



Investigation Report

FILE NUMBERS: 22-23-156 and 22-23-163

INSTITUTION IN QUESTION Service New Brunswick

SUBJECT Allegations of Deficiencies in the
Provision of Services in French

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**REPORT DISTRIBUTED TO THE
FOLLOWING PERSONS** Chief Executive Officer of Service
New Brunswick
Complainants
Premier
Clerk of the Executive Council
Executive Director of the Secretariat
of Official Languages

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Summary

This report was written following an investigation of two complaints against Service New Brunswick (the institution). More specifically, the complainants allege that they did not receive service in French or received inadequate service in French during driving tests at two of the institution's service centres.

Upon completion of the investigation, the Office of the Commissioner of Official Languages (OCOL) established, for the reasons set out in this report, that the complaints are **founded** and that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

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

1. **THAT the institution review the system it has in place for the public to make appointments for driver examinations to ensure that it meets its obligations under the OLA and provides all members of the public with the choice to receive services in their preferred official language;**
2. **THAT the institution remind all driver examiners and other service centre employees of the importance of confirming the official language in which a member of the public wishes to proceed;**
3. **THAT on a regular basis, Service New Brunswick conduct random checks on the active offer and the delivery of service in both official languages at its service centres;**
4. **THAT the institution immediately assess the linguistic profile of its driver examiner teams to identify and correct any deficiencies, to ensure that each of its service centres has the capacity to provide services in both official languages.**

Complaints

The details of the complainants' allegations are as follows:

File 22-23-156

On August 11, 2022, the complainant went to Service New Brunswick's Bouctouche Service Centre to take a driving test. According to the complainant, the examiner was unilingual English and did not offer service in French, even though the complainant had spoken French. The complainant was afraid to ask for service in their mother tongue out of a desire to pass the driving test and avoid delays. The complainant felt at the mercy of the system.

The complainant indicated having shared this information with the Office of the Commissioner in order to raise awareness about how language rights are not always respected, even in regions with a strong Francophone majority.

File 22-23-163

Given the complainant's desire to remain anonymous, here is a general summary¹ of the complaint:

On November 29, 2022, the complainant went to a Service New Brunswick service centre for an appointment to take a driving test. The complainant confirms having received service in French. However, the complainant alleges to have had great difficulty in understanding the instructions given during the test, indicating that the examiner had neither the required level nor sufficient command of the French language to be understood. The complainant claims to have failed the test for this reason.

¹ The summary reproduced in this report is that which appeared in the notice of investigation sent to the institution. Although the complainant provided the OCOL with further details, such as the municipality in which the service centre is located, these details were not shared with the institution to minimize the risk of reprisal feared by the complainant should the institution guess the complainant's identity.

Investigation

Investigation under Subsection 43(13) of the OLA

After the complaints were filed on November 21, 2022, and December 2, 2022, the 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 February 13, 2023, was sent to the institution. In this notice to its Chief Executive Officer, 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.

Response from the Institution

On March 13, 2023, the institution provided its reply, in which the Chief Executive Officer stated as follows:

[Translation] I recognize that the services received by the complainant in August 2022 and November 2022 did not live up to our vision of excellence in service delivery.

The institution's assessment of the facts reads as follows:

[Translation] We are able to provide you with further information about the complaint received under the Official Languages Act (OLA).

The information requested is as follows:

File 22-23-156:

The driver examiner on duty in Bouctouche on August 11 was fluently bilingual. Over the course of the examiner's career, this experienced employee served many Francophone and Anglophone clients in the language of their choice. Given that six months have passed since the event in question and that this employee is now retired, it is difficult to confirm or deny the complainant's allegations. That said, the employee was well aware of the responsibility to serve members of the public in the language of their choice. This driver examiner has been replaced by someone who is bilingual and fully aware of our responsibility to serve clients in the language of their choice.

File 22-23-163:

It is very difficult to investigate a situation without specific details, such as the location of the driving test and the name of the driver examiner. That said, the

second-language proficiency of our staff members is assessed before they are hired for a position requiring bilingualism.

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 Provided by the Institution

The questions asked by the OCOL in the notice of investigation covered several points, including compliance with the OLA, the active offer and continuity of service, employee linguistic profiles for service centres and driver examiner teams, the institution's recruitment strategy, and service of equal quality.

