

COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK



OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK

Investigation Report

FILE NUMBER 2019-004

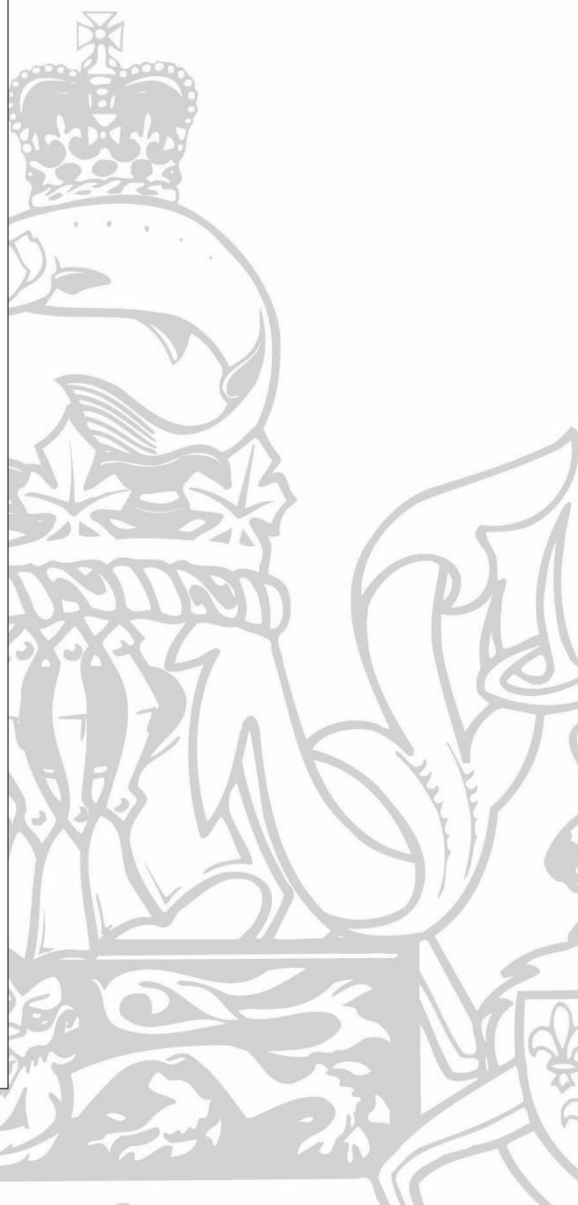
INSTITUTION IN QUESTION Public Safety

SUBJECT Alleged deficiencies in the provision
of services in French

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**REPORT DISTRIBUTED TO THE
FOLLOWING PERSONS** Premier
Deputy Minister of Public Safety
Clerk of the Executive Council Office
Complainant

ISSUE DATE May 2019



Summary

This report was drafted following an investigation of a complaint against the Department of Public Safety (the Institution). At the time of the complaint, the complainant was incarcerated in a provincial correctional centre. He alleges that some telephone services for inmates, provided by a third party, are not available in French.

Upon completion of the investigation, we concluded that the complaint was founded, and we therefore make the following recommendation:

THAT when the Institution uses a third party to provide services on its behalf, it conduct spot checks to ensure that the third party is meeting its obligations under the *Official Languages Act*.

Complaint

The details of the complainant's allegations are as follows:

The complainant, an inmate in a provincial correctional centre, has difficulty obtaining service in French when he uses the Synergy phone system. He explained that, when he enters his PIN number and calls the telephone number of a person to whom he wishes to speak, he is entitled to 20 minutes. One minute before the 20 minutes are up, the caller hears a warning that there is one minute left in the call. However, the warning is given in English only.

When the complainant contacted the company to complain, an automated message told him to press 5 to obtain service in French, which he did. However, the complainant says the recorded message was in English with a few words in French. It was therefore difficult for the complainant to understand the information provided by the company. The complainant said that other inmates told him he was being asked to leave a message, which he did. A representative of the company then left him a message saying that she did not understand what he had said. The complainant says that the employees of the correctional centre told him this was a problem they have never been able to correct.

Investigation

Investigation under subsection 43(13) of the OLA

After the complaint was filed, we issued a notice of investigation to the deputy minister of the Institution on February 3, 2019, pursuant to subsection 43(13) of New Brunswick's *Official Languages Act* (OLA). In that notice, we asked the Institution to:

- confirm whether Synergy had been hired to provide phone service for inmates in the province's correctional centres;
- inform us as to whether the agreement between Synergy and the Province contains terms and conditions for services in both official languages, and, if yes, to provide us with the wording of those terms and conditions;
- tell us whether the Institution had carried out checks of the service to ensure that it was of equal quality in both official languages; and
- let us know its position on the incidents reported by the complainant.

