



Investigation Report

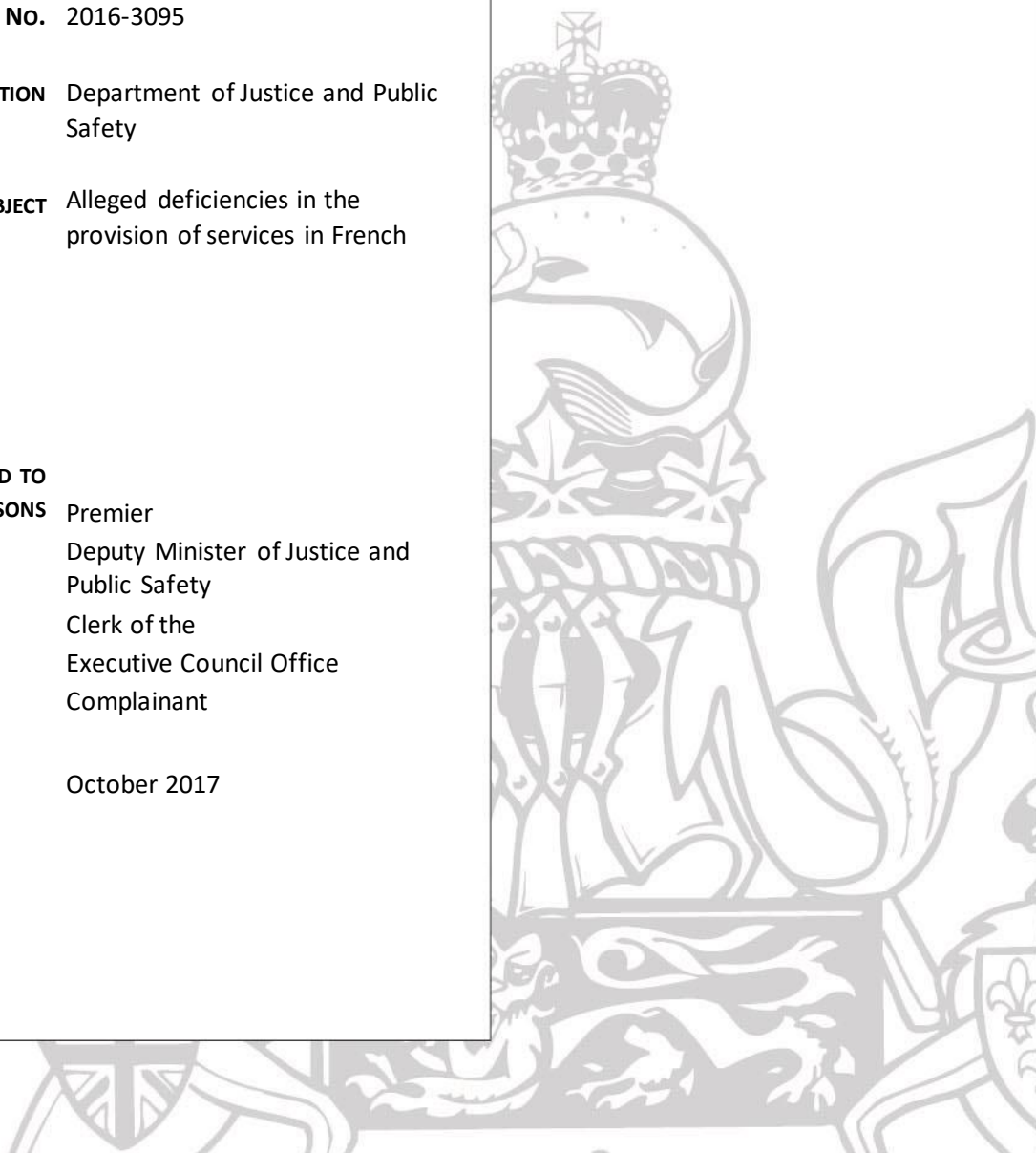
FILE NO. 2016-3095

INSTITUTION IN QUESTION Department of Justice and Public Safety

SUBJECT Alleged deficiencies in the provision of services in French

**REPORT DISTRIBUTED TO
THE FOLLOWING PERSONS** Premier
Deputy Minister of Justice and
Public Safety
Clerk of the
Executive Council Office
Complainant

