



Investigation Report

FILE NUMBER 2019-020

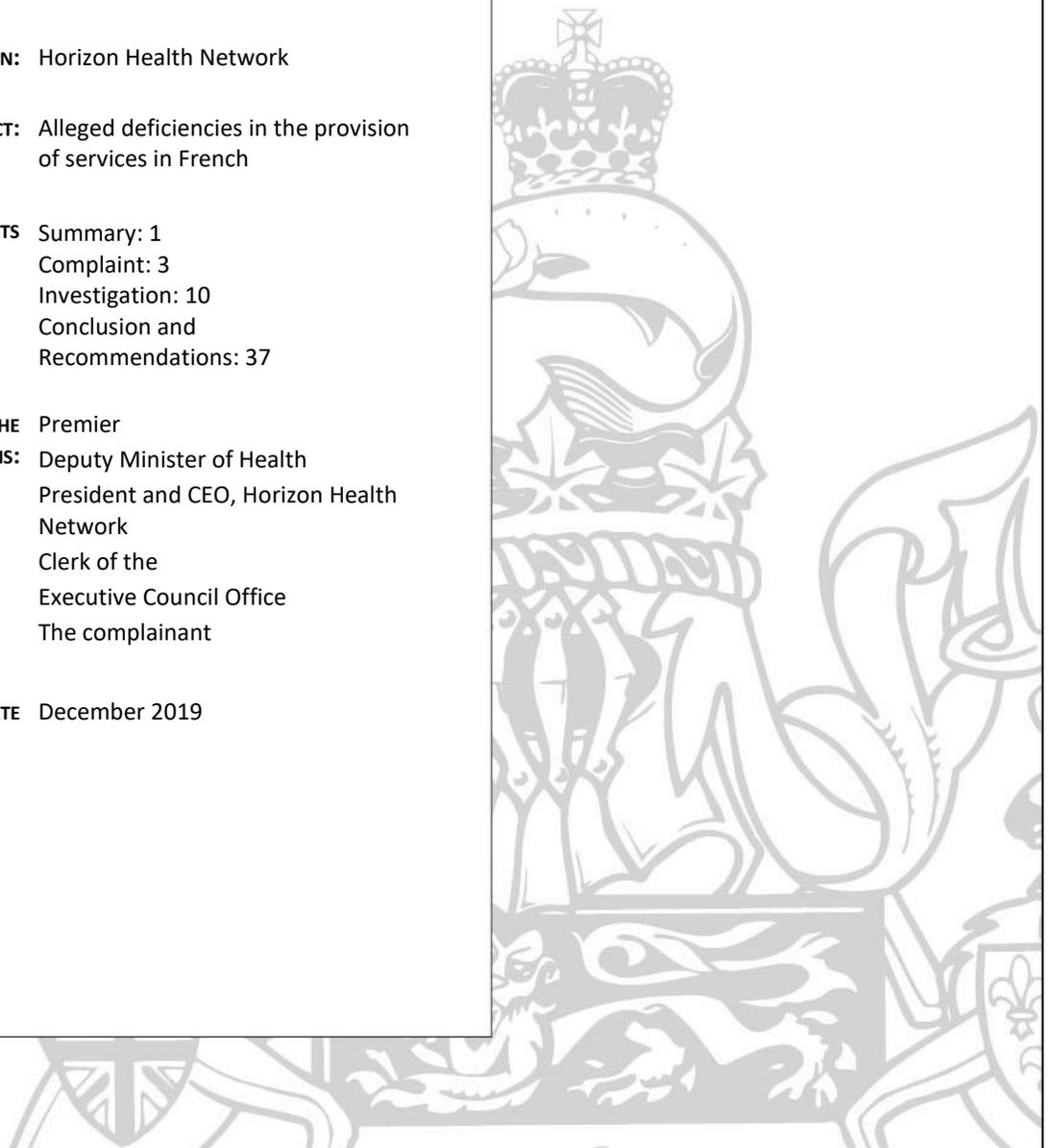
INSTITUTION IN QUESTION: Horizon Health Network

SUBJECT: Alleged deficiencies in the provision
of services in French

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Recommendations: 37

**REPORT DISTRIBUTED TO THE
FOLLOWING PERSONS:** Premier
Deputy Minister of Health
President and CEO, Horizon Health
Network
Clerk of the
Executive Council Office
The complainant

ISSUE DATE December 2019



Summary

This report was drafted following an investigation of a complaint against the Horizon Health Network (the Institution). The complaint comprises 13 incidents that occurred mainly at the Moncton Hospital (psychiatric unit) between February and June 2019. The complaints are on the lack of an active offer of service in both languages and deficiencies with respect to delivery of service in the complainant's language of choice, that is, French.

