

COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK



OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK

Investigation Report

FILE NUMBER 2019-022

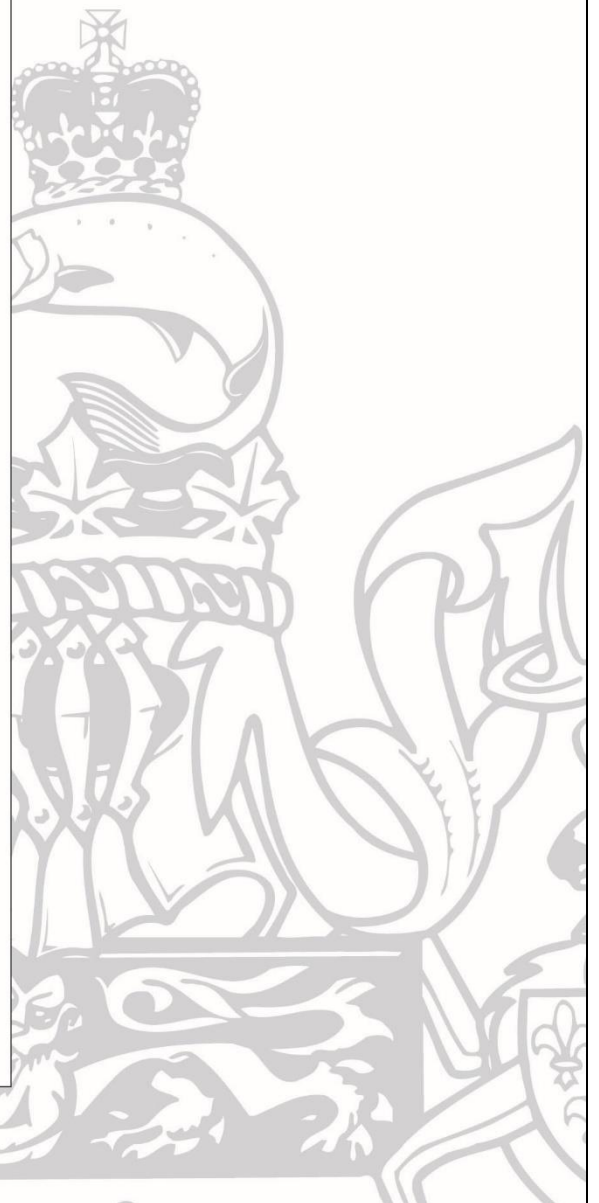
INSTITUTION IN QUESTION Vitalité Health Network

SUBJECT Allegations of deficiencies in the
provision of services in English

TABLE OF CONTENTS Summary: 1
Complaint: 2
Investigation: 3
Conclusion and
Recommendations: 7

**REPORT DISTRIBUTED TO
THE FOLLOWING PERSONS** Premier
Deputy Minister of Health
President and CEO of Vitalité Health
Network
Clerk of the Executive Council Office
Complainant

ISSUE DATE October 2019



Summary

This report was drafted following the investigation of a complaint against the Vitalité Health Network (the institution) for lack of English language service at the Stella-Maris-de-Kent Hospital.

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

THAT the institution continue to conduct unannounced audits, on a regular basis, to ensure its staff are fully compliant with the *Official Languages Act* of New Brunswick and with its policy on Official Languages; and

THAT if the audits continue to demonstrate a lack of conformity in the area of the active offer, the institution develop and implement a strategy which addresses this matter and assures that all personnel act in accordance with its policy on Official Languages.

Complaint

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

On May 9, 2019, the complainant called the Stella-Maris-de-Kent Hospital, and the call was answered in French only. The complainant asked about her right to an active offer to receive service in the official language of her choice, to which she was told Stella-Maris-de-Kent is a French hospital.

Investigation

Investigation pursuant to subsection 43(13) of the OLA

Following the filing of the complaint, our office issued a notice of investigation to the President and Chief Executive Officer of the institution on July 4, 2019, pursuant to subsection 43(13) of New Brunswick's *Official Languages Act* (OLA). In that notice, we asked the institution to provide us with its position regarding the complainant's allegations and to respond to a series of questions.

