OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES FOR NEW BRUNSWICK

COMMISSARIAT AUX LANGUES OFFICIELLES DU NOUVEAU-BRUNSWICK

Investigation Report

FILE NUMBER 24-25-112

INSTITUTION IN QUESTION WorkSafeNB

SUBJECT Alleged deficiencies in communication in French

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REPORT DISTRIBUTED TO THE FOLLOWING PERSONS

President and Chief Executive Officer of WorkSafeNB
Complainant
Premier
Clerk of the Executive Council
Executive Director of the Secretariat of Official Languages

ISSUE DATE October 2025

Summary

This report was prepared following an investigation into a complaint against WorkSafeNB (the institution). Specifically, the complainant alleges deficiencies in communication in French because they were unable to receive a written decision entirely in French, their language of choice, from the institution.

Upon conclusion of this investigation, the Office of the Commissioner of Official Languages finds, for the reasons set out in this report, that the complaint is **founded** and that the institution failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

Having established that the complaint is founded, the Commissioner makes the following recommendations:

1. **THAT to ensure continuity of service in the language of choice of any member of the public, the institution ensures that its communications and services, as well as those of its third-party service providers and non–third-party service providers, are available in the official language of choice of the member of the public at all times, even if the institution is not the author of the communication;**
2. **THAT the institution reminds all employees and third-party service providers of the importance of its official linguistic obligations and process so that all communications and related documentation are available in the official language of choice of members of the public;**
3. **THAT the institution continues its recruitment efforts to ensure that its staff maintain an adequate level of bilingualism to provide members of both official linguistic communities with oral and written communications of equal quality.**

Complaint

The details of the complainant's allegations as initially shared with the institution are as follows:

> The complainant contacted our office following a conversation they had with a workers' advocate. They allege that they received correspondence from WorkSafeNB dated January 19, 2024, with some excerpts written in French and others written only in English, despite French being their preferred language.
>
> The excerpts in English only appear to form part of the complainant's medical record and contain observations from medical professionals regarding the complainant's medical condition and evidence of the complainant's likelihood of returning to work safely.

In its second investigation letter to the institution, the Office of the Commissioner indicated that one detail of the complaint had been omitted:

> When they filed their complaint, the complainant had decided to appeal a WorkSafeNB decision that they were fit to return to work. The complainant was scheduled to appear before the New Brunswick Workers' Compensation Appeals Tribunal in December 2024. However, due to the correspondence informing them of the WorkSafeNB decision, which, as you are already aware, includes passages in both French and English, the complainant stated that they were concerned they would not receive service from the Tribunal in their official language of choice, French. They therefore feel disadvantaged because of this decision, as they allege that they are not receiving service equivalent to a member of the public whose chosen official language is English.

Abbreviations and Terms Used

OCOL	Office of the Commissioner of Official Languages
The institution	WorkSafeNB
OLA	*Official Languages Act* of New Brunswick
WCAT	New Brunswick Workers' Compensation Appeals Tribunal

Investigation

Alternative resolution attempt

After the complaint was filed on October 28, 2024, the OCOL decided to proceed through its alternative complaint resolution process under subsection 43(10.1) of the OLA. This provision simplifies the complaint process while allowing for the quick and effective resolution of the issue.

The OCOL issued an alternative resolution letter dated November 22, 2024, informing the institution of the complaint. This letter invited the institution to communicate with the OCOL if it denied the allegations or required additional information. If the institution acknowledged that violations of the OLA had occurred, the OCOL asked that it confirm in writing the steps it had taken or would be taking to comply with the requirements of the OLA and avoid a recurrence of this type of incident.

In its alternative resolution letter, the OCOL indicated the following regarding communications intended for a member of the public:

> [Translation]
> The Office of the Commissioner considers that this communication was intended for a member of the public—the complainant—and should have been sent to them entirely in their official language of choice, French, despite the fact that medical records are generally not considered to be intended for the public and generally fall under the "language of work" section, over which the Office of the Commissioner has no jurisdiction.

To resolve the situation, the OCOL proposed the following measure:

> [Translation]
- that the institution ensures that all communications intended for members of the public are fully available in the official language chosen by any member of the public, and of equal quality and without undue delay.

In its response dated December 19, 2024, the institution shared the following:

> [Translation]
> *WorkSafeNB complies with all OLA requirements for all communications with members of the public. For written communications, the institution ensures that the recipient receives their correspondence in the official language of their choice at all times when the institution is the author of the correspondence.*
>
> *In this complaint, you are referring to a decision letter in which we are required, in accordance with administrative justice principles, to provide details of the evidence used to accept or deny a claim. This evidence is often based on medical reports*

received from and produced by healthcare providers. As you point out, these are generally not considered to be intended for the public and generally fall under the "language of work." The analysis and conclusion of each decision are provided in the recipient's official language of choice to ensure that they understand the decision.