Our investigation enabled us to conclude that the complaint is founded to a large extent; in 12 of the 13 incidents, the institution did not respect the complainant's language rights.

In this matter, the Office of the Commissioner notes that some employees have not developed the reflex of making an active offer of service and using the contingency plan if they are unable to speak the official language of the recipient of the service. More seriously still, employees of the institution insisted that the complainant speak English. Furthermore, and this is troubling at the very least, the OLA violations occurred over more than three months. Why did the institution not take immediate action to remedy the violations after the complainant complained in February 2019 that his rights had not been respected? The institution seems to be in reactive rather than proactive mode with regard to respecting official languages.

In many respects, all of the measures, tools, and protocols needed for delivering services in both official languages by the Horizon network are in place, but are not being used or complied with by some employees. We note once again that employees do not seem to adhere to a culture of respect for language rights.

In a previous matter, the CEO of the institution made a commitment to review the Horizon network's official languages plan to ensure full compliance with the OLA. On March 19, 2019, she submitted a modified plan to the Commissioner (2019-2021). We commend this measure. We have examined this plan in the context of this investigation. It contains relevant elements, including staff awareness and organizational culture. However, we believe that the plan should specify the different stakeholders and their role in implementing the plan to ensure greater accountability. It should also be accompanied by a timetable and assessment measures.

The institution is aware of its shortcomings in this matter and states that it is taking action to correct the situation. For example, the nurse manager in mental health intensive care in the psychiatric unit is making visits to ensure that the staff comply with the OLA. In addition, the institution states it will come up with corrective measures to rectify the problems related to the lack of the active offer and non-use of the contingency plan.

We are taking careful note of these measures. While waiting for the plan and corrective action taken by the institution to produce the anticipated effects, the institution must see that all employees make an active offer of service and immediately find a bilingual co-worker if they do not speak the official language of the person receiving service.

The Commissioner makes the following recommendations to the Horizon Network:

- THAT** the 2019-2021 Official Languages Action Plan be modified so that those responsible for its implementation are identified, a timetable is established, and the means to measure the achievement of the objectives of the action plan are defined;
- THAT** the Horizon Network's Official Languages Department carry out monthly audits with the psychiatric unit of the Moncton Hospital regarding the active offer of service and the use of the contingency plan by employees and that the results of these monthly audits be sent to the director of this unit as well as to the CEO of the Horizon Network;
- THAT** the Horizon Network CEO forward the results of the monthly audits described above to the Commissioner of Official Languages every six months so that the progress of the file can be monitored;
- THAT** the Horizon Network review the contingency plan for the psychiatric unit of the Moncton Hospital in order to guarantee the delivery of quality service in both official languages; and
- THAT** satisfaction surveys dealing with official languages be made available to visitors in clearly visible areas of the psychiatric unit of the Moncton Hospital.

Complaint

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

1. February 15, 2019, Moncton Hospital

On February 15, 2019, at around 4:15 p.m., the complainant went to the psychiatric intensive care unit at the Moncton Hospital and was greeted by a nurse. According to the complainant, she did not make an active offer of service. Furthermore, after the complainant requested service in French, she replied, "I don't understand why you are requesting to be able to speak French because just again this morning I spoke to you in English and you answered me in English and you understand very well all I said to you."

The complainant again asked the nurse for service in French. She therefore went to get a bilingual nurse, who served as an interpreter.

2. February 17, 2019, Moncton Hospital

The complainant alleges that on February 17, 2019, at around 2:55 p.m., he went to the intensive care unit at the Moncton Hospital and rang the intercom to identify himself. According to him, the reply in English was, "How can I help you?" The complainant then said "Je suis ici pour visiter mon frère" [I am here to visit my brother], and the employee replied, "Do you speak English?" The complainant asked a second time, again in French, to see his brother. The employee ended their conversation by saying, "One moment please" and went to get a bilingual person.

