

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



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

INVESTIGATIVE REPORT

FILES 2016-3092 AND 2016-3119

February 2017

Cosmetology Association of New Brunswick

**Subject: Allegations of deficiencies in communications and in the
delivery of services in French**

SENT TO THE:

**Premier
Executive Director of the Association
Clerk of the Executive Council
Complainants**

TABLE OF CONTENTS

CONTEXT	1
- 2016-3092	1
- 2016-3119	2
- Association's response	2
INVESTIGATION	3
ANALYSIS	5
- Violation of the <i>Official Languages Act</i> of New Brunswick	5
- Provision of services and communications in both official languages	6
• Communications	6
• Training	8
- Audits	9
• Translation of documents	9
• Quality of the English and French versions of the CANB website	10
• Simultaneous interpretation during courses and training for members	10
COMMENT	10
RECOMMENDATIONS	11
CONCLUSION	12
APPENDIX	13

CONTEXT

The matter under study addresses two complaints against the Cosmetology Association of New Brunswick (“the Association”). In this case, deficiencies are alleged with respect to the delivery of services to members in the official language of their choice and to being placed at a disadvantage for choosing to communicate in French with the Association. After consulting the parties to obtain their version of the facts, the Office of the Commissioner can summarize the incidents as follows.

2016-3092

The complainant denounces the fact that the number of courses offered in French has not been equal to the number offered in English for a number of years. The complainant is exasperated to find that for more than seven years, the complainant has not been able to take a course in the complainant’s language of choice, and therefore was not receiving the same quality of service as English-speaking Association members.

On August 11, 2016, the complainant filed another complaint with the Office of the Commissioner of Official Languages (OCOL) in which the complainant maintains that when communicating with the Association by telephone, the message in French offers two services to members, while the message in English offers four.

In addition, the complainant points out that the employee at reception had difficulty communicating in the complainant’s language of choice, i.e. French. In that regard, on September 8, 2016, the complainant stated that a new incident had occurred on August 15, 2016, when the complainant tried to contact the Association by calling the number 1-800-561-8087. The employee who took the call said that she could not answer the questions immediately because they involved some explanations. However, she promised the complainant that she would call back the next day to give the complainant the requested information. On September 8, 2016, after more than three weeks had passed and the complainant had still not received a follow-up call, the complainant contacted the Association by telephone. The complainant said the employee was still unable to answer the complainant’s questions. The complainant said that the employee then said that a letter had to be written so that the complainant’s questions could be considered and, as well, if the complainant wanted to communicate directly with the Executive Director, the complainant should agree to do so in English.

The complainant states to have refused to send a letter to the Association because the wait for a reply was often too long. The complainant thought it unfair that speaking English made it possible to communicate directly with the Executive Director and obtain answers to questions without undue delay.

The complainant alleges not being able to obtain service in the language of choice from the Association without undue delay.

2016-3119

In this case, the complainant states having called the telephone number 1-800-561-8087 on September 8, 2016, to reach the Association and selected the “3” key to obtain service in French. The complainant wanted to obtain some information from the person responsible for hair salons. The complainant alleged that, because each employee working at the Association is responsible for administering a specific service, it is up to the member to contact a predetermined person to obtain the desired information.

According to the complainant, it was very difficult to obtain information from the employee who answered the call. In fact, the complainant states having to speak English on several occasions in order to communicate the required information. The complainant believes that this incident demonstrates that the service provided is not of equal quality when a member of the public or the Association wants to communicate in French, compared with English, and this violates the complainant’s rights under the *Official Languages Act* (“OLA”) of New Brunswick.

Association’s response

In its response, the Association refuted the majority of the complainants’ allegations and explained that the services it offered over the telephone, by email and by mail, and in its meetings, general meetings and training sessions, including related documents, were offered in both official languages.

With respect to the incident that occurred on August 11, 2016, in 2016-3092, the Association said that the information provided by the employee during this call was correct, although it was not provided directly by the Executive Director. The Executive Director stated that the employee gave her the complainant’s questions. The employee then responded to the complainant with the answers provided by the Executive Director. The director maintained that she was in the same room as the employee when she answered the complainant; in addition, the director alleged that the employee had even called the complainant back on the same day, i.e. August 11, 2016.