October 2017



Summary

This investigation report was prepared in response to a complaint about the Department of Justice and Public Safety. The complainant alleged that he had been unable to obtain service in French when he took the Class 6 driver's course, authorizing him to drive a motorcycle.

After considering all of the facts, the Office of the Commissioner is able to state that the complaint is **founded** and that there was a violation of the OLA.

The Office of the Commissioner bases this conclusion on the following:

- Impossibility for the complainant to take a driver's course required by the institution and to obtain the related documentation in French;
- Inability of an instructor designated as bilingual to truly communicate the information in French;
- Lack of bilingual staff at certain driving schools that offer the service on behalf of the institution; and
- Lack of a contract between the institution and the third parties that sets out the linguistic obligations of these third parties.

The Commissioner therefore makes the following recommendations to the Department of Justice and Public Safety:

- THAT** by February 3, 2018, the institution adopt measures and an implementation calendar in order to fully meet its obligations under section 30 of the OLA, particularly when the institution requires training provided by third party;
- THAT** the institution adopt training quality standards in both official languages, both for the training it provides and for the training provided by third parties;
- THAT** the institution adopt a rigorous assessment process to ensure that the third parties selected to provide training prescribed by the institution have the human and physical resources needed to offer service and training of equal quality in both official languages;
- THAT** when the institution makes use of a third party to provide training prescribed by the institution, the institution's linguistic obligations as well as the training quality standards in both official languages be included in the resulted contract between the institution and the third party;
- THAT** the institution adopt a rigorous process for checking regularly that its third parties fully meet the obligations and standards specified in the contract;

THAT the institution report to the Office of the Commissioner on the status of the implementation of these recommendations by March 30, 2018.

The Complaint

The complainant contacted Service New Brunswick (SNB) about getting a motorcycle license (Class 6). SNB then referred him to Safety Services New Brunswick, which offers the training required by the Department of Justice and Public Safety (the institution) to obtain a class 6 license.

At the time he registered for the training offered by Safety Services New Brunswick, the complainant received confirmation that the session would be delivered in French. However, during the first classroom session, held on August 4, 2016, the complainant noted that the two instructors were Anglophones and that the instruction manual and video were in English only. The complainant then informed the instructors that he had received confirmation upon registration that the training would be given in French. According to the complainant, the head instructor then said that the course would be offered in English but that one of the instructors of the practical course was bilingual and would be able to provide him with the information in French.

The complainant alleged that, during the practical course, which took place from August 5 to 7, 2016, the instructor designated as bilingual was not truly able to communicate the information in French and, as a result, the complainant was unable to understand the instructions provided. The complainant's spouse, who was also taking the training, was forced to act as an interpreter and translate the instructions and explanations. Furthermore, the complainant said that he had been told by the instructors that they had never been informed that members of the public registered for the course needed to proceed in French.

The complainant felt it was unfair for training, required by the Department of Justice and Public Safety to obtain a driver's license, to be given by an organization that was not able to offer the training in both official languages.

The Investigation

Investigation under subsection 43(13) of the OLA

On October 19, 2016, pursuant to subsection 43(13) of the *Official Languages Act* (OLA), a notice of investigation was sent to the deputy minister of the institution to serve notice of the intention of the Office of the Commissioner to conduct an investigation into this matter.

