



# Investigation Report

**FILE NUMBERS:** 22-23-138, 22-23-145, 22-23-172, 22-23-174, 22-23-182, 22-23-189 and 22-23-226

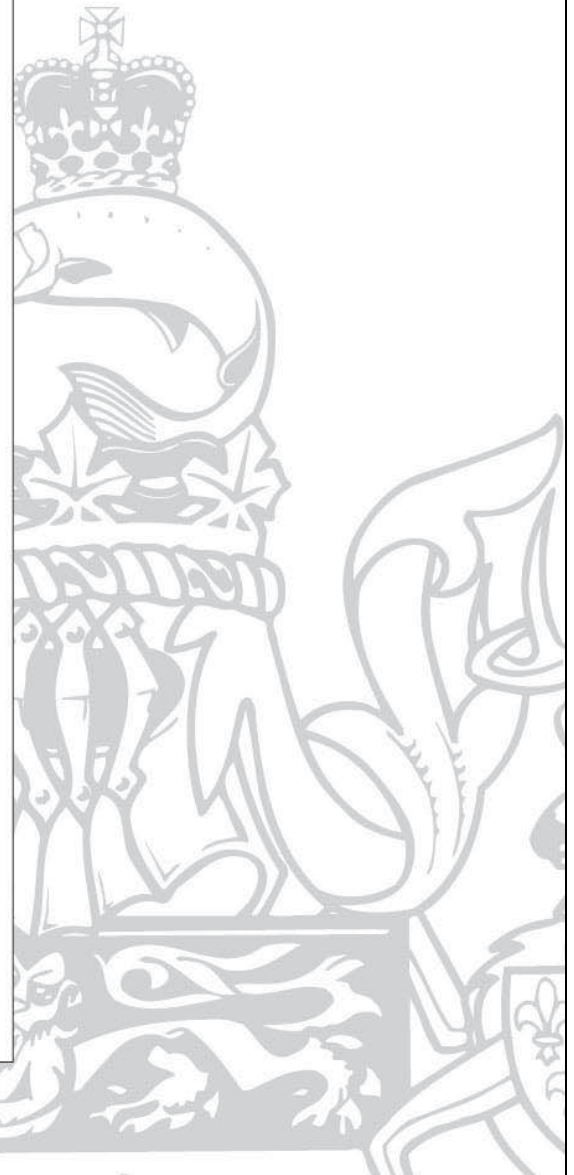
**INSTITUTION IN QUESTION** Department of Health

**SUBJECT** Allegation of Deficiencies in the  
Provision of Services in French

**TABLE OF CONTENTS** Summary: 1  
Complaints: 3  
Investigation: 7  
Observations and Analysis: 20  
Conclusion and Recommendations: 28

**REPORT DISTRIBUTED TO THE  
FOLLOWING PERSONS** Deputy Minister of Health  
Complainants  
Premier  
Clerk of the Executive Council  
Executive Director of the Official  
Languages Secretariat

**ISSUE DATE** March 2024



# Summary

This report was prepared following an investigation into complaints against the Department of Health (the institution) in which the complainants allege deficiencies in the provision of services in French. Specifically, the complainants allege that they experienced difficulties due to their official language when they requested virtual health care through the eVisitNB platform, namely the website<sup>1</sup> and the Maple application provided through a third party on the institution's behalf. The situations of fact reported by the complainants were not denied by the institution.

Upon conclusion of this investigation, the Office of the Commissioner of Official Languages has established, for the reasons set out in this report, that the complaints are **founded** and that the institution failed in its duty under the *Official Languages Act* of New Brunswick (OLA) to ensure that its obligations under that Act were being met by its third party.

Having established that the complaints are founded, the Commissioner makes the following recommendations:

1. **THAT** the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., take steps to rectify its website and application to ensure that all users who register to obtain online services are not prejudiced in any way by their choice of language;
2. **THAT** the institution take immediate steps to ensure that all users of the system offered on its behalf by eVisitNB Inc. be able to obtain services and continue to obtain services in the official language of their choice no matter where they are in the process, without delay being caused by choosing to be served in either official language;
3. **THAT** the institution take immediate steps to ensure that users of the system receive these services in the official language of their choice and that the choice of official language will not cause any delay in the provision of services by the third-party provider eVisitNB Inc.;
4. **THAT** the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., has adequate staffing in order to meet the institution's obligations under the OLA;

---

<sup>1</sup> fr.evisitnb.ca and www.evisitnb.ca.

5. **THAT** the institution take immediate steps to modify its online registration procedures to ensure that its third-party provider, eVisitNB Inc., provide an active offer of services to members of the public such that all users of its website have access to the same information and have the same ability to register in and use the system in both official languages;
6. **THAT** the institution report back to the OCOL within 30 days of receipt of this report as to the status of the implementation of Recommendations 1 to 5.

# Complaints

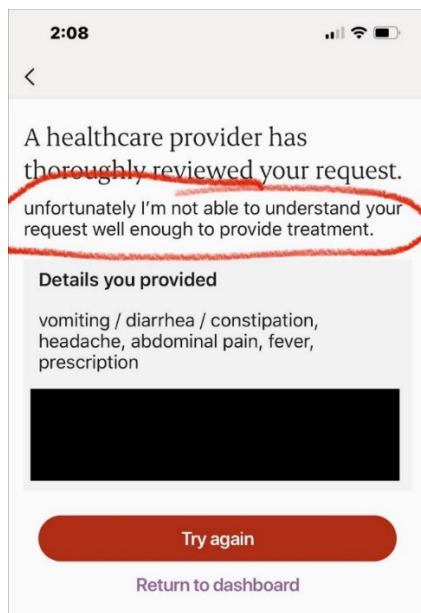
This investigation follows numerous complaints to the Office of the Commissioner of Official Languages (OCOL) regarding difficulties encountered in obtaining health care services in French via the eVisitNB system, a virtual consultation platform offered by the Department of Health (the institution) to the people of New Brunswick.