On September 8, 2016, the Association said that the complainant contacted the Association and asked to speak to the Executive Director in French. The Association alleged that a bilingual employee, once again, answered the complainant’s questions while the Executive Director was in the room.

The complainant alleges that the language proficiency of the employee answering the telephone was of poor quality.

The institution refuted the majority of the allegations contained in the two complaints.

As for the part of the complaint concerning the delay in sending a reply letter in French to Association members, the Executive Director, on behalf of the Association, stated that it took time to obtain translations and that the Association had to then check the accuracy of the translated information.

Concerning the element in the two complaints about communication over the telephone, the Association attempted to justify this situation by maintaining that the month of September was a very busy month for the few employees who worked at the Association because of the annual general meeting, the arrival of students and the preparation of exams. The Executive Director said that the employee had already answered the questions submitted by the complainant about the future of the complainant's salon, and that the Association was still waiting to receive the form that the complainant had to submit to the Association.

The Cosmetology Association of New Brunswick concluded by stating that it was fully committed to respecting the needs and wishes of members of the public to receive quality service in the official language of their choice.

INVESTIGATION

After receiving the complaints filed by the two complainants, the OCOL issued a notice of investigation to the Association in October 2016, pursuant to subsection 43(13) of the OLA. The Association then initiated its own internal investigation to refute or confirm the allegations stated by the two complainants. The Office of the Commissioner took care to include in the notice of investigation several questions in order to clarify the context in which the incidents occurred. The following questions were submitted to the Association:

1. What is the percentage of bilingual employees working at the Cosmetology Association of New Brunswick?

$$\text{Bilingual workforce} = \frac{\text{Total number of bilingual employees}}{\text{Total number of employees}}$$

The OCOL issued the notice of investigation to the Association in October 2016, pursuant to subsection 43(13) of the OLA.

2. What is the minimum level of second language proficiency¹ that the Association estimates is necessary for an employee designated as being bilingual to be able to carry out job-related tasks?
3. As a general rule, how does the Association ensure that it is providing service of equal quality in both official languages to its members and to members of the public?

As previously mentioned, professional associations throughout the province have an obligation under the OLA to provide service of equal quality in both official languages to members of the public. After conducting an audit, the OCOL noted several grammatical errors in the French version of the Association's website and noted that the electronic links inserted in this version led to the English versions of the suggested websites, whereas people could have easily been redirected to the French versions. This situation therefore prompted us to seek information pertaining to the following:

4. Does the Cosmetology Association of New Brunswick use interpretation and translation services during its meetings and for the publication of all information for which it is responsible, particularly correspondence, documents, the website and training tools?
5. Is the training offered by the Cosmetology Association of New Brunswick to its members given in both official languages within the same period?

For comparison purposes, please send the schedule of courses that the Association offered and plans to offer between April 1, 2016, and December 31, 2016, and indicate the language in which the said training is given, and whether a simultaneous interpretation system was or will be provided.

The Association provided responses to the OCOL's questions in correspondence received in late November 2016, the analysis of which is provided in this report.

After conducting an audit, the OCOL noted grammatical errors in the French version of the Association's website.

¹ **Appendix A** – Oral Proficiency Rating Scale developed by the Department of Post-Secondary Education, Training and Labour.

ANALYSIS

Violation of the *Official Languages Act* of New Brunswick

In this case, after taking all of the facts into consideration, the OCOL is able to conclude that the complaints are **founded** and there was a violation of the *Official Languages Act*.

Professional associations

- 41.1(2)** When a professional association exercises a power referred to in subsection (1), the professional association:
- (a) shall provide services and communications related to the exercise of that power in both official languages, and
 - (b) with respect to its power to impose requirements, shall ensure that a person is able to fulfil those requirements in the official language of his or her choice.
- 41.1(3)** No person shall be placed at a disadvantage by reason of exercising his or her right to choose an official language in which to fulfil requirements imposed by a professional association.

The OCOL supports this conclusion, based on a balance of probabilities, after having assessed the facts submitted by the parties. The OCOL considered the following in concluding that the Association has failed to respect its obligations under the OLA in this case:

- the unreasonable wait time that elapsed between the time the complainant first communicated with the Association (2016-3092) and when the Association responded;
- the telephone messages recorded by the Association were not of equal quantity;
- the disparity in quality between the English and French versions of the Association's website; and
- the disparity with respect to wait times and the receipt of information, depending on whether a member chooses to communicate in English or French.

