

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

**Complaint under the *Official Languages Act*
Alleged deficiencies in the provision of services in French**

**Investigation Report
File No.: 2015-2523**

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



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

NB Power

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This report was respectfully submitted to:

Brian Gallant, Premier
Gaëtan Thomas, President and Chief Executive Officer
Sonia Grenier, Official Languages Coordinator
The complainant

Context and facts

The file under review is in response to a complaint made concerning a third party that provides service on behalf of NB Power (hereinafter “NB Power”). The complainant alleged that there were deficiencies in the provision of services in French. After consulting the parties to obtain their version of the incident, the Office of the Commissioner summarizes the facts as follows:

The incident occurred at different times over one week in the summer of 2015. The incident began when the complainant contacted NB Power to make arrangements for a new residential water heater. During this telephone conversation, the complainant insisted that the subcontractor coming to do the work be able to communicate in French. The agent replied that he could not guarantee that the subcontractor would be able to provide service in French. However, if the technician could not communicate in French, the agent would provide the technician with a card with instructions to call NB Power, which would then translate the information. That same day, the complainant received a telephone call from the subcontractor (the “third party”) providing service on behalf of NB Power, who said that the complainant would be receiving another call the following week to make scheduling arrangements with the water heater technician.

The following week, when the complainant received the telephone call from the third party, a voice-mail message was left in English for the complainant, asking the latter to contact the third party as soon as possible. The complainant then wondered why the message had been left in English, after explicitly requesting that communication be in French. The complainant then contacted the third party. The employee who answered told the complainant that the person to whom the latter had spoken in French the week before was not available to come to the phone at that particular moment. The employee continued by insisting that the complainant communicate with the person in English. The complainant sensed that the employee was becoming frustrated and impatient owing to the request for service in French.

The complainant was also critical of the procedure whereby if the technician is not able to communicate in the customer’s preferred language, the technician is to show a bilingual “pocket card” suggesting that the client call NB Power for further assistance.

Investigation

After the complaint was filed, the Office of the Commissioner sent a notice of investigation to the institution concerned, taking care to include three

Communications with third parties providing service on behalf of NB Power did not take place in the complainant’s preferred language

questions to find out more about the context in which the incident occurred. The questions submitted to the institution were as follows:

1. Does NB Power have directives for the provision of service in both official languages? If so, please provide a copy of them.
2. How does NB Power ensure that subcontractors with whom it has arrangements are able to provide service (by telephone and in person) in both official languages?
3. Is the procedure whereby customers wishing to be served in one official language are given a “pocket card” when the technician is unable to provide service in the customer’s language of choice still in effect?

The institution admitted to the incident in a letter that was received a few weeks later. It also responded to the Office of the Commissioner’s questions. The institution’s responses were then analyzed.

Analysis

After considering all of the facts, the Office of the Commissioner determined that the complaint is **founded** and that the *Official Languages Act* (“OLA”) was violated, more specifically the following sections:

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.
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.

The Office of the Commissioner supports this finding, since the institution admitted that the incident occurred as described by the complainant. NB Power, in response to **question 1**, indicated that it had developed a specific directive concerning the provision of services in both official languages in

The complaint
against NB Power is
founded

relation to the water heater program (the “program”). The program, launched in 2011, is comprehensive and covers several aspects of the provision of service in both official languages. The program states as follows in its introduction:

[Translation] The emphasis on continuous improvement is to respond in an appropriate manner to our geographically, culturally and linguistically diverse customers. When language is at issue, we must be prepared to serve our customers in the official language of their choice.

The objective of this program is to inform third parties how to comply with section 30 of the OLA and thus to ensure that services provided to the public by third parties on behalf of the institution are provided in both official languages. While the Office of the Commissioner supports these statements, it is critical of the responses to **question 2** and **question 3**. When asked about the procedure in place to ensure that third parties are able to provide service in both official languages (by telephone and in person), the institution referred to the program, which indicates that active offer of service must be made at all times to inform the public that services are available in both official languages. However, the institution went on to say that should the water heater technician be unable to serve the customer in the official language of his or her choice, the technician must

[Translation] show a bilingual pocket card to the customer This card indicates that the technician will contact NB Power for assistance in order to serve the customer in the official language of his or her choice.

The Office of the Commissioner disapproves of this procedure because it is not synonymous with service of equal quality. Furthermore, this procedure is not functional, since sending a technician to a customer’s home when that technician is unable to communicate in the customer’s preferred language amounts to differentiation in the service that is provided compared to a customer who chooses to communicate in the technician’s language. In addition, the option to communicate with a telephone agent does not guarantee that the agent will be able to accurately translate everything that the technician has said.

Another problem with this procedure is that communication is initiated well in advance of the technician’s arrival at the customer’s home. It will be impossible to provide this card if problems arise during telephone calls with a unilingual agent. The offer of service also includes the initial telephone conversations. Although monitoring third parties can be challenging for the institution, it in no way alters its obligations under the OLA. The institution must ensure that when it delegates services, third parties are able to provide these services in both official languages, without accommodations.

NB Power’s official language program **aims to comply with section 30** of the OLA

The **provision** of a **bilingual card** does **not reflect** the offer of **service of equal quality** in both official languages

The **provision of service** begins well **in advance of the technician’s arrival** at the customer’s home

Lastly, and while the institution has acknowledged this, the Office of the Commissioner wishes to reiterate that in providing service to the public, the institution and third parties must comply with and understand their linguistic obligations. Members of the public must never be made to feel intimidated for wanting to use the language of their choice to obtain a service. It is therefore essential that NB Power employees acknowledge these principles in order to ensure that a positive attitude prevails at all times.

Conclusion and recommendations

In the light of the analysis above, we deem it appropriate to make the following recommendations:

1. The Commissioner recommends that NB Power add a clause in its service contracts with its subcontractors requiring that third parties be able to provide bilingual service in person to every user.
2. The Commissioner recommends that NB Power stop distributing bilingual cards to its users.
3. The Commissioner recommends that NB Power issue a reminder to its employees and third parties to ensure that a positive attitude toward linguistic rights prevails when service is provided.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the President and CEO of NB Power, the Official Languages Coordinator and the complainant.

We also wish to advise that pursuant to subsection 43(18) of the OLA, if the complainant is not satisfied with the conclusions of this investigation, the complainant 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 11th day of December 2015

A positive attitude with regard to language rights is necessary to ensure obligations under the OLA are met