3. February 18, 2019, Moncton Hospital

The complainant alleges that on February 18, 2019, at around 3:45 p.m., he rang the intercom at the intensive care unit of the Moncton Hospital, and someone replied, "Who is it?" The complainant said, "Je suis ici pour visiter mon frère" [I am here to visit my brother], and the employee replied, "Who are you here to visit?" The complainant claims to have said the same thing, again in French, and the employee replied, "Come on in."

4. February 19, 2019, Addiction and Mental Health Services

On February 19, 2019, at around 11:00 a.m., the complainant dialed 856-2444 to contact Addiction and Mental Health Services, a division of a mental health clinic under the Horizon Health Network, located on Albert Street in Moncton. According to the complainant, the employee who answered his call did not make an active offer of service and spoke English throughout the call. The complainant continued speaking French, and the employee said, "I will transfer your call."

5. February 20, 2019, Moncton Hospital

On February 20, 2019, at around 10:15 p.m., the complainant called the psychiatric unit at the Moncton Hospital and spoke French. The employee who replied told him that she was the only bilingual nurse working on the psychiatric unit during the night shift.

According to the complainant, since there are always two nurses working in intensive care, and since [REDACTED] was not one of those two nurses, the complainant deduced that there was no bilingual nurse to take care of his sister. This information is important because the complainant has a power of attorney for his sister and informed the hospital that he wanted his sister to be served in French. In addition, the complainant told us that the employee told him that the nurse who was looking after his sister did not speak French.

6. February 23, 2019, Moncton Hospital

On February 23, 2019, at around 7:30 p.m., the complainant rang the intercom in the intensive care unit at the Moncton Hospital and the person who answered said, "How can I help you?" The complainant replied, "Je suis ici pour visiter mon frère" [I am here to visit my brother], and the person he was talking to said, "Can you speak English?" The complainant spoke French again, saying, "Je préfère parler en français" [I prefer to speak French], to which the person replied, "One moment please."

The complainant could hear the remarks that the employees exchanged in English about his request to obtain service in French. More specifically, he said he heard, "Can you tell this guy he cannot come in now? He is going to have to wait awhile because we are in the process of changing shifts." Then someone said to him on the intercom, "Il vous faudra attendre, car nous sommes en train de changer d'infirmières" [You'll have to wait because we're in the process of changing nurses].

After waiting about 30 minutes, a nurse opened the door and said, "I am your brother's nurse," to which the complainant replied, "I would like to be served in French." The complainant's brother's nurse replied, saying, "You speak very good English. Can you speak to me in English?" Since the complainant did not want service in English, he said, "Again, I would like to speak in French. I am more comfortable speaking in French," and the nurse left without saying anything.

Then another employee came to speak to the complainant. The complainant asked how his brother was doing, and the employee replied that she did not know because she was not his brother's nurse. The complainant then asked her to check on his brother's health status with his nurse, and she replied that the nurse was busy and he would have to wait. In addition, she could not tell the complainant how long he would have to wait, so the complainant left.

7. March 1, 2019, Moncton Hospital

At around 4:45 p.m. on March 1, 2019, the complainant went to the intensive care unit at the Moncton Hospital and asked to speak to the nurse taking care of his brother. A nurse came to greet him, saying, "How can I help you?" The complainant said "Je suis ici pour savoir comment va mon frère"[I'm here to see how my brother is doing]. The nurse asked him in English if he could speak English and the complainant repeated his question, again in French. Despite that, the nurse continued speaking English: "What is it you want to know?" The complainant therefore had to communicate in English.

Shortly afterward, his brother's psychiatrist, who does not speak French, arrived. When he saw the complainant, he left without saying anything. The complainant believes that the doctor avoided him because he knew that the complainant would request service in French.

8. March 1, 2019, Moncton Hospital

At around 5:30 p.m. on March 1, 2019, the complainant went to the hospital reception desk. He called the psychiatric unit and someone replied without making an active offer. The complainant asked the person in French if he could go up to see his sister and the employee replied, "One moment please."

After waiting approximately five minutes, since no one came to help him, the complainant hung up the telephone. He then went up to the psychiatric unit. He was greeted by a nurse who spoke French and she explained to him that:

- she had just arrived on the psychiatric unit;
- she had come because the staff of the psychiatric unit had gone to get her and had asked her to greet someone who wanted to speak French;
- she had to leave right away to return to the children's unit; and
- the nurse looking after his sister did not speak French.