The OCOL supports this conclusion, based on a balance of probabilities, after assessing the facts submitted by the parties.

In order to guide the Association to help it achieve full compliance with the OLA, the aspects of service delivery and communication in both official languages that need to be reconsidered by the Association will be described in detail in the next sections of this report. It is also appropriate to state that, because the CANB is one of the first professional associations against which more than one complaint has been filed since the coming into force of section 41.1 in July 2016, the OCOL deemed it necessary to ensure that the investigation examined all of the services that the Association offers to its members and members of the public.

Provision of services and communications in both official languages

In reply to the two complaints filed against it, the Association provided explanations for the various aspects of the complaints, including the provision of its communications in both official languages and training services provided for members.

- Communications

First, the Association explained that in its opinion, its telephone communications system was designed in such a way that members and members of the public could communicate with members of its staff in the official language of their choice.

In reply to **Question 1**, the Association stated that during the period identified in the two complaints, it employed two unilingual Anglophone employees and two bilingual Francophone employees. The Association said that all of its employees were able to provide information on the certification of members, exams, salons and accounts to its 8,500 members. However, the Association explained that its team had recently been reduced to three employees because one of the unilingual employees had recently left the Association, which meant that the current ratio of employees was two bilingual employees and one unilingual employee.

However, in reply to the first question, the Association also said that since the fall, it had been re-assessing its telephone system in order to make callers aware of its office's "environmental dynamic". In other words, the Association wanted to be able to redirect members of the Association and the public to the employee responsible, while respecting its obligations, as prescribed in the OLA. The Association stated in reply to **Question 2** that when hired by the Association, the incumbent of a bilingual position had to be proficient in both official languages and meet the established standards for Level 3 on the second language proficiency evaluation scale in order to be able to carry out tasks assigned to the position, as well as serve members and the public in their choice of official language.

The Association said that since the fall, it has been re-assessing its telephone system in order to make callers aware of its office's "environmental dynamic".

Although there appears to have been confusion about the return of a call following the communication on August 15, because the complainant said that no follow-up have been done following this call and the Association refuted this allegation, it was nonetheless established in this case that the Executive Director of the Association does not have bilingual capability which would allow her to express herself in French. Consequently, it was the employees at reception who were responsible to answer the questions of members and members of the public in French.

It should be pointed out that as a general rule, an institution or association is able to respect its language obligations, as prescribed in the OLA, when its team of employees has the capacity to provide service for members and members of the public in the official language of their choice. Therefore, bilingual capacity is not the responsibility of a particular employee when this approach is implemented.

The OCOL finds in this case that a failure to comply with the OLA occurred because a member of the public who communicates in English, and who wishes to obtain information that only the Executive Director has, is able to obtain this information directly, whereas a member wishing to communicate in French does not have the same privileged access to the Executive Director. As demonstrated, it is up to the employees to act as interpreters so that the Francophone members can obtain the important information they seek. The issue is that of unequal treatment in obtaining service because Francophone members have to depend on a third party being involved in the conversation, which burdens the response process and does not ensure the reliability of the relayed information.

Furthermore, it is necessary to look at the specific role of directors or executive directors of associations because they play a fundamental role in the proper operations of their association. In the same way as deputy ministers of institutions, they have a direct responsibility to represent their association, manage employees and communicate important information concerning the association's activities and administrative matters to their members and members of the public. This representation and these communications should therefore be expressed in both official languages so that association members are treated equally.

The occupational skills of directors and executive directors, their work experience and their expertise in various areas constitute the basis for good administration of the association. Thus, it is imperative that professional associations active in the sole bilingual province acquire appropriate tools to help their executive directors develop and maintain their second official language proficiency. The OCOL deems that executive directors, in the same way as deputy ministers, should be able to speak and understand both official languages (a minimum of Level 3 oral proficiency in the second official language)² in order to ensure that their members

Executive directors have a direct responsibility to represent their association, manage employees and communicate to their members and members of the public important information concerning the association's activities and administrative matters.

