

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



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

**MARCH 2015**

**INVESTIGATION REPORT**

**VITALITÉ HEALTH NETWORK**

**SENT TO: THE PREMIER  
THE DEPUTY MINISTER OF EXECUTIVE COUNCIL  
OFFICE  
THE PRESIDENT & CEO VITALITÉ HEALTH NETWORK  
THE COMPLAINANTS**

## TABLE OF CONTENTS

I. INTRODUCTION .....	2
II. COMPLAINTS, INVESTIGATION AND OBSERVATIONS .....	2
A. FIRST FILE.....	2
1. Complaint.....	2
2. Investigation.....	3
a. Telephone calls on July 19, 2013 .....	4
b. Greeting on the 4 <sup>th</sup> floor Cardiac ward on July 20, 2013 .....	4
c. Communicating Patient complications on July 24, 2013 .....	4
d. Assisted Living issues surface on July 29, 2013 .....	4
e. Patient Care and Communication from July 19 to September 1, 2013 .....	4
Complainant's comments	
a. Telephone calls on July 19, 2013 .....	5
b. Greeting on the 4 <sup>th</sup> floor Cardiac ward on July 20, 2013 .....	5
c. Communicating Patient complications on July 24, 2013 .....	6
d. Assisted Living issues surface on July 29, 2013 .....	6
e. Patient Care and Communication from July 19 to September 1, 2013 .....	6
3. Observations .....	6
a. Telephone calls on July 19, 2013: No active offer of service and no staff with requisite linguistic capacity on site.....	6
b. Greeting on the 4 <sup>th</sup> floor Cardiac Ward on July 20, 2013: No active offer of service and no staff with requisite linguistic capacity provided .....	6
c. Communicating patient complications on July 24, 2013: What is the Purpose of the Active Offer of service? .....	7
d. Assisted living issues surface on July 29, 2013: Who is responsible? .....	7
e. General patient Care and Communication from July 19 to September 1, 2013: Who is Vitalité's clientele? .....	8
B. SECOND FILE .....	8
1. Complaint.....	8
2. Investigation.....	9
3. Observations .....	9
C. THIRD FILE.....	10
1. Complaint.....	10
2. Investigation.....	10
3. Observations .....	12
III. ANALYSIS AND GENERAL OBSERVATIONS.....	12
1. General observations .....	13
A. Linguistic obligations.....	13
B. Lack of capacity of Human Resources.....	14
C. Lack of Procedures .....	15
D. Attitude .....	15
IV. CONCLUSIONS.....	15
V. RECOMMENDATIONS .....	16

**IN THE MATTER OF THE *OFFICIAL LANGUAGES ACT* OF NEW BRUNSWICK  
R.S.N.B. 2002, CHAPTER O-0.5**

**Subject: Complaints under the *Official Languages Act*  
Vitalité Health Network – Edmundston Regional Hospital  
Allegations of deficiencies with respect to communication in English**

**INVESTIGATION REPORT**

**I. INTRODUCTION**

Three complaints were received at our office, the first on November 25, 2013, the second on March 17, 2014 and the third on September 9, 2014. All deal with allegations of deficiencies with respect to the same establishment, the Edmundston Regional Hospital which is administered by the Vitalité Health Network (hereinafter called “Vitalité” or “institution”). We therefore chose to merge the results of our investigations within one report. The details of these complaints and subsequent investigations follow.

**II. COMPLAINTS, INVESTIGATION AND OBSERVATIONS**

**A. *FIRST FILE***

**1. Complaint**

The complainant says that at around 8 p.m. on July 19, 2013, he called the Edmundston Regional Hospital’s switchboard and asked to be transferred to his mother’s hospital room. He says he was told that his mother did not have a telephone in her room so the call was transferred to the 4<sup>th</sup> floor nurses’ station. When someone at the station answered the telephone, the complainant said: “Good evening” then gave his name and asked to speak with the nurse who was caring for his mother and gave her name. The complainant says that he then heard a click on the line and the call was terminated. He says he then called the switchboard back and explained what had happened to the receptionist. She said that she would transfer the call again to the 4<sup>th</sup> floor Cardiac ward nurses’ station and gave the complainant the telephone number (739-2275) in case he got disconnected again.

The complainant said that when he called the second time he waited for the person answering the telephone at the nurses’ station to speak first. A man answered so he introduced himself again but within seconds of speaking into the telephone, he heard it thud onto a hard surface then heard the man say, as he was walking away, “St’un Anglais” (C’est un Anglais). At this point the complainant says he started timing his wait for someone else to come to the telephone and says he waited for one minute and thirty seven seconds before someone else, a woman, picked up the telephone receiver and said: “What you want?” so he explained that he wanted to know his mother's condition and said he would be arriving in Edmundston the following evening. The complainant says the nurse told him with much difficulty that his mother's condition was now stable so he thanked her and hung up.