Response of the Institution

In the response dated March 26, 2019, the deputy minister advised us as follows:

Please be advised that Synergy Inmate Phone Solutions, Inc. is the contractor providing phone services to inmates under a Professional Services Contract that commenced July 16th, 2014.

The terms of the professional services contract state the requirements of a bilingual service. The requirement is represented under Schedule 'A' of the contract and states the following:

"The following requirements are considered to be basic and essential elements of an inmate telephone and video visitation system:

The inmate telephone and visitation systems must be fully bilingual (English and French) and provided as turnkey telecommunication service for inmates by August 2014."

Correctional Services have taken steps to meet with representatives of Synergy Inmate Phone Solutions to identify the concerns raised and steps have been taken to address the identified concerns with the service contractor. The system is now fully bilingual, as the Act requires.

Additional quality assurance measures have also been requested from the service contractor to ensure that the service provided meets all requirements under the Official Languages Act of New Brunswick.

The requirement of providing bilingual services to the inmates in custody and to members of the Public is taken very seriously. Correctional Services will monitor the services provided by this contractor to ensure ongoing compliance.

Analysis

The relevant provisions of the OLA in this matter are as follows:

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.
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. Il incombe aux institutions de veiller à ce que le public puisse communiquer avec elles et en recevoir les services dans la langue officielle de son choix.
28.1. 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.
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.

The complainant alleged that, one minute before the end of his 20-minute call, he heard a warning stating that there was only one minute left in the call. However, the warning was in English only. In its response to our notice of investigation, the Institution did not deny the complainant's allegations but rather stated that it had made efforts to address the concerns raised in the complaint. We therefore accept the complainant's version of the facts and conclude that he did not receive service in French when using the Synergy system.

We then had to determine whether Synergy, a private company, must provide its services in both official languages. In its response, the Institution confirmed that Synergy "is the contractor providing phone services to inmates under a Professional Services Contract." We therefore determined that Synergy provides services on behalf of the Institution and that its communications with and services to the public are subject to the OLA. The Institution therefore has an obligation to ensure that the phone system can provide services in both official languages at all times.

In the second part of his complaint, the complainant informed us that he had contacted Synergy to complain. Specifically, the complainant explained that he had received an active offer of service (“*Appuyer sur la touche 5 pour obtenir un service en français.*”). However, he said that, after he pressed 5, the recorded message was in English. As previously stated, the Institution did not deny the allegations, and we accept that the recorded message was not in the complainant’s official language of choice. The Institution must therefore bear in mind that such an active offer is meaningless if it is not followed by the provision of service of equal quality in the official language chosen by the member of the public (see *R. v. Gaudet*, 2010 NBQB 27, at paras. 41 and 42).

Neither did the Institution deny the allegations that the company’s representative did not understand what the complainant had said. We accept what the complainant said and conclude that the representative was unable to serve him in his official language of choice.

We wonder whether the managers of the correctional centre were aware of the problems with accessing services in French. Indeed, with respect to the fact that was impossible to obtain services in French through the Synergy system, the Institution did not deny that the employees of the correctional centre had told the complainant that “this was a problem they have never been able to correct.” If that is the case, we find it unacceptable that the Institution did not take appropriate measures to comply with the OLA and to provide all inmates with access to service of equal quality in both official languages.

We acknowledge the efforts made by the Institution by inserting a bilingualism clause in the agreement with Synergy and that corrective action had been taken after we informed it of the deficiencies stated in the complaint. However, we believe that including a clause does not always guarantee the provision of service of equal quality in both official languages by a third party, as the current complaint demonstrates. To ensure that a third party meets its obligations with respect to service in both official languages, it is preferable to be proactive and to do spot checks instead of simply taking action after a complaint is received.

Conclusion

Our investigation made it possible to establish that, for the reasons stated in this report, the complaint was **founded** and that the Institution failed to meet its obligations under the *Official Languages Act* of New Brunswick.

Although the Institution failed to meet its obligations under the OLA, it quickly took measures to address the linguistic deficiencies in the telephone services provided for provincial inmates. We deem these measures to be acceptable, and we make the following recommendation:

THAT when the Institution uses a third party to provide services on its behalf, it conduct spot checks to ensure that the third party is meeting its obligations under the *Official Languages Act*.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Deputy Minister of Public Safety, the Clerk of the Executive Council Office, and the complainant.

Pursuant to subsection 43(18) of the OLA, if the complainant is not satisfied with the conclusions of this investigation, he may apply to The Court of Queen's Bench of New Brunswick for a remedy.

Michel A. Carrier, Q.C.
Commissioner of Official Languages for New Brunswick

Dated at the City of Fredericton,
Province of New Brunswick,
This 6th day of May 2019