This section examines the institution's responses to the questions relating to these points. Through its analysis, the OCOL has concluded that the complaints are **founded**.

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

Complaints

The institution's reply acknowledges as follows:

[Translation] *that the services received by the complainant in August 2022 and November 2022 did not live up to our vision of excellence in service delivery.*

Although the institution acknowledged the merit of the allegations, it indicated that it was unable to conduct its own internal investigation. As a result, it is not in a position to either confirm or deny the allegations made by the complainants. Its assessment of the facts provides some information, but it is of a general nature. In the absence of further details from the institution, the only versions of the complaints available to the OCOL are those of the complainants reporting their personal experiences during their driving tests at one of the institution's service centres.

Unable to question the good faith of the complainants or challenge the veracity of the facts presented by the institution, we must conclude that the complaints are **founded**.

However, because the complainant in file 22-23-163 did not wish to disclose many details about the incident, the OCOL cannot draw any definitive conclusions as to how the services provided influenced the test result. Apart from the institution's acknowledgement that its usual level of service was not provided, we can draw no other conclusions.

The OCOL summarizes the complainants' situation of fact and the points to be considered as follows:

File 22-23-156 (Bouctouche Service Centre)

According to the complainant's allegations and in the absence of any indication to the contrary, the complainant was not informed that the driving test could be taken in the official language of choice, which in this case was French. The complainant was afraid to ask for service in French and, as a result, had to take the test in English.

The obligations imposed by the OLA are clear: the institution must be able to communicate with and offer the public its services in both official languages. Furthermore, the institution must inform the public that its services are available in both official languages. In other words, the public should not have to ask for service in one language or the other, as both languages should already have been offered. That is what is called the active offer of service.

According to the institution's response, the examiner on duty at this service centre that day was [translation] "fluently bilingual" and "well aware of the responsibility to serve members of the public in the language of their choice." However, the institution does not deny that the active offer of service was not extended by the driver examiner to the complainant, even though the complainant had spoken in French and despite the institution's obligation to inform the public that its services are available in both official languages.

The active offer and continuity of service in the public's official language of choice are addressed below.

File 22-23-163 (Service Centre B)

It is argued that the driver examiner assigned by the institution did not have the language proficiency required and that the comprehension difficulties caused by this linguistic inequality prevented the complainant from passing the test.

The institution informed the OCOL that [translation] “the second-language proficiency of [its] staff members is assessed before they are hired for a position requiring bilingualism.”

Not only must institutions subject to obligations under the OLA provide all communications and services in both official languages, but the communications and services must also be of equal quality in both official languages.

An institution whose services are of lesser quality in one official language than in the other cannot be considered compliant with the OLA.

The institution does not deny the complainant’s allegation of not having received adequate service in their official language of choice, which was French, despite the institution’s obligation to offer the public services of equal quality in both official languages.

Service of equal quality is examined below.

Active Offer and Continuity of Service

The active offer of services is a key component in the provision of services in both official languages, which must be of equal and consistent quality. The OCOL stresses the importance of making the active offer of service on first contact to confirm the official language in which the member of the public wishes to be served. Since it is the institution’s obligation to offer service in both official languages, it is not the duty of a member of the public to make the request.

The term “active offer” is clearly defined in the following section of the OLA:

***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.*

The in-person active offer consists of a greeting in both official languages, such as “hello, bonjour,” and then service provided in the person’s language of choice.

The reason the active offer must be extended to every member of the public at the first point of contact is twofold. First, the active offer informs members of the public that they can obtain the institution’s services in either official language. Second, the language used by the person in response informs the employee of the language preference and therefore the official language

in which the person chooses to be served, i.e., the official language in which the institution must provide service.

Institutions are obligated to respect the language choice indicated by reacting appropriately and providing service in the official language requested — ensuring continuity of service in the language chosen by the member of the public, without exception and without undue delay. For this reason, many institutions have implemented systems for informing the next employee of the official language to be used so that the member of the public does not have to be asked again.

The institution's response confirms that driving tests are scheduled in advance. During the online or telephone appointment booking process, clients indicate the official language in which they would like to take their test. In addition, when they appear for an appointment, "[t]he active offer is nevertheless extended to clients on arrival at the service centre counter."

This should ensure that service is provided in the public's official language of choice, pursuant to the institution's obligations under the OLA.