Response of the Institution

In a response dated August 19, 2019, the President and CEO advised our office as follows:

With respect to the active offer of service in both official languages, we recognize the noncompliance reported in the complaint. Although 27 % of this facility's clients prefer service in English, we are aware that our employees must provide the active offer of service always, regardless of the linguistic makeup of the regional population served. Regarding the comment that would have been made indicating that this hospital is a French-speaking hospital, the employee in question does not remember saying that.

In this regard, we will continue our communication efforts targeting our managers and employees to meet our official language obligations.

Questions regarding official languages training for staff and compliance audits

Question 1: In previous correspondence with our Office, your institution has advised us that Vitalité staff carry out e-learning modules on official languages obligations. Are all staff required to complete such official languages training, and what grade is required to pass the modules?

Answer 1: *The Official Languages obligations online module must be completed by all employees and be redone every three years. Although there are questions and answers, this module does not require a pass or fail score. When the learner does not answer a question correctly, he or she must choose another answer until it is right.*

Question 2: Other than the above-noted e-learning modules, what additional official languages training options or reinforcement measures are available to Vitalité staff?

Answer 2: *Once a year, a memo is sent to all managers reminding them of the importance of making their employees aware of the active offer of service in the public's language of choice.*

Also, managers hold service meetings at different times of the year. Among the various topics discussed at these meetings, there are official language obligations, including the importance of active offer.

Question 3: Are official languages obligations reviewed on a regular basis with staff at Stella-Maris-de-Kent Hospital? If yes, please provide details. If no, please explain why not.

Answer 3: *As mentioned previously, managers hold service meetings at different times of the year. Among the various topics discussed at these meetings, there are official language obligations, including the importance of active offer. In this case, the Health records, admission and reception manager holds a service meeting every semester. Each time, he reiterates the importance of making the active offer in both official languages and to continue the discussion in the language chosen by the member of the public.*

Question 4: Does your institution conduct audits to ensure compliance with official languages obligations? If yes, please provide us with the results of the last round of audits. If no, please explain why not.

Answer 4: *Yes. Please see attached, our Active Offer report (2017). Our report for the 2019 audits results will be ready next fall.*

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. |

The specific allegations

The complainant alleges that, upon calling the Stella-Maris-de-Kent Hospital on May 9, 2019, she was not given an active offer to receive service in the language of her choice. Additionally, the complainant informed our office that when she asked about her right to an active offer of service, she was told that Stella-Maris-de-Kent is a French hospital.

In its response, the institution acknowledged having failed to provide the complainant with an active offer of service, thereby having breached the OLA. Regarding the allegation of being told that Stella-Maris-de-Kent is a French hospital, the institution advised us that the employee in question does not recall making that comment.

Where the employee has no recollection of the comment, and the complainant is clear in her communications to us that she was told that Stella-Maris-de-Kent is a French hospital, we find, for the purpose of this report, that the comment was likely made.

The two health networks

New Brunswick has two health networks: Vitalité and Horizon. Each network has an internal working language (French for Vitalité and English for Horizon). However, both networks must provide services of equal quality in both official languages, at all times, to the public.

Reason for the active offer of service

An active offer of service in both official languages is at the heart of quality services. This active offer means that, from the moment of first contact, the employee has the obligation to inform the member of the public that services are available in both English and French. Therefore, it is not up to citizens to request service in their preferred language; rather, employees must offer it to them.

An active offer of service in one's language of choice is incredibly important because if an offer of service is made in one language only, members of the public wishing to be served in the other language are often not likely to enforce their language rights. Instead, they will often accept to be served in the language of the greeting given by the employee. This is why a greeting such as "Hello/Bonjour" is so important, as it invites members of the public to choose the language in which they wish to communicate and receive service.

Questions posed by our office

The institution was asked a series of questions. The first three questions dealt with official languages education and awareness to institution personnel, and the fourth question dealt with audits.

We recognize the modules, memos and service meetings described in the institution's answers, and we encourage the institution to continue with its efforts to provide staff with official languages education and training, and to promote the importance of both official languages.