In that letter, the Commissioner asked the institution to respond to the allegations made by the complainant. She also asked the institution the following questions:

1. Please confirm the provider in the Moncton area that is responsible for delivering the mandatory training, Gearing Up, for the purpose of obtaining a class 6 driver's license enabling the holder to operate a motorcycle in New Brunswick.
2. Does the contract between the Department of Justice and Public Safety and the sub-contractor – Safety Services New Brunswick – contain a clause concerning delivery of service in both official languages? Please provide a copy of the said contract.
3. Has the institution established a process to ensure that the training is offered in the Moncton area, and elsewhere in the province, in both official languages? Please support your response with the appropriate documentation.
4. Has the institution conducted an assessment of the level of second-language proficiency required¹ for employees who are considered bilingual and work on the Gearing Up team? Please indicate this level.
5. What is the linguistic composition of the team responsible for delivering the Gearing Up training in the Moncton area?
6. How does the institution ensure that the Gearing Up training sessions are offered in both official languages throughout the province? How does the institution ensure that, during the training, the third party provides members of the public with the necessary learning tools in both official languages?

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

7. a) In file 2013-1815, your institution stated as follows:
“For the snowmobile safety training course to be offered in either language, a minimum of ten people must be registered.”
Was this policy still in effect in October 2016?
- b) If yes, does this policy also apply to the Gearing Up training?
- c) If yes, how are members of the public informed that they must ask to be part of a group in order to receive the training in French? Does the institution believe that this procedure corresponds to the delivery of a quality, equal service in both official languages?

Detailed responses from the institution

The Office of the Commissioner is critical of the fact that the institution did not answer several of the questions it was asked in the notice of investigation and reminds the institution that it has a duty to cooperate fully with the investigations of the Office of the Commissioner.

The institution confirmed that, on April 1, 2015, the Department implemented the graduated motorcycle driver license program whereby new applicants are required to complete a mandatory motorcycle course. It stated that training schools throughout the province are licensed by the Motor Vehicle Branch. The Branch approves their curriculum and fees and issues licenses to their instructors.

Here is the list of driving schools authorized to offer motorcycle training in New Brunswick on behalf of the institution:

- Atlantic Moto Skills Ltd. – Moncton area;
- Dornan Academy of Defensive Driving – Moncton area;
- Motorcycle Safety Quest (MSQ) – Saint John area;
- Safety Services New Brunswick – based in Fredericton but serves the entire province;
- Sewell's Drivers Ed – Woodstock area; and
- République Éducation Automobile enr. – Edmundston area.

In answer to **question one**, the institution stated that the course Gearing Up/En piste is offered by Safety Services New Brunswick; however, it did not specify the other driving schools that offer this course, saying only that “it is not used by all schools.”

In response to **questions 2 and 3**, the institution indicated there was no contract between the six schools mentioned above and the Department of Justice and Public Safety; however, it did say that there was an audit process to ensure that the driving schools selected by the institution are complying with all conditions.

The institution failed to answer **question 4** concerning the level of second-language proficiency required for employees who are considered bilingual and work for the driving schools that offer the Gearing Up program but did say that Sewell's Drivers Ed in Woodstock and Motorcycle Safety Quest (MSQ) in Saint John do not have instructors who can provide training in French.

With respect to **question 5**, the institution again failed to answer but indicated that the following three schools offer a class 6 driver's course in the Moncton area:

- Atlantic Moto Skills;
- Dornan Academy of Defensive Driving; and
- Safety Services New Brunswick.

In response to **question 6**, the institution did not provide us with the audit process it uses to ensure that motorcycle training to obtain a driver's license is offered in both official languages throughout the province. Instead, the institution opted to focus its response on the ability of Safety Services New Brunswick to offer the Gearing Up/En piste program, adding that the school offers bilingual courses and has student handbooks in both French and English.

The institution did not provide answers to **questions 7a) and b)** concerning the policy on the minimum number of registrations needed for a class 6 driver's course to be offered in either language, but it did say that the course is offered mainly in the language spoken by most of the students in the area; for example, in Caraquet, the course may be predominantly in French, whereas in Moncton, there would be more of a bilingual approach to the course.

