

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



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

INVESTIGATION REPORT

FILES

2016-2935, 2016-2946 AND 2016-2982

DECEMBER 2016

ELECTIONS NEW BRUNSWICK

**Subject: Allegations of deficiencies in the delivery of service
and signage in French**

**SENT TO THE: Premier
Chief Electoral Officer
Clerk of the Executive Council
Complainants**

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Context

This report concerns three complaints filed against Elections New Brunswick (“the institution”) following the most recent municipal elections, for which voting took place in April and May 2016. In this case, there are alleged deficiencies with respect to the delivery of services in French and the posting of signs in French. After consulting the parties involved to obtain their versions of the facts, the Office of the Commissioner of Official Languages (OCOL), summarizes the details of the allegations made by the complainants relative to the above-mentioned deficiencies as follows:

2016-2935

In this matter, the complainant went to the Hillside Baptist Church, located at 2290 Mountain Road in Moncton, on April 30, 2016, to vote in an advance poll in the municipal election. The complainant alleges that the reception staff were not bilingual, which meant that the complainant was unable to receive service in the language of choice, French, during each of the steps in the voting process.

However, the complainant wishes to point out being able to obtain service in the language of choice during the other steps that followed in the voting process because bilingual staff were available.

2016-2946

In this matter, the complainant went to the polling station at the Brookside Shopping Centre, located at 435 Brookside Drive in Fredericton, on May 9, 2016, at 5:30 pm to exercise the right to vote. The complainant was greeted in both official languages with “hello/bonjour.” The complainant continued by requesting service in French; however, the complainant was directed to unilingual Anglophone employees.

The complainant alleges to have interacted with four employees during the voting process and received all instructions in English. Only one employee, the person responsible for registration, was able to proceed in the complainant’s language of choice. Consequently, registration was the only step in the voting process that took place in French, even though the complainant repeated numerous times to wanting to proceed in that language.

This report concerns three complaints that were filed against Elections New Brunswick following the most recent municipal election, for which voting took place in April and May 2016, denouncing deficiencies in the delivery of service and the posting of signs in both official languages.

2016-2982

On May 9, 2016, at 5:30 pm, the complainant went to the Grace Memorial Baptist Church, located at 536 Northumberland Street in Fredericton, to exercise the right to vote in the municipal election. The complainant wishes to commend the work of the team that was in place as the complainant was able to obtain service in the official language of choice during almost all steps in the voting process.

However, the complainant notes that, in order to be able to truly say that service of equal quality was provided in both official languages, two things should be mentioned:

- When going to the building where the polls were located, an English-only sign¹ informed voters that they should use the door located at the rear of the building to get to the voting area.
- Once at the rear of the building, the greeter did not make an active offer of service when greeting the complainant. When the complainant spoke French, the greeter replied,

“Oh ... you are French.”

The complainant then asked the employee,

“Is that a problem?”

The employee replied “no”, but because she did not speak French, the complainant had to go over to the employees in the gymnasium in order to obtain service in the language of choice.

Institution’s response

On page 5 of its response, the institution stated that it had no way of validating the truthfulness of the stated complaints and could only provide general information based on the recollections of the polling station workers on duty that day who were asked questions in that regard.

The OCOL will therefore rely on the answers submitted by the institution in order to confirm or deny the merits of the various complaints.

In its response, the institution stated that it has no method for validating the truthfulness of the stated complaints.

¹ **Appendix A** – Photograph of the English-only sign submitted by the complainant in file 2016-2982 indicating where members of the public must go to get to the polling station.

Investigation

The OCOL issued a notice of investigation to the institution concerned in May 2016, stating, based on the three complainants' allegations, that there may have been a failure to comply with the following sections of the *Official Languages Act* ("OLA"):

Communication 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.
- 29** Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

Following receipt of the notice of investigation, the institution then carried out its own investigation in order to be able to respond to the questions submitted by the OCOL. The OCOL took care to include in the notice of investigation two questions in order to clarify the context in which the incidents occurred. The following questions were submitted to the institution.

QUESTIONS

2016-2935

- 1.** What was the bilingual capacity of the staff working at 2290 Mountain Road in Moncton on April 30, 2016, during the municipal election?
- 2.** How does Elections New Brunswick ensure that all aspects of the voting process are available to members of the public in both official languages, including:
 - signs;
 - greetings;
 - registration; and
 - voting.

The complainants allege that there was non-compliance with sections 27 to 29 of the OLA.

