



Investigation Report

FILE NUMBER 21-22-269

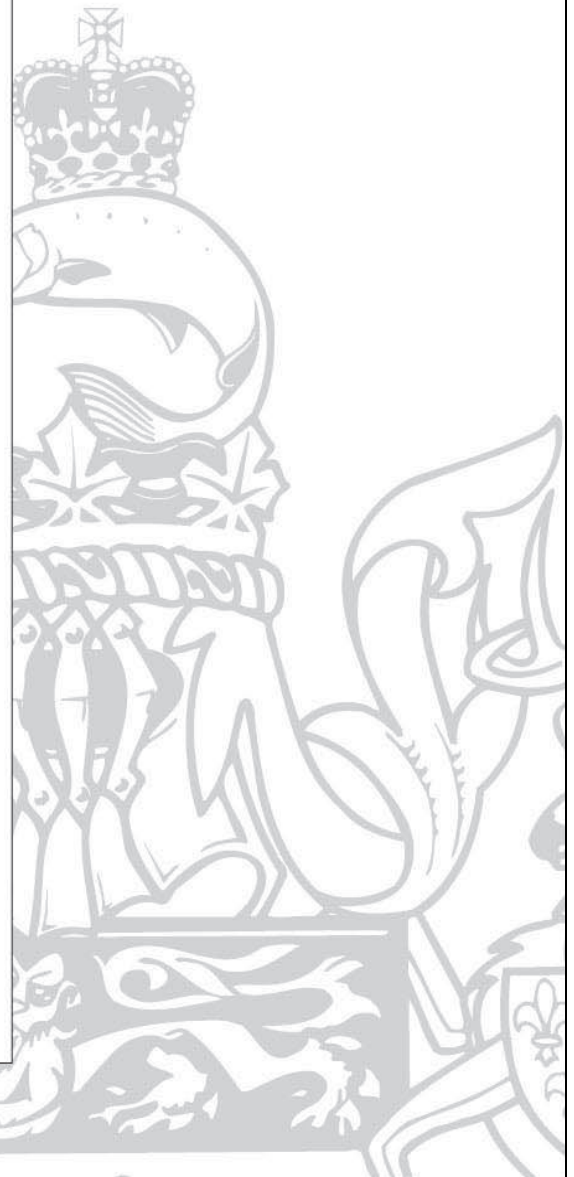
INSTITUTION IN QUESTION New Brunswick Liquor Corporation

SUBJECT Allegations of Deficiencies with
Respect to the Delivery of Services in
French

TABLE OF CONTENTS Summary: 1
Complaint: 2
Investigation: 3
Analysis: 5
Conclusion: 12

**REPORT DISTRIBUTED TO
THE FOLLOWING
PERSONS** President and Chief Executive Officer
of the New Brunswick Liquor
Corporation
Complainant
Premier
Clerk of the Executive Council
Executive Director of the Secretariat
of Official Languages

ISSUE DATE March 2024



Summary

This report was prepared following an investigation of a complaint against the New Brunswick Liquor Corporation (the institution). Specifically, the complainant alleges that they were unable to obtain service in French at the institution's outlet in Grand Falls.

Upon completion of the investigation, the Office of the Commissioner of Official Languages established, for the reasons set out in this report, that the complaint is **unfounded** because it is impossible to determine that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

Complaint

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

The complainant went to the New Brunswick Liquor Corporation store at 240A Madawaska Road in Grand Falls on March 10, 2022, with a special occasion permit to purchase two boxes of wine.

According to the complainant, an employee working in the store office [translation] "refused to serve me because I did not speak English." The complainant says that they can speak English but that as the customer, they have the right to be served in French. An employee told them to come back at 1:00 p.m. and that another employee would be able to serve them in French.

The complainant insisted on being served in their language like any other customer seeking service, but, in their words, [translation] "There was nothing I could do."

The complainant then attempted to present their permit printed in both official languages, but the unilingual Anglophone manager refused to look at it.