The institution did not consider it necessary to answer **question 7c)** concerning how members of the public are informed that they must ask to take the driver's course in French.

Analysis of the Office of the Commissioner

The Department of Justice and Public Safety (the institution) requires that training be taken to obtain a motorcycle license (class 6). Although the training is not offered by the Department, the Department does regulate it. The institution therefore approves the curriculum and fees of the driving schools and issues licenses to the instructors. The Office of the Commissioner believes that such supervision means that the driving schools approved by the Department are third parties within the meaning of section 30 of the OLA.

Section 30 of the OLA requires that the province and its institutions ensure that services offered to the public by third parties on behalf of the province or its institutions are provided in both official languages. This therefore means that the institution is fully responsible for ensuring that the third party complies with the OLA. When an institution calls upon a third party to provide a service on its behalf, it must ensure in advance that this third party – driving schools in this case – will in fact be able to provide service of equal quality to the members of both official linguistic communities at all times.

The institution could not refute the complainant's allegations that the third party did not offer the driving course, which includes a classroom session, practical training, and student documentation, in French. Furthermore, the fact that the institution failed to answer several questions shows that it did not know the actual capacity of the schools delivering courses in both official languages to provide quality training in French and English. Also, the institution acknowledged that some schools provide training in one official language only. The situation underlying this investigation could therefore easily happen again.

Lack of supervision

Although deplorable, the situation described by the complainant is not surprising. In its response, the institution confirmed that it has no contract with the driving schools it selects to provide training. As a result, the linguistic obligations of this third party are not specified. Also, meeting obligations under the OLA is not mentioned by the institution when it refers to the process for issuing licenses to driving schools and government verification of "all conditions." The institution seems to rely on the willingness of the third party to offer training in both official languages. It is therefore difficult to imagine how the delivery of this training could be provided in French and English.

The Office of the Commissioner believes that the institution must take the necessary steps to ensure that the driving schools authorized by the institution to provide class 6 training are able to do so in both official languages. These steps should include a rigorous assessment by the institution of each school's human and physical resources used to provide training of equal quality in both official languages. Furthermore, a contract to respect obligations under the OLA should be established between the institution and each of the schools selected to provide this training, and the institution should do periodic quality checks of the services provided in both official languages. If the school does not meet its linguistic obligations under the contract, the institution could then terminate the contract and hire the services of another third party.

Second-language proficiency of employees

The complainant in this matter reported that the instructor who was designated as bilingual was not actually able to communicate the information in French. The complainant was therefore unable to understand the instructions given by the instructor.

In its response, the institution was unable to specify the level of second-language proficiency of bilingual employees. As a result of this lack of rigour, the institution believed that a third party could provide training in both official languages when this was clearly not the case.

Knowing the level of second-language proficiency is essential for guaranteeing the delivery of quality service in that language. The Office of the Commissioner therefore believes that the institution must require that any third party assess the level of second-language proficiency of employees designated as bilingual in order to ensure that they are able to provide quality training in both official languages at all times.

Provision of equal service throughout New Brunswick

The *Canadian Charter of Rights and Freedoms* states that both official languages and both official linguistic communities in New Brunswick have equal constitutional status. Under that principle, which is reiterated in the OLA, an institution may not offer, either directly or indirectly, through a third party, services of lesser quality to the members of one of the two communities.

In its response, the institution indicated that the driving schools Sewell's Drivers Ed, in Woodstock, and Motorcycle Safety Quest (MSQ), in Saint John, did not have any instructors who could provide training in French. The Commissioner considers the institution's failure to answer questions 7a), b), and c) an admission of the following:

- the policy stating that, in order for snowmobile safety training to be provided in either language, at least 10 people must be registered (File 2013-1815), is still in effect;
- this policy also applies to class 6 training; and
- citizens are not informed that they must ask to be a member of a group in order to be able to take the said training in French.