## Complaint 1 / File 22-23-138

On October 29, 2022, at approximately 11:00 a.m., the complainant visited the eVisitNB.ca website and submitted a request for medical services, as the complainant did not want to go to the emergency room. Someone responded to the message to state that they did not clearly understand the complainant's request. It was suggested that the complainant ideally resubmit the message in English. The complainant states that a second request was submitted and the response was the same. The complainant adds that users should not be receiving responses like this and should not have to submit requests in a language other than their own in order to receive service.

## Complaint 2 / File 22-23-145

On November 8, 2022, at approximately 2:00 p.m., the complainant visited the eVisitNB.ca website and filled out all information in French concerning a health issue. A message was received in English in response: "Unfortunately I'm not able to understand your request well enough to provide treatment." The complainant also indicates that the quality of French on the eVisitNB.ca website is not equal. The complainant provided two screenshots in support of this complaint:

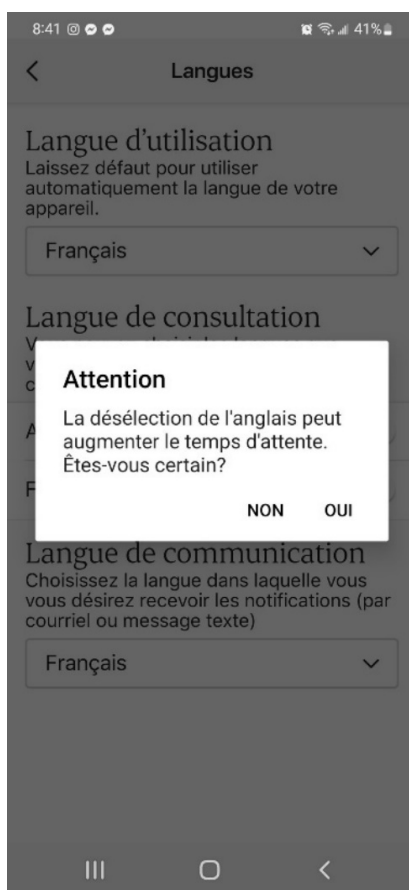


### Complaint 3 / File 22-23-172

On December 1, 2022, at around 3:00 p.m., the complainant reports having visited the new online virtual health system. The person needed to see a doctor and was unable to get through to the local clinics. After submitting a request in French, the complainant received the response, “Unfortunately I am not able to understand your request well enough to provide treatment.” The complainant asks, [translation] “is this what having bilingual services means?”

### Complaint 4 / File 22-23-174

During the evening of September 15, 2022, the complainant visited the fr.eVisitNB.ca website and was asked to download the Maple application which, after installation, functioned in English even though the complainant had used the website in French. The complainant then proceeded to create a personal profile. When the complainant selected French as the preferred language, the following message was displayed: [translation] “Important: deselecting English may increase your wait time. Are you sure?”



The complainant asserts as follows:

[Translation] *It is totally unacceptable for a Francophone to receive second-class health care because they choose to be served in their language of choice. Simply*

*asking this question discourages people from consulting in French. They make it clear that Francophones may have to wait longer for service in French.*

The complainant states that, although the message has since been removed from the site, they fear that the French-speaking minority may receive worse service and have to wait longer than the English-speaking population or even not receive service at all.

According to the complainant, the terms of use and confidentiality policies were also in English only. In the complainant's opinion, if people do not understand the conditions and policies because they are in English only, then they cannot really make a decision as to whether their confidentiality rights will be respected.

With regard to the message that had been displayed, the OCOL had previously reported this same incident to the institution on November 30, 2022 (complaint from Commissioner/closed file 22-23-114). In its reply dated January 3, 2023, concerning the previous file, the institution simply states, [translation] "We confirm that the message on the Maple platform has been corrected. Francophone clients are not at any disadvantage with regard to wait time to receive eVisitNB services."

#### **Complaint 5 / File 22-23-182**

On December 16, 2022, at approximately 9:00 p.m., the complainant submitted a request on the eVisitNB site to renew some prescriptions. After requesting to be served in French, the complainant was informed in English, "Unfortunately I'm not able to understand your request well enough to provide treatment." According to the complainant, the request was to renew some prescriptions and included a list of the medications. The file was closed, and the complainant had to submit a new request.

#### **Complaint 6 / File 22-23-189**

On December 3, 2022, at 4:20 p.m., the complainant visited the fr.eVisitNB.ca site seeking a consultation to treat a medical condition. After waiting for more than three hours, the complainant was informed in English that there was insufficient information to offer advice. The complainant reports having clearly listed the symptoms and provided information and getting the following response in English: "Unfortunately I'm not able to understand your request well enough to provide treatment." The complainant did not reply for fear of having to wait another three hours for a response and was too ill to continue with this system. The complainant expresses being very disappointed with this service.

#### **Complaint 7 / File 22-23-226**

The complainant submitted a request in French to the eVisitNB service via the Maple application. A health care professional replied in English that she did not understand the complainant's request and ended the consultation. The complainant reports having retained a screenshot of the message:

Consultation details

Patient: [REDACTED]

Details: [REDACTED]

[REDACTED]

[REDACTED] [Prescription](#)

A healthcare provider has thoroughly reviewed your request.

unfortunately I'm not able to understand your request well enough to provide treatment.

[Try again](#)

# Investigation

## Earlier Complaints

The Office of the Commissioner of Official Languages (OCOL) received the following six complaints:

- Complaint 1 (file 22-23-138) filed on November 1, 2022;
- Complaint 2 (file 22-23-145) filed on November 8, 2022;
- Complaint 3 (file 22-23-172) filed on December 10, 2022;
- Complaint 4 (file 22-23-174) filed on December 12, 2022;
- Complaint 5 (file 22-23-182) filed on December 16, 2022;
- Complaint 6 (file 22-23-189) filed on December 21, 2022.

## Investigation under Subsection 43(13) of the OLA

After these complaints were filed, the OCOL decided to proceed with an investigation under subsection 43(13) of the *Official Languages Act of New Brunswick* (OLA).

