

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



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

MARCH 2014

INVESTIGATION REPORT

FILE NUMBER: 2013-1992

AMBULANCE NEW BRUNSWICK (ANB)

**SENT TO: THE PREMIER
THE DEPUTY MINISTER OF HEALTH
THE PRESIDENT AND CEO OF ANB
THE COMPLAINANT**

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

**Complaint pursuant to the *Official Languages Act*
Ambulance New Brunswick
Allegation of deficiencies with respect to the delivery of services in French**

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1. Complaint

On September 30, 2013, a complaint concerning Ambulance New Brunswick ("ANB") was filed at our office. The details are as follows:

On the night of September 29, 2013, the complainant received a call from her sister, who told her she was having trouble breathing and was experiencing chest pain. The complainant therefore called 9-1-1 and received service in her language of choice over the telephone.

When the complainant arrived at her sister's home in Dieppe, a fire truck and an ambulance were already on the premises. The complainant noted that her sister was on a stretcher and being given oxygen. The complainant tried to approach the ambulance attendants in order to get some information about her sister's condition. However, a firefighter reportedly moved in front of her, saying he was the interpreter.

According to the complainant, a person who was visiting her sister noted that the ambulance attendants had not spoken to her sister in French and that the firefighter's interpretation skills were poor, since he could not translate the term "bladder" (vessie) into French. The complainant noted these deficiencies as well.

After her sister was discharged from the hospital, the complainant took her home with her. However, around 2:00 a.m. on September 30, 2013, her sister feeling unwell again, the complainant had to call 9-1-1 again, specifying that she wanted only an ambulance. She pointed out that, this time, the ambulance attendants who came to her home spoke French.

2. Investigation

In accordance with the provisions of subsection 43(13) of the *Official Languages Act* ("OLA"), a letter in lieu of notice of investigation was sent to ANB on October 10, 2013. In that letter, we asked the institution to advise us of its position with respect to the complainant's allegations and to provide us with an update since the release of our study report dated June 10, 2013.

In a letter dated November 12, 2013, ANB asked us to provide more details about the incident reported by the complainant. On November 22, 2013, the additional required information was

sent to ANB after the complainant's sister consented to the release of personal information. Subsequently, senior ANB staff and the Commissioner of Official Languages met on December 17, 2013, to discuss the institution's difficulties with respect to its linguistic obligations. On January 21, 2014, some general information about ANB's linguistic profiles was provided. Then, on February 24, 2014, the President and Chief Executive Officer (CEO) of ANB informed us of his position with respect to this complaint in a letter dated February 14, 2014. Here is an excerpt from that letter:

[Translation] First of all, thank you for providing us with the information about the above-mentioned complaint for investigation purposes. Because Ambulance New Brunswick (ANB) works diligently every day to offer New Brunswickers exemplary prehospital care in the official language of their choice, we take our responsibilities under the *Official Languages Act* of New Brunswick very seriously and we provide our employees with information about this matter on an ongoing basis.

According to the additional information about the complaint received from your office on November 26, 2013, we have been able to determine what prevented the complainant from receiving ANB services in the language of her choice. The two paramedics who responded on September 29, 2013, [at the site of the emergency] were both unilingual. Normally, this crew consists of a bilingual paramedic and a unilingual paramedic. However, that day, the bilingual worker did not come to work for personal reasons, and a unilingual worker replaced him so that we could keep this ambulance in service and provide adequate coverage in the region. Unfortunately, the paramedics did not ask the patient in which language she wished to be served. As indicated in the complaint, there was a firefighter on site who served as an interpreter, but one of the witnesses considered that to be insufficient. It should be mentioned, however, that our paramedics spoke to the patient in English and that at no time did she ask them to speak to her in French. Furthermore, the patient had no trouble expressing herself in English.

At each shift change, the operational team tries to ensure that each ambulance is bilingual. If necessary, it will rotate workers, but sometimes there are not enough bilingual workers available to allow for these rotations, and we have to make the decision required to keep the ambulance in service. That day, there was unfortunately no rotation of workers. You are no doubt aware that the decision to take an ambulance out of service is not made lightly, as the emergency coverage provided for New Brunswickers would definitely suffer.

ANB works on an ongoing basis with your office, the Department of Health, and its employees to find viable ways to inform its staff about the need to offer services in both official languages. In your investigation report dated June 10, 2013, you proposed a few recommendations to us. As requested, and to better help you target the particular circumstances of this new complaint, we detail below the measures taken in response to those recommendations.