2016-2946

3. What was the bilingual capacity of the staff working at 435 Brookside Drive in Fredericton on May 9, 2016?
4. What procedure does Elections New Brunswick follow to recruit staff for municipal elections held in New Brunswick?
5. Does Elections New Brunswick assign the task of establishing teams of bilingual employees to local returning officers or does it ensure that citizens are able to obtain bilingual service by providing the local polling stations with a province-wide directive?

2016-2982

6. What procedure is in place² to ensure that the signs displayed at the polls and advance polls fulfill the obligations set out in the OLA with respect to bilingual signage?
7. Do the individuals working at municipal elections receive training on the obligation to provide bilingual service, as set out as a requirement for the institution under the OLA? If so, please provide the details concerning this training (when it is offered, the information that is presented, etc.). Please send us a copy of this directive, if there is one.

In correspondence received in June 2016, the institution provided answers to the various questions submitted by the OCOL. An analysis of the answers is provided in the next section of this report.

Analysis

In its reply to the notice of investigation, the institution dealt with a number of topics in order to provide context for the situations reported by the complainants. Details of the institution's answers to the questions submitted by the OCOL are provided in the next section.

² For example, a visual inspection on voting day or mandatory approval of signs before they are put up.

- **Team composition**

The three situations submitted in this case give rise to the same issue, i.e., the issue of the composition of the team providing service in the context of the election. According to the various complaints submitted by the complainants, although staff members on the team were able to express themselves in both official languages, the team’s overall capacity was insufficient to provide service in the complainants’ choice of official language at every stage in the voting process.

In reply to **Question 1**, which asked about the bilingual capacity of employees working at 2290 Mountain Road in Moncton on April 30, 2016 (“the Moncton polling station”), the institution submitted the following table:

Polling Station	Unilingual Anglophone Workers	Unilingual Francophone Workers	Bilingual Workers	Total Number of Workers
M07-A04 Hillside Baptist Church 2290 Mountain Road Moncton, NB	6	0	13	19

In reply to **Question 3**, which asked about the bilingual capacity of employees working at 435 Brookside Drive in Fredericton on May 9, 2016 (“the Fredericton polling station”), the institution submitted the following table:

Polling station	Unilingual Anglophone Workers	Unilingual Francophone Workers	Bilingual Workers	Total Number of Workers
M12-C02 Brookside Shopping Centre 435 Brookside Drive Fredericton, NB	16	0	4	20

Based on these answers, the OCOL is able to state that the Moncton polling station had a bilingual capacity of 68%, which was more adequate than the Fredericton polling station, which had a bilingual capacity of only 20%. Whereas in the complaint concerning the Moncton polling station, only the greeting associated with the delivery of service in the language of choice was defective, in the case of the Fredericton polling station, the entire service could not be provided in French.

To be able to provide quality service in both official languages, the OCOL deems that at “stations” where a single employee is on duty, the employee should be a member of a team with bilingual capacity in order to prevent any undue delay or confusion that would require a member of the public to use an official language that is not his or her language of choice in order to proceed. The institution must therefore review these “key” positions and identify those that must be filled by an employee with bilingual capacity, as well as specify the required level of bilingualism for the position³.

At stations where two or more employees are assigned to a task, it would not be necessary for all of them to have bilingual capacity, but it would be necessary for the institution to estimate the number required to operate in accordance with the obligations set out in the OLA. The institution could also organize the composition of its workforce in such a way as to have one or two bilingual employees available to come to the assistance of their co-workers where necessary. Therefore, without suggesting a percentage of bilingual employees required for the various polling stations, the OCOL submits that it is important for the institution to try to have as many bilingual workers as possible and to organize them in such a way as to meet the needs of members of the public without undue delay.

- **Recruitment of bilingual employees**

The institution stated that providing a high level of professional service in both official languages to every voter in the province presented unique challenges. The institution is made up of 15 permanent employees, and when a quadrennial election is held, its workforce increases within barely two months to more than 4,500 part-time employees spread across the entire province.

As an organization, Elections NB must open polling stations on the prescribed dates, in this case, dates as prescribed in the *Municipal Elections Act* (“MEA”). These dates cannot be changed and alternate dates cannot be set if it proves impossible to find a sufficient number of employees able to perform the tasks to be carried out. The institution stated that during the election on May 9, 2016, there were 114 advance polling stations and 379 regular polling stations open on the prescribed dates. As an organization, Elections NB must hire and train about 215 staff members. In that regard, the institution stated that the recruitment and training of a full complement of employees able to work in all regions of the province was difficult even without taking official languages-related obligations into account.