When the complainant arrived from Ontario on Saturday July 20, 2013, he went directly to the Edmundston Hospital and was informed that his mother was in room 406 located on the 4<sup>th</sup> floor so he went to Cardiac ward nurses’ station on that floor where at least eight people were located. He then said: “Excuse me” and proceeded to introduce himself and asked to speak with the nurse

looking after his mother. The complainant says that everyone at the station area just stared at him and did not respond. So, he repeated the question at which point one of the nurses held up her finger which he took to mean that he should wait a minute. Then she disappeared down the hall. She returned at the station a few minutes later with another nurse who asked him what he wanted in broken English. The complainant says he repeated his question but the new nurse was not able to explain his mother's condition in English. She switched to French and tried to explain things but he could not understand what she was trying to tell him. He went to his mother's room not knowing what he would find when he got there and without information on her prognosis.

On July 21, he says he spoke with a Dr. Martin at approximately 10:45 a.m. who tried to explain the situation in English, with difficulty. She gave the complainant the name of the doctor who would be looking after his mother the following day suggesting that he discuss these matters with the new doctor. The complainant says that on that day when he tried to speak with staff including nurses, orderlies or physiotherapy personnel, he was ignored. He says he could not even find out what his mother's blood pressure levels were.

It was not until the afternoon of Wednesday July 24 that the complainant was able to speak with Dr. Soucy, who was able to speak with him in English but that at around 7p.m. that evening, his mother was having problems with dizziness, feeling sick to her stomach, a racing heartbeat and pounding in her chest. So they rang for a nurse and one came into the room very quickly and treated his mother. This went on for hours during the course of which he could not find out what was happening to his mother. He says that at around 1:30 a.m., the nurse in charge suggested (in French) that he go home and get some sleep that they would contact him by telephone if anything happened. He said he left not knowing what was really happening and very concerned that his mother would not make it through the night.

On Monday July 29, the complainant says he found out that the Provincial Social Worker who was preparing an evaluation report for entry into an assisted living facility for his mother had just started a two week vacation which meant that it would take at least three weeks before its completion. He says this changed his mother's rank from 5<sup>th</sup> position to 9<sup>th</sup> on the waiting list. The complainant says that had he been notified in English that the social worker would be out of the office for such a long period of time, he would have asked the doctor to complete the report and his mother would not have been disadvantaged. He says that on two separate occasions he asked to speak with an English-speaking person who could explain their options but this never took place.

The complainant says the situation went on between July 19<sup>th</sup> and September 1<sup>st</sup> adding that this was one of the most frustrating and stressful experiences of his life, attempting to make necessary arrangements for his mother's release from Hospital while having no idea of what her needs were. He says he does not understand how in New Brunswick, the medical staff in this hospital would not speak to him in English.

## **2. Investigation**

On December 2, 2013, a letter pursuant to subsection 43(13) of the *Official Languages Act* ("OLA") was sent to Vitalité conveying the complainant's concerns, asking the institution to provide its position with respect to the allegations and seeking the answers to the following questions:

1. What is the linguistic capacity of the staff on duty at the Cardiac Ward at the Edmundston Regional Hospital?

2. What measures are in place to ensure that services are provided in the language of choice of patients at all times at the Edmundston Regional Hospital?

On June 19, 2014, a letter dated June 13, 2014 from the President and Chief Executive Officer of Vitalité at the time, Rino Volpé, was received in response to this complaint. The response was broken down into issues with comments provided for each. The following are excerpts from these comments:

**a. Telephone calls on July 19, 2013**

Comments: We were able to question the nurse manager of this sector, who explained that due to a shift change occurring when the call came in and due to the length of time since the call, it was difficult to identify who exactly had answered and subsequently informed the family member in question. That said, the nurse manager acknowledged that the interaction should not have unfolded as it did. All employees must answer (in person and on the telephone) with the active offer of service, which did not occur in this case. With respect to the second nurse who was asked to inform the family member, although she was well-intentioned, she did not appear to have the functional skill level in English required to inform the family member effectively. Everything indicates that this person was the nurse most able to converse in English at that time.

**b. Greeting on the 4<sup>th</sup> floor Cardiac ward on July 20, 2013**

Comments: The nurse manager indicated that it was difficult to know exactly which nurse had been involved due to the length of time that had elapsed since the event. That said it appears that, despite making an effort to speak English, the nurse did not possess the functional skills required to explain the mother's condition effectively and that these skills were insufficient to inform the family member effectively. Another employee more qualified in the family member's language of choice should have been made available.

**c. Communicating Patient complications on July 24, 2013**

Comments: When a change occurs in a patient's condition, the physician is usually the one to inform the patient's loved ones. The nurse manager was able to question the nurse on duty on the night of July 24, 2013, who indicated that the patient had been served in French and that she was unaware that the family member in question did not understand French.

**d. Assisted Living issues surface on July 29, 2013**

Comments: First, it should be noted that it is not the physician but rather the social worker with the Department of Social Development who is authorized to complete this type of report. This social worker is not an employee of Vitalité Health Network. Following a request for placement, a report on the patient's needs must be sent to the care home to make the request for placement official, and the patient's name is then placed on a waiting list (if applicable).

The request for placement in a long-term care home was prepared by a social worker from the hospital. This request was submitted two days before the provincial social worker with the Department of Social Development left on holiday. It would appear that this misunderstanding resulted from a lack of communication.