However, despite the efforts described in the institution's answers, the results in the 2017 Active Offer report (Appendix A) show very poor audit results. Specifically, the provision of the active offer of service was extremely low for both telephone and in-person service. Although the 2017 Active Offer report shows that rates of service in the public's language of choice were extremely high, it is, pursuant to section 28.1 of the OLA, the institution's obligation to make it known to members of the public that services are available in its language of choice.

We have no doubt that most Vitalité personnel understand what is required of them, yet it appears, based on the institution's own audit, that they either omit or choose not to follow the institution's instructions to provide members of the public with an active offer of service in the language of their choice. The institution must determine if this is a problem of organizational culture and, if so, must take the steps to correct the situation. It is incumbent upon the institution to ensure that all employees not only understand the importance of the OLA, but also, in the spirit of the Act, fully embrace the language rights of all New Brunswickers.

Conclusion and Recommendations

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.

In addition to finding that the institution failed to respect the complainant's language rights, an Active Offer report provided to us by the institution showed a very low rate of active offer compliance by institution staff, despite regular training modules and memos and service meetings centering around official language requirements, and despite the fact that the institution has adopted a clear policy on the matter. This policy as it appears on the institution's website states as follows:

1. Board Policy CA-220: Official Languages

Effective date: 2019-06-18

1. Purpose

Vitalité Health Network (the "Network") is a Francophone leader in health care in New Brunswick. The Network is also bound to meet the requirements of the *Official Languages Act* and the *Regional Health Authorities Act* to ensure that members of the public have access to the services and programs provided by the Network in the official language of their choice and to set official language requirements regarding its internal operations.

2. Definitions

- **Public:**
Refers to any person or group of persons, any association or body, whether for-profit or not-for-profit, any municipality or municipal body, any provincial or federal department or body, or any non-governmental organization or their representative.
- **Services of equal quality:**
Services that are actively offered in both official languages and that are available without undue delay in the language chosen by the client.

- **Active offer (to actively offer):**
Active offer of service means taking the necessary measures to let members of the general public know they can obtain services in the official language of their choice. Active offer of service means letting people know at first contact that services are available in both official languages, and this, without the public members having to ask for it.
- **Program:**
Refers to any program such as the Public Health, Mental Health, or any other similar program.
- **Language of service:**
Refers to the active offer and the delivery of all services provided by the Network in French and English throughout the health facilities, programs or hospitals in the province. All members of the public have the legal right to receive health care services in the official language of their choice.

3. A. Services to the public

Under the *Official Languages Act* and the *Regional Health Authorities Act*, the Network is committed to guaranteeing delivery of services of equal quality¹ to the general public throughout all its facilities and programs² in the two official languages recognized by the province, in respect of both linguistic communities on the Network's territory.

1. As regards the language of service, the Network is responsible for implementing the policy and guidelines of the Language of Service Policy of the Government of New Brunswick.
 - a. Thus the Network is committed to taking the necessary measures to actively offer members of the public services in the language of their choice and to inform them about this.
 - b. The Network must have on site at all times the linguistic resources required to fulfill its obligations when comes the time to offer and provide services to the public.
 - c. The Network must ensure that public signage or visible by the public, other publications and communications directed to the public are available in both official languages. This includes written and verbal communication, communication technologies (e.g. voicemail boxes), and the website.
 - d. To be better able to fulfill its official language obligations, the Network must develop and maintain the linguistic profile of its employees to ensure that it has the ability to offer quality services in both official languages.

With respect to the active offer, when a bilingual greeting is not provided, history has shown that a large number of individuals from minority communities will not insist on service in their language. It is therefore an integral part of the delivery of services in the language of choice.

In many matters that we have dealt with over the years as part of our mandate, we have found that concrete measures are often needed to ensure that policies, such as the one included above, are in fact followed.

Based on all of the above, we make the following recommendations:

THAT the institution continue to conduct unannounced audits, on a regular basis, to ensure its staff are fully compliant with the *Official Languages Act* of New Brunswick; and

THAT if the audits continue to demonstrate a lack of conformity in the area of the active offer, the institution develop and implement a strategy which addresses this matter and assures that all personnel act in accordance with its policy on Official Languages.

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Deputy Minister of Health, the President and Chief Executive Officer of the institution, 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, she 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 11th day of October 2019