² **Appendix A** – Oral Proficiency Rating Scale developed by the Department of Post-Secondary Education, Training and Labour.

and the public are not placed at a disadvantage when they exercise their right to choose the official language of their choice in dealings with the Association.

On a separate issue, the OCOL finds that the Association did not address in its reply the part of the complaint relative to the recorded message heard when calling the Association's toll-free number. One of the complainants said that in August 2016, the French message offered two services, whereas the English message offered four services. Our audits, conducted on December 9 and 12, 2016, found that when members and the public dialed 1-800-561-8087, they had access to the same number of services from the Association.

The two complainants denounced the fact that the employee at reception with whom they had to communicate had difficulty speaking the language of their choice, i.e. French. The Association did not deny these allegations.

In reply to **Question 3**, the Association submits that it is working hard and conscientiously to provide a correct level of service in both official languages. The Association states that it is taking into consideration the comments about grammatical errors in the French version of its website and its links leading Francophone Internet users to the English versions of bilingual websites. Also in reply to Question 3, the Association stated that it is currently working on a new website and promises to take all of the concerns and comments received into account. The OCOL finds that the acknowledgement of these deficiencies shows a failure to comply with the OLA with respect to the quality of access to information presented in both official languages by the Association.

In its reply to **Question 4**, the Association explained that during all of its annual general meetings, as well as during any other meeting, a simultaneous translation service is provided, as well as documents, publications, a website and training tools in both official languages. The Association also maintains, in reply to **Question 5**, that it will continue providing training for its members in both official languages, but there was no other meeting scheduled until the end of December 2016.

- Training

The Association maintained that all of the instructors and school owners had received a notice in both official languages about training workshops. The notice informed interested members that the training and training materials were in the language of their choice. The Association also sent to the OCOL a list of courses that were offered to Association members, and the OCOL found only one course entered on the Association's 2016 schedule. In fact, the workshop entitled "Architecture de la coupe masculine" (male hair cut architecture) had been given in both official languages within one month, i.e. in September and October, by the Revolution & Style Company.

The Association did not deny these allegations concerning the employee at reception who had difficulty speaking the complainants' language of choice, i.e. French.

However, the Association said that only one single instructor had applied to participate in the workshop entitled “Gestion des personnes difficiles” (managing difficult people) given in French. Because of the high cost of instruction for only one person, the Association said that it had decided not to give this course in French.

In that regard, the OCOL deems that the financial costs do not constitute appropriate justification for failing to respect the language rights of its members. If the Association limits the delivery of courses based on the cost involved in serving a small group of people, there is a risk over the long term that members will be discouraged from applying for courses in French, because it is more complicated to access them. Therefore, the Association must ensure that its members are not placed at a disadvantage, regardless of the choice of official language in which they would like to obtain their training, and regardless of the cost of that training.

Audits

- Translation of documents

In the course of this investigation, it was found that seven weeks went by from the time the initial letter was sent by the complainant to the Association and the time a reply was provided by the Association. To support her allegations, the complainant provided the OCOL with the correspondence between the complainant and the Association during the period concerned, i.e. between September and October 2016. The following are the details, as provided by the complainant, and the dates of the correspondence concerned:

September 19, 2016	Complainant’s letter to the Association
October 19, 2016	Complainant’s reminder to the Executive Director of the Association
October 31, 2016	Letter to the complainant from the Executive Director of the Association

The OCOL finds it unreasonable that it took several weeks to obtain a translation of a document of fewer than 250 words. It should also be pointed out that the document concerned did not contain technical, medical or scientific terminology, which could have partly explained the delay.

The Association must ensure that its members will not be placed at a disadvantage, regardless of the choice of language in which they wish to receive their training, and regardless of the cost of providing that training.

- Quality of the English and French versions of CANB website

The OCOL also audited the Association’s website as part of the investigation process. During these audits, a number of errors and discrepancies were found in the French version of the website, compared with the English version.

In addition, there were a number of hyperlinks in the French version of the website that lead to the English pages of another website that was bilingual. Some of the links in the French version simply did not work at all. There was also a quantity of more substantive information in the English version than there was in the French version. It should also be noted that the website page entitled “Skills Compétences Canada” is displayed in English only. Lastly, on the page entitled “Paiement de frais/Fee payments”, the Association asks in the French version that the permit number be provided in each section of the form, whereas in the English version, there is no mention of the need to provide a permit number.

