Level 2 French. She has done calls in the past where she conversed in French with no issues or concerns. MCMC was aware that French was the patient's language of choice. However, in order to transfer the patient back to Moncton City Hospital without further delay after the diversion to the Sussex Health Center, MCMC made the decision to ask the patient if he would be fine with an English crew to which the patient responded, "Yes."

In response to the questions we asked in our letter of July 24, 2014, the Department provided the following information:

1. *a) What is the normal procedure for meeting language obligations with regard to transporting patients from one hospital to another?*

ANB has a procedure in place (Memorandum 2012-070) which states that each call taker must ask for the language of choice for every patient. This memo was distributed to all MCMC staff on October 30, 2012. This process was further reiterated and clarified in a memo to all MCMC staff (Memorandum 2014-054¹).

- b) Is there a policy in place regarding this procedure?*

The two memos indicated in the above response and the official languages policy were developed to ensure that patients are provided service in their language of choice.

- c) If so, please provide us with a copy of this policy.*

A copy of Policy 2017 as well as Memorandums 2012-070 and 2014-054 are attached.

2. *Three different ambulances were involved in this file. We therefore need you to give us details on the circumstances that led to the dispatch of each of these ambulances:*

- a) How many paramedics were on duty and able to be dispatched to transport the complainant from Moncton to Saint John on March 17, 2014?*

In responding to this question and similar questions below, it is important to note that under ANB's dynamic deployment model, the unit that is assigned to a call is the one that is closest, available and meets the language profile of the patient.

During the early morning of March 17, 2014, 75 paramedic units were available in the province; of those, 21 were located in the eastern region with 4 units available within the Moncton administrative area.

¹ According to the title of the document in question, the memo number is in fact 2014-055.

- b) *Of this total, how many had the language skills required by ANB to provide service in French?*

Of the 75 paramedic units available across the province, 33 had the language proficiency available. Fourteen were from the eastern region of the province. All four of the Moncton administrative area units had the language proficiency required.

- c) *How many paramedics were on duty and able to be dispatched to transport the complainant from Saint John to Moncton on March 17, 2014, at approximately 3:00 p.m.? (Note: The account of the events above indicates that this ambulance had to stop at the Sussex Health Centre.)*

During the afternoon of March 17, 2014, 110 paramedic units were available in the province, 23 of those units were located in the southern region with 8 units available within the Saint John administrative area.

- d) *Of this total, how many had the language skills required by ANB to provide service in French?*

Of the 110 paramedic units available provincially, 57 of those units had the language proficiency available. Three of those units were from the southern region of the province, with two of those units from the Saint John administrative area.

- e) *How many paramedics were on duty and able to be dispatched to transport the complainant from Sussex to Moncton on March 17, 2014, at approximately 8:00 p.m.?*

On the evening of March 17, 2014, 67 paramedic units were available in the province, 17 of those units were located in the southern region and 3 units were available within the Sussex administrative area.

- f) *Of this total, how many had the language skills required by ANB to provide service in French?*

Of the 67 paramedic units available provincially, 35 of those units had the language proficiency available. None of the units with the required language proficiency were located in the southern region.

3. *In our last investigation report involving Ambulance New Brunswick (file no. 2013-1992), our recommendations included that "ANB establish the level of language proficiency required in order for paramedics to be considered bilingual throughout the province."*

- a) *Has this recommendation been implemented?*

Yes. ANB has established the level of language proficiency required in order for paramedics to be considered bilingual throughout the province.

b) If so, what level of language proficiency is required?

Effective September 1, 2014, ANB has established that the level of language proficiency level required in order for paramedics to be considered bilingual throughout the province to be a minimum of 2+ in English and 2+ in French.

Through ANB's continued education process on official languages with its employees, ANB identified the need to further clarify the requirement of language preference when scheduling patient transfers between facilities. As indicated above, this process was reiterated and clarified in a memo to all MCMC staff on July 29, 2014, or after the incident subject to this investigation (Memorandum 2014-054), on July 29, 2014, which was after this incident occurred.

In the light of the above, we are able to draw 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. Analysis and observations

Being an institution within the meaning of the OLA, ANB is required to comply with the provisions of that act. With respect to communication with the public, the provisions of the OLA include the following:

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.

Insofar as the complaint triggering this investigation involves three transfers, we will first examine the information relating to each transfer and comment on the key points of each. We will then make general observations applicable to the overall investigation.

a) Transfer from Moncton to Saint John

The ambulance had on board one bilingual paramedic and one unilingual Anglophone paramedic, the latter being responsible for patient care. It was reported that the bilingual paramedic typically took over responsibility for providing care to "a patient who requested to be spoken [to] in French."

It is inferred from the explanations provided by the Department concerning this ambulance transfer that the paramedic unit in question expected the patient to request service in his language of choice. This goes against the principle of the active offer of service set out in section 28.1 cited above and pursuant to which institutions must offer the public the option to receive service in either official language.

b) Transfer from Saint John to Sussex

The paramedic unit assigned to this transfer was made up of two unilingual Anglophone paramedics. However, in response to our question as to the number of paramedic units available in the region which had the language proficiency required to provide service in French, the Department reported that there were three in the southern region, including two in the Saint John administrative area. It would consequently have been possible to dispatch one of those units to do the transfer in question.