**e. Patient Care and Communication from July 19 to September 1, 2013**

Comments: It is very regrettable that the patient's family member had this experience. According to our investigation, the patient was admitted as a Francophone and, as indicated in her medical report, the interactions with her during her stay took place in French.

As is the case with all public organizations in New Brunswick, Vitalité Health Network must offer services in both official languages. Although all employees are not required to be able to communicate in both official languages, they must possess the language skills required to perform their duties.

The institution also provided answers to the above-noted questions asked in our letter dated December 2, 2014. These are repeated below for ease of reference:

1. What is the linguistic capacity of the staff on duty at the Cardiac Ward at the Edmundston Regional Hospital?

The linguistic capabilities of the Cardiac Medical Unit of the Edmundston Regional Hospital are not currently defined due to staff turnover that has occurred in recent months. This analysis will be carried out in the next few months.

2. What measures are in place to ensure that services are provided in the language of choice of patients at all times at the Edmundston Regional Hospital?

To meet language skill requirements, Vitalité Health Network relies on an integrated team approach to deliver services. These functional teams are made up of a combination of employees with varied linguistic skills. Teams must be able to provide services in either official language. In this case, some care teams on duty during the patient's stay did not necessarily possess all the satisfactory language skills at all times. This observation highlights the need for us to continue making the managers of the various units aware of the need to include the language skills component in the composition of teams assigned to shifts. All nurse managers of care units are responsible for ensuring that teams are able to provide services in both official languages. It appears that, since the patient was admitted as a Francophone, some employees assumed (by association) that the family member also spoke French.

Last year, a brochure entitled "Active Offer of Service in Both Official Languages" was distributed to Vitalité Health Network managers, employees, and physicians. An e-learning module on official language obligations, especially with respect to the integrated team approach in the provision of services, is available to managers and employees. All employees of the care unit in question have already completed this module or will do so in the near future. The nurse manager will monitor compliance.

We are very cognizant that language is a key component of quality service and we will continue our efforts to ensure that our communication with the public meets official language obligations.

On June 16, 2014, a copy of the institution's response was sent to the complainant allowing for a reply which was received July 9, 2014. The following is an excerpt of this reply:

**a. Telephone calls on July 19, 2013**

Statement 1: The call was placed to the nurses' station between 0900-0930 pm Edmundston, N.B. time. I was not aware that a shift change took place at this time of night. If the nurses on duty are not able to speak fundamental/rudimentary English at any given time then how are they able to or expected to explain difficulty situations or procedures to the loved ones of their patients? When the nurse picked up the telephone she spoke to me in English, so she had to be aware that an English speaking person was on the other end of the line. It seems to me for her to know this, she had to be present when the telephone was thrown or dropped onto the desk. So therefore she probably knew who dropped or threw the telephone. A shift change nurse would most likely pick up the telephone and first address me in French by saying something like, "Hello, can I help you" so the explanation given does not make much sense.

**b. Greeting on the 4<sup>th</sup> floor Cardiac ward on July 20, 2013**

Statement 2: None of the nurses at the station could or would speak to me in English. A finger gesture which indicated please wait a minute was given and a nurse went to find someone. It took only a few

minutes for another nurse to appear and even that person could hardly speak to me in everyday English. So again, how would I be able to find out details of my mother's condition?

**c. Communicating Patient complications on July 24, 2013**

Statement 3: This is a big skip from July 20<sup>th</sup> to July 24<sup>th</sup>. I guess that no one wants to address the situation that occurred on Sunday the 21<sup>st</sup> of July, 2013.

I'm really surprised that my mother's chart, or foot note on the chart, did not mention that I needed to be updated in English?

**d. Assisted Living issues surface on July 29, 2013**

Statement 4: If we had been made aware that the social worker would be away on vacation and my mother's placement would be in jeopardy then other avenues would have been pursued. Dr. Soucy was prepared to fast track the papers herself, but no one felt that it would be important for us to know!

**e. Patient Care and Communication from July 19 to September 1, 2013**

Statement 5: My mother is over 90 years old and has some difficulty understanding or remembering what is happening to her. I am her trustee and in case of her being unable to look after herself, it is up to me to make the necessary decisions and arrangements when that time comes. "How" would I know if that situation is at hand if no one can speak to me in English?? Our solicitor drew up the necessary papers in 2008 and I had them with me if needed. In the nearly 2 1/2 months I was at the hospital I did not encounter or speak to a single nurse in everyday/ functional English. If it is actually the case that there are nurses on the cardio floor that have the linguistic skills necessary to speak well in both French and English then it looks like I was being discriminated against on the basis that I am English! The above mentioned scenario does create more problems so please enlighten me as to the actual reality as both I and my solicitor would like to know!

It would not be difficult to determine the names of the staff members working on the Cardio ward during this time period and thus their individual linguistic skill sets.