The complainant therefore left, saying, "Il faudra bien que je revienne plus tard" [I'll have to come back later].

The complainant returned to the psychiatric unit 20 minutes later. At that time there were two nurses in intensive care: [REDACTED] and [REDACTED].

[REDACTED] said to the complainant in English, "I'm trying to learn French. I'm really trying hard." In turn, [REDACTED] said, "Je parle un tout petit peu en français" [I speak a little French]. The complainant therefore decided to speak to the latter about his sister.

The complainant asked him in French how his sister was doing and [REDACTED] replied in English, "I understand but I can't speak it." The complainant continued, in French, asking if his sister was making progress, to which [REDACTED] replied, "I'm not sure I understand what you're asking." The conversation with [REDACTED] therefore had to take place in English.

After the visit with his sister, [REDACTED] having left, the complainant had to speak English with [REDACTED].

9. March 9, 2019, Moncton Hospital

On March 9, 2019, at around 10:50 p.m., the complainant called unit 4200 and spoke with his brother's nurse. He identified himself in French, and the nurse replied, "Do you speak English at all?" The complainant said, "I prefer to speak French," and another person who was able to respect his language choice took over on the telephone.

10. March 20, 2019, Moncton Hospital

At around 2:05 p.m. on March 20, 2019, the complainant called the psychiatric unit and someone answered the call, saying, "Hi, how can I help you?" The complainant said, "J'appelle pour parler à la directrice," [I'm calling to speak to the director], to which the person replied, "One moment please."

The call was then transferred to [REDACTED] who, without making an active offer, said to him, "Hi, j'ai parlé with you l'autre semaine. I don't speak good French. Are you calling to find out the state of your sister?" At that time, the complainant decided to end the call.

11. March 31, 2019, Moncton Hospital

At around 10:15 p.m. on March 31, 2019, the complainant called the psychiatric unit and spoke with [REDACTED]. The conversation took place as follows:

The complainant: "Puis-je parler avec l'infirmière qui s'occupe de ma sœur?" [Can I speak to the nurse looking after my sister?]

[REDACTED]: "Can you speak English?"

The complainant: "Puis-je parler avec l'infirmière qui s'occupe de ma sœur?" [Can I speak to the nurse taking care of my sister?]

[REDACTED]: "One moment please."

The complainant's call was then transferred to a nurse who could speak French to him.

12. April 24, 2019, Moncton Hospital

At around 9:35 a.m. on April 24, 2019, the complainant called the psychiatric unit and spoke to [REDACTED], the unit supervisor. The conversation took place as follows:

The complainant: "C'est avec qui que je parle?" [Who am I speaking with?]

[REDACTED]: "One moment please. I will get someone who speaks French."

[REDACTED] returned and said to him, "No one is in the unit at this time to speak French to you. I will transfer you to [REDACTED]."

[REDACTED], the manager of the psychiatric unit, then spoke to the complainant on the telephone. According to him, [REDACTED] is not a nurse, and at that time there were no nurses who spoke French on the unit.

13. June 3, 2019, Moncton Hospital

At around 12:15 p.m. on June 3, 2019, the complainant spoke to a Ms. [REDACTED] from the Moncton Hospital on the telephone. The conversation took place as follows:

M^{me} [REDACTED] : Dr [REDACTED] aimerait te parler concernant un nouveau traitement pour ta sœur.

Le plaignant : Est-ce que Dr [REDACTED] parle français?

Madame [REDACTED] : Non.

Le plaignant : Je voudrais parler dans la langue de mon choix, qui est le français.

Madame [REDACTED] : Dr [REDACTED] ne parle pas français et je ne suis pas en mesure de faire la traduction.

Le plaignant : Je voudrais parler dans la langue de mon choix, qui est le français.

[Ms. [REDACTED] : Dr. [REDACTED] would like to talk to you about a new treatment for your sister.

The complainant: Does Dr. [REDACTED] speak French?

Ms. [REDACTED] : No.

The complainant: I would like to speak in the language of my choice, which is French.

Ms. [REDACTED] : Dr. [REDACTED] does not speak French and I am not able to translate.