### List of Correspondence

The following correspondence was exchanged between the OCOL and the Department of Health (the institution):

- |   |                    |
|---|--------------------|
| 1. Notice of investigation to institution:                    | February 2, 2023   |
| 2. Additional complaint (file 22-23-226) sent to institution: | March 1, 2023      |
| 3. Confirmation from institution:                             | March 9, 2023      |
| 4. Response from institution:                                 | March 14, 2023     |
| 5. Follow-up letter from OCOL:                                | May 18, 2023       |
| 6. Second response from institution:                          | June 28, 2023      |
| 7. Second follow-up letter from OCOL re file 22-23-145:       | September 21, 2023 |
| 8. Response from institution:                                 | October 16, 2023   |

### Notice of Investigation to Institution

A notice of investigation dated February 2, 2023, was forwarded to the institution. In this notice of investigation sent to the deputy minister, the institution was asked to inform the OCOL of its assessment of the facts concerning the allegations made by the complainants, provide any additional information that may be useful in this matter and answer a series of questions.

## Additional Complaint

The OCOL subsequently received a new complaint concerning eVisitNB. Since the OCOL had recently sent the notice of investigation to the institution and was still awaiting its response, the OCOL decided to add this new complaint to the investigation:



- Complaint 7 (file 22-23-226) filed on February 7, 2023.

The details of the complaint were forwarded to the institution on March 1, 2023, with a request to incorporate it into the investigation already underway. A message from the institution, dated March 9, 2023, confirmed that the institution had agreed to the OCOL's request to amend its response, which was currently being prepared, to include the new complaint in its responses.

### **Issues**

The complaints relate to virtual health care offered through the eVisitNB system (the system), namely the eVisitNB.ca online platform and the Maple application provided by the private company eVisitNB Inc. Although the service is offered by a private company, the institution relies on this company to provide the service on its behalf. In addition to being required to provide their services and communications to the public in compliance with the OLA, institutions that use the services of a third party are also responsible for ensuring that the third party complies with the institutions' linguistic obligations under that Act.

The OCOL consequently contacted the institution for the responses to its investigative questions. The institution then contacted eVisitNB Inc. (the third party) to obtain the information required to submit its responses.

The complaints raise numerous allegations, many of which are similar in nature:

1. A patient registered to access services on the website eVisitNB.ca in French and went on to describe their symptoms and what they required in terms of services (ex. prescription renewal). They received a response in English, which in essence told them that their requests were unable to be understood: "Unfortunately I'm not able to understand your request well enough to provide treatment." The patient was advised it would be preferable if they re-wrote the request in English.
2. Other patients who registered to obtain services in French received the same message referred to in #1 above after waiting online. In one case, the patient had waited three hours and ultimately never received services as they felt too ill to restart the process.
3. When a patient received the same message referred to above, they lost their place in the cue in terms of receiving service.
4. A patient registered on the Maple application and set up their profile in French. When they indicated that their choice of language was French, they received an automated message which stated that failure to select English could increase the wait times. In addition, the confidentiality policy and terms of use policies were in English only.
5. Two complainants specifically indicated that the provider unilaterally ended the session when they were unable to respond to the complainants in French, which appears to have also been the case for others.
6. Concerns were raised about the quality of the French website and some sections that were in English only.

The OCOL posed a number of questions to the institution in order to obtain a clear understanding of how the service operates from the point of registration to treatment, including waiting for service, and how the site works when a patient chooses French as their official language of choice.

### **Summary of Questions Posed by the OCOL and Answers from the Institution**

The following is a summary of some of the questions posed by the OCOL and portions of some responses provided by the institution and its third-party provider.

In its initial response to the investigation dated March 14, 2023, the institution included some background information that was provided by its third-party provider regarding the service:

*[Translation] During our relationship with the province we are proud to say we have helped over 150,000 NBers in both official languages and have maintained an average user satisfaction rate of 4.7/5. That being said, quality of care over quantity of care is a foundational tenet of eVisitNB and this includes compliance with the Official Languages Act, as outlined in our GNB agreement. We look forward to a positive resolution to the complaints brought forward and are grateful for the opportunity to improve our services and correct any omissions.*

The OCOL sent several follow-up questions to the institution on 18 May 2023 and received a second letter of response dated June 28, 2023.

#### Question 1 – Registration Procedures and Wait Times

This question asked about procedure that is followed by the system from the point when a patient registers in the system to when they receive treatment from a healthcare professional. This includes how triage is conducted, whether the choice of official language is an important part of triage, and whether there are longer wait times for patients depending on their choice of language.

#### **RESPONSE:**

In order to respect its obligations under the OLA, the system offers to patients the choice of their official language when they first register on the website and on the application. The providers of the service requested that their suppliers explain to patients how to make that choice if this has not already been done. In terms of triage, the system collects information from patients to create a general idea of the health problem to be treated. Patients are then placed into the queue to wait for a provider based on their registration time.

*[Translation] All patients with a valid New Brunswick Medicare card can use the eVisitNB service. First-time users complete a registration indicating their language of choice for service.*

The institution also stipulates that the choice of official language is an important part of the triage process:

[Translation] *If a patient's language preference has been overlooked, eVisitNB has a process with our providers to help redirect patients to ensure provision of service in their language of choice.*

The institution advised that language preference has no impact on the wait time and that wait times vary from 9 to 40 minutes on average for all patients, no matter what language is chosen.

#### **FOLLOW-UP QUESTIONS FROM THE OCOL**

In response to question 15, to follow up on the answers summarised above, the OCOL requested some clarification as to whether patients may continue to navigate on the website without first selecting an official language. The response provided appeared to indicate that the system has a process for providers to redirect patients to choose a language if they have not already done so to ensure they are served in the language chosen.

[Translation] **15. Please indicate how you made this request and the outcome.**

RESPONSE: *The provider sends the patient a text explaining the process. We do not have details of this process's results since the system cannot track a patient offline.*

The institution was asked to describe the process that a patient must follow if they wish to receive professional health services when they register and after being redirected.

The additional questions posed by the OCOL also asked whether the setup of the system in the past presumed the use of English or French.