### **3. Observations**

**a. Telephone calls on July 19, 2013: No active offer of service and no staff with requisite linguistic capacity on site**

With respect to the telephone calls made on July 19, 2013, the institution indicates that the nurse manager acknowledged that "the interaction should not have unfolded as it did." She concedes that: "All employees must answer with the active offer of service which did not occur in this case." Furthermore, the institution admits that the staff member who interacted with the complainant did not have the requisite linguistic capacity to speak effectively in English adding that the staff member in question was the most qualified on site to speak English at the time. We note that the institution provides no explanation for the dropped calls nor does it provide an explanation for the lack of staff on hand able to provide adequate service in the complainant's language of choice.

**b. Greeting on the 4<sup>th</sup> floor Cardiac Ward on July 20, 2013: No active offer of service and no staff with requisite linguistic capacity provided**

With respect to the incident on July 20, 2013, the institution does not deny the allegations made against it. Rather it indicates the nurse did not possess the functional skills required to explain the mother's condition effectively to the complainant. It adds that an employee more qualified in the complainant's language of choice should have been made available. Again no explanation was provided for the lack of availability of such staff at that time nor was any explanation given for the manner in which the staff reacted upon the complainant's arrival on the Unit with gestures rather than a proper greeting.

**c. Communicating patient complications on July 24, 2013: What is the Purpose of the Active Offer of service?**

According to Vitalité, the nurse on duty that night indicated that she provided French service to the patient and was unaware that the complainant did not understand French. We question this given that the complainant indicated that he was speaking to her in English. Furthermore, had this nurse made the active offer of service, the complainant's language preference would have been clearly known to this nurse. This leads us to conclude that the nurse may have failed to understand the extent of her linguistic obligations in general; and in particular with regard to how these obligations apply not only to patients but also to members of the public. It is also possible that the nurse deliberately ignored her linguistic obligations toward this individual knowing that she felt she did not have the linguistic ability in English to deal with the situation.

Whatever the reason, the fact remains that the complainant's linguistic rights were not respected. This conclusion does not change even though the institution says it is up to the doctor to communicate changes in patient condition to family members. Although this may be the case, this does not justify or excuse the end result in this case with the complainant leaving the hospital: "not knowing what was really happening and very concerned that his mother would not make it through the night." Nurses on duty must either be able to relay general medical information to members of the public in the language of their choice at all times or have a mechanism in place which enables them to have recourse to someone with the linguistic capacity to do so in a timely manner at all times.

**d. Assisted living issues surface on July 29, 2013: Who is responsible?**

The institution indicates that the responsibility for the preparation of the report ultimately belongs to the social worker with the Department of Social Development who is authorized to complete this type of document but specifies that the request for placement in a long term care home was prepared by a social worker from the hospital two days before the provincial social worker went on vacation. We therefore conclude that the role of Vitalité's staff in this case was significant with respect to the timelines. Although Vitalité acknowledges that a lack of communication was at the source of the misunderstanding, the institution provides no explanation for not responding to the complainant's requests on two separate occasions to speak with an English speaking person who could explain their options.

Hence, we are left to wonder whether the staff members fail to understand the extent of their linguistic obligations or whether they simply did not have the ability to respect their obligations for lack of qualified staff able to speak in the complainant's language of choice. We also

question whether there are procedures in place to deal with such instances which would outline specific steps to be taken to ensure the respect of linguistic obligations.

**e. General patient Care and Communication from July 19 to September 1, 2013: Who is Vitalité’s clientele?**

The institution outlines in its June 13, 2014 response that “the patient was admitted as a Francophone and, as indicated in her medical report, the interactions with her during her stay took place in French.” Although this may be the case, Vitalité’s linguistic obligations are not limited in application to its patients. Rather, these obligations also apply to members of the general public. For patients who rely on family members and others for support, the non-respect of the linguistic rights of family members and others can have a negative impact on a patient’s wellbeing.

The institution says that: “As is the case with all public organizations in New Brunswick, Vitalité Health Network must offer services in both official languages. Although all employees are not required to be able to communicate in both official languages, they must possess the language skills required to perform their duties.”

In fact, **all** employees bear the responsibility of ensuring that the official language rights of members of the public are respected at all times. This means that if employees do not have the ability to communicate in both official languages, they must be able to rely on procedures established by the institution which will enable them to quickly access someone with this capacity.

We note that Vitalité does not dispute the allegations of the complainant with respect to the lack of service in his language of choice during the period in question nor does it address the claims that staff seemed to be avoiding him.

***B. SECOND FILE***

**1. Complaint**

At around 10:00 a.m. on March 17, 2014, the complainant dialed 506-739-2211 in order to reach the Edmundston Regional Hospital.

The complainant indicates not receiving an active offer of service from the person who answered the telephone (the latter’s greeting was in French only). When the complainant mentioned, in English, calling for an MRI booking, the call was transferred to 506-739-2200 following which a person answered, once again, in French only. The complainant then requested service in English and was put on hold with the communication later being disconnected.

The complainant is particularly unhappy as this is the third time such an incident occurs within a few weeks (since late February 2014).

## **2. Investigation**

On March 31, 2014, a letter pursuant to subsection 43(13) of the OLA was sent to Vitalité conveying the complainant's concerns. On May 26, 2014, a letter dated May 21, 2014 from the then President and Chief Executive Officer of Vitalité, Rino Volpé, was received in response to the complaint. The following is an excerpt of this letter:

This letter follows your correspondence dated March 31, 2014. An internal evaluation was conducted by Vitalité Health Network regarding the aforementioned complaint.