It is important to note that recipients can obtain more information at any time by contacting the caseworker or through worker's representatives, who are available to them at no cost.

WorkSafeNB relies on a significant number of third-party service providers. In fact, there are currently more than 5,000 service providers, including doctors, physiotherapists, massage therapists, hearing loss professionals, etc. As can be expected with such a large number of service providers scattered across the province, some provide services primarily in English, some primarily in French and some in both official languages.

WorkSafeNB is aware of its obligation as an institution under the OLA to provide services to the public, including injured workers, in both official languages and is committed to ensuring that this obligation is respected. WorkSafeNB is also aware that this obligation extends to our third-party service providers, and will therefore work closely with these entities to ensure compliance. We cannot guarantee the same service for non–third-party providers.

Thank you for the opportunity to respond to this complaint. I trust that the above information is helpful in resolving this matter and we would be happy to answer any further questions the Commissioner may have in this regard. We would also be happy to discuss the matter further with your office, depending on your availability, to better understand how we can improve our practices.[1]

Investigation under subsection 43(13) of the OLA

After receiving the institution's response, the Commissioner decided to proceed with an investigation under subsection 43(13) of the *Official Languages Act* of New Brunswick (OLA).

In a notice of intention to investigate to the President and CEO of WorkSafeNB dated February 26, 2025, the Commissioner stated the following:

> [Translation]
> The Office of the Commissioner is of the view that your response dated December 19, 2024, describes measures that appear insufficient to enable your institution to meet its linguistic obligations under the *Official Languages Act* of New Brunswick (OLA).

[1] The responses provided by the institution are reproduced in their entirety in this report.

Once again, the OCOL advised the institution that, although medical records are generally not considered to be intended for the public and fall under the language of work, over which the OCOL has no jurisdiction, the OCOL considers that the letter received by the complainant should have been sent to them entirely in their language of choice, French, since it was intended for a member of the public.

In the notice of investigation, the institution was asked to inform the OCOL of its assessment of the facts concerning the allegations made by the complainant, provide any additional information that may be useful in this matter and answer a series of questions.

Response from the institution

On April 22, 2025, the institution provided its response to the complaint, but that response contained no assessment of the facts.

Second request to the institution

On July 29, 2025, the OCOL sent the institution a request for clarification. As can be seen above, a "detail concerning the complainant was omitted from the summary of the complaint." The Commissioner explained the following:

> [Translation]
> The Office of the Commissioner is still of the view that your decisions should be written entirely in the official language of your clients' choice. However, in your response to my letter dated February 26, 2025, you state the following:
>
> > *Delays and translation costs would affect the speed of service for written decisions.*
> > .....
> > *To overcome these challenges, we assign cases based on the language requirements of each client and this applies to all cases. We are committed to providing all information in the official language chosen by our clients. Therefore, when medical information serving as evidence in the file is included, caseworkers explain decisions verbally to clients over the phone before sending decisions in writing.* [SIC]
>
> The question raised by the Office of the Commissioner is as follows: are these measures sufficient to ensure that equal quality of service is provided to all members of both official linguistic communities, or is it simply an accommodation for members of the official language minority community?
>
> To include additional details about the complainant in this case, I have decided to inform you and ask you additional questions about the Appeals Tribunal.

The institution provided the following response:

[Translation]
WorkSafeNB remains firmly committed to providing service of equal quality to all members of New Brunswick's two official language communities. Our main goal is for every client to receive comprehensive, respectful and fair service in their language of choice.

The measures outlined in our previous correspondence are not intended to be an accommodation, but rather to ensure equality in delivering our services, as the same procedure applies to English-speaking clients.

Assigning cases based on the client's official language, proactively communicating decisions in the chosen language, and providing verbal explanations when supporting documents are not available in that language are all used to ensure clients fully understand their case and their rights.

That said, we recognize the importance of always striving to improve our practices. We continue to strive to ensure clients understand how decisions are made.

In short, these measures should not be seen as an accommodation, but as an effort to provide service that is consistent with the spirit and letter of the Official Languages Act (the "OLA").

This issue of accommodation and the New Brunswick Workers' Compensation Appeals Tribunal will be discussed in detail in the "Analysis" section of this report.