[Translation] **10a. Please specify why it is necessary for a patient to be redirected to the language selection step if they are required to select their official language of choice upon first use.**

RESPONSE: *This is because some patients ignore the first request to set their preferred language and continue to use the site without changing their settings.*

**10b-i. In the past, did the system architecture assume the use of English?**

RESPONSE: *The system is designed to detect a patient's language settings on their device and offer the system in that language. Technological incompatibilities usually cause a failure of this process, usually due to outdated technology or improper settings on the patient's device.*

**10b-ii. Have there been occasions when the system has assumed the use of French?**

RESPONSE: *If the patient has their settings set to French or selects French upon entry via the "book now" selection, it is assumed they are requesting service in French.*

**10c. Please describe the process by which a patient specifies the official language of choice in which they would like to have a consultation with a health care professional:**

**10c-i. upon registration/first use.**

RESPONSE: *The patient clicks on the link and is taken to the setting page, where they can change their preferred language to French.*

**10c-ii. after being redirected there.**

RESPONSE: *The patient clicks a toggle button to change their preferred language from English to French.*

**10d. Are patients able to use the official language of their choice when asked to make or reconfirm this selection?**

RESPONSE: *The eVisitNB website provides this direction in French on both the French and English versions. As discussed in 10 b), the Maple app is also viewable in French if the patient's device settings are correctly set to French.*

The OCOL requested further information regarding patient wait times:

[Translation] **11a. What is the average wait time for patients who choose French as their official language of choice?**

RESPONSE: *Our platform provider does not break down the consult statistics by language, so we cannot provide the requested information. The average wait times depend on the number of patients requesting consults and the number of providers online. Currently, the wait time average is approximately 30 minutes for all clients.*

**11b. What is the average wait time for patients who choose English as their official language of choice?**

RESPONSE: *Same answer as question a above.*

**11c. From what moment to what moment is this wait time calculated?**

RESPONSE: *Same answer as question a above.*

**9. Did the official language in which the complainants browsed the website or application on their first visit or use dictate which queue they were placed in, or were they specifically asked in which official language they wished to consult a health care professional?**

RESPONSE: *When a patient first enters the eVisitNB.ca site and clicks the Book Now button (the only way to access care), the first information they are provided is the opportunity to change their preferred language to French. If they do not make this*

*change, they could be paired with a provider who may only speak English, as the system uses the language preference as the input to determine which language the provider needs to speak to a patient. Patients can always go to their settings to change their language preferences. We have also emailed all registered patients reminding them to change their language settings if they want to be served in French. All patients are placed in the same waiting room, with pairing occurring on a first-come, first-served basis and with patients who request French as their service language only paired with French or bilingual providers.*

#### Question 2 – Quality of Service

The OCOL wondered what steps were being taken to maintain equal quality of the two official languages throughout the system.

The institution confirmed that

*[Translation] all web and application content has been reviewed for appropriateness and quality. Additionally, more than 25% of eVisitNB providers are bilingual.*

#### Question 3 – Continuity of Service

The OCOL asked about the steps taken to maintain continuity of service in patients' official language of choice.

*[Translation] RESPONSE: Patients are able to register and submit in the language of their choice and match with an English or French language provider based on their selection.*

#### Question 4 – French Version of Website

The OCOL asked why the French website leads to a hyperlink to download the application in English.

*[Translation] RESPONSE: The website links to Maple's registration page, our technology provider, which is in English but can be toggled to French. Now that we are aware of the issue, we will work with Maple to deploy a fix.*

#### Question 5 – Service in Official Language of Choice

The initial investigation question and sub-questions centered around what occurs when a health professional cannot respond to a patient in the patient's official language of choice:

[Translation] RESPONSE: *When a healthcare provider cannot respond to a patient's request in their official language of choice, then the patient remains in the cue until they can be provided care in their language of choice.*

*If the patient has not indicated French as their language preference, then the eVisitNB providers have been provided scripts with direction to assist the patient to amend their registration information. When this is completed, the patient can re-register for a consultation.*

**5a. Is it possible to transfer a patient to a colleague who will be able to reply in the patient's official language of choice?**

RESPONSE: *No, it is not possible to transfer a patient and their file to a colleague.*

**5b. Does the patient have to go back and submit a new request to receive service in their language of choice?**

RESPONSE: *The options for proceeding when there has been a mismatch based on language choices are (as outlined above).*

- *wait in the cue for an appropriate language match;*
- *proceed in an alternate language choice if the patient wishes; or*
- *amend registration language choice and re-register for care.*

#### *FOLLOW-UP QUESTIONS FROM THE OCOL*

To follow up this response, the OCOL asked question 12, which included several sub-questions. They are as follows, along with the institution's responses:

[Translation] **12a. How are these choices communicated to the patient?**

RESPONSE: *This is accomplished by the provider texting the patient a pre-written script in French with these options.*

**12b. The reported allegations describe several scenarios in which the complainants received a message in English and their session was terminated. Please explain the circumstances in which a patient is or is not offered the options described above.**

RESPONSE: *eVisitNB has a process to handle these situations as part of company policy. The provider is to send the client a message in the language they are attempting to access services in (even though their phone settings and/or language selection on the app does not align with the pathway chosen). The policy and process have been reviewed with all providers and disciplinary action could result from non-compliance up to and including termination.*

**12c. According to response 5a, it is not possible to transfer a patient and their file to a colleague. Do we understand that it is possible to send a patient back to the queue?**

RESPONSE: *Currently, the system does not allow a patient to be manually placed back into the system by a provider. The patient must re-register and, as a result, enters the queue behind those currently in the queue since it is a new registration. We anticipate a new process where a patient can be placed back in the queue at the front of the line by the fall of 2023.*

**12d. If a patient returns to the queue, do they retain their position at the front, or are they moved to the back behind patients who have not been waiting as long?**

RESPONSE: *Same answer as question c above.*

#### Question 6 – Inability to Respond to Requests for Service

The institution was asked how it could occur that a situation would arise where a patient who wishes to receive services in French is advised that the health professional cannot understand their request.