This evaluation showed that the phone number 506-739-2211 is in fact the former number of the facility's main reception. When this number is dialed, the caller is automatically transferred to the Edmundston Regional Hospital Administration. Calls are usually answered by the administrative assistant. The administrative assistant in question said that she did not remember that call specifically. She also said that she always answers calls from the public this way, "Hôpital régional de Edmundston good morning/good afternoon." She is bilingual and claims that she always continues the conversation in the caller's chosen language. Random calls confirmed this practice. Also, to avoid unnecessary intermediaries, she says that when a call needs to be transferred to a unit or department, she transfers the call directly to the unit or department in question.

We also questioned the hospital Reception, Admitting and Central Scheduling Department and the Manager said that on March 17, 2014, a casual employee was working at the main reception (506-739-2200). When questioned by the Manager, the casual employee said she did not remember that call specifically. Although bilingual, the employee also mentioned that she does not systematically offer services in both official languages during telephone greetings. There may actually have been a failure to actively offer services in both official languages during the call made on the morning of March 17, 2014. It is also possible that another employee answered the call while the casual employee was on break and would be responsible for the failure. As for call waiting being disconnected, we are unable to explain why the caller got cut off.

After the incident was reported, the Manager of Reception, Admitting and Central Scheduling reiterated the importance of actively offering services in both official languages to the casual employee, as well as to all her staff. Information pamphlets on active offer of service were distributed again to every employee in the sector. Also, in the short term, each employee in the sector will complete the online training on official languages, which will soon become mandatory for all Vitalité Health Network employees.

We are very cognizant that the active offer is a key component of quality service and we will continue our efforts to ensure that communication with the public meets official language obligations.

On June 2, 2014, a copy of the institution's response was sent to the complainant allowing for a reply, however none was received.

## **3. Observations**

With respect to the telephone calls made by the complainant on March 17, 2014, the institution concedes that "Although bilingual, the casual employee also mentioned that she does not systematically offer services in both official languages during telephone greetings. There may actually have been a failure to actively offer services in both official languages during the call made on the morning of March 17, 2014. It is also possible that another employee answered the call while the casual employee was on break and would be responsible for the failure."

In this case, Vitalité indicates being unable to explain why the complainant's call got cut off. We are therefore left to wonder whether there may be a link between the unexplained disconnected telephone calls and the staff's inability to provide service in English as well as the lack of a procedure in place, which could indicate who would be able to provide service in this official language.

### ***C. THIRD FILE***

#### **1. Complaint**

The complainant's wife was admitted to the Edmundston Regional Hospital for emergency surgery on August 29, 2014. At 7:00 pm on August 30<sup>th</sup>, the complainant dialed 506-739-2270, the ICU number provided, to find out how she was doing. He was transferred to the 4<sup>th</sup> floor surgery department where the receptionist told him that the nurse assigned to his wife would not speak with him on the telephone because she could not speak English. He says the receptionist would not give him any information on his wife's condition either. It was not until the next morning, when his wife got a telephone in her room, that he was able to find out how she was.

#### **2. Investigation**

On September 12, 2014, a letter pursuant to subsection 43(13) of the OLA was sent to Vitalité conveying the complainant's concerns, asking the institution to provide its position with respect to the allegations and seeking the answers to the following questions:

1. Did the receptionist make the alleged statements?
2. What was the linguistic capacity on duty of the nursing staff on the 4<sup>th</sup> floor surgery department at 7:00 p.m. on August 30<sup>th</sup>, 2014?
3. What is the current linguistic profile (required and actual) for all departments of the Edmundston Regional Hospital?
4. Are there procedures in place at the hospital to ensure the provision of services in both official languages by teams (and not by individuals)?

On January 5, 2015, a letter dated the same day from the President and Chief Executive Officer of Vitalité, Jean Castonguay, was received in response to this complaint. The following is an excerpt of this letter:

This letter follows your correspondence dated September 12, 2014. An internal evaluation was conducted by Vitalité Health Network regarding the aforementioned complaint. We offer to the following in answer to the questions raised.

##### **Question 1: Did the receptionist make the alleged statements?**

As part of this evaluation, the Surgical Department Manager of the Edmundston Regional Hospital reported that a licensed practical nurse recalls providing information to this patient's family member on August 30, 2014. It was therefore not a receptionist but a licensed practical nurse. The licensed practical nurse stated that she had acted as an intermediary between the family member and the nurse in charge of the patient, as the latter had difficulty speaking English. The licensed practical nurse who acted as an

intermediary stated that she had explained the patient's health condition to this family member. She also stated that she had answered all questions asked.

**Question 2: What was the linguistic capacity on duty of the nursing staff on the 4th floor surgery department at 7:00 p.m. on August 30, 2014?**

The Surgical Department Manager of the Edmundston Regional Hospital indicated that he was not aware of this specific information. Information available indicates that thirty of the thirty-eight employees (79%) in the Surgical Department have a functional level of proficiency in the second language.