According to the complainant, this is not the first occurrence of this in Grand Falls: on two other occasions, a unilingual Anglophone cashier refused to serve the complainant in French at the cash register.

The complainant indicates that the situation on March 10, 2022, was [translation] "the last straw" and states that the population of this predominantly Francophone region should not have to tolerate situations like this.

Investigation

Investigation under Subsection 43(13) of the OLA

After the complaint was filed on March 10, 2022, the Office of the Commissioner of Official Languages (OCOL) decided to proceed with an investigation under subsection 43(13) of the *Official Languages Act* of New Brunswick (OLA).

A notice of investigation dated April 26, 2022, was forwarded to the New Brunswick Liquor Corporation (ANBL) (the institution). In this notice to the institution's President and Chief Executive Officer, the institution was asked to inform the OCOL of its assessment of the facts concerning the allegations made by the complainant, provide any additional information that may be useful in this matter and answer a series of questions.

Institution's Initial Response

On August 30, 2022, the institution provided its answers to the questions posed by the OCOL, stating that it was [translation] "committed to providing excellent service in both languages." In its response, the institution expresses appreciation for having the opportunity to reply to the OCOL's questions and adds at the end:

[Translation] *At ANBL, we pride ourselves on our excellent service, and it is important to us that our customers be able to receive quality service in both official languages.*

Follow-up from the OCOL

On November 29, 2022, in a second letter to the institution, the OCOL thanked it for its initial response and asked it to provide additional information to supplement its answers to ensure that the OCOL had "a more complete picture of the situation in question."

Additional Response from the Institution

On December 15, 2022, the institution submitted a second response in which it indicated as follows:

[Translation] *Thank you for the follow-up questions and the opportunity for ANBL to provide further details concerning this particular case and the system-wide measures being taken.*

After receiving the initial complaint, we conducted an internal investigation and spoke with the store manager, the team members concerned and witnesses. Based on these conversations, we are confident that the team members offered to serve

the customer in the language of their choice and that the complainant's version of events is misleading.

The response also includes “supporting information in response to the questions asked in the letter of November 29, 2022,” and concludes as follows:

[Translation] ANBL is committed to providing excellent service in both official languages. We are also committed to ensuring that our team members feel safe and are treated with respect. In the course of our investigation, we discovered that this customer was highly disrespectful to a member of our team, going so far as to insult that person as they left the premises. This is unacceptable behaviour at any time and especially since the team members were able, and attempted, to serve the customer in their language of choice.

[...] In this particular case, we believe that our team members upheld their commitments under the Act and our internal policies by offering the customer service in their language of choice but that the customer refused, insisting that the unilingual team member serve them in French.

We trust that you find these clarifications useful.

Analysis

Relevant provisions of the OLA in this matter are as follows:

COMMUNICATION WITH THE PUBLIC

Communications with government and its institutions

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.

Obligations of institutions

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.

COMMUNICATION AVEC LE PUBLIC

Communication avec le gouvernement et ses institutions

27 Le public a le droit de communiquer avec toute institution et d'en recevoir les services dans la langue officielle de son choix.

Obligation des institutions

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.

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.

Questions Asked by the OCOL and Answers Received from the Institution

The questions asked by the Office of the Commissioner of Official Languages (OCOL) in the notice of investigation and follow-up letter covered several points, including compliance with the OLA and training of the institution's employees as well as the linguistic profile of the outlet subject to the complaint, namely the store in Grand Falls (the store), and the work shifts of its sales staff.

This section examines the answers provided by the New Brunswick Liquor Corporation (ANBL) (the institution) to the questions addressing these points. Based on its analysis of this information, the OCOL is unable to determine that the allegations that the institution failed to meet its linguistic obligations are founded; it must therefore be concluded that the complaint is **unfounded**.

The questions asked by the OCOL and responses provided by the institution have been reproduced in their entirety under **Appendix 1**.

