

**OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK**



**COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK**

INVESTIGATION REPORT

FILE NO.: 2015-2561

MARCH 2016

HORIZON HEALTH NETWORK

Subject: Alleged deficiencies in the provision of communications in French

**SENT TO THE: Premier
Deputy Minister of Health
President and CEO of Horizon Health Network
Clerk of the Executive Council
Complainant**

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Context

The case under review relates to a complaint concerning the Horizon Health Network (hereinafter “the institution”), and more specifically, The Moncton Hospital, with alleged deficiencies in the provision of services in French by the Emergency Department receptionist and a triage nurse. After consulting the parties to obtain their version of the facts, the Office of the Commissioner can summarize the incident as follows:

The complainant went to the Emergency Department at The Moncton Hospital on October 18, 2015. The complainant alleged—and this was subsequently confirmed by the institution—that he did not receive an active offer from the Emergency Department receptionist. It was also confirmed that the triage nurse had not been informed that the patient wished to receive service in French and that the patient therefore did not receive service in the language of choice.

The institution indicated that the situation arose partly because one of the two employees concerned had recently returned from leave, was not performing her regular duties, and was not aware of the requirements under the OLA concerning the provision of services.

It should be noted that this case comes on the heels of another complaint concerning the same institution from the same complainant. It will be discussed in the Analysis chapter of this report.

Investigation

After receiving the complaint, the Office of the Commissioner sent a notice of investigation to the institution concerned, taking care to include two questions in order to clarify the context in which the incident occurred. The following questions were submitted to the institution:

1. Did the employee reminders and the meetings with the employees concerned actually take place as you indicated to the Office of the Commissioner in your correspondence dated July 8, 2015?
2. Did the informal visits actually take place, and what were their results in terms of the provision of services in both official languages?

As indicated, the institution, in correspondence that we received a few weeks later, admitted to the facts as reported by the complainant, and it explained the steps it planned to take to remedy the situation. These steps will be examined in the next chapter of this report.

The complainant did not receive an offer of service or service in the official language of choice.

Analysis

After considering all of the facts, and since the institution has admitted to them, the Office of the Commissioner has determined that the complaint is **founded** and that the *Official Languages Act* (“OLA”) was violated. Pursuant to section 34 of the OLA, all facilities as defined in the *Regional Health Authorities Act* have an obligation to serve members of the public in the official language of their choice.

34. Subject to the obligation to serve members of the public in the official language of their choice, section 33 does not limit the use of one official language in the daily operations of a hospital or other facility as defined in the *Regional Health Authorities Act*.

Furthermore, the following sections of the OLA must be complied with:

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.
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.

- **Initial complaint and actions taken by the institution**

A complaint was filed with the Office of the Commissioner in June 2014.¹ The complainant, after being admitted to the Emergency Department at The Moncton Hospital, did not receive an active offer of service or service in the official language of choice from the unilingual nurse responsible for providing care to the complainant. The complainant had to communicate exclusively in English in order to receive specialized care. Lastly, the classes the complainant had to attend as part of remission treatment at The Moncton Hospital were offered in English only. On July 30, 2015, the Office of the Commissioner presented a report on this matter. After reviewing the institution’s response, the Office of the Commissioner did not deem it necessary to issue any formal recommendations. However, it did discuss some important points.

¹ File 2014-2138: Report dated July 30, 2015.

For example, the institution indicated in this case that a system had been developed to identify patients' language of choice by noting it on a "Care Transfer" form when patients have to go to another facility. Since the offer of service was not made initially, the patient's language of choice was not noted properly. As indicated, the Office of the Commissioner and the institution both concluded that this situation could have been avoided had the offer of service been made initially.

In this case, the institution informed the Office of the Commissioner that an Official Languages Policy ("the Policy") had been developed and officially approved on June 25, 2015, by the Horizon Health Network's Board of Directors. This Policy now requires that all managers submit an up-to-date linguistic profile and contingency plan to Official Languages once a year.

After the Policy was implemented, training was provided for Emergency Department staff. However, the institution informed us in its response to the notice of investigation that, since January 2015, only 20 employees out of 120 had attended one of the four training sessions. According to the institution, there are several reasons for this low participation rate, including the fact that it was difficult for employees to get away to attend the sessions without disrupting service delivery. Lastly, some Emergency Department staff were somewhat hesitant with respect to offer of service because, when patients are admitted to the Emergency Department, the situation does not always lend itself to offer of service, as any delays could exacerbate the condition of patients.

- **October 2015: The incident happens again**

As indicated in the Context chapter, the complainant was admitted to the Emergency Department at The Moncton Hospital in October 2015 and could not obtain service in the official language of choice. In response to the reasons given in the notice of investigation, the institution indicated with regard to **question 1** that, although training was provided for staff members, only 15% of the personnel concerned actually took it.

The institution indicated that, to remedy the situation, compulsory training would be provided for Emergency Department staff at The Moncton Hospital. This training will explain the principles of active offer and will include the program called H.E.L.P.: Hello/*Bonjour*, Explain, Listen, Professionalism. The program focuses on customer service, empathy, and effective communication. According to the institution, these training sessions should be sufficient to enable employees to understand their obligations under the OLA. The Office of the Commissioner endorses this affirmation.

In its written response to the notice of investigation, the institution indicated with regard to **question 2** that it had conducted active-offer checks in the Emergency Department. The institution explained that, once all of the employees concerned had taken the required training, it would be conducting random checks at the two identified contact points, namely triage and reception. If the active offer is deficient, the manager will immediately follow up with the employees in question. If the deficiency persists, the

institution indicated that the appropriate disciplinary action would be taken, in accordance with the collective agreements in force.

- **Provision of services in both official languages: Need to adopt a proactive approach**

From the many investigations conducted by the Office of the Commissioner involving various institutions, one corollary keeps emerging: Had the institutions acted diligently and proactively, situations of non-compliance with the OLA could have been avoided. Identifying needs and then taking action enables institutions to create the conditions required to provide quality service for the two linguistic communities, in accordance with the obligations set out in the OLA. For example, by developing employee linguistic profiles, institutions can better identify challenges and deficiencies in their departments and then take action in the sectors where efforts need to be focused.

Prevention is the best possible course of action, as it negates the need to respond to adverse circumstances. By assessing needs, such as the need to have a bilingual employee at reception at all times and to develop a system in patients' records to identify their preferred language for all subsequent courses of treatment, institutions will be able to provide quality service in both official languages without having to continuously reinvent their practices.

Recommendation

The Office of the Commissioner would like to draw attention to the steps taken by the institution to ensure that members of the public receive quality service in both official languages. However, following the analysis presented, the Commissioner deems it appropriate to make the following recommendation:

THAT employees receive the training provided by the institution concerning active offer and H.E.L.P on commencement of employment, i.e., on their orientation day.

The Office of the Commissioner believes that, if the institution implements this recommendation, the training sessions will not disrupt the employees' schedules, and staff will be aware of the Horizon Health Network's obligations under the OLA beginning on their first day at work.

Conclusion

Pursuant to subsection 43(16) of the OLA, we respectfully submit this report to the Premier, to the Deputy Minister of Health, to the President and CEO of Horizon Health Network, to the Clerk of the Executive Council, and to the complainant.

We also wish to advise that, pursuant to subsection 43(18) of the OLA, if the complainant is not satisfied with the conclusions of this investigation, the complainant may apply to the Court of Queen's Bench of New Brunswick for a remedy.

[Original signed by]

Katherine d'Entremont, MPA
Commissioner of Official Languages for New Brunswick

Dated at Fredericton,
in the Province of New Brunswick,
this 31st day of March 2016