



Investigation Report

FILE NUMBER 20-21-073

INSTITUTION IN QUESTION: New Brunswick Liquor Corporation

SUBJECT Alleged deficiencies in the provision
of services in French

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**REPORT DISTRIBUTED TO THE
FOLLOWING PERSONS** Premier
President and Chief Executive Officer
(acting) of the New Brunswick Liquor
Corporation
Clerk of the
Executive Council Office
Complainant

ISSUE DATE January 2021



Summary

This report was drafted following an investigation of a complaint against the New Brunswick Liquor Corporation (the institution). More specifically, the complainant alleges that members of the public were unable to communicate in French with the institution's security guards in several regions of the province.

Upon completion of the investigation we concluded that the complaint was founded, and that the institution did not meet its linguistic obligations under the *Official Languages Act* of New Brunswick (OLA). We therefore make the following recommendations:

THAT provisions regarding language obligations be included in all contracts between the institution and the third parties engaged to provide services on its behalf; and

THAT the institution continue to perform unannounced audits to ensure that the third parties it engages comply with sections 27 to 29 of the OLA.

Complaint

The details of the complainant's allegations are as follows:

On July 21, 2020, the complainant brought to our attention an article¹ by Radio-Canada concerning a unilingual Anglophone security guard posted at the Alcool NB Liquor (ANBL) store in Caraquet. According to the article, the employee "greeted customers at the Caraquet store for two days, on June 23 and July 14," and that he "was not able to communicate in French, which raised the ire of many people."

In addition, the complainant provided us with screen shots of social media comments by users who noted similar situations in other parts of the province, that is, Dieppe, Dalhousie, Fredericton, Saint John, and Tracadie.

¹ Appendix A – This article was translated from French to English at the request of the Office of the Commissioner of Official Languages for New Brunswick.

Investigation

Investigation pursuant to subsection 43(13) of the OLA

After the complaint was filed, we issued a notice of investigation to the President and Chief Executive Officer of the institution on October 7, 2020, pursuant to subsection 43(13) of the OLA. In that notice, we asked the institution to respond to the following series of questions and to provide us with any other information it considered useful to our investigation:

1. Are all third parties ANBL engages to provide services on its behalf required to sign a contract containing provisions on official languages? If yes, please provide us with the wording of the aforesaid provisions. If no, please provide us with explanations.
2. Since March 2020, which third parties provided ANBL with security guard services? Did these third parties sign a contract containing provisions relating to official languages?
3. Once services are retained, how does ANBL ensure that the third parties always comply with sections 27 to 29 of the OLA.
4. Has ANBL conducted internal audits to determine whether, since June 23 of this year, members of the public have been able to obtain service in the language of their choice from the security guards? If so, please provide us with the results of these audits.
5. Since the publication of the Radio-Canada article, attached, what measures has ANBL taken to ensure compliance with the OLA at all times when it engages a third party?

Response from the institution

Before moving on to the institution's answers to the questions in our notice of investigation, it should be noted that shortly after publication of the article mentioned in the complaint, the institution contacted our office to inform us that it was aware of the situation and that it was taking corrective and preventative action to get on top of the problem rather than waiting to hear from our office. Specifically, we were informed of the following:

- Store managers talk to security guards at the beginning of each shift to make sure that they have the requisite language skills to serve customers in both official languages;
- The district manager contacted the store identified in the Radio-Canada article to ensure it is aware of its language obligations;
- Discussions are under way between the institution and the company that supplies security guards to ensure compliance with language obligations; and

- If a situation occurs in which only a unilingual guard is available, a member of the bilingual team will be assigned to ensure compliance with the customer’s choice of language.

We take this opportunity to thank the institution for recognizing that the security guards hired by its stores must serve the public in the official language of their choice. We also appreciate that it took immediate action to remedy the situation rather than waiting to be contacted by our office.

Answers to the questions asked in the notice of investigation²

Answer to question 1:

In the past few years, ANBL has not engaged third-party service providers that were in contact with the public, so it was not necessary to adopt provisions related to official languages requirements. However, we recently launched a new invitation to tender for security services and we added official languages requirements. You will find below the language used in the recent invitation to tender for security services at our retail points of sale. The active offer is required in all locations. If a security guard is unable to provide the service in the language chosen by the customer, a member of the team at our retail sales outlets will provide the service in the language of their choice...