The complainant: I would like to speak the language of my choice, which is French.]

At that point, Ms. [REDACTED] put the complainant's call on hold. He waited for about 10 minutes and then hung up the telephone.

On the evening of June 3, 2019, the complainant went to the hospital to visit his sister. During the visit, she told him she was supposed to be discharged from the hospital the following day (June 4). The complainant then asked a nurse, who confirmed the information provided by his sister. Regardless of that, the nurse did not provide him with details about his sister's new treatment.

On June 4, 2019, the complainant spoke to Dr. [REDACTED] on the telephone. Since he does not speak French, the complainant had to speak English to him.

The complainant was very disappointed, because owing to his language choice he had to wait a whole day to get the very important information that was conveyed to him by Dr. [REDACTED].

Furthermore, the complainant informed us that during the period when these 13 incidents took place, he had four brothers and sisters who were hospitalized; two of them were at the Moncton Hospital and the other two were at the Dr. Georges-L.-Dumont University Hospital Centre. The complainant was under a lot of stress because he had to look after his brothers and sisters by visiting them almost every day. The fact that he often had trouble obtaining a service in the language of his choice during those difficult times greatly increased his stress.

Investigation

Investigation pursuant to subsection 43(13) of the OLA

After the complaint was filed, we issued a notice of investigation to the President and Chief Executive Officer of the Institution on June 3, 2019, pursuant to subsection 43(13) of New Brunswick's *Official Languages Act* (OLA). In that notice, we asked the institution to respond to the complainant's allegations and to answer a series of questions.

Institution's Answers

In its response dated August 15, 2019, the institution responded to the complainant's allegations and to our questions.

Responses to allegations

The institution provided us with a response to each allegation put forward by the complainant.

1. February 15, 2019, Moncton Hospital

According to the employees who dealt with the complainant, numerous interactions occurred between him and the staff on the days leading up to the incident. According to the staff, at no time did the complainant demand service in French during these preliminary interactions. Moreover, the staff were surprised when the complainant changed his language of choice. Horizon recognizes that patients, members of their families, and visitors have the right to change the language in which they want to be served without notice. In this case, it can be seen that the staff in question did try to find bilingual help. The problem here arises mainly from the speed of the reaction. Following a discussion with the nurse manager of the unit in question, the staff understood that it had to be ready to change languages without hesitation. We will come back to this point in part 3.

2. February 17, 2019, Moncton Hospital

Horizon recognizes that the incident exposes a gap in service delivery. The staff should have initiated the interaction using the active offer and have resorted to the contingency plan if needed.

The nursing and administrative staff share responsibility for the intercom. The interactions performed through this means of communication are simple and repetitive. We will discuss the solutions that will make it possible to ensure that this situation does not reoccur in part 3¹.

3. February 18, 2019, Moncton Hospital

This incident is similar to incident number 2, which confirms that the principle of the active offer and the contingency plan will need to be strengthened at this point of contact. Please refer to part 3 for more details.

4. February 19, 2019, Addiction and Mental Health Services

Bilingualism is a condition of employment at the Albert Street clinic. We talked to the director of Mental Health Services, and it is clear that it was an exceptional event. The usual receptionist was on leave because she had just lost two family members. The receptionist replacing her was absent because of a chronic illness. The person who answered the telephone was therefore the replacement for the replacement. The director clearly indicated that in such a situation, a clinician should answer the telephone.

5. February 20, 2019, Moncton Hospital

Some facts are incorrect in this statement. First, there are rarely two nurses working on the intensive care unit during the night shift except when short-term care to be provided requires more staff, which was not the case at the time of the incident. Second, [REDACTED] is a bilingual nurse who had been assigned to the intensive care unit, where the patient in question was receiving treatment. Third, the patient, who is still deemed medically fit to make her own decisions, mentioned to staff several times that she preferred to receive services in English. The patient herself made this express request directly to our director of the Official Languages Department in an investigation of a previous complaint. Furthermore, the patient repeatedly expressed her satisfaction with the care received at the Moncton Hospital.

6. February 23, 2019, Moncton Hospital

Horizon recognizes that there were deficiencies in services offered during this incident; however, it is also essential to note the situation occurring in the Medical and Surgical Intensive Care Unit (MSICU) of the hospital.