With regard to the complaint concerning the Bouctouche Service Centre, the driver examiner assigned was capable of providing service in both official languages. Because the examiner was unaware of the need to proceed in French, the delivery of service continued in English. The absence of an active offer meant that continuity of service was not ensured.

If the complainant had already indicated the choice of official language when making the appointment and then again when arriving at the service centre counter, the system in place may not be sufficient for conveying to examiners which official language to use. It is also possible that the complainant was a victim of human error.

Recommendation No. 1:

The Office of the Commissioner recommends that the institution review the system it has in place for the public to make appointments for driver examinations to ensure that it meets its obligations under the OLA and provides all members of the public with the choice to receive services in their preferred official language.

When employees already know the preferred official language of the person they are greeting, they are not required to repeat the active offer of service. However, in the case of the complainant who took a driving test at the Bouctouche Service Centre, the complainant used French when speaking with the examiner.

As mentioned above, it is the institution's duty to offer its services in both official languages and to respond to a member of the public's official language choice by providing service in the official language used by that member of the public. It is not, in any case, the public's duty to request service in one language or the other, especially when the situation is as described by the

complainant, whose complaint states as follows: [translation] “I was afraid to ask for service in my mother tongue, because I wanted to pass my driving test and avoid delays.”

Even if the examiner believed that an English driving test had been requested, the complainant’s use of French should have indicated the possibility that the complainant wished to take the test in French. This was an opportunity for the examiner to extend another active offer of service in both official languages to the complainant to ensure that the complainant received service from the institution in the language of choice. By taking this cautious approach, employees can avoid errors and fulfill the institution’s obligation to take the necessary steps to ensure that the public can communicate and be served in the language of choice.

Recommendation No. 2:

The Office of the Commissioner recommends that the institution remind all driver examiners and other service centre employees of the importance of confirming the official language in which a member of the public wishes to proceed.

Service of Equal Quality

The other complainant who took a driving test, that of file 22-23-163, confirms having received service in French but alleges that the level of French was not adequate. The complainant claims to have been adversely affected, as it was very difficult to understand the instructions given, and as a result did not pass the test.

In general, the OCOL has no authority over questions of language quality unless there is a clear situation of linguistic inequality affecting comprehension, as alleged in this case.

The institution did not deny the situation of fact presented by the complainant but stated the following in its reply:

[Translation] It is very difficult to investigate a situation without specific details, such as the location of the driving test and the name of the driver examiner. That said, the second-language proficiency of our staff members is assessed before they are hired for a position requiring bilingualism.

Under the OLA, the institution is required to provide all communications and services in both official languages. To fulfill this obligation, communications and services offered in one official language must be of equal quality to those offered in the other official language. Consequently, the institution must ensure that driving tests offered in French are of equal quality to those offered in English.

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

39 [...] in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

While the OCOL cannot determine in this case whether the complainant failed the test due to linguistic inequality or for another reason, it is worth remembering that the institution has an obligation to ensure that its bilingual employees have the necessary second-language proficiency.

Given that the quality of language spoken by an examiner may affect the fairness of an examination, and given that the public's access to driving privileges is contingent on the fairness of such examinations, the OCOL reminds the institution that it must ensure that the minimum second-language competency required of its bilingual driving examiners, in this case French, must be sufficient so that candidates are not disadvantaged by reason of their choice of official language.

Regular Checks to Verify Compliance with Linguistic Obligations

Random checks and other audits are an opportunity for the institution to better observe and understand what is happening at its service centres. To this end, the OCOL sees fit to reiterate the following recommendation, issued in March 2015 (see file 2014-2101):

Recommendation No. 3:

The Office of the Commissioner recommends that, on a regular basis, Service New Brunswick conduct random checks on the active offer and the delivery of service in both official languages at its service centres.

Driver Examiner Team Linguistic Profiles

The institution has a duty to ensure that, at each service centre and for each shift, the team of examiners on site contains a sufficient number of employees who can speak each official language, so that each service centre can serve the public in both official languages at all times.

In addition, because the institution knows in advance the official language in which clients wish to take the test, it can anticipate the resources needed to ensure continuity of service in the client's preferred official language during the test.