**Question 3: What is the current linguistic profile (required and actual) for all departments of Edmundston Regional Hospital?**

Vitalité Health Network is currently developing a strategy regarding the determination of employee linguistic profiles, and thus be in a better position to enable a staffing complement that meets the linguistic requirements of the patients.

**Question 4: Are there procedures in place at the hospital to ensure the provision of services in both official languages by teams (and not by individuals)?**

As with all public service staff, Vitalité Health Network favours a team approach. So it is on a team basis rather than an individual basis alone that health care services are delivered in both languages. The procedure to ensure services in the language of choice of patients, their families, people who accompany them or any other members of the public is the same in all Vitalité facilities. Employees are required to follow this procedure:

1. Always greet the public in both official languages by employing a salutation in both languages in person and on the telephone (e.g., "Hello, bonjour").
2. Continue conversation in the language chosen by the member of the public.
3. If unable to do so, obtain help from a co-worker who is fluent in the member of the public's language of choice.

I thank you for bringing this situation to our attention and helping us to improve the quality of care provided by our health facilities.

On January 5, 2015, a copy of the institution's response was sent to the complainant allowing for a reply which was received via telephone on January 12, 2015. The following is a summary of the comments provided:

- ◆ The complainant says that the nurse in question is mistaken about the date of the conversation referenced in the answer. He says that he did speak to someone from the hospital the following day who provided information and says the conversation referenced in the institution's letter occurred the following day. He points out that had a receptionist or nurse answered his questions and provided information on his wife's condition on August 30th as is indicated in the institution's response, he would not have filed this complaint.
- ◆ The complainant ends by saying that he does not understand how a French-only speaking nurse could have been assigned to his wife's care when she only speaks English.

The above-noted information will allow us to draw conclusions without the need to continue our investigations or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

### **3. Observations**

#### **Question 1: Did the receptionist make the alleged statements?**

With respect to the telephone call made by the complainant in this case, the institution outlines in its answer that a licensed practical nurse and not a receptionist took the call. This nurse indicated that she served as an intermediary between the nurse in charge of the patient and the complainant and provided patient information and answered all of the complainant's questions.

We note that this version of the events contradicts the allegations made by the complainant. Nonetheless we conclude that the complainant would not have filed a complaint had he received service in his language of choice whether from a receptionist or a licensed practical nurse. We are also perplexed by the assignment of a nurse who has "difficulty speaking English" to an Anglophone patient.

#### **Question 2: What was the linguistic capacity on duty of the nursing staff on the 4th floor surgery department at 7:00 p.m. on August 30, 2014?**

In its answer, the institution indicated that "thirty of the thirty-eight employees (79%) in the Surgical Department have a functional level of proficiency in the second language" but was unable to specify the linguistic capacity of the nursing staff on the 4<sup>th</sup> floor surgery department at 7:00 p.m. on the night in question, which is baffling. It seems to us that if the institution knows that thirty of its thirty eight employees are proficient in the second language then they should be able to determine what it was on the night in question by assessing who was working.

#### **Question 3: What is the current linguistic profile (required and actual) for all departments of Edmundston Regional Hospital?**

With Vitalité indicating that it is currently developing a strategy determining the linguistic profiles of employees, it is clear that the institution does not know its current linguistic profile which is troubling since personnel gaps cannot be filled if they are not first identified which in turn cannot be done without first knowing what is necessary for all departments.

#### **Question 4: Are there procedures in place at the hospital to ensure the provision of services in both official languages by teams (and not by individuals)?**

Although the above noted procedure outlines a proper procedure to deal with language choice, it may not require further information to enable staff to be in a position to promptly find personnel with the language capacity able to converse in the member of the public's language of choice.

### **III. ANALYSIS AND GENERAL OBSERVATIONS**

Although one official language can be established by health establishments, facilities and programs under the jurisdiction of the regional health authorities under the Regional Health

Authorities Act (RHAA) for daily operations under sections 33 and 34 of the OLA, they must still comply with sections 27 to 28.1 of the OLA. The relevant provisions of the OLA to that effect state the following:

#### Health services

33(1) For the purposes of the provision of health services in the Province and notwithstanding the definition of “institution” in section 1, an institution in sections 27 and 28 refers to the network of health establishments, facilities and programs under the jurisdiction of the Department of Health or the regional health authorities under the *Regional Health Authorities Act*.

33(2) When establishing a provincial health plan under the Regional Health Authorities Act, the Minister of Health shall

- (a) ensure that the principles upon which the provision of health services are to be based include the delivery of health services in both official languages in the Province, and
- (b) consider the language of daily operations under section 34.

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*.

#### Communication with the public

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.

[Emphasis added.]

Thus, health care establishments such as the Edmundston Regional Hospital must make the active offer of service and provide service to members of the public in the official language of their choice.

## 1. General observations

In analyzing the facts of these cases, certain issues become apparent including the staff’s lack of understanding of its linguistic obligations. In addition, the institution acknowledges that there is a deficiency of personnel with the required linguistic capacity to provide services in both official languages. Additionally, there are no procedures in place to assist personnel who do not have the linguistic capacity to provide service in both official languages. Finally, whatever the cause, discourteous behavior and general lack of respect towards individuals who are merely exercising their right to use the official language of their choice must not be tolerated.