- Simultaneous interpretation during courses and training for members

On December 12, 2016, the OCOL contacted the Association to obtain clarifications on the simultaneous interpretation service used by the Association in its various courses, meetings and general meetings, as well as on the translation firm responsible for producing all documents and the website in both official languages.

The Association confirmed that it used certified interpretation service provided by three separate firms during its meetings and general meetings, and for the translation of its documents. In addition, the Association explained that once the documents were translated, it discussed the terminology with two or three French training schools in the province to ensure that the terminology was in compliance.

COMMENT

In this case, the OCOL noted numerous discrepancies between the two complainants’ allegations and the answers submitted by the Association following the issuing of the notice of investigation. Despite the Association’s detailed answers, the OCOL cannot disregard the allegations in File 2016-3092, which concerned the unequal quantity of services offered in the French recorded message and the English recorded message, nor the allegations in File 2016-3119, which concerned the deficient language skills of a front-line employee on the day of the incident.

To sum up, although the Association stated that it was implementing measures that would make it possible to provide service of equal quality in both official languages, the OCOL finds that this objective is not currently being met.

In the audits conducted, a number of errors were found in the French version of the Association’s website.

The parties submitted differing versions of the facts overall, but the information provided could be used nonetheless to establish the grounds for the complaints.

Thus, the failures to comply with the OLA result from that fact that service delivery is not of equal quality when an Association member chooses to communicate in French with the Association, and consequently, the member is placed at a disadvantage, compared with those who choose to communicate in English.

RECOMMENDATIONS

The OCOL acknowledges the measures already implemented by the Association to enable members and the public to obtain service in both official languages. However, it should be stated that additional measures must be implemented to ensure that the Association is able to provide service of equal quality in both official languages and all times, as required under the *Official Languages Act*.

Further to the analysis presented herein and in a spirit of collaboration, the Commissioner deems it necessary to make the following six recommendations in order to support the Association in achieving full compliance with the obligations set out in the OLA:

- THAT** front line employees working for the Association be able to reply to Association members and members of the public in the official language of their choice at all times, using language of sufficient quality in order to ensure that the information provided is clear;
- THAT** the various training courses offered to members be provided in both official languages according to a reasonable schedule;
- THAT** all tools, manuals and documents necessary for training be available in both official languages and that the language quality of these documents be reviewed by certified translators;
- THAT** the simultaneous interpretation services during meetings and general meetings be provided by certified interpreters at all times;

The Commissioner deems it necessary to make six recommendations to ensure that the Association fully respects its obligations under the OLA.

THAT the Association's entire website be reviewed by a certified translation firm as soon as possible to ensure that the English and French versions of the website are of equal quality; and

THAT upon the appointment of the next person to the position of executive director of the Cosmetology Association of New Brunswick, that the ability to speak and understand both official languages (minimum of level 3 oral proficiency in the second official language) be a prerequisite for appointment to the position.

CONCLUSION

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the Executive Director of the Cosmetology Association of New Brunswick, to the Clerk of the Executive Council, and to the complainants.

The Office of the Commissioner also wishes to advise that pursuant to subsection 43(18) of the OLA, if the complainants are dissatisfied with the conclusions presented following this investigation, they may apply to the Court of Queen's Bench of New Brunswick for a remedy.

[Original signed by]

Katherine d'Entremont, MPA
Commissioner of Official Languages for New Brunswick

Dated at Fredericton, in the
Province of New Brunswick,
this 29th day of February 2017

APPENDIX A

Oral Proficiency Rating Scale; Department of Post-Secondary Education, Training and Labour

Novice (0+) Memorized Proficiency

Able to satisfy immediate needs using rehearsed utterances. Shows little real autonomy of expression, flexibility or spontaneity. Can ask questions or make statements with reasonable accuracy only with memorized utterances or formulae. Attempts at creating speech are usually unsuccessful.