Analysis

Relevant provisions of the *Official Languages Act* of New Brunswick (OLA) in this matter are as follows:

Definitions	**Définitions**
1 In this Act	**1** Dans la présente loi
"court" means any court or administrative tribunal in the Province	« tribunaux » désigne les cours et les tribunaux administratifs dans la province
THE ADMINISTRATION OF JUSTICE	**L'ADMINISTRATION DE LA JUSTICE**
Language of the courts	**Langues des tribunaux**
16 English and French are the official languages of the courts.	**16** Le français et l'anglais sont les langues officielles des tribunaux.
Right to use language of choice	**Droit de choisir**
17 Every person has the right to use the official language of his or her choice in any matter before the courts, including all proceedings, or in any pleading or process issuing from a court.	**17** Chacun a le droit d'employer la langue officielle de son choix dans toutes les affaires dont sont saisis les tribunaux, y compris toute procédure, pour les plaidoiries et dans les actes de procédure qui en découlent.
Person not to be disadvantaged by choice	**Interdiction de désavantager l'usager**
18 No person shall be placed at a disadvantage by reason of the choice made under section 17.	**18** Nul ne peut être défavorisé en raison du choix fait en vertu de l'article 17.
COMMUNICATION WITH THE PUBLIC	**COMMUNICATION AVEC LE PUBLIC**
Communications with government and its institutions	**Communication avec le gouvernement et ses 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.	**27** Le public a le droit de communiquer avec toute institution et d'en recevoir les services dans la langue officielle de son choix.
Obligations of institutions	**Obligation des institutions**
28 An institution shall ensure that members of the public are able to communicate with and to receive its	**28** Il incombe aux institutions de veiller à ce que le public puisse communiquer

services in the official language of their choice.	avec elles et en recevoir les services dans la langue officielle de son choix.
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.	**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.
Services provided by third parties	**Prestation de services pour le compte de la province**
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.	**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.

Questions asked by the OCOL and responses provided by the institution

The questions asked by the Office of the Commissioner of Official Languages (the OCOL) in the notice of investigation relate to several points, including the legal aspect (the New Brunswick Workers' Compensation Appeals Tribunal), compliance with the OLA, service providers, the linguistic profile of employees, workers' representatives and equal quality of service.

This section of the report examines WorkSafeNB's (the institution) responses to the questions relating to these points. Through its analysis, the OCOL concluded that the complaint is **founded**.

Medical records and the *Official Languages Act*

To support its decisions, the institution must present evidence. These are often excerpts from the injured worker's medical record or medical observations from health professionals. As noted above, the OCOL is of the view that excerpts from medical records cited in the written decisions of WorkSafeNB are subject to the OLA, since these decisions are intended for members of the public. As will be discussed below, medical records are generally not considered to be documents for the public, but rather working documents between health professionals. In these situations, the OCOL has no jurisdiction.

To fully understand the issue of medical records and official languages, a thorough explanation is required. There are two health networks in New Brunswick: Vitalité Health Network and Horizon Health Network. Each network has an internal language of operation (French for Vitalité and English for Horizon). This is what is called the "language of work."

Although the regional health authorities established under the *Regional Health Authorities Act* may determine an official language for the daily operations of the healthcare establishments,

facilities and programs under their jurisdiction, as set out under sections 33 and 34 of the OLA, they are still required to comply with sections 27 to 28.1 and section 30 of the OLA. Under the *Regional Health Authorities Act* and the OLA, each network must ensure that members of the public receive health services in their official language of choice at all times. This is what is called the "language of service."

Depending on the health network concerned, and the health professionals' workplace being either English or French, the results of medical examinations, medical records and other documents are commonly written in the working language of these health professionals. Medical records are therefore the product of the work of health professionals and are intended to share information or share a patient's health status between health professionals. At this stage, these documents are not considered to be intended for the public.

Furthermore, a private practice doctor has no linguistic obligations under the OLA unless they provide services on behalf of one of the two health authorities. This doctor can therefore write their patients' medical reports in their chosen language without considering the patient's official language of choice.

The case at hand

In the OCOL's view, in this particular case, the WorkSafeNB decision is clearly intended for a member of the public, although the excerpts that appear in it are generally not. The OCOL is therefore of the view that all related documents and communications prepared by WorkSafeNB, one of its third-party service providers or by service providers that, according to the institution, are not third-party service providers must be available in the chosen official language of the member of the public. Since the complainant was unable to access the entire communication in their chosen language, French, and had to use the services of a workers' representative to fully understand the decision, which was partly in English, the OCOL believes that this is not access equal to that of a member of the public whose chosen language is English. Therefore, the OCOL considers that **the complaint is founded.**

As can be seen below, since excerpts from service providers (third party or otherwise) are part of the WorkSafeNB decision—a decision intended for the complainant—these excerpts are no longer simply internal documents created in the working language of the service provider. Since these documents are not fully available in the complainant's language of choice, the OCOL is satisfied that they create a significant disadvantage for members of one of the two official language communities.