Regarding the OCOL's question concerning the established procedure for when no bilingual driver examiner is available to serve a client in the language of choice, the institution responded that

[Translation] *driving test resources are arranged to serve clients in their language of choice throughout the province. We also communicate directly with clients if they require alternative test options due to their language preference.*

That said, in terms of driver examiner teams and whether their linguistic profiles are adequate for serving the public in both official languages, the institution is of the opinion that they are, stating that [translation] “the language capabilities of those hired for these positions in fact exceed the linguistic profiles required.”

The OCOL then asked several questions about the institution’s employees and its approach to human resources. The institution’s responses confirm that linguistic profiles have been established

[Translation] *for driver examiner positions in each of the service centre regions and that these profiles were in place as of August 11, 2022, and November 29, 2022*

As supporting evidence, the institution also appended to its response [translation] *Table 1 – Linguistic Profile – Driver Examiners:*

Team name	Bilingual requirement	French essential	English essential	English or French	Total
Customer Service – Driver Examiner – central/northern region	2	0	0	0	2
Customer Service – Driver Examiner – northeast region	3	0	0	0	3
Customer Service – Driver Examiner – northwest region	1	0	0	0	1
Customer Service – Driver Examiner – Fredericton region	1	0	2	0	3
Customer Service – Driver Examiner – Moncton region	2	0	0	0	2
Customer Service – Driver Examiner – Saint John region	0	0	4	0	4

This table reveals that there is only one region, Saint John, for which the linguistic profile does not include an examiner classified under “bilingual requirement” or “French essential.” According to this, there is no requirement to have an examiner with French proficiency in this region, as all four examiners are classified under “English essential,” even though this is the region with the most examiners. Finally, the table indicates that all other regions have at least one, if not several, examiners with proficiency in both official languages.

Institutions may use a team approach to offer their services in both official languages, even if some of their employees are not bilingual. In a situation where an employee does not speak the official language chosen by the client, the employee must be able to refer to a contingency plan

that specifies which colleague to turn to so that the client is served in a timely manner in the official language of choice.

However, in this case, the absence of a requirement to have a driver examiner with linguistic abilities in French is a glaring omission. How can a team approach be used if there is no other member of the team who is capable of stepping in? If a team has no bilingual employees, it goes without saying that the member of the public would not be able to obtain service in the preferred language if the language differed from that used by the team in question.

Recruitment Strategy

As stated in one of the OCOL's questions, the institution must ensure it has a bilingual staff that is able to provide services in both official languages at all times, despite "current recruitment and hiring challenges."

The OCOL has asked the institution to clarify its recruitment strategy for service centres affected by a shortage of driver examiners with the necessary language skills. However, according to the institution, its linguistic profiles [translation] "are sufficient for serving [its] clients," and therefore no recruitment strategy was provided.

The response confirms, however, that the institution [translation] "has experienced difficulties in recruiting customer service representatives and driver examiners" and describes a strategy it uses to ensure that it is "offering service of equal quality and within a reasonable timeframe in both official languages":

[Translation] As a result, one of the measures employed to alleviate these difficulties has been to cross-train customer service representatives so that they can also act as driver examiners when required.

The OCOL makes the following recommendation regarding the institution's linguistic profiles and recruitment strategy:

Recommendation No. 4:

The Office of the Commissioner recommends that the institution immediately assess the linguistic profile of its driver examiner teams to identify and correct any deficiencies, to ensure that each of its service centres has the capacity to provide services in both official languages.

Conclusion and Recommendations

The investigation of the Office of the Commissioner of Official Languages (OCOL) made it possible to establish that, for the reasons stated in this report, the complaints are **founded** and that Service New Brunswick (the institution) failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

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

1. **THAT the institution review the system it has in place for the public to make appointments for driver examinations to ensure that it meets its obligations under the OLA and provides all members of the public with the choice to receive services in their preferred official language;**
2. **THAT the institution remind all driver examiners and other service centre employees of the importance of confirming the official language in which a member of the public wishes to proceed;**
3. **THAT on a regular basis, Service New Brunswick conduct random checks on the active offer and the delivery of service in both official languages at its service centres;**
4. **THAT the institution immediately assess the linguistic profile of its driver examiner teams to identify and correct any deficiencies, to ensure that each of its service centres has the capacity to provide services in both official languages.**

The OCOL would like to thank the institution for acknowledging the admissibility of the complaints, for the information it provided in its responses and for its ongoing commitment to its linguistic obligations, as expressed by its Chief Executive Officer:

[Translation] Service New Brunswick continues to recognize the importance of the Official Languages Act (OLA), and I would like to assure you that we remain committed to offering quality services in both official languages at all of our service centres.