Basic (1) Elementary Proficiency

Able to satisfy minimum courtesy requirements and maintain very simple face-to-face conversations on familiar topics. A native speaker must often use slowed speech, repetition, paraphrase or a combination of these to be understood by this individual. Similarly, the native speaker must strain and employ real-world knowledge to understand even simple statements/questions from this individual. This speaker has a functional but limited proficiency. Misunderstandings are frequent, but the individual is able to ask for help and to verify comprehension of native speech in face-to-face interaction. The individual is unable to produce continuous discourse except with rehearsed material.

Basic+ (1+) Elementary Proficiency Plus

Can initiate and maintain predictable face-to-face conversations and satisfy limited social demands. He/she may, however, have little understanding of the social conventions of conversation. The native speaker is generally required to strain and employ real-world knowledge to understand even some simple speech. The speaker at this level may hesitate and may have to change subjects due to lack of language. Speech largely consists of a series of short, discrete utterances.

Intermediate (2) Limited Working Proficiency

Able to satisfy routine social demands and limited work requirements. Can handle routine work-related interactions that are limited in scope. In more complex and sophisticated work-related tasks, language usage generally disturbs the native speaker. Can handle with confidence, but not with facility, most normal, high-frequency social conversational situations, including extensive but casual conversations about current events, as well as work, family and autobiographical information. The individual can get the gist of most everyday conversations but has some difficulty understanding native speakers in situations that require specialized or sophisticated knowledge. The individual's utterances are minimally cohesive. Linguistic structure is usually not very elaborate and not thoroughly controlled; errors are frequent. Vocabulary use is appropriate for high-frequency utterances but unusual or imprecise elsewhere.

Intermediate+ (2+) Limited Working Proficiency Plus

Able to satisfy most requirements with language usage that is often, but not always, acceptable and effective. The individual shows considerable ability to communicate effectively on topics relating to particular interests and special fields of competence. Often shows a high degree of fluency and ease of speech, yet when under tension or pressure, the ability to use the language effectively may deteriorate. Comprehension of normal native speech is typically nearly complete. The individual may miss cultural and local references and may require a native speaker to adjust to his/her limitations in some ways. Native speakers often perceive the individual's speech to contain awkward or inaccurate phrasing of ideas, mistaken time, space and person references, or to be in some way inappropriate, if not strictly incorrect.

Advanced (3) General Professional Proficiency

Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social and professional topics. Nevertheless, the individual's limitations generally restrict the professional contexts of language use to matters of shared knowledge and/or international convention. Discourse is cohesive. The individual uses the language acceptably but with some noticeable imperfections; yet, errors virtually never interfere with understanding and rarely disturb the native speaker. The individual can effectively combine structure and vocabulary to convey his/her meaning accurately. The individual speaks readily and fills pauses suitably. In face-to-face conversation with natives speaking the standard dialect at a normal rate of speech, comprehension is quite complete. Although cultural references, proverbs and the implications of nuances and idioms may not be fully understood, the individual can easily repair the conversation. Pronunciation may be obviously foreign. Individual sounds are accurate, but stress, intonation and pitch control may be faulty.

Advanced+ (3+) General Professional Proficiency Plus

Able to use the language to satisfy professional needs in a wide range of sophisticated and demanding tasks.

Superior (4) Advanced Professional Proficiency

Able to use the language fluently and accurately on all levels normally pertinent to professional needs. The individual's language usage and ability to function are fully successful. Organizes discourse well, using appropriate rhetorical speech devices, native cultural references, and understanding. Language ability only rarely hinders him/her in performing any task requiring language; yet, the individual would seldom be perceived as a native. Speaks effortlessly and smoothly and is able to use the language with a high degree of effectiveness, reliability and precision for all representational purposes within the range of personal and professional experience and scope or responsibilities. Can serve as an informal interpreter in a range of unpredictable circumstances. Can perform extensive, sophisticated language tasks, encompassing most matters of interest to well-educated native speakers, including tasks which do not bear directly on a professional specialty.

Source: Judith Liskin-Gasparro. *Testing and Teaching for Oral Proficiency*. Boston: Heinle and Heinle Publications. 1987.

Department of Post-Secondary Education, Training and Labour, *Oral Proficiency Rating Scale* [Online] http://www2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/Skills/content/AdultLearningAndEssentialSkills/oral_proficiencyratingscale.html (February 2017)