Documents or portions of documents obtained in the other official language do not constitute service of equal quality for members of both official linguistic communities. In the OCOL's view, in addition to failing to respect the complainant's language rights, this type of situation creates inequality between the two official languages, which is a breach of *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act* of New Brunswick (OLA).

The OCOL will explain the specific reasons why it believes the complaint is founded in the following pages.

Legal consideration – New Brunswick Workers' Compensation Appeals Tribunal

Under the OLA, every member of the public is entitled to be heard before a court or tribunal in the official language of their choice, since English and French are the languages of the court for all legal proceedings. Thus, a member of the public cannot be disadvantaged because of their choice of official language.

To establish that the appeal process of the New Brunswick Workers' Compensation Appeals Tribunal is a legal proceeding, the OCOL asked the institution the following questions. Its answers appear in italics.

[Translation]

> Please describe the relationship between WorkSafeNB and the New Brunswick Workers' Compensation Appeals Tribunal.
>
> *WorkSafeNB and the New Brunswick Workers' Compensation Appeals Tribunal ("WCAT" or the "Tribunal") are two separate and independent agencies. WorkSafeNB is responsible for administering the Workers' Compensation Act (the "Act") and providing services and benefits to workers and employers.*
>
> *The WCAT, on the other hand, is an independent quasi-judicial administrative tribunal charged with hearing appeals from decisions rendered by WorkSafeNB under the Act and related legislation. WorkSafeNB has no influence over the WCAT decision-making process. The WCAT operates independently of WorkSafeNB. Its judicial functions mirror those of a court, including conducting hearings, reviewing evidence and making binding decisions. WCAT members are appointed by the Lieutenant Governor in Council and follow formal procedures to ensure fairness and impartiality.*
>
> *While the WCAT is independent in its decision-making, its chair reports to the Minister of Post-Secondary Education, Training and Labour ("PETL") on administrative matters such as the budget and human resources. This ensures accountability while preserving jurisdictional independence.*

[Translation]

> What is the procedure for a client who wishes to appeal a WorkSafeNB decision determining that the client is fit to return to work?
>
> *When a client disagrees with a WorkSafeNB decision, they must first request an internal review. If the decision is upheld after the review, the client may appeal to the WCAT by submitting a written notice of appeal within the time limits prescribed*

by the Act. The WCAT then takes over the appeal process, in accordance with its own procedures and in the official language chosen by the client.

[Translation]

Is the appeal file distributed by WorkSafeNB for an appeal hearing in the client's official language of choice, based on the official language chosen for the hearing? What role does the official language of choice play in this appeal?

The appeal file is created and forwarded in accordance with WCAT procedures. When the client chooses an official language for the hearing, this choice is respected by the Tribunal. The WCAT and workers' representatives have direct access to relevant documents, including the appeal record, which are available in the client's official language of choice in accordance with the OLA.

[Translation]

How is the client's medical record used in an appeal of a WorkSafeNB decision?

The client's medical record is part of the evidence submitted as part of the appeal record. It is used by the WCAT to assess the medical facts and determine if the initial WorkSafeNB decision complied with the Act and applicable policies.

[Translation]

In WorkSafeNB's view, is this type of procedure a legal proceeding? Please elaborate.

The WCAT appeal process is a quasi-judicial proceeding arising from an administrative tribunal. The Tribunal operates according to legal principles, including respect for procedural fairness, the right to be heard and impartial decision-making. Decisions rendered by the WCAT are binding and can only be challenged by judicial review in the New Brunswick Court of King's Bench.

The WCAT plays a critical role in New Brunswick's workers' compensation system by providing an impartial forum for dispute resolution. Its independence and judicial-style procedures support the principles of fairness and justice.

The institution states in its response that all [Translation] "relevant documents […] are available in the client's language of choice." However, in their complaint, the complainant states that they received a decision from the institution where the evidence was partially in English, which the institution has confirmed. The complainant feels disadvantaged since the decision is not entirely in their language of choice, French, giving them the perception that they will not have access to an appeal hearing entirely in French, although the institution states that the complainant must indicate their official language of choice in a notice of appeal. The OCOL believes that this is a

legitimate concern on the part of the complainant, as both the decision and the appeal process have significant consequences for their life and future.

Clients deal with WorkSafeNB because they may suffer injuries that may affect their ability to work, return to work or return to suitable work. These are members of the public who must deal with WorkSafeNB in order to continue to collect benefits when injured and potentially receive treatment, and WorkSafeNB decides to what extent an injury affects the person's ability to return to work.

WorkSafeNB has established appeal provisions that members of the public can avail themselves of if they do not agree with WorkSafeNB decisions.