### A. Linguistic obligations

Not only was Vitalité not compliant with its linguistic obligations, these instances also highlight a fundamental lack of understanding of the purpose of the active offer of service as well as how to make this offer. One cannot assume the language choice of a member of the public simply because that person is a relative of a patient whose language choice is known. Furthermore, the obligation to provide service in the official language of one’s choice is not limited to

patients of the hospital. This obligation extends to all members of the public, whether they are relatives of patients or not. As such, care must be taken to ascertain the official language choice of all members of the public without making any assumptions based on familial ties or other considerations such as a person's last name, etc.

The purpose of the active offer of service is to determine the official language of choice of members of the public which, once determined, must be respected. In a health care setting, where many different interventions occur across many departments and by many different health care providers, providing service in the official language of one's choice requires that the choice of language be respected throughout the continuum of care. This means that when telephone calls are transferred to other departments, the person taking the call on the other end must provide service in the official language of choice of the patient or the member of the public. Therefore, the individual transferring the call must ensure that the person receiving the call is able to communicate in the language of choice of the patient or the member of the public. When the language choice is respected throughout the continuum of service, there is no need to repeat the active offer of service at each step. Rather, the official language choice made at the first point of contact by the patient or the member of the public is simply respected throughout the various interactions within the establishment. Patients and members of the public should therefore not have to reassert their official language preference once this has been clearly established at the first point of contact through the active offer of service.

### ***B. Lack of capacity of Human Resources***

In his response, the CEO of Vitalité indicated that the institution relies on an integrated team approach to deliver services and that "these functional teams are made up of a combination of employees with varied linguistic skills" and that "teams must be able to provide services in either official language." He also acknowledges that "some care teams on duty during the patient's stay did not necessarily possess all the satisfactory language skills at all times". Indeed, the institution concedes that certain staff members who attempted to provide service in English, the language of choice of the complainants, did not have the linguistic capabilities to do so adequately. We note with interest the institution's acknowledgement that "nurses on duty during the patient's stay did not necessarily possess all the satisfactory language skills at all times."

This result is hardly surprising in light of the fact that the linguistic capabilities of the Cardiac Medical Unit are not defined. Furthermore, we were taken aback by the institution's response which stated:

The linguistic capabilities of the Cardiac Medical Unit of the Edmundston Regional Hospital are not currently defined due to staff turnover that has occurred in recent months. This analysis will be carried out in the next few months.

The institution must determine the linguistic capability requirement for its staff in each unit or team and be aware of its current staffing capabilities at all times in order to fill the gaps as they arise. Staff turnover is a common occurrence in workplaces such as this one. We were dismayed to learn that not only does the institution not know the linguistic capabilities of the Cardiac Medical Unit, but it appears to be in no particular hurry to address this shortcoming by stating "this analysis will be carried out in the next few months".

The institution's response becomes even more perplexing when it further states that "all nurse managers of care units are responsible for ensuring that teams are able to provide services in both official languages". Clearly, placing such an expectation on nurse managers is hardly reasonable given that the linguistic capabilities of the Cardiac Medical Unit are not defined. The institution admits that nurse managers do not have the requisite information to fulfill this obligation. Thus, the relevance of reminding nurse managers to ensure the presence of bilingual staff is misguided. At the end of the day, the institution will need to go beyond making the managers of the various units aware of the need to include the language skills component in the composition of teams assigned to shifts, it will have to have the personnel on hand with the requisite linguistic capabilities to enable the managers to include such individuals on various shifts.

### ***C. Lack of Procedures***

Since members of the staff in these cases do not have procedures in place to assist them in respecting the linguistic rights of members of the public who wish to be served in English, Vitalité must establish and implement such procedures to assist its personnel in complying with their linguistic obligations. This should include details on making the active offer of service followed by steps to follow to ensure the provision of the service in the official languages of choice of each member of the public at all times. Although Vitalité indicates that its staff must now complete the e-learning module on official languages, we believe the institution must be more vigilant and proactive. Establishing internal procedures to assist its staff which would include a mechanism to verify the effectiveness of this training and these procedures would enable Vitalité to assess their effectiveness and take steps to modify these where warranted.

### ***D. Attitude***

We believe that the dropped calls, lack of communication and absence of service which lead the complainant in file number 2013-2011 to feel ignored by hospital staff are indicative of the staff's ignorance of its linguistic obligations, the lack of personnel with the linguistic capacity to provide service in both official languages along with an absence of procedures available to assist staff.

Although, there may be a connection between the staff's unhelpful manner towards the complainants in this case and its ignorance of its linguistic obligations along with the lack of staff and tools to enable compliance, discourteous behavior and general lack of respect towards individuals who are merely exercising their right to use the official language of their choice must not be tolerated. Service of equal quality must be provided in a respectful and courteous manner regardless of the language choice.

## **IV. CONCLUSIONS**

Our investigations allow us to conclude that Vitalité has not complied with its obligations under the OLA. We note that on the whole, the institution has not denied the allegations made against it including allegations pertaining to disrespectful behavior from staff. As such we find

that sections 27, 28 and 28.1 of the OLA were not respected and conclude that all three complaints are founded.