Discrepancies in the Situation as Described by the Two Parties Involved

At the outset, in its responses, the institution informed the OCOL of discrepancies between the complainant's allegations and its staff members' statements. These discrepancies complicate the analysis of the complaint.

In order to find that the complaint has merit, the OCOL must be satisfied that the complainant's allegations are true. However, given the disparity between what is alleged in the complaint and what is explained in the institution's letters of response, the OCOL is not in a position to draw this conclusion. In the face of contradictory information, it is not for the OCOL to doubt the veracity of the information obtained from the complainant or from the institution. The OCOL must therefore conclude that the complaint is **unfounded**.

The OCOL's determination that a complaint is unfounded is not necessarily a finding that the complainant did not experience a situation in which their linguistic rights were not respected by the institution, but rather that it is not possible to determine from the information gathered whether such is the case or not.

Positions of the Parties Involved

Complainant's Allegations

The complaint indicates that the store refused to serve the complainant by reason of their choice of official language, which was French.

Additionally, they state that they were asked to return later, at 1:00 p.m., when someone else would be able to serve them in French.

Institution's Obligations under the OLA

If the complainant's allegations proved accurate, a violation of the OLA would have occurred, as the obligations imposed by the Act are clear: the institution must be able to communicate with the public and offer its services in both official languages.

Moreover, an institution governed by the OLA must be able to uphold its linguistic obligations at all times. In other words, a member of the public who chooses service in either of the two official languages must not encounter any undue delay in comparison to someone opting to be served in the other official language. It should also be noted that the OLA makes no exceptions for special or unforeseen circumstances.

Response from the Institution

According to the institution's letters of response, the sales team at the store quickly recognised the complainant's preferred official language as being French and was able to provide service in that language right away. The members of the sales team attempted to do so, but the

complainant would not accept the offer to be served in French by another employee. Instead, they insisted on being served, in French, by a unilingual Anglophone employee.

The institution's replies concede that the complainant was asked to return at 1:00 p.m., but maintain it was not because service in French would not be available until then: it was because a particular employee would be there at that time.

What Is Not in Dispute

Before reviewing the discrepancies between the complainant's allegations and the institution's responses, it is appropriate to list the points on which the parties involved are in agreement.

Context – Previous Occasions

The complainant states that they had been refused service in French at the cash register in this store on two previous occasions and describes the situation subject to the complaint as "the last straw." Since these prior visits are not part of the present complaint and all related details are unknown, it is impossible to consider these allegations. Although the OCOL did not ask any questions about the past incidents, they provide context for the situation that is the subject of the complaint. This information was therefore shared with the institution, whose letters of response neither confirm nor deny it. However, given that they are not part of either the complaint or the investigation that was conducted by the OCOL, little or no weight may be given to the comments.

No Linguistic Obligations Imposed on the Complainant

The complainant indicates that they can speak English but that, as the customer, they have [translation] "the right to be served in [their] language." Members of the public are entitled to choose to receive their service in the official language of their choice, in this case French, even if they can express themselves in both official languages. The complainant therefore had no obligation to speak their second language while they were visiting the store.

Both letters of response filed by the institution recognize its linguistic obligations pursuant to the OLA and explain that it undertakes to provide excellent service in both official languages:

[Translation] At ANBL, we pride ourselves on our excellent service, and it is important to us that our customers be able to receive quality service in both official languages.

Delay Encountered by the Complainant

It is not contested that the complainant was asked to return later in the day. However, the reason why is in dispute and must therefore be examined in more detail.

Complainant's Visit to the Store

As explained above, an institution must be able to offer, at all times and of equal quality, all its communications and services in both official languages without undue delay. A service offered at a later time cannot be considered equal in quality to a service offered immediately in the other official language and would therefore not meet the requirements of the OLA.