[Translation] RESPONSE: *Unfortunately, situations have occurred when a patient who has chosen service in French has received a message in English indicating that the health care professional does not understand the patient's request. eVisitNB takes these situations very seriously and responds to each and every one with a communication to the provider to reinforce eVisitNB's procedure in this instance, provide counseling and coaching on how to correct the error, and if provider-specific non-compliance is trending, to remediate individually.*

*When new providers are onboarded to the platform, this policy and script is included with their information and it is also reviewed during our quarterly provider meetings. eVisitNB has a robust quality assurance program and takes our obligation of compliance with the Official Languages Act very seriously.*

#### Questions 7 and 8 – Details Regarding the Service provider for eVisitNB

The OCOL asked whether there is a service contract with the third-party provider and whether the contract contains provisions relating to the OLA. The OCOL also asked how the institution ensures that the requirements of sections 27 to 29 of the OLA are respected.

The institution confirmed there is a service contract between the Province of New Brunswick and the service provider, which includes the obligation of the third-party provider to respect the provisions of the OLA. The institution included in its response the specific contract clauses relating to official languages that the OCOL used for the purposes of the investigation only. For confidentiality reasons, the contract clauses have been removed from the institution's response in this report.

When the OCOL asked about work shifts within the system, the institution replied that it did not have this information:

[Translation] RESPONSE: *We do not have access to the linguistic profile or other information related to the health care professionals working for eVisitNB Inc.*

And:

[Translation] *There is no specific policy governing work shift coverage with regard to offering services in both official languages. When entering into contracts with providers, we ask them to ensure compliance with the Official Languages Act.*

In its question 14, the OCOL revisited its original question 8 by requesting a more detailed explanation regarding the linguistic profile of the health care professionals of the system:

[Translation] **8a. Are you able to track the linguistic profiles of the health care professionals of the eVisitNB application? If so, please provide these linguistic profiles to us.**

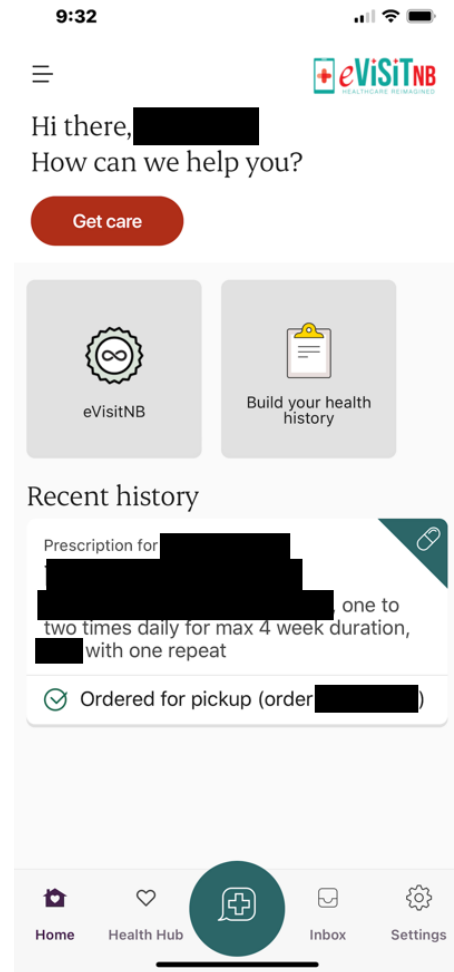
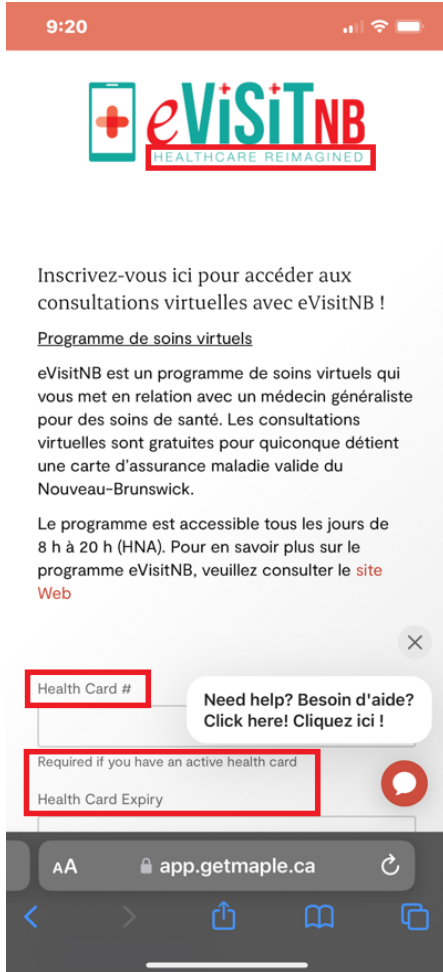
SECOND RESPONSE:

*Based on the model used by eVisitNB Inc., nurse practitioners work when they have time. There are no set schedules. The service is continually recruiting staff to ensure that there are enough nurse practitioners available to cover the volume of consultation requests. eVisitNB Inc. recruits staff to maintain a sufficient percentage of bilingual providers on the platform to meet demand for consultations in French. There are currently 26 bilingual nurse practitioners on eVisitNB, and on average, 49% of the individuals in this pool are online on any given day, meaning that 13 bilingual nurse practitioners are available online on average. As this does not guarantee coverage in French on every work shift, the Department of Health works with the provider to ensure compliance with the Official Languages Act.*

### **New information**

On August 25, 2023, the complainant in file 22-23-145 emailed the OCOL two additional screenshots:





### Additional Correspondence from OCOL to the Institution

On September 21, 2023, the OCOL contacted the institution a final time to advise it of the new information shared by the complainant and give it the opportunity to respond if it wished to do so:

[Translation] I am contacting you today to advise that my office has received new information and screenshots concerning file 22-23-145 which indicate that the situation in question continues to occur. The new information reads as follows:

In late August 2023, the complainant made another attempt to renew a prescription and was unable to complete the process in French. The pharmacist agreed to refill the prescription but informed the complainant that a new prescription would be needed the next time. The complainant states: "Why do I have to go through all these complications due to a lack of health services in French?"