Once again, the intercom is clearly a point of contact where an update of procedures is required to provide more equitable language services. You will find the resolution of this matter in part 3.

¹ See page 26 of this investigation report.

The MSICU of the hospital operates in 12-hour rotations. They occur at 7:30 a.m. and 7:30 p.m. Some crucial procedures need to have taken place in the 30 or so minutes around these transition hours. For example,

- a) The nurse leaving her position informs the one arriving of the condition of each patient for whom she is responsible; the nurse arriving conducts an initial assessment of each patient for whom she is responsible;
- b) The nurse arriving maintains or adjusts care as needed.

In view of the critical and confidential nature of this procedure, the MSICU limits visits as long as the shift change has not been completed. In addition, nurses are assigned in terms of the language of the patients, not of the visitors. In this case, an Anglophone nurse was assigned to this patient in view of her choice of language, which was English. The patient was intubated for most of the care in the MSICU.

When the patient's nurse came to speak to the complainant, she was performing her duties related to the shift change and could not monopolize a second nurse at that crucial time. After the patient's nurse left, the bilingual nurse came to talk to the complainant, but he alleged that she had been impolite to him. The MSICU managers suggest that the employee in question would not have been that direct with the complainant. However, it is true that the bilingual nurse was not the patient's main caregiver, and that this role was the responsibility of the nurse who had first come to talk to the complainant.

7. March 1, 2019, Moncton Hospital

Horizon recognizes that the active offer and contingency plan were not used in this case. Such a situation shows that the employees have to better understand the importance of these gestures in the first contacts with visitors.

As for the departure of Dr. [REDACTED], there is no evidence to indicate that he left because of the complainant. Horizon will therefore not pursue an investigation of this allegation.

8. March 1, 2019, Moncton Hospital

In this instance, the person who answered the telephone should have used the active offer and said "un moment s'il vous plaît" instead of "one moment please" before resorting to the contingency plan. However, the staff used the contingency plan to have an employee come from another unit to talk to the complainant.

The nurse who tried to speak French had good intentions. However, the execution left something to be desired. In this case, another employee who was bilingual should have been called. It should be noted that the patient was very comfortable with [REDACTED] and [REDACTED] who provided her with care.

9. March 9, 2019, Moncton Hospital

In this instance, the person who answered the telephone should have used the contingency plan and used the proper wording as soon as the complainant mentioned he was Francophone.

10. March 20, 2019, Moncton Hospital

Although the person was polite, the active offer and the contingency plan should have been used in this case. Five bilingual employees were available in the unit at the time of the incident: two were on the floor, two were outside the unit, and the nurse manager was also on duty.

11. March 31, 2019, Moncton Hospital

In this instance, the person who answered the telephone should have had recourse to the contingency plan more quickly and said, "un moment, s'il vous plaît." She should not have asked the complainant to speak English.

12. April 24, 2019, Moncton Hospital

The complainant's family member was discharged from the hospital on April 10, 2019. The reason for the complainant's call was not clear. It should be noted that from April 4 to 10, the staff in the unit where the patient was receiving care was bilingual 24 hours a day and that it was not necessary to fall back on the contingency plan.

Although the employee who answered did not use the active offer, she did use the contingency plan and found a bilingual employee, the nurse manager.

It is important to correct another incorrect fact here. [REDACTED], the nurse manager of the three psychiatric units at the hospital, has been a registered nurse for 19 years. She is authorized to practise in Canada and Bulgaria, and has a bachelor of nursing degree, a master's degree in health services administration from the Université de Montréal, and a master's degree in nursing services management. She is also trilingual: she speaks French, English, and Romanian fluently.

13. June 3, 2019, Moncton Hospital

Ms. [REDACTED] and Dr. [REDACTED] state that they both called the complainant on numerous occasions on June 3 and 4 in an effort to convey clear, precise, up-to-date information. However, since the complainant's mobile phone does not have voice mail, they were unable to leave him a message asking him to call them back.

The complainant had met Dr. [REDACTED] before June 3. The nurse manager said she had met with the complainant with Dr. [REDACTED] in April 2018, and again on September 12 of that year. The complainant knew that Dr. [REDACTED] was Anglophone. [REDACTED] acted as an interpreter during previous meetings between the complainant and Dr. [REDACTED]. During these meetings, when [REDACTED] was interpreting Dr. [REDACTED]'s comments into French, the complainant was trying to correct her in English and continued the discussion in English. In addition, Dr. [REDACTED] states that when he talks to the complainant one on one, he does not request service in French.