Since the complainant and the institution both agree that there was a delay in completing the services the complainant was seeking, the question that must be decided is whether or not the delay was caused by the inability of the institution to provide service in French, as alleged by the complainant. The institution cites a different reason why the complainant was asked to return to the store later in the day in order to complete the purpose of their visit.

The OCOL cannot conclude with certainty that the delay was related to the complainant's choice to receive their service in French and therefore finds that the complaint is **unfounded**.

According to the complainant, when they entered with special occasion permit in hand for the purpose of purchasing store products, an employee [translation] "working in the store office refused to serve me because I did not speak English." A second employee told them to return later when another employee "would be able to serve me in my language." According to the complainant, they attempted to present their permit printed in both official languages, but the staff "refused to look at it."

The institution's initial response was as follows:

[Translation] [I]n our opinion, the staff at the Grand Falls store made every reasonable effort to do so during the interaction with the complainant on March 10, 2022. According to our team members, the customer entered the store office where a unilingual (English) team member was working. The team member quickly recognized the customer's language of choice and attempted to get another team member to provide the service.

The institution enters into greater detail in its second response:

[Translation] Based on our investigation, the customer came to the store to provide additional information concerning his liquor permit that had been requested the previous day by the assistant manager. The customer entered the store office where a unilingual (English) team member was working. The team member quickly recognized the customer's language preference and attempted to get help from a coworker to serve them in the appropriate language. The customer did not accept the offer to bring in a bilingual team member and insisted that the unilingual employee serve them in French. The customer then told the employee that they should not be allowed to work for ANBL since they only speak English. Another team member who was bilingual offered assistance in the customer's language of

choice several times during the discussion, but the customer continued insisting that the unilingual employee serve them in French.

During the interaction, the team was unable to locate any information regarding the additional details requested the previous day by the assistant manager. The team member therefore invited the customer to return to the store at 1:00 p.m. to speak with the assistant manager, as she would have all necessary information.

According to the institution's version of events, the employee who had already begun to process the complainant's request was simply not on site at the time, and the complainant would not accept service in French from the other employees who were present and who were trying to obtain the information required to complete the complainant's purchase.

There are two contradictory versions of the events. Unable to doubt either the complainant or the institution, the OCOL can therefore not conclude that the complaint is founded.

Institutional, Not Individual, Bilingualism

It is important to note that individual employees are under no personal obligation to offer service in French. Their obligation is to indicate that service is offered in both official languages (active offer) and based on the response from the member of the public, to follow a contingency plan if the employee does not have sufficient proficiency in the official language chosen by the customer by going to get a coworker who is able to provide service in that language without undue delay.

While it is impossible to determine whether the events took place as described by either party involved or whether the complainant's expectations were as the institution interpreted them, the OCOL takes this opportunity to make clear that it is not necessary for all employees to be bilingual *provided that* unilingual employees can always follow a contingency plan by calling upon a coworker to provide service in the other official language without undue delay. If the institution followed a team approach, as its responses to the complaint appear to indicate, then it respected its linguistic obligations under the OLA.

Additional Factors Related to OLA Compliance Reviewed by the OCOL

Institution's Bilingual Staff

Based on the institution's initial response, it ensures that it has an appropriate number of employees capable of providing service in both official languages:

[Translation] To ensure we are appropriately staffed to meet our customers' linguistic needs, whenever a position opens up at a store, this is always considered before the position is advertised.

Official Language Training

With respect to employee training, the institution confirms that all employees are trained on the institution's official languages obligations [translation] "at the time of hiring." This consists of "regular interactive training from one of [the institution's] retail sales trainers."

This training addresses the importance of making the active offer of service in both official languages and the importance of continuity of service in the customer's language of choice as well as the importance of following the contingency plan if a unilingual employee is unable to provide service in the official language of choice of a member of the public. In such a case, the employee [translation] "must ask a coworker who is able to provide service in the language in question to serve the customer." The response indicates further that "team members are trained to do this as promptly as possible to maintain the same quality of service for all customers."