- *The service provider retained must be familiar with the various acts and regulations that apply to ANBL and which extend to third parties, including but not limited to:*
 - i. the New Brunswick Liquor Corporation Act;*
 - ii. the Liquor Control Act;*
 - iii. the Official Languages Act;*
 - iv. the Right to Information and Protection of Privacy Act.*

In certain locations, it is essential to know how to communicate orally in both official languages. The bilingual positions require the minimum provincial “intermediate or Level 2” rating.

Answer to question 2:

In March 2020, we began to use the services of Admiral Investigations Inc. to assign security guards to help the teams in our stores during the COVID-19 pandemic. There was an urgent need in an unprecedented period, and it was hard to establish our true needs. That is why we did not have a contract with that service provider. As established by our tendering process, as of November 2, we will henceforth use GardaWorld for our security needs, and the contract signed includes official languages provisions.

² The answers were translated from French to English at the request of the Office of the Commissioner of Official Languages for New Brunswick.

Answer to question 3:

Around July 2020, we began to conduct random audits in our different stores around the province to make sure the security guards assigned were really bilingual. We called the stores and asked the members of the team if the security guard assigned to their store was bilingual, and they were in every case.

Answer to question 4:

Since the Radio-Canada article was published, ANBL has taken the following action:

- *We talked to our security service provider to remind it of the obligations of ANBL and our third-party service providers under the Official Languages Act.*
- *Every day, the manager or team leader of the store concerned checks whether the security guard assigned to that store is in fact bilingual.*
- *If only a unilingual security guard is available from the service provider, a member of the team is designated to accompany him throughout the day to make sure to provide service in the language chosen by the customer.*

Analysis

The relevant provisions of the OLA in this matter are as follows:

<p>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.</p>	<p>27. Le public a le droit de communiquer avec toute institution et d'en recevoir les services dans la langue officielle de son choix.</p>
<p>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.</p>	<p>28. Il incombe aux institutions de veiller à ce que le public puisse communiquer avec elles et en recevoir les services dans la langue officielle de son choix.</p>
<p>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.</p>	<p>28.1. Il incombe aux institutions de veiller à ce que les mesures voulues soient prises pour informer le public que leurs services lui sont offerts dans la langue officielle de son choix.</p>
<p>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.</p>	<p>30. Si elle fait appel à un tiers afin qu'il fournisse des services pour son compte, la province ou une institution, le cas échéant, est chargée de veiller à ce qu'il honore les obligations que lui imposent les articles 27 à 29.</p>

An institution's language obligations when it hires a third party

Section 30 of the OLA imposes on the New Brunswick Liquor Corporation, as on all institutions, the obligation to ensure that services offered to the public by third parties on their behalf are 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 – security guards 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.

Measures taken and to be taken by the institution

The Office of the Commissioner recognizes the measures taken by the institution to comply with its obligations under the OLA. First, concerning invitations to tender, we are pleased to note the addition of official languages requirements. It is important for all third parties providing services on behalf of the institution to be aware that they must honour sections 27 to 29 of the OLA. In future, we hope that the institution will require its third parties to sign a contract containing provisions that clearly state their official languages obligations.

Next, we recognize that a contingency plan is in place. In its reply to question 1, the institution informed us that:

If a security guard is unable to provide the service in the language chosen by the customer, a member of the team at our retail sales outlets will provide the service in the language of their choice.

We thank the institution for developing a back-up plan for instances when a security guard does not have the language skills needed to serve a member of the public in the language of their choice. However, we are wondering if this contingency plan itself requires a contingency plan. If a security guard is unilingual, that means that a member of the institution's team will always need to be available to perform the duties of the aforesaid security guard in the language of choice of the member of the public, without delay. If this member of the team must be at the door to serve customers, that means that one less bilingual staff member will be available inside the store. The institution must therefore ensure that enough staff who can serve customers in both languages are available in the store at all times.