Recommendation No. 1

That ANB management assume its role with conviction, clarify its policy, and exercise leadership throughout the institution so as to ensure that its employees adhere to the principles arising from the OLA.

Measures taken

ANB continues to implement the procedures that we communicated to you in our response dated July 11, 2013. With our employees, we always stress the need to offer services to patients in the language of their choice and to fully understand our obligations under the Act, which we do through reminders, presentations, and discussions with the directors. In addition, ANB's HR department works in collaboration with our official languages coordinator in order to fill positions. We have also determined which positions at each station have a "bilingualism required" or "bilingualism an asset" criterion and hire accordingly. Every day, the operational team ensures that the composition of the ambulance crews makes it possible to offer bilingual services. In addition, bilingual signs are displayed in all of our ambulances and stations to let our patients know that they can be served in the language of their choice. On December 17, 2013, we met with you to give you a brief rundown of our activities and explain the procedures that enable us to comply with the requirements of the *Official Languages Act*.

Recommendation No. 2

That the institution re-examine the matter of language proficiency levels, taking into account the movement of paramedics around the province (dynamic deployment).

Measures taken

Last summer and fall, ANB continued the assessment of its employees by the Department of Post-Secondary Education, Training and Labour. Also, the HR department continues to require that job applicants provide their certificate of language proficiency. This enables us to allocate our resources more effectively in order to increase the level of bilingualism throughout our institution. In December 2013 and January 2014, ANB launched two training initiatives for its employees to help them increase their level of proficiency in both languages. To this end, an agreement with the Université de Moncton and Rosetta Stone Language Training to offer second-language training to its employees was signed. We are delighted to be able to say that approximately 50 employees are enrolled in one or the other of these programs.

Recommendation No. 3

Pending installation of the new scheduling software, that ANB provide a temporary solution aimed at ensuring that each paramedic crew has an adequate linguistic profile.

Measures taken

ANB's new scheduling software, TeleStaff, launched in late November 2013, takes into account the linguistic profile of all employees. Consequently, our directors are able to modify the strategic distribution of paramedics in accordance with the needs of each administrative region. In March 2014, ANB will undertake an analysis of the impact of using the level of language proficiency as a criterion for assigning paramedics to vacant shifts. Moreover, thanks to its recruitment efforts with various training institutions, ANB is seeking to increase its pool of casual bilingual workers.

Recommendation No. 4

In view of the non-use of the telephone interpretation service, and since all dispatch staff members are bilingual, that the institution look into the possibility of having these employees intervene to facilitate communication, when necessary. This solution would be more direct and would make it possible to prevent misunderstandings caused by regional differences (accents, vocabulary, etc.).

Measure taken

As we mentioned in our earlier letter, we frequently remind our employees of the possibility of using the telephone interpretation service. It is the Medical Communications Management Centre's (MCMC) coordinator of transportation for patients requiring critical care who receives the calls requesting access to this service, which enables this fluently bilingual paramedical worker to stay on the line and provide services, if need be.

Recommendation No. 5

That the institution's administrative staff review procedures for written and oral communication with the public.

Measure taken

ANB continues to ensure - so far without incident - that all requests from the public receive a response in the language in which they were expressed.

Recommendation No. 6

That the institution organize information and awareness sessions for all of its employees so they will understand and recognize the unique character of New Brunswick, the only officially bilingual province in Canada.

Measures taken

ANB is continuing its efforts in this regard. All new employees must officially attest to their understanding of the *Official Languages Act* before they start working for ANB. During its presentations to the various training institutions, the HR team insists on the need to offer services in both official languages to all patients in New Brunswick. The management team frequently reviews the importance and necessity of complying with the Act during meetings with its supervisors and unionized employees.

Recommendation No. 7

That ANB and the various unions representing its employees negotiate ways to overcome obstacles that impede the delivery of bilingual services across the province and at all times.

Measures taken

Meetings are regularly held with the two unions, CUPE and NBNU, and official languages are always on the agenda. Thanks to this close cooperation, we believe we have made considerable progress in relation to the *Official Languages Act*, while respecting the integrity of the collective agreements. Needless to say, both unions understand the issues. In 2013, we received 15 grievances relating to positions awarded on the basis of language proficiency. We settled them in a satisfactory manner, which enabled us to continue to fill positions with a bilingualism

requirement on the basis of language proficiency. This is a major success for us, and we are delighted to have achieved it in collaboration with the unions.