To be able to provide quality service in both official languages, the OCOL deems that in polling stations where a single employee occupies a position, the position should be held by a team member with bilingual capacity.

³ **Appendix B** – Oral Proficiency Rating Scale, Department of Post-Secondary Education, Training and Labour

In reply to **Question 4**, the institution explained that under section 6 of the MEA, the Lieutenant-Governor in Council appoints 14 municipal returning officers who are responsible for managing all aspects of the election in their electoral district. The institution provides municipal returning officers with extensive training in several sessions during which all aspects of holding an election are covered, including official languages-related requirements. The organization also has to find qualified, competent workers for the polling stations and the office of the returning officer, so that quality service can be provided for voters in the official language of their choice.

In reply to **Question 5**, the institution stated with respect to the recruitment of bilingual employees, that it was the municipal returning officers in each electoral region who were responsible for appointing all of the election officers and assigning them to their duties at the polling stations. To carry out this task, the institution provided training and special instructions related to the required procedures, job requirements and official languages requirements. At the time of their hiring, the municipal returning officers informed staff members who would be interacting directly with the voters that they had to make an active offer of service and provide service in both official languages to every voter communicating with the office. The second category of temporary employees needed to hold the election included about 4,500 people hired to work for one day at the regular polling stations or for two days at the advance polling stations. The institution stated that in order to staff the thousands of positions to be filled, the municipal returning officers used various methods, including the following:

- lists of persons who had applied;
- lists of persons who had worked in previous elections;
- contacting people they knew in the area;
- contacting local service organizations; and
- purchasing radio advertising.

The institution stated that given the temporary nature of the employment, it was difficult to recruit qualified bilingual employees who were willing to work for low pay.

The OCOL notes the challenges that Elections NB must contend with and deems that the implemented strategy helps to ensure that service is provided in the language of choice of members of the public most of the time. In addition to the measures listed above, the OCOL encourages the institution to develop a program for identifying Francophone community associations in various regions and set up partnerships with them in order to have direct access to a pool of potential Francophone or bilingual employees.

The institution provides municipal returning officers with extensive training in several sessions during which all aspects of holding an election are covered, including official languages-related requirements.

- **Bilingual signage – procedure in effect**

Following the filing of various complaints, the OCOL sought to find out whether practices relative to the posting of signs were the same in all of the province's polling stations. In reply to **Question 2**, the institution reiterated that it provided extensive training to the returning officers in each electoral region which included detailed information on the job requirements and official languages-related requirements. All polling stations in the province were therefore administered under the same rules.

Specifically with respect to the signs in various areas of the polling stations, the institution stated in reply to **Question 6** that all signs to be posted in polling stations provided by the Elections NB warehouse were bilingual. They were provided to the voting supervisors and had to be put up before the polling stations opened, i.e. at 10:00 am, and taken down after the polling stations closed, i.e. at 8:00 pm. With respect to Complaint 2016-2982, the institution stated that the room in the building where the voting took place was in a church and that Elections NB rented the room and regular operations continued in the rest of the building during the election. The institution stated that the entrance to the polling station was at the rear of the building and that the sign indicating this fact⁴ had been put up by a church official and not by an Elections NB employee.

The institution explained that it had not rented the entire building for the purposes of a polling station and did not have the right to remove signs put up by the building owner, because the OLA has no jurisdiction over the activities of private enterprises. The OCOL partly supports the institution's argument, but points out that there are grounds for looking at the issue from the perspective of adhering to the spirit of the OLA, i.e. to advance the equality of status and use of the official languages. Given the importance of the information on the sign, i.e. informing members of the public of where they had to go to be able to enter the polling station and exercise their right, this information must be provided in both official languages.

Because in the case at hand, access to the polling station was not through the main door, the institution should have ensured that this message was also posted in French to prevent any confusion. If the owners of the premises wanted to inform the public about the activity for which Elections NB was renting a room, the institution should take the initiative to contact the person in charge of the building to obtain his/her agreement to post this information in French as well. Given that the institution had some bilingual employees on its team, this would not have been an onerous procedure.

⁴ **Appendix A** – Photograph of the English-only sign submitted by the complainant in file 2016-2982 indicating where members of the public must go to get to the polling station.