Pursuant to subsection 43(16) of the OLA, we submit this report to the Chief Executive Officer of Service New Brunswick, the complainants, the Premier, the Clerk of the Executive Council and the Official Languages Secretariat.

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
25th day of March 2024

APPENDIX 1

Questions Asked by the OCOL and Answers Provided by the Institution

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

Question 1: In a previous investigation report (file 2014-2101) concerning Service New Brunswick and the provision of service in French, the Office of the Commissioner made the following recommendation:

That Service New Brunswick, in cooperation with the Department of Human Resources, review the linguistic profiles of all its service centres so that, regardless of their location, the established linguistic profiles provide enough capacity to serve the public in both official languages.

As of August 11, 2022, and November 29, 2022, were linguistic profiles established for all Service New Brunswick service centres?

Question a: If so, what were they?

Question b: If not, why?

Question c: What linguistic profiles have been established for the teams of driver examiners at all Service New Brunswick service centres?

ANSWER: As indicated in the previous investigation report, I can confirm that Service New Brunswick has a linguistic profile for driver examiner positions in each of the service centre regions and that these profiles were in place as of August 11, 2022, and November 29, 2022 (see Table 1 – Linguistic Profile – Driver Examiners²).

Question 2: Do the linguistic profiles of the driver examiner teams allow for the sufficient provision of service to the public in both official languages?

ANSWER: We believe that the linguistic profiles are sufficient for serving our clients and that the language capabilities of those hired for these positions in fact exceed the linguistic profiles required.

Question 3: What procedure is in place for when clients book driving tests and choose the official language in which they wish to take their test?

Question a: When clients go to a service centre, is the active offer made before they arrive at the driving test counter?

ANSWER: Driving test clients are served by appointment. Clients book appointments online or through TeleServices and indicate their choice of language for the test (as part of the

² See Appendix 2 of this report.

appointment-booking process). The active offer is nevertheless extended to clients on arrival at the service centre counter.

Question b: How do you ensure that there is continuity of service in clients' preferred official language when they take their test?

ANSWER: Clients indicate their preferred language when booking an appointment (online or through TeleServices), which helps us anticipate the resources needed to serve driving test clients in their language of choice.

Question c: What is the established procedure for when no bilingual driver examiner is available to serve a client in the language of choice?

ANSWER: As indicated in paragraph b), driving test resources are arranged to serve clients in their language of choice throughout the province. We also communicate directly with clients if they require alternative test options due to their language preference.

Question 4: In the previous investigation report (file 2014-2101), the Office of the Commissioner made the following recommendation:

That Service New Brunswick, after identifying its needs in terms of human resources, adopt a targeted recruitment strategy in order to make up for shortcomings with respect to bilingual staff.

The Office of the Commissioner is well aware of the current recruitment and hiring challenges. However, the institution must ensure that its bilingual staff is able to provide service in both official languages at all times.

Question a: If you answered "no" to question 2, what is the current recruitment strategy for all Service New Brunswick service centres affected by a shortage of driver examiners with the necessary language skills?

Question b: If you are currently facing recruitment challenges, what measures are you implementing to ensure that you are offering service of equal quality and within a reasonable timeframe in both official languages?

ANSWER: SNB has experienced difficulties in recruiting customer service representatives and driver examiners. As a result, one of the measures employed to alleviate these difficulties has been to cross-train customer service representatives so that they can also act as driver examiners when required.

APPENDIX 2

Table 1, Provided by the Institution

Linguistic Profile – Driver Examiners

Team name	Bilingual requirement	French essential	English essential	English or French	Total
Customer Service – Driver Examiner – central/northern region	2	0	0	0	2
Customer Service – Driver Examiner – northeast region	3	0	0	0	3
Customer Service – Driver Examiner – northwest region	1	0	0	0	1
Customer Service – Driver Examiner – Fredericton region	1	0	2	0	3
Customer Service – Driver Examiner – Moncton region	2	0	0	0	2
Customer Service – Driver Examiner – Saint John region	0	0	4	0	4