We thank you for the time that you and your staff have spent investigating this complaint. You may rest assured that ANB continues to inform its staff about the need to provide services in both official languages. We are very proud of the prehospital care we offer, and we are committed to continuing to provide the best prehospital services in the province, in both official languages.

We believe the information above is sufficient for us to draw convincing conclusions without the need to continue our investigation or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

3. Analysis and observations

The complaint in this case has to do with the alleged non-application of the following provisions of the OLA:

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 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 obligations under sections 27 to 29 are met by the third party.

The active offer of service

Section 28.1 of the OLA states clearly that members of the public must be informed that they have the right to be served in the official language of their choice. The active offer of service is the first step that representatives of an institution of the provincial government must go through. Greetings in both official languages are therefore a key component of quality services. **It is no longer acceptable, as was the case prior to the adoption of the OLA in 2002, to wait for a member of the public to ask to be served in one language or the other. The fact that someone “seems to understand” English or French is entirely irrelevant, because the language in which members of the public wish to be served must be respected.**

Once members of the public make their choice of language known, the necessary mechanisms must be in place to ensure that they can immediately receive the services offered by the institution in that language. This leads us to a troubling observation in this case: not only did the ambulance attendants, both unilingual Anglophones, not make the active offer to the patient; they also made no effort to provide her with services in French.

In response to this complaint, ANB indicated that: "With our employees, we always stress the need to offer services to patients in the language of their choice and to fully understand our obligations under the Act, which we do through reminders, presentations, and discussions with the directors." However, it is clear that this approach is not producing the desired effects. Some of the comments in ANB's response are of concern to us. For example, the institution notes that the patient was not having any trouble expressing herself in English and that at no time did she ask the paramedics to speak to her in French.

As this is not the first time ANB indicates that paramedics were waiting for services to be requested in one official language or the other, we question whether their linguistic obligations are fully understood. It should also be noted that the other workers on site, such as the firefighters, cannot adequately compensate for deficiencies in complying with the OLA. Admittedly, paramedics will not fulfill their linguistic obligations if, on the one hand, they do not understand them and, on the other, ANB management tolerates the absence of the active offer.

The institution will have to be firm and require that its entire staff comply with the OLA at the risk of disciplinary action being taken.

In our view, the source of this problem is found in the approach used by ANB, noting in its response that it has "frequently reminded" its employees of the "possibility" of using a mechanism to ensure compliance with the OLA. If ANB wants its employees to use means of ensuring that language rights are respected, then its directives must be clear and unequivocal. All of the measures taken in this regard must be mandatory and not optional. In short, ANB management must make it clear that the active offer and service in the language of the patient's choice have to be incorporated into the delivery of regular patient care services. For non-compliant employees, disciplinary action must be taken.

Furthermore, ANB tells us in its response that its ambulances and stations display bilingual signs informing patients that they can be served in the language of their choice. This is not an adequate way of ensuring the active offer because, obviously, individuals who are unwell are not generally in any condition to read signs, regardless of the languages in which they are written. ANB can therefore not rely on these signs to ensure the active offer.

Telephone system

With respect to the telephone system, although this is only a backup solution for ensuring service in both official languages at all times pending installation of the TeleStaff software, we would like to take this opportunity to mention the relevant comments made by Judge Blanchard in *Doucet v. Canada*, 2004 FC 1444, [2005] 1 F.C.R. 671:

[43] Sgt. Haste testified with respect to the protocol established by the RCMP for meeting the needs of Francophone travellers. I would like to point out that, however well-intentioned it may be, the service is limited. Sgt. Haste testified that, on occasion, a unilingual English officer meets someone who speaks only French. Arrangements are made for such individuals to communicate via radio to a bilingual member who is on the air. In my view, such an arrangement is by no means sufficient for the RCMP to fulfill its obligations under the Charter and the OLA so that any member of the public is entitled to communicate with a federal institution in the official language of his or her choice.
[Our emphasis.]

Consequently, it is not acceptable for ANB to use radio or the telephone system as a way of fulfilling its linguistic obligations in one official language only.