Although the Elections NB procedure for signs is in compliance for the most part, the OCOL encourages the institution to adopt a procedure that would require the election officer to check the entrances to the building where the vote is held to ensure that signs indicating where members of the public must go comply with the obligation set out in section 29 of the OLA. The OCOL therefore deems it would be necessary to add a procedure involving the checking of signs before opening polling stations, on every day of their operation.

- **Delivery of quality service in both official languages – undeniable progress**

In reply to **Question 7**, which sought more information on the training that employees received with respect to official languages, the institution clearly stated that it is fully aware of the requirement to provide service in both official languages in all polling stations and that it is taking numerous measures to meet that requirement by providing training and the document entitled *Serving Electors in their Choice of Official Language/Servir les électeurs dans la langue officielle de leur choix*. The voting method used since 2009 makes it possible to maximize the creation of pools of bilingual employees, who are sometimes few in number, for some polling stations in the province. The voting process is divided into various stages, and bilingual employees wear a badge stating that they can speak both official languages. This procedure makes the voting process easier for both employees and voters.

After the institution explained the challenges involved in recruitment as a whole and the procedure it uses to select employees with respect to official languages, the OCOL finds that the institution appears to be able to implement the majority of procedures in order to be able to provide service in the official language of choice of members of the public.

The OCOL deems that the institution must address the recruitment of bilingual staff and continue to ensure that their bilingual capacity is maximized. As the institution stated in the context of a previous investigation conducted by the OCOL (March 2015 Report), in order to help increase the number of bilingual workers and train future citizens before the 2010 provincial election, it had developed and implemented a program jointly with the Department of Education and Early Childhood Development. The institution stated that this program allowed it to employ 16- and 17 year old students, who took part in a cooperative learning experience after receiving authorization from their school principal. Although the students were not paid during school hours, the institution stated that this program allowed it to authorize the students to work in elections, if they obtained permission. The OCOL once again states its support for this program, which has now been operating for nearly eight years, and encourages the institution to continue the program because it makes it possible to easily make use of this pool of potential “employees.”

The institution clearly stated that it is fully aware of the requirement to provide service in both official languages in all polling stations and that it is taking numerous measures to meet that requirement.

As stated in the conclusion of the 2015 Report, the OCOL reiterates the need for the institution to establish relationships with various community organizations in both linguistic communities so that the latter can provide assistance in setting up a potential recruitment pool for the selection of election workers. As previously mentioned, investing in the development of a partnership with community organizations (community radio stations, French schools, etc.) helps to ensure that there is a pool of previously identified employees available at election time.

Lastly, the OCOL deems it is imperative that employees working alone, for example, employees at the polling station reception area, be able to speak both official languages, because they are the first point of interaction between the institution and members of the public. The institution could also make provision to have one or more “mobile” bilingual employees on hand to come to the assistance of members of the public at any time regarding their choice of official language. The OCOL deems that the institution is on the right track to fully respecting its obligations set out in the *Official Languages Act*, a fact also noted in the complaints submitted by members of the public.

The OCOL deems that the institution is on the right track to fully respecting its obligations set out in the *Official Languages Act*.

Recommendations

Having taken all of the facts into consideration and assessed them on a balance of probabilities, the OCOL finds that the complaints are **founded** and that there were failures to comply with the *Official Languages Act* (“OLA”).

The OCOL would like to draw attention to the steps taken by the institution to ensure that members of the public receive quality service in both official languages. However, because in this case, the OCOL found that the institution had failed to respect its obligations under the OLA, certain measures must be implemented to prevent failures in the future.

The Commissioner therefore deems it appropriate to make the following three recommendations:

THAT the institution develop a partnership project with local Francophone associations in order to strengthen the recruitment of bilingual staff;

THAT the institution conduct an analysis of various steps of the current voting process in order to identify positions occupied by a single employee and subsequently issue a directive stating that these positions must be allocated to a bilingual employee at all times; and

THAT the institution draft a directive stating that prior to the opening of a polling station, the premises should be inspected to ensure that information concerning the election (instructions, locations and times) is posted in both official languages, in keeping with the spirit of the Act, and as prescribed in section 29 of the OLA.

Conclusion

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the Chief Electoral Officer, 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 one or several 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 13th day of December 2016

APPENDIX A

Photograph of the English-only sign submitted by the complainant in file 2016-2982 indicating where members of the public must go to get to the polling station



APPENDIX B

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)