Ms. [REDACTED] is a registered nurse (RN) who works in the hospital's psychiatry unit. She is fully bilingual, and French is her mother tongue. She reported being bullied by the complainant, and because she is not a certified interpreter, she did not believe she had the necessary skills to interpret.

Additional information provided by the institution that is not included in this investigation report

After responding to the 13 alleged incidents reported by the complainant, the institution then addressed some other matters that were unrelated to this official languages complaint. Since we determined that that information was not relevant to this case, we decided not to include it in this investigation report, with the exception of one point.

The point that we consider necessary to repeat, and that will be dealt with in the "Analysis" section of this report, is as follows:

- *Staff members said the complainant opted to speak to them in English during several interactions and then suddenly switched to French. They felt trapped, particularly since the complainant used these incidents to file a complaint.*

Answers to our questions

The institution provided the following answers to our questions:

- 1) Over the past year, we resolved a number of complaints from the same complainant (files 2018-3706, 2018-3748, and 2018-3749), in cooperation with your Office. For each of the 12 incidents listed above where you acknowledge the complainant's allegations, how do you explain, if applicable, this failure to respect the complainant's language rights in the light of the resolution of files 2018-3706, 2018-3748, and 2018-3749 and the assurances we received from you that you were taking corrective measures?

Answer

The measures set out in files 2018-3706, 2018-3748, and 2018-3749 have been fully implemented. Horizon acknowledges that there may still be some deficiencies in the services offered. We are working on changing the operational culture with respect to bilingual services. Without wanting to make excuses, we feel we should point out how long it takes to bring about such a change. We realize that, at certain times, the active offer or the contingency plan was not properly implemented. Our official languages team continues to work closely with our team of managers and with staff to improve our services on an ongoing basis. With regard to the above-mentioned complaints, as was noted in question 7, the manager of the psychiatry units is committed to taking disciplinary action if necessary.

- 2) Please describe all the measures you have taken since files 2018-3748 and 2018-3749 were closed to ensure that your institution, and the psychiatry unit in particular, comply with the OLA.

Answer

The Hospital's psychiatry units made many improvements in response to complaints 2018-3706, 2018-3748, and 2018-3749. Specifically, the following measures were taken:

- The nurse manager sent out numerous memos to staff explaining in detail, and stressing the importance of, the active offer and the contingency plan.
- Each psychiatry unit's contingency plan is updated periodically.
- Useful written material that includes key bilingual sentences and reminders regarding the active offer was distributed.
- The regional official languages advisor visited the units with the nurse manager to confirm that tools intended for staff are in place.
- One registered nurse is currently taking French second-language training.

- 3) What is the bilingual capacity of staff in the intensive care unit and the psychiatry unit? (When responding, please use the following ratio: total number of bilingual employees ÷ total number of employees.)

Answer

Intensive care unit: 16 of the 40 registered nurses say they are able to serve French-speaking patients. Of that number, 9 speak French as their mother tongue. One of the two administrative employees is bilingual, as is one of the two attendants.

Psychiatry: 34 of the 80 employees in the three psychiatry units are at least capable of responding to bilingual requests, and one of three administrative employees is fully bilingual.

- 4) What is the contingency plan for the intensive care unit and the psychiatry unit to ensure that you can comply with the OLA at all times?

Answer

Intensive care unit: The intensive care unit is an isolation unit. Patients are sometimes unable to express themselves. However, nurses are assigned on the basis of language needs. If necessary, the unit can ask the Hospital's other intensive care units for help in offering bilingual services. See Appendix 1.

Psychiatry: The three psychiatry units are near to one another and offer related services. They serve as contingency plans for one another, and they generally refer to the nurse's office if necessary. See Appendix 2.

- 5) When did you last review the contingency plan with the staff of the intensive care unit and the psychiatry unit? Was the review done with all staff?

Answer

Intensive care unit: The contingency plan of the intensive care unit was last reviewed in October 2017. The unit has always had at least one French-speaking nurse on the floor. Language is part of the unit's workforce optimization strategy.

Psychiatry: The most up-to-date version of the contingency plan of the psychiatry units, which predates these events, was finalized and distributed in December 2018. It has also been reviewed and relaunched since these events.