This may or may not result in a court hearing. These decisions form part of the legal proceedings before a court, and any document relating in any way to the client's file constitutes proceedings, pleadings and process within the meaning of section 17 of the OLA as it relates to a matter before a court or which may be brought before a court within the meaning of the OLA. An administrative tribunal is a court within the meaning of the definition of "court" in the OLA.

Clients' legal rights may be directly affected by the information in their file and how WorkSafeNB uses their information to make decisions that affect their livelihoods.

WorkSafeNB is not compliant with its official linguistic obligations under subsections 16, 17 and 18 of the OLA when it fails to provide a client with their entire file in their official language of choice.

Compliance with the OLA

<u>Active offer of service in both official languages</u>

The obligations imposed by the OLA are clear: a government institution with linguistic obligations must be able to communicate with and offer all its services to the public in both official languages. Furthermore, the institution must inform members of the public on first contact that its services are available in both official languages. In other words, members of the public should not have to request service in either official language, as both languages should already have been offered by the institution's employees. This is what is called the "active offer of service."

The active offer of service in both official languages is extremely important, because if the offer is made in only one language, it is often unlikely that members of the public who wish to be served in the other official language will assert their language rights. Instead, they tend to accept being served in the language used by the employee to greet them. That is why a greeting such as "Hello/Bonjour" is so important, as it invites members of the public to use either of the two official languages when communicating with or receiving service from a government institution.

> [Translation]
> *The concept of the active offer is therefore fundamental, and it is central to the purpose of language rights: ensuring respect for the individuals within a society*

and the equal status, rights and privileges of the English and French languages and linguistic communities.

Michel Doucet, *Les droits linguistiques au Nouveau-Brunswick*, 2017.

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.	**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.

Although the complainant alleges that they did not have access to the entire WorkSafeNB decision in their language of choice, French, it is clear that the complainant was informed that they could communicate with the institution in their official language of choice.

Continuity of service in the language of choice

The purpose of the active offer of service in both official languages is to determine the official language of choice of members of the public, which, once established, must be respected. This is what is called "continuity of service." If an institution fails to maintain continuity of service, then there is a chance that the public will accept being served in the official language used by the institution's employee, which is contrary to obligations under the OLA. In some cases, this may also force members of the public to assert their language rights.

According to the complainant, the institution's decision that they received contained numerous passages entirely in English, which the institution confirmed. For the OCOL, this equates to an interruption in the continuity of service, as the complainant did not receive service entirely in their official language of choice. This can create a perception of disadvantage for a member of the public, since they cannot read what is included in these excerpts and must trust a third party's interpretation.

Since these excerpts contain recommendations about their health and ability to return to work, a misunderstanding of the excerpts that appear in the decision, even when they are explained to them by a representative of the institution or by a workers' representative, can have negative consequences.

In its notice of investigation, the OCOL asked the following question:

> [Translation]
> Your response to our alternative resolution letter states the following:
>
> > *WorkSafeNB complies with all requirements under the OLA for all communications with members of the public. With regard to written*

> *communications, the institution ensures that at all times, the recipient receives their correspondence in the official language of their choice when the institution is the author of the correspondence.*
>
> *In this complaint, you are referring to a decision letter in which we are required, in accordance with administrative justice principles, to provide details of the evidence used to accept or deny a claim. This evidence is often based on medical reports received from and produced by healthcare providers. As you point out, these are generally not considered to be intended for the public and generally fall under the "language of work." The analysis and conclusion of each decision are provided in the recipient's official language of choice to ensure that they understand the decision.*
>
> **(Our emphasis)**

According to the Office of the Commissioner, failing to provide communication entirely in the language of choice of a member of the public violates your institution's linguistic obligations under the OLA.

What measures will be or have been implemented since your reply dated December 19, 2024, to ensure that in the future, all written communications with members of the public will be fully available in the official language chosen by a member of the public, and of equal quality and without undue delay?

The institution replied as follows:

> [Translation]
> *We must review the aspects of your request and continue to ensure that all written communications to the public are made available in the official language of their choice, without undue delay and of equivalent quality:*
>
> - *Review of internal procedures to ensure that all correspondence is in the language chosen by the recipient.*
> - *Increased staff awareness of linguistic obligations under the OLA.*
> - *Implementation of quality control mechanisms to verify linguistic accuracy prior to sending documents.*

The institution has implemented measures to ensure that all its services and communications are equally available in both official languages. However, the OCOL is of the view that this is a content and container situation. The institution writes its decision (the container) and makes it available in the official language of choice of members of the public. However, it is the content stage that is lacking: the evidence. In its response to the alternative resolution letter, the institution stated that [Translation] "[the] analysis and conclusion of each decision are provided in the recipient's

official language of choice to ensure that they understand the decision." However, the decision letter must [Translation] "provide details of the evidence used to conclude that a claim has been accepted or denied." According to the institution, [Translation] "the evidence is often based on medical reports received from and produced by healthcare providers." These appear in the language of the service provider and not the language chosen by the member of the public.