### Additional Response from the Institution

On October 16, 2023, the institution provided its third response, in which it informed the OCOL of the specific measures that had been taken:

[Translation] *The Department of Health has been working with the provider to address language issues on their website and application, including the translation of:*

- *key documents and forms;*
- *simplified directions on selecting language of choice, and*
- *prominent messages on accessing the application in the language of choice.*

*Departmental staff are also involved in verifying the website and application to ensure no other issues are identified related to language.*

*We have reached out to our eVisitNB provider and as you pointed out, several pages were not translated correctly, leading to individuals encountering English while on the platform's French version. Below is the information provided by the provider in relation to these issues:*

*We take our responsibility to provide equal service to French and English-speaking patients on the eVisitNB platform very seriously. We are always appreciative when we are made aware of situations that could result in some patients experiencing difficulties using the platform.*

*Upon investigation of the issue, it was found that a number of the French patient registration pages used a combination of French and English on both the web and mobile app versions.*

*We have contacted our platform provider and taken the following steps to remediate the situation.*

*On the new patient registration pages, the text fields on these pages have been updated and now have both French and English labels. Menu items that the patient must choose or click are now in French on the French version of the platform. Regarding the registration pages for all patients (new and returning), there remain four areas that require correcting:*

1. *the Get Care button on the dashboard (French mobile);*
2. *the message that eVisitNB is currently closed (French mobile and French web);*

3. *the coverage description for the service (French mobile), and*
4. *the symptom list (French mobile).*

*These will be corrected during the week of October 16th.*

*While these changes address the issues raised in your email, we are taking the following steps to augment these actions to minimize further language-related issues patients could encounter using the platform.*

*Regarding the platform, we have reviewed the system to ensure no other instances of English text appearing on the French version exist. We did find the instances mentioned above, and corrections will be made by the week of October 16th. We will continue these regular checks by navigating through the platform and looking for any changes caused by updates. A bilingual staff member will be part of these reviews to check any translations.*

*Also, we have found a solution to allow patients in the French version of eVisitNB.ca to continue onto the French version of the consultation platform instead of the current flow where if their browser settings are not in French, they will be directed to the English version and must change the version manually. This change has been implemented.*

*From an administrative perspective, we have sent an email in both languages to all patients who have used eVisitNB to remind them of the need for correct consultation language settings and explain how to set their preferences on both the web app and mobile app. We have also reminded our providers to clearly explain to patients paired with a provider who does not speak the patient's language of choice (due to improper language settings) the process they must perform to correct their settings and re-enter the queue.*

*We have also increased the font size and are using bold on the following message found at the top of the page all new patients must navigate through to get to the platform: “Si vous avez besoin d’un service en français, assurez-vous de sélectionner la langue de votre choix dans le menu des paramètres (paramètres « langues » régler tout sur français) de votre compte avant de soumettre votre demande de consultation.” [Translation] “If you require service in French, please select the language of your choice in the account*

*settings menu (Settings | Language, then choose French for all) before submitting a consultation request.”*

*We are confident that these changes and processes will eliminate any platform-related issues and reduce the number of complaints that result from users who did not select their preferred consultation language correctly. As always, we appreciate and encourage your feedback and suggestions.*

*The Department of Health will continue to work closely with the provider to ensure a full review of the language in all parts of their system and that the corrections needed are completed as soon as possible.*

# Observations and 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.

### **Posting of signs and publications intended for the public**

**29** Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

### **Services provided by third parties**

**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.

## **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.

### **Affichage et publication à l'intention du public**

**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.

### **Prestation de services pour le compte de la province**

**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.

## **Founded Complaints**

The present investigation of these seven complaints from members of the public follows a complaint initiated by the Commissioner (closed file 22-23-114). This related to a situation in which a francophone patient had registered to receive medical care in the Maple application. When they did so, they received an automated message warning them that not selecting English could result in a longer wait time. The Commissioner contacted the Deputy Minister of Health by telephone and was advised the issue had been resolved. As noted below, the Office of the Commissioner (the OCOL) continued to receive complaints.

eVisitNB Inc. is a virtual healthcare provider that operates via Maple. Many New Brunswickers do not have family doctors or nurse practitioners. We all are aware of the considerable pressures on the healthcare system and emergency rooms in particular. The Government of New Brunswick's Department of Health (the institution) has contracted with eVisitNB Inc. (the third party) to provide online medical services to all New Brunswickers who have a Medicare card. By registering online, patients may receive assistance with their medical concerns, go through routine evaluations, and obtain referrals or prescriptions. For many New Brunswickers without family doctors or nurse practitioners, the online platform provided by the third party (the system) is the sole manner they can access medical services without attending an emergency room or a walk-in clinic.

As the Government of New Brunswick has contracted with eVisitNB Inc. to provide services to the public on behalf of the government, section 30 of the OLA stipulates that the Government of New Brunswick must ensure that eVisitNB Inc. meets the same obligations under the OLA as the Government of New Brunswick.

After conducting the current investigation, the OCOL concludes that all complaints **are founded** and that there have been serious breaches of the OLA.

The OCOL wishes to note that the situations of fact described by the complainants were not denied by the institution. While the institution's responses do not contradict the complainants' allegations, they do not confirm them either. In the absence of further details from the institution, the only version of each complaint available to the OCOL is that of the complainants reporting their personal experiences in attempting to obtain service from the eVisitNB system in the official language of their choice, which in each case was French. The OCOL does not dispute the veracity of the responses provided by the institution, nor can it doubt the good faith of the complainants.

It is trite to say that matters relating to health are of importance to all New Brunswickers. All of us have at some point been ill and when we are ill there are times when we require medical assistance from a health care provider. The inability to access adequate healthcare services in the official language of choice is more than a simple denial of legislated rights. It may lead to misunderstandings on the part of either patient or provider that may in turn lead to dire or dangerous consequences.

In the complaints under review, the patients, in good faith, registered in eVisitNB's virtual online system and were not able to continue in the official language they chose – French. In some cases, it was suggested that the patient re-register in English or they received a warning indicating that registering in French may result in a longer wait time. In another case, an individual waited three hours for service only to be told that the provider could not understand their request and they lost their place in line, as did others who received the same reply.

As noted above, the institution is aware of its official language obligations and did not deny the alleged incidents in its responses filed during the investigation.