The institution cannot claim to provide a service of equal quality when members of the public have to travel to another region to take a driver's course required by the institution or wait a long time because of low registration for a driver's course offered in their language of choice. This approach is therefore contrary to the OLA.

Being proactive to guarantee respect for language rights

The investigations done by the Office of the Commissioner point to many situations where non-compliance with the OLA could be avoided if the institutions took proactive action.

Periodic auditing of bilingual service delivery by driving schools authorized to offer class 6 training would probably have enabled the institution to prevent the situation described by the complainant.

Prevention is the best intervention because it makes it possible to take action upstream rather than downstream and thus avoid ending up in violation of the *Official Languages Act*.

Action taken by the institution

In its letter to the Office of the Commissioner dated November 24, 2016, the institution informed us of the following action:

The Acting Deputy Registrar will be reminding Service New Brunswick employees that they should not recommend one driver training school over another and that clients should be directed to the list of all available schools from which to choose in order to make their own determination of which school to attend based on their needs.

Conclusion and Recommendations

According to the complainant's allegations, there was a violation of the following sections of the OLA, which stipulate as follows:

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.
- 30** When the Province or an institution engages a third party to provide a service on its behalf, the Province or the institution, as the case may be, is responsible for ensuring that its obligations under sections 27 to 29 are met by the third party.

After considering all of the facts, the Office of the Commissioner is able to state that the complaint is **founded** and that there was a violation of the OLA.

The Office of the Commissioner bases this conclusion on the following:

- Impossibility for the complainant to take a driver's course required by the institution and to obtain the related documentation in French;
- Inability of an instructor designated as bilingual to truly communicate the information in French;
- Lack of bilingual staff at certain driving schools that offer the service on behalf of the institution; and
- Lack of a contract between the institution and the third parties that sets out the linguistic obligations of these third parties.

The Office of the Commissioner believes that measures must be taken to provide equal service in both official languages at all times, as imposed by the *Official Languages Act*.

The Commissioner therefore makes the following recommendations to the Department of Justice and Public Safety:

- THAT** by February 3, 2018, the institution adopt measures and an implementation calendar in order to fully meet its obligations under section 30 of the OLA, particularly when the

institution requires training provided by third party;

THAT the institution adopt training quality standards in both official languages, both for the training it provides and for the training provided by third parties;

THAT the institution adopt a rigorous assessment process to ensure that the third parties selected to provide training prescribed by the institution have the human and physical resources needed to offer service and training of equal quality in both official languages;

THAT **when the institution makes use of a third party to provide training prescribed by the institution, the institution's linguistic obligations as well as the training quality standards in both official languages be included in the resulted contract between the institution and the third party; (TRANSLATION DONE BY PATRICIA ON MAY 11, 2018)**

THAT the institution adopt a rigorous process for checking regularly that its third parties fully meet the obligations and standards specified in the contract;

THAT the institution report to the Office of the Commissioner on the status of the implementation of these recommendations by March 30, 2018.

Reminder to the institution

Once again, the Office of the Commissioner is critical of the fact that the institution did not answer several of the questions it was asked in the notice of investigation and reminds the institution that it has a duty to cooperate fully with the investigations of the Office of the Commissioner.

Conclusion

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the Deputy Minister of Justice and Public Safety, to the Clerk of the Executive Council, and to the complainant.

Pursuant to subsection 43(18) of the OLA, if a complainant is dissatisfied with the conclusions presented following this investigation, he or she may apply to the Court of Queen's Bench of New Brunswick for a remedy.

Katherine d'Entremont, M.P.A.
Commissioner of Official Languages for New Brunswick

Dated at Fredericton,
in the Province of New Brunswick,
October 25, 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.

Postsecondary Education, Training and Labour, *Oral Proficiency Rating Scale* [Online] http://www2.gnb.ca/content/gnb/en/departments/postsecondary_education_training_and_labour/Skills/content/AdultLearningAndEssentialSkills/oral_proficiency_ratingscale.html (July 2017)