Therein lies the problem. As a reminder, under section 30 of the OLA, when an institution uses a third party to provide services on its behalf, it "is responsible for ensuring that its obligations under sections 27 to 29 are met by the third party." If the service provider is unable to provide all its services in the chosen official language of the member of the public, it is the institution's responsibility to ensure that this is done. If the institution continues to include excerpts from service providers or medical reports in the official language not chosen by the member of the public, this does not provide continuity of service in the language of choice. Thus, according to the OCOL, such a situation is contrary to the institution's linguistic obligations under the OLA. The institution is responsible for ensuring compliance with its linguistic obligations.

This report will examine the relationship between the institution and third-party service providers, as well as those that the institution believes are not third-party service providers.

Recognizing the difficulties that government institutions may face in providing services in the official language of choice of any member of the public, the OCOL asked the following question:

> [Translation]
> In your opinion, what are the major barriers that prevent <u>all</u> evidence, "based on medical reports received from and produced by healthcare providers," and therefore <u>all</u> written correspondence from being entirely provided in the chosen language of members of the public so that they can access all the information intended for them in their language of choice?

The institution responded as follows:

> [Translation]
> *We recognize the importance for members of the public to receive all relevant information in the language of their choice. That said, a number of challenges remain:*
>
> - *Medical reports from independent professionals writing in their language of practice.*
>
> - *Administrative justice requirements require us to include these reports as the basis for our decisions. Delays and translation costs would affect the speed of service for written decisions. While we have an experienced in-house translation team, their expertise is not in medical translation. When necessary, this work is sent to an outside firm.*

- *To overcome these challenges, we assign cases based on the language requirements of each client and this applies to all cases. We are committed to providing all information in the official language chosen by our clients. When medical information on file is included, caseworkers explain decisions verbally to clients over the phone before sending decisions in writing.*

(Our emphasis)

The OLA makes no exceptions for special circumstances. The institution's linguistic obligations continue to apply, even in the event of unforeseen circumstances, such as translation costs and delays. According to the dictionary *Le Robert,* the definition of "mitigate" ("pallier" in French) is as follows:

> [Translation]
> *Compensate (a shortfall), provide an interim solution to.*[2]

The OCOL is skeptical about the use of these temporary solutions, as it appears that the institution is circumventing its linguistic obligations by relying on case managers or workers' representatives. As we will see below, the OCOL is of the opinion that, despite the measures explained by the institution to overcome the challenges, the use of workers' representatives to explain a decision and interpret excerpts that do not appear in the language of choice of members of the public equates to accommodation, which is not the equality of both official languages under the *Act*.

Service providers

In its initial response to the OCOL's alternative resolution letter, the institution addressed the topic of its service providers as follows:

> [Translation]
> *WorkSafeNB relies on a significant number of third-party service providers. In fact, there are currently 5,000 service providers, including doctors, physiotherapists, massage therapists, hearing loss professionals, etc. As can be expected with such a large number of service providers scattered across the province, some provide services primarily in English, some primarily in French and some in both official languages.*
>
> *WorkSafeNB is aware of its obligation as an institution under the OLA to provide services to the public, including injured workers, in both official languages and is committed to ensuring that this obligation is respected. WorkSafeNB is also aware that this obligation extends to our third-party service providers, and will therefore work closely with these entities to ensure compliance. We cannot guarantee the same service for non–third-party service providers.*

[2] https://dictionnaire.lerobert.com/definition/pallier

(Our emphasis)

Following this response from the institution, the OCOL asked the following question to better understand the difference between the two types of providers:

> [Translation]
> Please provide a detailed explanation of the terms “third-party service providers” and “non–third-party service providers” as they appear in your response to our alternative resolution letter.

The institution provided this response:

> [Translation]
> *Third-party service providers: professionals or organizations contracted by WorkSafeNB to provide specific services to clients (e.g., medical adjudicators).*
>
> - *Non–third-party service providers: service providers chosen directly by the workers or their attending physicians, outside of any formal contract with our institution.*
>
> - *Current contracts with certain service providers contain strict language clauses.*

Third-party service providers

The OCOL thought it appropriate to ask the institution the following question to ensure that requests for proposals and contracts between the institution and service providers include provisions relating to official languages. The OCOL asked:

> [Translation]
> In a previous investigation of WorkSafeNB (file 20-21-169[3]), your institution responded that a request for proposals issued in July 2020 contained the following provisions and that your institution considered including similar provisions in other calls for tenders in the future:
>
> - *Service providers must administer services in the preferred official language (English and/or French) of the injured worker with verbal and written fluency.*
>
> - *The service provider must be able to provide a translated version of all or part of its report in either official language (English or French) at the client’s request.*

[3] Unpublished investigation report.

