



Investigation Report

FILE NUMBER 20-21-079

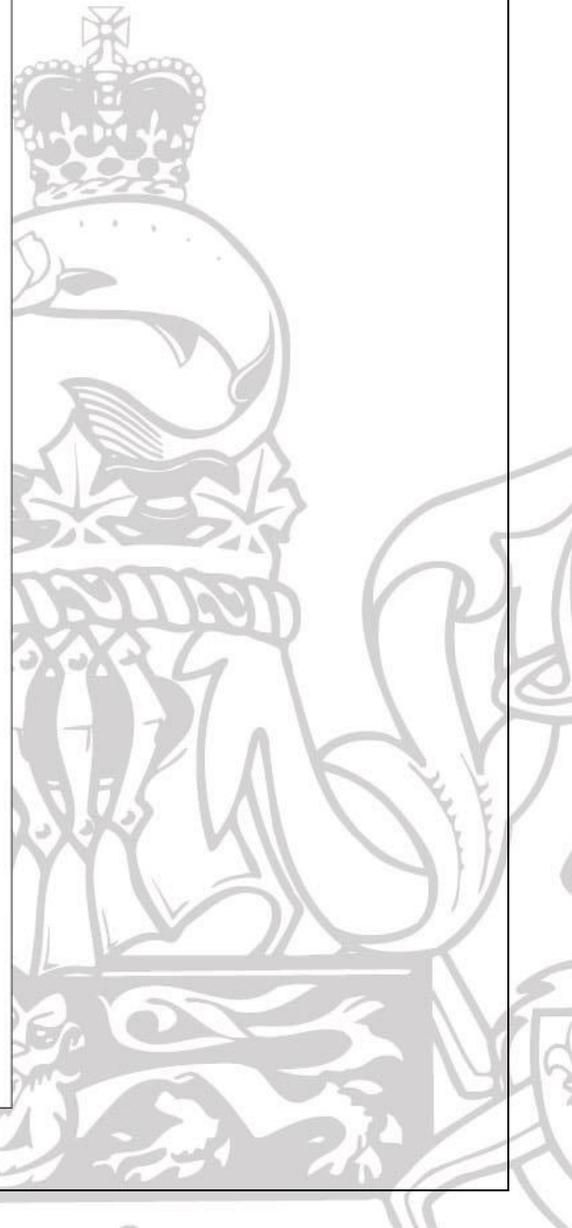
INSTITUTION CONCERNED Service New Brunswick

SUBJECT Deficiencies in the quality of the
French language

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**REPORT DISTRIBUTED TO THE
FOLLOWING PERSONS** Premier
Chief Executive Officer, Service New
Brunswick
Clerk of the Executive Council Office
Complainant

DATE ISSUED January 2021



Summary

This report was drafted following an investigation of a complaint against Service New Brunswick (the institution). The complaint concerned the quality of the French used in a decision of the Residential Tenancies Tribunal.

At the end of the investigation, the Office of the Commissioner concluded that the complaint was **founded**; we therefore make the following recommendation:

THAT the institution ensure that all decisions of the Residential Tenancies Tribunal are reviewed before their distribution, by a member of its staff with the appropriate language skills in written expression in French and English, to ensure that the document is of equal quality, regardless of the official language used.

Complaint

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

On July 22, 2020, the complainant learned that he was going to be evicted from his apartment on October 31, 2020, owing to renovations. The complainant accepted that decision but found that the quality of the French language in the Residential Tenancies Tribunal's decision was unacceptable.

Investigation

Investigation pursuant to subsection 43(13) of the OLA

After the complaint was filed on October 28, 2020, we issued a notice of investigation to the CEO of the institution pursuant to subsection 43(13) of New Brunswick's *Official Languages Act* (OLA). In that notice, we asked the institution to let us know its assessment of the facts concerning the allegations made by the complainant and to answer a series of questions.

The questions asked by the Office of the Commissioner and the answers provided by the institution on December 11, 2020, and its assessment of the facts, are as follows:

From the outset, the institution said it recognized "that the services received by the complainant in July did not live up to our vision of excellence in service delivery."

Questions and answers:

1. What is the current bilingual capacity of residential tenancies officers working for the Residential Tenancies Tribunal (Tribunal)? When responding, please use the following ratio: total number of bilingual residential tenancies officers ÷ by total number of residential tenancies officers.

Using the formula provided, we have determined that the current bilingual capacity of the Residential Tenancies Tribunal residential tenancies officers is 71% (5 bilingual/7 total).

2. What level of second-language oral proficiency is required by your institution for Tribunal residential tenancies officers?

In order to be able to provide the public with a service that complies with the obligations of the OLA, we require our residential tenancies officers to have "intermediate plus" level oral skills in both official languages.

3. What procedure was used to evaluate and conclude that this level of proficiency was sufficient for residential tenancies officers to be able to offer service to members of the public that meets the obligations set out in the OLA?