We will review the main breaches and our recommendations to ensure these breaches do not continue or reoccur.

### **Failure to Communicate with the Public and to Provide Services to the Public in the Official Language of their Choice: Breach of Section 27 of the OLA**

Members of the public have a right to communicate with the institution and receive its services in the official language of their choice. Accordingly, the institution must provide all its direct communications or communications intended for the general public in both official languages. It is also required to ensure that members of the public are able to communicate with it in both official languages at all times.

However, each of the complaints included in this investigation contains elements concerning communication in French.

The institution's responses do not give the OCOL detailed insight into how the system functions or of the algorithm in place for health care professionals who meet with patients virtually. The information provided by the institution in relation to the complaints investigated is, nonetheless, sufficient to conclude that the system functionality does not support the provision, without exception, of all services in compliance with sections 27 to 29 of the OLA.

In the seven complaints investigated, none of the complainants were able to receive the services they requested in the official language of their choice, French. Indeed, they did not receive any service. In one instance a user was encouraged to register in English.

In other instances when complainants were told, « Unfortunately I'm not able to understand your request well enough to provide treatment », they failed to receive service in the official language of choice at that point in time. The responses filed by the institution indicate that patients who communicated in French and received such a response are provided with choices as to what they may do:

1. Wait in line until a service provider who speaks French is available;
2. Continue with that provider in the other language (English);
3. Re-configure their language settings to "French" and make the request for service again.

However, the answers from the institution indicate that it is not possible to return a patient to the waiting room.

In using those choices, the only way the user may obtain service without waiting in line again is to continue in the language of the provider, in this case English.

In choices 1 and 3, if the user wants to continue in French, they must return to the “back of the line” to start again. If the user is a unilingual francophone, he or she has only this one choice, which requires they start the process again, resulting in a longer wait time than their anglophone counterparts.

It is the position of the OCOL that this type of service option is unacceptable as it presumes an inequality of service to the public, in these cases to francophone registrants.

**Recommendation No. 1**

**The Office of the Commissioner recommends that the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., take steps to rectify its website and application to ensure that all users who register to obtain online services are not prejudiced in any way by their choice of language.**

**Recommendation No. 2**

**The Office of the Commissioner recommends that the institution take immediate steps to ensure that all users of the system offered on its behalf by eVisitNB Inc. be able to obtain services and continue to obtain services in the official language of their choice no matter where they are in the process, without delay being caused by choosing to be served in either official language.**

These recommendations require that the current manner of triaging users must cease. If a user has chosen an official language in the system and describes the services they are seeking and is told their request is not understood, this is a serious breach of the OLA that requires immediate attention by the institution. The manner in which patients are refused services and redirected on the site represents a breach of constitutionally guaranteed language rights of the users.

It must be noted that the institution in its responses highlights its efforts to work with the third party to ensure they meet their official language requirements. Their responses attest to its objective to [translation] “ensure that New [Brunswick]ers receive the service in their language of choice.” However, as the complaints demonstrate, this is not occurring.

The parameters of the system are currently set up in such a way that there is an onus or burden placed on the user who wishes to proceed in French to take additional steps or safeguards in



order to access and receive the service in that language. These additional steps do not exist for users continuing in English.

In its third response, the institution indicated as follows:

[Translation] *we have sent an email in both languages to all patients who have used eVisitNB to remind them of the need for correct consultation language settings and explain how to set their preferences on both the web app and mobile app.*

It therefore appears to the OCOL that the situation has not changed, and the onus is still on members of the public to define or modify the language settings for the service.

### **Recommendation No. 3**

**The Office of the Commissioner recommends that the institution take immediate steps to ensure that users of the system receive these services in the official language of their choice and that the choice of official language will not cause any delay in the provision of services by the third-party provider eVisitNB Inc.**

The institution has indicated to the OCOL that it does not have access to details of the system's workforce and there is no policy as to official language requirements for work teams or shifts. It is the responsibility of the institution to ensure that the third party has the capacity to provide services to the public in both official languages. The institution bears the responsibility of obtaining the necessary information from its third-party provider that demonstrates they have the capacity to meet all the institution's obligations under the OLA.

### **Recommendation No. 4**

**The Office of the Commissioner recommends that the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., has adequate staffing in order to meet the institution's obligations under the OLA.**

The complaints that are the subject of this investigation have demonstrated that francophone users of the system were denied services or that service was delayed because they were obligated to wait for another provider or re-register in English. Such delay constitutes a breach of sections 27 and 28 of the OLA and the institution's obligations to communicate and provide services to the public, without undue delay.

One official language user must not be requested to wait or to use another method to access services.

In *R. v. Beaulac*, [1999] 1 S.C.R. 768, the Supreme Court of Canada clearly indicated as follows:

*This principle of substantive equality has meaning. It provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State [...] It also means that the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation.*

The delays encountered and the solutions offered by the service provider to francophone users constitute an accommodation provided to an official language group and in this case the official linguistic minority. These provisions are far from providing services of equal quality.

The institution's responses demonstrate its commitment to upholding its obligations under the OLA by working with its third party to address the issues raised by the OCOL. The OCOL recognizes that the institution has taken the necessary steps to ensure that its third party provides all communications and services on behalf of the institution in accordance with its linguistic obligations. However, this agreement does not contain clear references to concrete data or other measures by which the institution might verify whether the service provided meets the requirements.

Once again, based on all the substantiated elements of the seven complaints analyzed above, the OCOL is unable to conclude that the institution has succeeded in its duty to diligently monitor its third party's activities to ensure that the latter is complying with the institution's linguistic obligations.

Moreover, the situation was not rectified by the institution as soon as it was brought to its attention. The Commissioner first brought potential issues in the system to its attention when she initiated an attempt at alternative resolution of her own complaint in September 2022, and she subsequently informed the institution of multiple complaints from members of the public via two investigative letters. Even after the institution had submitted its initial responses to the investigation, the situation persisted into August 2023, when the complainant in file 22-23-145 was once again unable to obtain a virtual consultation in French through the system.