Additionally, all employees are required to review the institution's policies "on a regular basis."

OLA Compliance Checks

One of the OCOL's questions to the institution concerned the regular use of mystery shoppers to verify compliance with linguistic obligations at the store subject to the complaint. The answer indicates that this is done, as it is at all outlets.

The OCOL also asked whether the results of these checks are incorporated into employees' "annual performance reviews." The institution replied that [translation] "compliance with policies governing the active offer and language of service is an integral part of these evaluations." It also confirmed that the results "are shared with our team members during [...] performance evaluations." At that time, the institution takes the opportunity to review with employees their obligation "to make the active offer and provide services of equal quality in the two official languages."

Store Subject to Complaint

In its initial response, the institution indicated that, excluding the manager, the current linguistic profile of store employees includes eight employees, of which 37.5% are unilingual. Including employees who speak either official language, the OCOL calculates that 75% of the employees are able to provide service in French and 87.5% in English. In its second response, the institution provides new data including the manager based on which it is calculated that of the nine employees at the store, only 22.2% are unilingual.

According to the institution, the sales team must always have at least three employees on duty, and "given the composition of the staff, this store is always able to serve customers in the official language of their choice."

With regard to work shifts, the institution responded as follows:

[Translation] *[T]he store manager is responsible for scheduling to ensure that the team is able to provide service in a customer's language of choice at all times.*

Since the complainant indicates that a member of the sales team asked them to return at 1:00 p.m. to be served in French, without specifying whether this employee spoke to them in French, the OCOL followed up with the institution to request an explanation regarding the situation described by the complainant in relation to the above-mentioned response. The institution indicated in its follow-up response that [translation] "at the time of the complainant's visit, several bilingual team members were on duty," adding:

[Translation] *In this case, the team member invited the customer to return to the store at 1:00 p.m. for the sole purpose of speaking with the person (assistant manager) who had asked him for the additional information. From a linguistic point of view, the team members on duty that day were able to serve the customer in his language of choice and offered to do so.*

The institution's replies confirm it understands its obligation to provide service of equal quality, and therefore service that is without undue delay, in both official languages.

In response to the question as to which measures are currently in place at this store to provide members of the public with customer service in both official languages, the institution states as follows:

[Translation] *The management team at our Grand Falls store ensures that we are able to offer service in customers' language of choice by scheduling staff so as to be able to serve members of the public in their language of choice at all times.*

This answer demonstrates to the OCOL that the institution is fully aware of its linguistic obligations and takes specific measures to respect them.

Conclusion

For the reasons set out in this report, based on its investigation, the Office of the Commissioner of Official Languages (OCOL) was unable to establish that the New Brunswick Liquor Corporation (the institution) failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA); consequently, the OCOL determines that the complaint is **unfounded**.

An examination of the replies provided by the institution confirms that it has many measures in place to respect its linguistic obligations pursuant to the OLA and it appears that service in both official languages was available at the time of the incident that is the subject of the complaint.

The OCOL also takes note of the institution's efforts to provide service in both official languages and thanks it for its willingness to receive recommendations for improvement, as noted in its second letter of reply:

[Translation] At ANBL, we take the responsibility of providing excellent service in both official languages very seriously and take great pride in this. We welcome feedback and are keen to address any opportunities for improvement brought to our attention.

Pursuant to subsection 43(16) of the OLA, we submit this report to the President and Chief Executive Officer of the New Brunswick Liquor Corporation, to the complainant and to the Premier. This report is also provided to the Clerk of the Executive Council and to the Secretariat of Official Languages.

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

Shirley C. MacLean, K.C.
Commissioner of Official Languages for New Brunswick
Signed at the City of Fredericton,
Province of New Brunswick, this
21st day of March 2024

APPENDIX 1

Initial questions asked by the OCOL (on April 26, 2022) and initial answers provided by the institution (on August 30, 2022)

The initial questions asked by the OCOL and answers provided by the institution are translated here in their entirety.