The institution then referred, in its answer to question 2, to another measure that it had implemented. More specifically, the contract between it and the security company "has official languages provisions." In addition, the institution informed us of the following:

Around July 2020, we began to conduct random audits in our different stores around the province to make sure the security guards assigned were really bilingual. We called the stores and asked the members of the team if the security guard assigned to their store was bilingual, and they were in every case.

This shows us that the institution is aware that, under section 30 of the OLA, it is responsible "for ensuring that its obligations under sections 27 to 29 are met [by the third party]." Consequently, even though its contract with GardaWorld contains clauses related to official languages, we hope that the institution will continue to perform random audits in its stores to ensure that its customers can always obtain service in both official languages in all stores.

Conclusion and recommendations

Our investigation made it possible to establish that, for the reasons stated in this report, the complaint was **founded**, and that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick. We therefore make the following recommendations:

THAT provisions regarding language obligations be included in all contracts between the institution and the third parties engaged to provide services on its behalf; and

THAT the institution continue to perform unannounced audits to ensure that the third parties it engages comply with sections 27 to 29 of the OLA.

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the President and Chief Executive Officer of the New Brunswick Liquor Corporation (Acting), to the Clerk of the Executive Council, and to the complainant.

Pursuant to subsection 43(18) of the OLA, a complainant who is not satisfied with the conclusions of this investigation may apply to the Court of Queen's Bench of New Brunswick for a remedy.

Shirley C. MacLean, Q.C.
Commissioner of Official Languages for New Brunswick

Dated at the City of Fredericton,
Province of New Brunswick,
This 11th day of January 2021

APPENDIX A

Unilingual Anglophone employee of NB Liquor causes headaches in Caraquet



A unilingual Anglophone security guard greeted customers at the Caraquet store for two days, on June 23 and July 14

René Landry
Published July 21, 2020

The presence of a unilingual Anglophone security guard at the entrance to the NB Liquor store in Caraquet was a source of dissatisfaction for several customers.

According to our information, the security guard was responsible for greeting customers for at least two days, including July 14.

Several customers made their disapproval known to employees of the NB Liquor store in Caraquet.



Caraquet residents are mainly Francophone
PHOTO: RADIO-CANADA / RENÉ LANDRY

The employee held a sensitive position during a pandemic. He was responsible for getting customers to wash their hands at the store entrance and asking them if they had travelled outside the province or if they were experiencing symptoms of COVID-19.

Thus, it is a job that requires communication skills; however, the employee was not able to communicate in French, which raised the ire of many people.



Kevin Haché, Mayor of Caraquet, thinks it is important for NB Liquor to remediate the situation.
PHOTO: RADIO-CANADA

Caraquet mayor Kevin Haché does not understand how this kind of situation could occur in his community.

“I find it is a real failing of NB Liquor not to make sure they were doing business with an external company that would have bilingual people in Caraquet,” he said. “Caraquet is a community that is 99.9% Francophone. Having a unilingual Anglophone employee providing an essential service such as asking questions about COVID, I find that shows a blatant lack of respect. They should have checked more carefully before awarding that contract.”

Mayor Haché recalls that NB Liquor is a Crown corporation that must be careful when subcontracting services.

“It’s important for NB Liquor to remediate the situation and make sure it doesn’t happen again.”

- Kevin Haché, Mayor of Caraquet

He believes that the company has a “fiduciary duty” to ensure the presence of a Francophone or at the very least, a bilingual security guard.

NB Liquor's explanations

A spokesperson from NB Liquor, Sarah Bustard, confirms that a unilingual Anglophone security guard greeted customers at the Caraquet store for two days, on June 23 and July 14.



NB Liquor is a Crown corporation.

PHOTO: RADIO-CANADA / RENÉ LANDRY

“Last week, NB Liquor contacted Admiral Investigations Atlantic Incorporated [to ensure] that in the future, only bilingual or Francophone security guards would work in Caraquet,” she explained.

Admiral Investigations Atlantic

At the NB Liquor store on Monday, a young Francophone man from Neguac was the security guard greeting customers. He works for Admiral Investigations Atlantic Incorporated in Dieppe.

This is a firm of private detectives and security guards. On its website, in English only, it mentions that it has been serving the Atlantic region for 35 years and offers bilingual service.

Admiral Investigations Atlantic did not return our telephone calls.

René Landry