**Failure to Communicate with the Public and to Provide Services to the Public in the Official Language of their Choice: Breach of Sections 27, 28 and 28.1 of the OLA**

**Recommendation No. 5**

**The Office of the Commissioner recommends that the institution take immediate steps to modify its online registration procedures to ensure that its third-party provider, eVisitNB Inc., provide an active offer of services to members of the public such that all users of its website have access to the same information and have the same ability to register in and use the system in both official languages.**

**Recommendation No. 6**

**The Office of the Commissioner recommends that the institution report back to the OCOL within 30 days of receipt of this report as to the status of the implementation of Recommendations 1 to 5.**

In addition to its duty to be able to communicate with and provide services to the public in both official languages at all times, the institution must inform the public on first contact that its services are available in both official languages. In other words, the public should not have to request service in either official language, as both languages should already have been offered. This is what is called the “active offer of service.”

The OLA makes no exceptions for special circumstances; an institution governed by the OLA must be able to uphold its linguistic obligations at all times regardless of unforeseen circumstances. Even though the service is provided online, the same obligations must be met. The burden of ensuring that the system demonstrates a reliable method for doing so falls upon the institution, not the public. It is up to the system, not members of the public, to find a way to meet the linguistic obligations imposed under the OLA.

As the parameters of the website and application are currently structured, if a user choosing French as their official language goes to the system to book a consultation, they will receive a notification in French welcoming them to the site and indicating, “Voici quelques éléments que vous devez connaître avant votre consultation” ([translation] “Here are some things you need to know before your consultation”). That information contains instructions about how to ensure they have selected their language of choice in the settings before submitting their request for a consultation. Users registering in English who wish to continue in English do not have to follow similar instructions. This registration procedure, which merely instructs the francophone public how to request service in French, does not constitute an active offer of services in the view of the OCOL, as francophone registrants do not have equal access to registration in the system. Only francophone users must complete additional steps.

This goes against the principles of active offer and continuity of service. It is not the public’s responsibility to modify certain settings while following steps that may be in the other official language. It is the responsibility of the institution and, therefore, its third party, to ask members of the public in which language they wish to receive a service and to then respect the choice indicated regardless of the language in which members of the public have configured their devices to browse the Internet or technological applications.

This breaches section 28.1 of the OLA.

Also, if a member of the public uses the Maple application to access the system, as did the complainant in file 22-23-174, that application presumes that English will be used, which again is a breach of section 28.1 of the OLA, as all members of the public who access a government service must be offered those services in the official language of their choice.

The OCOL raised a number of issues regarding the French language on the system's website, such as the translation of forms and documents, directions as to choosing a language, and important notices about using the application in the official language of choice. The institution accepted that these were founded and communicated with its third-party provider to correct the issues. However, the OCOL notes that as of October 16, 2023, there are still outstanding problems on the user registration page that have not been corrected.

The provider also advised that it had found a solution to permit patients using the French version of the website to continue in French in the French version of the consultation application, but it is unclear, as of the writing of this report, whether this solution has been implemented and the situation rectified.

If a member of the public is unable to access services on the website or in the application in their official language of choice, the obligation to provide an active offer of services is not respected by the institution. It is a fundamental obligation that remains the responsibility of the institution, and it appears there continue to be problems in respecting this obligation.

# Conclusion and Recommendations

Based on its investigation, the Office of the Commissioner of Official Languages (OCOL) is able to establish that, for the reasons stated in this report, the complaints are **founded** and that the Department of Health (the institution) failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

The OCOL would like to thank the institution for its responses and for its cooperation in allowing the OCOL to consult its internal documents with a view to completing this investigation.

The OCOL also acknowledges the institution's efforts to achieve compliance with the OLA for the benefit of all New Brunswickers and its commitment set out in its most recent response letter:

[Translation] *The Department of Health will continue to work closely with the provider to ensure a full review of the language in all parts of their system and that the corrections needed are completed as soon as possible.*

*(Emphasis added)*

The New Brunswick Court of Appeal has clearly stated the obligations of government institutions with regard to language rights. In *Charlebois v. Mowat*, 2001 NBCA 117, it held as follows:

*The principle of equality entrenched in subsection 16(2) [of the Canadian Charter of Rights and Freedoms] must be interpreted according to its true meaning, i.e., substantive equality is the applicable norm. Substantive equality means that language rights that are institutionally based require government action for their implementation and therefore create obligations for the government.*

The eVisitNB system, as it functioned for the complainants in this investigation, did not demonstrate the true and substantive equality of the two official language communities. It is the institution's responsibility to do so and, in the case at hand, to ensure that its third party complies with the linguistic obligations of the institution on whose behalf it provides services.

Having determined that the complaints are founded, the Commissioner makes the following recommendations:

1. **THAT** the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., take steps to rectify its website and application to ensure that all users who register to obtain online services are not prejudiced in any way by their choice of language;
2. **THAT** the institution take immediate steps to ensure that all users of the system offered on its behalf by eVisitNB Inc. be able to obtain

services and continue to obtain services in the official language of their choice no matter where they are in the process, without delay being caused by choosing to be served in either official language;

3. **THAT** the institution take immediate steps to ensure that users of the system receive these services in the official language of their choice and that the choice of official language will not cause any delay in the provision of services by the third-party provider eVisitNB Inc.;
4. **THAT** the institution take immediate steps to ensure that the third party that offers services on its behalf, eVisitNB Inc., has adequate staffing in order to meet the institution's obligations under the OLA;
5. **THAT** the institution take immediate steps to modify its online registration procedures to ensure that its third-party provider, eVisitNB Inc., provide an active offer of services to members of the public such that all users of its website have access to the same information and have the same ability to register in and use the system in both official languages;
6. **THAT** the institution report back to the OCOL within 30 days of receipt of this report as to the status of the implementation of Recommendations 1 to 5.

Pursuant to subsection 43(16) of the OLA, we submit this report to the Deputy Minister of Health, the complainants and the Premier. We also submit it to the Clerk of the Executive Council and to the Executive Director of the Official Languages Secretariat.

Pursuant to subsection 43(18) of the OLA, if a complainant is dissatisfied with the conclusions presented following this investigation, the complainant 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  
**20th day of March 2024**