## **V. RECOMMENDATIONS**

### ***A. Linguistic obligations***

In light of our findings with respect to staff's lack of understanding of its linguistic obligations, we endorse Vitalité's e-learning measure however the institution will have to go further to ensure that its front line employees fully comprehend this obligations with respect to making the active offer of service to **all** members of the public.

### ***B. Lack of Capacity of Human Resources***

Furthermore, the institution needs to delve into the core issues it faces in providing service in English which appears to include a lack of awareness of its linguistic capacity. These staffing issues are reminiscent of those analyzed in the context of this office's human resources study conducted in 2013, the results of which can be viewed beginning at page 16 of our 2013-2014 Annual Report and are reproduced here:

Human Resources are at the heart of the delivery of government services in both official languages. In that regard, a study conducted by the Office of the Commissioner reveals serious shortcomings in relation to

- the determination of the required levels of second language proficiency for bilingual positions;
- the bilingual staffing process;
- second-language training;
- maintenance of second-language proficiency levels of bilingual employees.

As a result of this study, the Commissioner concludes that the many deficiencies noted have the same cause; a lack of rigour in the planning, provision, and assessment of bilingual services offered to the public. The Commissioner makes the following recommendations:

- That required levels of second-language proficiency be associated with work teams for different categories of bilingual positions.
- Based on the duties and responsibilities of positions, that specific guidelines be developed to assist departments in objectively determining the required and relevant levels of second language proficiency for different categories of bilingual positions.
- For all positions advertised with a bilingual requirement, that the required level of second language proficiency (beginner, intermediate, advanced, Superior) be clearly indicated in all job postings and that an Internet link be included to the descriptions of language proficiency levels.
- That the provincial government adopt effective strategies and tools for assessing and addressing its needs in terms of a bilingual workforce, second-language training, and the maintenance of language proficiency of its employees.
- That the provincial government develop and implement effective monitoring mechanisms to assess the actual ability of work teams to provide services of equal quality in both official languages.

Thus, the level of linguistic capacity required by personnel for each team or unit must be established by Vitalité. Only then can the gaps be identified and subsequently filled by suitable staff. The integral team approach can only work if the teams are composed of personnel with the requisite linguistic capabilities to fulfill its mandate.

Vitalité must endeavor to identify and fill the gaps so that nurse managers can be apprised of its staffing complement. Without this information, nurse managers do not have the necessary tools at their disposal to have required staff on hand able to fulfill linguistic obligations.

### ***C. Lack of Procedures***

In addition, Vitalité must develop comprehensive procedures outlining specific steps to be taken by staff to ensure that language rights of all members of the public are respected at all times. The institution must also ensure that its employees fully understand both their linguistic obligations and the procedures established to assist them in complying with these obligations.

### ***D. Attitude***

Steps should also be taken to impress upon staff the importance of providing courteous and respectful service at all times and regardless of the language of choice in order to ensure the provision of service of equal quality in both official languages.

These complaints have allowed us to identify four areas where deficiencies have been noted: staff's lack of understanding of its linguistic obligations, inadequate staff on hand with the requisite linguistic capabilities, absence of procedures to assist staff comply with the OLA and employee attitudes which are not respectful at all times. As such, the Commissioner makes the following recommendations:

#### **Recommendation 1 (Linguistic obligations):**

- **That Vitalité develop and implement an effective monitoring system to assess and verify the effectiveness of e-learning modules on staff's understanding and compliance with its linguistic obligations. This system should include unannounced checks of service provision and the actual ability of work teams to provide services of equal quality in both official languages on a continual basis.**
- **That Vitalité use the information gathered above to incorporate changes when warranted to ensure that it is compliant with its linguistic obligations at all times.**

#### **Recommendation 2 (Lack of Capacity of Human Resources):**

- **That Vitalité establish the required levels of second-language proficiency for work teams for different categories of bilingual positions.**
- **That Vitalité assess its staffing needs for each work team and assess its actual personnel complement.**
- **That Vitalité use the information gathered above to identify its actual staffing deficiencies for each work team and develop a plan to fill the gaps in a timely manner.**

**Recommendation 3 (Lack of Procedures):**

- That Vitalité establish internal procedures for staff use outlining specific steps employees must take to ensure the delivery of services in the language of choice of all members of the public at all times.
- That Vitalité develop and implement effective monitoring mechanisms to assess the use of the procedures in the provision of services of equal quality in both official languages.

**Recommendation 4 (Attitude):**

**That Vitalité continue to hold training sessions to educate its staff with respect to its linguistic obligations including how respectful behavior can impact quality service in both official languages.**

This report is respectfully submitted to the Premier, to the Deputy Minister of Executive Council Office, to the President and Chief Executive Officer of Vitalité and to the complainants pursuant to subsection 43(16) and 43(18) of the OLA.

[Original signed by]

Katherine d'Entremont, M.P.A.  
Commissioner of Official Languages for New Brunswick

Dated at Fredericton,  
in the Province of New Brunswick  
this 31<sup>st</sup> day of March 2015