Staff distribution and required level of language proficiency

In this case, the ambulance in question was not staffed with employees capable of providing services in both official languages, despite the objective that each team of paramedics have an appropriate linguistic profile. This is a troubling situation. In our view, employee distribution must take into account possible absences owing to sickness, personal reasons, or vacations. Also, we note that, if the pool of employees presented in the table prepared in 2007 by ANB concerning linguistic profiles in New Brunswick (and more specifically in the Dieppe region, which requires 16 bilingual and 4 Anglophone paramedics) reflected reality, the ambulance crew would undoubtedly have been able to provide services in either official language. That said, ANB assures us that the scheduling software, TeleStaff, will rectify this situation.

During our investigations, ANB explained to us that dynamic deployment is used in the province to provide ambulance coverage in each region at all times. ANB added that the required level of language proficiency can vary from region to region depending on its population, which means that, if an ambulance is dispatched outside its base region, the ambulance attendants may not have the linguistic capacity required to comply with the OLA in the other region. It is inconceivable that ANB could fulfill its obligations under the OLA with such a system.

The number of Francophones or Anglophones in a region must not be the factor used to determine the required level of language proficiency. Given the nature of the services offered, which may have a serious impact on patients' lives, it is essential that there be no communication barriers.

A Francophone living in a predominantly Anglophone region and an Anglophone living in a predominantly Francophone region must both be able to receive services in the official language of their choice. Consequently, each crew of paramedics, regardless of where it is in the province, must be able to provide services of equal quality in both official languages.

Clearly, the required level of proficiency at which a paramedic would be considered bilingual must be standardized across the province. We believe that, to establish the minimum level required for all bilingual positions in the province, ANB must determine the level needed to perform the duties associated with these positions. To do this, ANB could use the Canadian Language Benchmarks¹ as a model. The following list of examples of skills could be analyzed by ANB to determine the minimum level required to work as a paramedic. When speaking with others (patients or other persons on site), paramedics should, for example, be able to:

- ask questions and understand the answers;
- rephrase their sentences, as required;
- use everyday language;
- speak fluidly;
- give directives/instructions;
- explain the situation and the procedure to be followed;
- reassure people.

By staffing the dispatch centre with employees who are 100% bilingual, ANB seems to have understood the importance of being able to answer emergency calls in both official languages. Paramedics who are in the field must now provide services of the same quality as their co-workers in the dispatch centre.

In its reply, ANB noted that it had the language skills of its employees assessed by the Department of Post-Secondary Education, Training and Labour and required that job applicants provide their certificate of language proficiency. However, we find it difficult to understand why ANB did not establish, for the entire province, the required level of proficiency at which a paramedic would be considered bilingual. In our view, ANB must first identify this target in order to then be able to determine its staffing needs. Knowing the actual linguistic capacity of its pool of employees would then be useful in preparing a plan designed to make up for the shortage of paramedics with the required language skills, now identified. The presentation of a certificate of language proficiency would then become relevant.

¹ http://www.language.ca/index.cfm?Voir=sections&Id=17369&M=4038&Repertoire_No=2137991327

Training

ANB must objectively evaluate the extent to which language training for its existing staff will enable it to meet its obligations under the OLA. We take note of the ANB initiative to offer language-upgrading courses to its employees through the Université de Moncton and Rosetta Stone software. However, the study conducted by the management consulting firm Goss Gilroy Inc.² for the New Brunswick government, *Report on the Review of the New Brunswick Second Language Services* (March 28, 2011), notes the following with respect to training:

The French language program includes three levels: basic, improvement, and maintenance:

- The basic program involves 1200 hours of classroom-based training over approximately four years. Learners may attend the day-time program (one day/seven hours a week) or evening program (2.5 hours a week). Learners are anticipated to reach a Level 2 or 2+ (Intermediate or Intermediate+) on the GNB proficiency scale by the end of this program.
- Once the basic program is finished, learners who have reached Level 2+ either leave the program or go to a two-hour a week maintenance program that is focused on conversational French.
- Learners who have reached Level 2 only may take an improvement program (two hours a week) that reviews the elements of the basic program in order to reach 2+.

The program is classroom-based and follows the academic year from September to June.
[Our emphasis.]

Improving the language skills of ANB staff through language training is therefore a major undertaking that will not produce results overnight. That said, given that this matter clearly reveals that some ANB employees do not always understand their linguistic obligations, which is very disappointing, they must participate in information and awareness sessions on their linguistic obligations and should, like new employees, officially attest to their understanding of the OLA.

In addition, ANB must establish a process for verifying maintenance proficiency of all of its employees to ensure that, since their assessment, they have not lost their ability to speak French and English at the required levels as this could have a serious impact on patient care.