Are these provisions included in your calls for tenders at this time? If not, why not?

As noted above, the institution states that "[c]urrent contracts with certain service providers contain strict language clauses."

The institution also shared the following:

> [Translation]
> *Recently published calls for tenders always contain the following clauses, or equivalent variations:*
>
> "Service providers must administer services in the preferred official language (English and/or French) of the injured worker with verbal and written fluency."
>
> *"The service provider must be able to provide a translated version of all or part of its report in either official language (English or French) at the client's request."*

This indicates that the institution is aware of its obligation to ensure that its service providers comply with the Act in their dealings with members of the public.

To give an example, when browsing the WorkSafeNB web page, under the "Health Care" tab, in the "Providers" category, there is a "Medical consultants" category. It states:

> *Medical consultants are physicians who provide medical advice to case management teams and help co-ordinate medical care for workers with a workplace injury or illness. They help determine if an injury is work-related. They may review clinical objectives, estimate recovery and disability periods, and determine probable outcomes of a treatment plan. They communicate with a worker's physician to co-ordinate care aimed at return to work.*
>
> *Medical consultants may also conduct examinations to assess possible permanent physical impairment resulting from workplace accidents.*[4]

In this case, without providing details that could identify the complainant, the decision includes several paragraphs of a case review by "the WorkSafeNB medical consultant." However, this is not provided entirely in the member of the public's official language of choice, French. Only a few lines for explanation in the chosen official language of the member of the public appear after the medical consultant's excerpts. This appears to be contrary to the official languages provisions found in calls for tenders for service providers.

Under section 30 of the OLA, when service providers provide services on behalf of an institution, the institution must ensure that its service providers meet its linguistic obligations under the OLA.

[4] https://www.worksafenb.ca/health-care/providers/medical-consultants/

The OCOL also asked the following question:

> [Translation]
> How are these service providers informed of your linguistic obligations under the OLA?

The institution provided the following response:

> [Translation]
> *Our service providers are informed of linguistic obligations through:*
>
> - *Language clauses in calls for tenders and contracts.*
> - *Guidance documents provided at the beginning of the contractual relationship.*
> - *Ongoing communications about OLA requirements.*

Non–third-party service providers

According to the OCOL's understanding of the evaluation of calls for tenders and contracts between the institution and its potential service providers, the institution's third-party service providers are responsible for providing all reports or documents in the language of members of the public, [Translation] "at the client's request," whereas the institution appears to have no recourse to require non–third-party service providers to provide services in the official language of the client's choice. According to the institution's response, these service providers are [Translation] "chosen directly by the workers or their attending physicians, outside of any formal contract with our institution."

Since service providers that are not, according to the institution, a third party are not required to offer their services in both official languages and do not have linguistic obligations, the institution seems not to be concerned about the need to have the reports or documents that it uses as evidence translated, as they are generally not intended for the public. However, the institution's decisions are. As noted earlier, any communication intended for the public must be fully available in a member of the public's language of choice.

The OCOL is therefore of the view that, since the institution uses documents or reports from service providers that the institution believes are not third parties—documents intended for members of the public—it is responsible for providing the documents used in the official language of choice of the member of the public, even if it is not the author of the documents. It does not matter who the author is: all correspondence sent by the institution must comply with its linguistic obligations under the OLA.

Linguistic profile of employees

To better understand the institution's ability to offer all its services in the official language of choice of any member of the public, the OCOL examined the linguistic profile of employees. It asked the following question:

> [Translation]
> What is the linguistic profile of WorkSafeNB case managers? Do you consider the number of bilingual case managers to be sufficient to offer all your services equally in both official languages?

The institution responded as follows:

> [Translation]
> *A significant percentage of our caseworkers are designated bilingual, particularly in all departments dealing with the public. At the time of writing, 53 of our 86.6 case managers are bilingual (spoken and written), or 61.20% of our staff in this unit. We continue to assess our capabilities to provide an active offer of services of equal quality in both official languages. Matching processes and support measures are implemented when required.*

The institution seems confident in its ability to offer all its services equally in both official languages. It also appears to have established a contingency plan to ensure its services are available in both official languages at all times.

Workers' representatives

In its response to the OCOL's alternative resolution letter, the institution stated:

> [Translation]
> *It is important to note that recipients can obtain more information at any time by contacting the caseworker or through worker's representatives, who are available to them at no cost.*

After receiving this response, the OCOL asked the following question:

> [Translation]
> What is the relationship between WorkSafeNB and the workers' representatives that are available to the decision recipient? Are these individuals assigned by WorkSafeNB to support workers in specific situations?