It is also to be noted that the Department reported that the paramedics in question “remembered conversing with the patient in English with no issue or concerns” and that “if they were to have a patient unable to speak English, they would ask the MCMC to dispatch a new crew with the proper language capability” [our underlining]. This leads us to believe that paramedics either do not understand, or deliberately disregard, the notion of choice with respect to official languages. They appear to believe that the fact that a patient is “able” to speak English removes the requirement to offer service in that patient’s official language of choice, which may be French.

c) Transfer from Sussex to Moncton

As in the previous case, the paramedic unit that transported the complainant from Sussex to Moncton was made up of two unilingual Anglophone paramedics.² In this case, however, no other paramedic units with the language proficiency required to offer service in French were available in the region in question at that time.

Unlike the two preceding transfers, in this case, the MCMC knew that the complainant preferred to be served in French. Despite this, “in order to transfer the patient back to Moncton Hospital without further delay after the diversion to the Sussex Health Centre, MCMC made the decision to ask the patient if he would be fine with an English crew, to which the patient responded, ‘Yes.’”

Evidently, when it came to this transfer, the complainant was obliged to choose between waiting longer for service in French or being transported immediately by an Anglophone crew. By choosing the latter option, the complainant resigned himself to setting aside his language preference, which is regrettable.

² The Department clarified nonetheless that one of the paramedics in this unit held provincial level 2 (intermediate) certification in French.

❖ General observations

In previous investigations, it was reported that the general practice of the MCMC was to ask and document the official language chosen by patients for transfers. In the investigation at hand, the Department also refers to ANB memo 2012-070, indicating that according to this memo all individuals responding to calls must confirm the patient's language of choice each time. This assertion is consistent with the first sentence of the memo: "each call taker must ask for the language of choice for every patient" [our underlining]. However, we perceive a certain contradiction upon reading the text immediately following that sentence: "During each request for facility transfers, the call taker will ask if the patient is **able** to communicate in French, English or both." In our opinion, this statement clearly goes against the OLA in that it places the focus on patients' language skills rather than on upholding the notion of choice. This creates confusion which is then perpetuated in memo 2014-055, which places the focus on "the patient's preferred language." This leads us to the matter of the coexistence of these two memos, the content of one being inconsistent with that of the other. Presuming that both of these memos need to be kept on file, the problematic sentence mentioned previously needs to be deleted.

Based on the information collected, the existence of these memos notwithstanding, the procedure established by ANB was not followed for the first two transfers. In both of these cases, the MCMC consequently failed in its duty by neglecting to inquire with the various facilities as to the complainant's language preference. If the MCMC had confirmed the complainant's choice, it could, in the first case, have relayed this information to the paramedic unit sent to Moncton Hospital, and the bilingual paramedic in that ambulance could have stepped forward to assume responsibility for patient care. With respect to the second transfer, knowing that paramedic units were available and equipped to provide service in French, the MCMC could have sent one of these instead of dispatching a unilingual Anglophone crew.

The circumstances surrounding the third transfer differed somewhat in that this time, as noted previously, the MCMC was aware of the complainant's language preference but had to cope with the lack of a paramedic crew in that area with the language proficiency required to provide adequate service in French.

The information concerning the number of paramedic units available at the times of these three transfers offers insight into the challenge ANB faces in terms of offering OLA-compliant service across New Brunswick: at the time of each transfer, the proportion of paramedic units available and having the language proficiency required to offer service in French was around 50%.³ That being the case, the distribution of these units also varied from region to region. Hence, at the time of the third transfer, 35 of the 67 paramedic units available across the province (or 52%) had the required competencies in official languages. The fact that none of these 35 was in the southern region compromised ANB's capacity to fulfil its language obligations.

³ 44%, 51% and 52% at the times of the first, second and third transfers respectively.

4. Conclusion

This investigation addressed a situation in which a patient who had to be transported by three different ambulances was at no time served in the official language of the patient's choice, in this case, French. Based on the information provided by the Department, we have examined the various aspects of this complaint.

Clearly, the paramedics involved in this investigation did not uphold their obligations under the OLA in that they did not make an active offer of service to the complainant and, seeing that the patient spoke English without difficulty, settled on communicating with the complainant in that language. Moreover, the MCMC neglected on two occasions to inquire as to the patient's preferred language, thereby failing to follow the ANB procedure applicable to transfers, hence the need for the active offer of service. Finally, we find that in asking the patient whether the complainant agreed to be transported by an Anglophone crew, the MCMC gave the complainant little choice other than to say "yes" under the circumstances. In view of the above, we find that the complaint is founded and formulate the following recommendations:

Recommendation No. 1

That the Department require that ANB reinforce among its paramedics the need to make an active offer of service at the start of each interaction.

Recommendation No. 2

That the Department require that ANB:

- a) clarify its memos concerning inter-facility patient transfers to dispel any confusion and ensure consistency with the OLA; and**
- b) ensure that its directives are followed.**

With respect to the province-wide distribution of paramedics, we recommend as follows:

Recommendation No. 3

That the Department require that ANB continue its efforts to achieve balanced coverage of its services to ensure that these services comply with the OLA throughout the province.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Deputy Minister of Health, the president of ANB and the complainant. We also find it appropriate to forward this to the Clerk of the Executive Council.

In the event that the complainant is not satisfied with our conclusions, the complainant can 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, MPA
Commissioner of Official Languages for New Brunswick

Dated at Fredericton
In the Province of New Brunswick
this 5th day of May 2015