Staffing

During this investigation, we examined ANB job postings, and we are disconcerted by how the language requirements for these positions are presented. We note that linguistic ability is not a

² G. Gilroy, *Report on the Review of the New Brunswick Second Language Services*, St. John's (N.L.), Goss Gilroy Inc. Management Consultants, March 28, 2011.

required skill but rather it is included under the heading "Status," which in our view can only lead to confusion about this requirement.

In addition, it is difficult to understand how ANB can determine that bilingualism is an "asset" for certain positions. All positions should have a specific language proficiency requirement based on the objectives set by ANB. Also, the level of language proficiency required should be included in job postings in order to attract qualified applicants.

Other comments

In its letter to the Commissioner, the institution writes: "You are no doubt aware that the decision to take an ambulance out of service is not made lightly, as the emergency coverage provided for New Brunswickers would definitely suffer." Forty-five years after the adoption of the first *Official Languages Act* of New Brunswick, the Commissioner believes that New Brunswickers should no longer be put in a position where such a choice needs to be made. It is not a matter of ensuring the delivery of ambulance services or the delivery of bilingual services; both must be provided, at all times and throughout New Brunswick.

In its response, ANB seems to indicate that the Commissioner works with ANB on an ongoing basis to find viable solutions to inform its staff about the need to offer services in both official languages. We wish to make it clear that the Commissioner of Official Languages for New Brunswick is an independent officer of the Legislative Assembly with a mandate to investigate, report on, and make recommendations with regard to compliance with the OLA. The Commissioner therefore cannot take part in the implementation of recommendations.

Relationship between the Department of Health and ANB

During the course of this investigation, the Commissioner looked into the relationship between the Department of Health and ANB. In this regard, the *Ambulance Services Act* outlines the following:

2(1) The Minister is responsible for the administration of this Act and shall endeavor through this Act to ensure the development throughout the Province of a balanced and effective system of ambulance services.

In a service contract between ANB and New Brunswick EMS Inc. ("NB EMS"), which came into effect on April 1, 2007, and in force until March 31, 2017, the Department of Health confers certain responsibilities on ANB. This agreement recognizes that ambulance services in New Brunswick are the responsibility of the Department of Health and that ANB is the company licensed and authorized by this Department to provide these services in New Brunswick. For its part, NB EMS is responsible for management and must comply with the OLA.

4. Conclusions and recommendation

As ANB does not dispute the facts presented by the complainant, we accept that the incident occurred as described when the complaint was filed, and consequently, we conclude that the complaint is founded.

Despite the institution's good intentions, our recent recommendations, the meetings with the President and CEO and other senior ANB staff, and the seven years that the institution has been in existence, ANB is still not able to fulfill its linguistic obligations. Moreover, since the release of our investigation report on June 10, 2013 dealing with four complaints against ANB, we have received two more complaints against this institution. Such findings require a new approach.

The time has come for the Department of Health, which is responsible for the *Ambulance Services Act* in the province, to compel ANB to take decisive actions to fulfill its linguistic obligations under the OLA.

We therefore recommend the following:

Recommendation:

That the Department of Health respect its own obligations under the OLA by requiring the following:

- a. That ANB management assume its role with conviction, clarify its official languages policy, and exercise leadership throughout the institution such that ANB staff comply fully with the provisions of the OLA.**
- b. That ANB establish the level of language proficiency required at which a paramedic will be considered bilingual and that this level be applied uniformly across the province.**
- c. That ANB accurately determine the shortfall of bilingual paramedics and adopt a detailed plan for meeting its need for bilingual employees.**
- d. For paramedic job postings, that ANB include the language requirements in the required competencies section.**
- e. That ANB offer regular training and awareness sessions on the specific rights and obligations under the OLA to its entire staff.**
- f. That ANB adopt mechanisms for evaluating the employee training and awareness program on OLA requirements in order to determine its effectiveness and take any**

corrective measures required to ensure that its employees comply with the OLA at all times.

- g. That ANB do follow-ups with its patients concerning the active offer and services in both official languages to ensure that the various corrective measures, including awareness efforts and policy development, are not only understood by its staff but are also implemented on a daily basis.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the President and CEO of ANB, the Deputy Minister of Health and the complainant.



Katherine d'Entremont, M.P.A.

Commissioner of Official Languages for New Brunswick

Dated at Fredericton
in the Province of New Brunswick
this 28th day of March 2014