Question 1: What is the current linguistic profile of employees at the store at 240A Madawaska Road in Grand Falls?

ANSWER: The current linguistic profile of the team members working at our Grand Falls store (excluding the store manager) is as follows: five are bilingual, one is unilingual French and two are unilingual English.

Question 2: What measures are currently in place at this store to provide members of the public with customer service in both official languages?

ANSWER: The management team at our Grand Falls store ensures that we are able to offer service in customers' language of choice by scheduling staff so as to be able to serve members of the public in their language of choice at all times.

Question 3: Do all employees receive training at the time of hiring with respect to NB Liquor's official languages obligations?

ANSWER: All team members are trained on ANBL's official languages obligations at the time of hiring. All team members are also required to review ANBL's policy on a regular basis.

Question 4: Does this training address the importance of making the active offer of service in both official languages and the importance of continuity of service in customers' chosen language, regardless of whether they speak the other language, as well as the contingency plan to be followed if a unilingual employee is unable to provide service in the official language of choice of a member of the public? Please provide details of this store's contingency plan.

ANSWER: As part of ANBL's SERVICE Excellence coaching program, all team members receive regular interactive training from one of ANBL's retail sales trainers that covers our obligations under the Act. In accordance with the training provided, when team members note a customer's language of choice, if they are unable to provide service in that language, they are to ask a coworker who is able to provide service in the language in question to serve the customer. Team members are trained to do this as promptly as possible to maintain the same quality of service for all customers.

Question 5: When scheduling teams for shifts, how does the institution ensure that teams contain a sufficient number of bilingual employees to meet your institution's linguistic obligations at all times?

ANSWER: To ensure we are appropriately staffed to meet our customers' linguistic needs, whenever a position opens up at a store, this factor is always considered before the position is advertised. Additionally, the store manager is responsible for scheduling to ensure that the team is able to provide service in a customer's language of choice at all times.

Question 6: Does this store use mystery shoppers regularly to verify compliance with official languages obligations? If so, how do you explain this shortcoming? If not, how do you explain this decision?

ANSWER: Mystery shops are conducted regularly at our Grand Falls store and all other ANBL stores.

Question 7: Are the results of these regular checks incorporated into employees' annual performance reviews?

ANSWER: Mystery shop results are incorporated into several areas of our quarterly and annual reviews, specifically compliance with the active offer and language of service.

APPENDIX 2

Follow-up questions asked by the OCOL (on November 29, 2022) and additional answers provided by the institution (on December 15, 2022)

The follow-up questions asked by the OCOL and answers provided by the institution are translated here in their entirety.

Question 8: How do you explain the situation described in terms of your answer that “the store manager is responsible for scheduling to ensure that the team is able to provide service in a customer’s language of choice at all times”?

ANSWER: As stated above, at the time of the complainant’s visit, several bilingual team members were on duty. Including the manager, the team at this ANBL outlet has a total of seven bilingual and two unilingual members. In addition, at least three team members must be on duty at all times. Accordingly, given the composition of the staff, this store is always able to serve customers in the official language of their choice.

In this case, the team member invited the customer to return to the store at 1:00 p.m. for the sole purpose of speaking with the person (assistant manager) who had asked them for the additional information. From a linguistic point of view, the team members on duty that day were able to serve the customer in their language of choice and offered to do so.

Question 9: To expand on question #7, do you take time during employees’ annual evaluations to inform them of mystery shop results and review their obligation to make the active offer at all times and to respect customers’ choice of language?

ANSWER: Mystery shop results are incorporated into several aspects of our quarterly and annual evaluations. In particular, compliance with policies governing the active offer and language of service is an integral part of these evaluations. To clarify, please note that mystery shop results are shared with our team members during quarterly and annual performance evaluations. At that time, we also take the opportunity to review their obligation to make the active offer and provide services of equal quality in the two official languages.