The institution responded to this question as follows:

> [Translation]
> *Workers' representatives report to the Department of Post-Secondary Education, Training and Labour (PETL) and are assigned by this Department to workers according to their language preferences, unless the workers themselves select*

> *their representative (e.g., union representatives or lawyers), not by WorkSafeNB. We work with them to facilitate understanding of decisions, always respecting the official language of choice.*

These workers' representatives are assigned according to the client's official language and provide an interpretation of the decision and the evidence in its entirety. They also appear to be responsible for ensuring that clients understand the excerpts of these decisions that appear in the other official language. However, without a reliable translation by a certified professional, the document is subject to interpretation by a workers' representative. In addition, workers' representatives are not health professionals and lack healthcare training and an understanding of medical issues. The risk of misinterpretation is therefore significant. Furthermore, the OCOL is of the view that, in order to avoid such a situation, any document, communication or other material intended for a member of the public who is a client of WorkSafeNB must, without exception, be fully available in the official language of the client's choice. Otherwise, the institution is not fully compliant with its linguistic obligations under the OLA.

As an example, consider the decision sent to the complainant in this case. It was written in French, with evidence in English. The complainant, whose first language is French, is required to ask for help to understand the English excerpts. They cannot read or understand them themselves. Conversely, it is possible that a person whose chosen official language is English receives a letter written in English with the excerpts of evidence in English. That person does not need to use the workers' representative to read the evidence in their decision, since it is already in their official language of choice. Nevertheless, nothing prevents this person from accessing the services of a workers' representative to interpret their decision, which we repeat is entirely available in their chosen official language.

The OCOL believes that workers' representatives are excellent resources available to members of the public. However, it is concerned that the institution is failing to meet its linguistic obligations to provide excerpts of decisions in the official language of the member of the public by relying on those representatives, who are employed by another institution, to provide linguistic interpretation verbally. In the OCOL's view, this is not equal access.

Access to workers' representatives to interpret excerpts in the other official language amounts to nothing more than an accommodation for one of the two official languages.

<u>Equal quality of service</u>

Moreover, 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.*

The OCOL respectfully warns the institution that, if it continues to include excerpts from documents generally not intended for members of the public in the official language not chosen by a member of the public, this does not equate to service of equal quality for members of both official linguistic communities. The institution should also not rely on workers' representatives to interpret these excerpts from decisions that are not in the language of choice of members of the public. As suggested above, it is the institution's responsibility to ensure that all communications and documents intended for the public are fully available in the chosen official language of members of the public, including the institution's decisions and related evidence, otherwise the institution does not recognize the equality of both official languages of New Brunswick.

In its latest response, the institution informed the OCOL that this was not an accommodation, since members of both official linguistic communities have access to these workers' representatives. However, due to the decision received from the institution that contains excerpts in English, the complainant is concerned that they will not be served by the Appeals Tribunal in French and feels disadvantaged. This situation also affects members of the public whose official language of choice is English. They also have the right to receive decisions and documents from WorkSafeNB written entirely in their official language of choice.

The situation rests on the complainant's perception. How can they be certain they will receive service entirely in their language of choice when appealing a decision if they cannot receive all their communications from the institution in that language? The complainant is concerned about not being able to understand the appeal process, which will undoubtedly have serious effects on their future.

Conclusion and recommendations

This investigation by the Office of the Commissioner of Official Languages has made it possible to establish that, for the reasons set out in this report, the complaint is **founded** and that WorkSafeNB (the institution) failed to meet its obligations under the *Official Languages Act* of New Brunswick (OLA).

Having established that the complaint is founded, the Commissioner therefore makes the following recommendations:

1. **THAT** **to ensure continuity of service in the language of choice of any member of the public, the institution ensures that its communications and services, as well as those of its third-party service providers and non–third-party service providers, are available in the official language of choice of the member of the public at all times, even if the institution is not the author of the communication;**
2. **THAT** **the institution reminds all employees and third-party service providers of the importance of its official linguistic obligations and process so that all communications and related documentation are available in the official language of choice of members of the public;**
3. **THAT** **the institution continues its recruitment efforts to ensure that its staff maintain an adequate level of bilingualism to provide members of both official linguistic communities with oral and written communications of equal quality.**

The Office of the Commissioner would like to thank the institution for its cooperation in this investigation.

Pursuant to subsection 43(16) of the OLA, we submit this report to the President and Chief Executive Officer of WorkSafeNB, the complainant and the Premier. We also submit it to the Clerk of the Executive Council and to the Executive Director of the Secretariat of Official Languages.

Pursuant to subsection 43(18) of the OLA, if the 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 22nd day of October, 2025