We examined the duties and requirements associated with the mediator position and were able to determine the intermediate plus level was the minimum skill level needed to properly process transactions and provide services to the public. That level is adequate to allow full participation in a general conversation. In addition, the employer takes into account the complexity of the situations that employees must manage in order to determine the level of second language proficiency required.

4. According to the Tribunal's operations data, can the institution confirm that the number of bilingual residential tenancies officers identified in question 1 is sufficient to offer equal-quality services in both official languages to members of the public at all times, in accordance with the obligations set out in the OLA?

Service New Brunswick is able to confirm that the number of bilingual rental residential tenancies officers identified in question 1 is sufficient to meet the needs of the Tribunal's operations and to provide service of equal quality in both official languages in accordance with the obligations prescribed by the OLA.

5. How does the institution ensure that the Tribunal's residential tenancies officers are able to offer a quality of service equivalent in French to the service offered in English?

Based on an analysis of previous requests, the Tribunal office identifies the needs based on demand and is then able to ensure that the residential tenancies officers are able to provide service of equivalent quality in both official languages.

6. Considering the allegations made by the complainant, how does the institution explain the poor quality of the language used in the document which is the subject of this complaint?

The errors noted in the document result from the inattention of the officer in charge of the file. Since this incident, a meeting with her has taken place to stress the importance of the quality of the language.

7. What procedure (including drafting, proofreading, revision) is periodically implemented so that the institution ensures that residential tenancies officers provide a product of equal quality in both official languages to members of the public? Please forward a copy of any such procedure.

In order to ensure that the residential tenancies officers provide a product of equal quality in both official languages to members of the public, a review of the written decisions of each employee is completed periodically throughout the year.

8. Please provide us with the measures that your institution plans to implement, in the short term and in the long term, in order to prevent such a situation from recurring in the future.

Lastly, to avoid a recurrence of such an incident, the Tribunal plans to increase the frequency of document reviews. In addition, the Deputy Chief Residential Tenancies Officer will also make a final review of all decisions to ensure the quality of the content and writing.

Analysis

The relevant provision of the OLA in this case is as follows:

| Posting of signs and publications intended for the Public | Affichage et publication à l'intention du public |
|---|--|
| 29 Institutions shall publish all postings, publications and documents intended for the general public in both official languages. | 29 Tout affichage public et autres publications et communications destinés au grand public et émanant d'une institution sont publiés dans les deux langues officielles. |

We will examine here some of the responses that the institution provided to the questions we asked in our notice of investigation dated October 28, 2020.

The first questions we asked the institution concerned the linguistic profile and capacities of its staff. In its responses, the institution confirmed that 71% of its workforce is bilingual, with an Intermediate Plus level of oral proficiency in both official languages.

We believe that the linguistic profile and capacities of the staff are sufficient to meet the needs of the Tribunal's operations and to provide service of equal quality in both official languages to the citizens of New Brunswick.

In addition, our last questions dealt with the reasons which would explain the poor quality of the French used, the procedure used by the institution to ensure a product of equal quality in both official languages, as well as the measures that will be implemented by the institution in the short and long term to prevent such a situation from happening again in the future.

In its responses, the institution informed us that the inattention of the officer in charge of the case was the cause of the poor quality of the document in question. The institution also confirmed that a review of the written decisions of each employee is completed periodically throughout the year to ensure that the residential tenancies officers provide a quality product.

We were pleased to learn that the institution checks the quality of the work of the residential tenancies officers periodically throughout the year. That said, the institution recognized that, despite this process, errors did occur, and it did not hesitate to put in place immediate measures to ensure respect for the language rights of citizens.

In fact, in its answer to question 8 on the measures it plans to implement in order to prevent a situation of this kind from happening again in the future, the institution confirmed that:

- the Tribunal plans to increase the frequency of document reviews;
- The Deputy Chief Residential Tenancies Officer will also make a final review of all decisions to ensure the quality of the content and writing.

Although we recognize the short-term measures implemented by the institution, we believe that a long-term measure is necessary.

Conclusion

Our investigation made it possible to establish that a member of the public received a decision from the Residential Tenancies Tribunal in which the quality of French left something to be desired. Our investigation made it possible to establish that the complaint was **founded** and that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick. Since we believe that a long-term measure will be beneficial, we make the following recommendation:

THAT the institution ensure that all decisions of the Residential Tenancies Tribunal be henceforth reviewed before their distribution, by a member of its staff with the appropriate language skills in written expression in French and English, to ensure that the document is of equal quality, regardless of the official language used.

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

Pursuant to subsection 43(18) of the OLA, if a 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.

Shirley C. MacLean, Q.C.
Commissioner of Official Languages for New Brunswick
Dated at the City of Fredericton,
Province of New Brunswick,
This 13th day of January 2021