- 6) What measures are taken if a Horizon employee does not comply with the institution's Official Languages Policy?

Answer

Intensive care unit: The nurse manager of the intensive care unit sends the employee to an active offer dialogue session. The goal is to send two employees to each session offered. To speed up the process, the local official languages advisor attends the team meetings the unit holds each week to discuss ideas about bilingual services.

Psychiatry: The changes made following the earlier complaints are based on existing procedures aimed at ensuring compliance with official languages policies. It should be noted that none of the unit's employees refuses to make an active offer or to use the contingency plan. The nurse manager has already met with employees who say they are confused about or resistant to the procedures.

7) What are the consequences for employees who repeatedly violate the Official Languages Policy?

Answer

Intensive care unit: None of unit's staff members is resistant to the active offer or to the delivery of bilingual care. If a staff member were opposed to linguistic equality, the unit's nurse manager would take disciplinary action ranging from a written warning to dismissal.

Psychiatry: The nurse manager of this unit has stated clearly that any employee who refuses to comply with official languages procedures would be subject to disciplinary action ranging from a written warning to dismissal.

8) Over the past 12 months, how many official languages complaints other than those listed above have you received:

a. concerning the intensive care unit?

Answer

Intensive care unit: No official languages complaints concerning the unit have been received over the past 12 months.

b. concerning the psychiatry unit?

Answer

Psychiatry: No other official languages complaints concerning this unit, other than the ones listed above, have been received. All the complaints were made by the same complainant.

9) How were these additional complaints against the intensive care unit and the psychiatry unit resolved? Please provide details.

Answer

This question does not apply to any of these services because no other official languages complaints, other than those listed above, were received.

10) The action plan refers to a Horizon Hospital Experience Survey. Your plan states that, in order for Horizon to comply with the legislation with respect to individual rights, you are going to use the survey to measure the organization's performance in relation to language of service. Is measuring the results of this survey the only strategic action you are taking to ensure that Horizon complies with the OLA?

Answer

Every three years, the New Brunswick Health Council (NBHC) conducts provincial surveys on acute care for inpatients who were discharged from facilities offering acute care in the province. These results are made public. In addition, the Horizon Health Network conducts its own internal survey during the same three-year period, which includes a selection of questions asked by the NBHC to monitor improvements. The same questions are used in the NBHC and the Horizon surveys to determine the language of choice of respondents and to enquire about their experience with regard to receiving services in their language of choice.

The NBHC mails surveys to the homes of all patients discharged from facilities providing acute care in New Brunswick. Patient participation is voluntary. The response rate is around 45%. Only patients who have received medical, surgical, or obstetrical care are surveyed.

All patients discharged during a given period can participate in the Horizon survey at the time of their discharge. If they do not have the necessary cognitive capacities, we suggest that their family take the survey. Participation is voluntary, and the survey is distributed to around 70% to 79% of patients. The next step is to wait for them to complete the survey. Of those who receive the survey, about 35% to 40% return it to us.

Target data

Percentage (%) of patients who report choosing French

Percentage (%) of patients who report “always” receiving services in the official language of their choice

Survey	Year	Number of respondents	Percentage (%) of respondents who reported French as their language of choice	Of the percentage (%) of respondents who reported French as their language of choice, what percentage reports “always” receiving services in that official language
NBHC**	2013	3,233	6%	28%
Horizon	May 14	966	6%	41.10%
Horizon	November 14	871	5.60%	46.80%
Horizon	May 15	873	4.50%	52.60%
NBHC**	2016	4,542	5.10%	42%
Horizon	Jan.-Feb. 2018	1,157	6.70%	47.20%
NBHC	2019	Results pending		

At the moment, the acute care surveys are the main tool used by Horizon to measure patient satisfaction with regard to language issues.

11) Please describe the other ways in which you guarantee compliance with the OLA.

Answer

Horizon is working on implementing a strategy for gaining a better understanding of the importance of bilingual services, explaining the nature of the active offer, and clarifying the responsibility of units when it comes to setting up their own systems for ensuring equal services. To do this, we ensure that employees always keep bilingual services and official languages in mind. The following methods are used:

- Active offer dialogue sessions. Because these sessions were explained in connection with earlier complaints, we will not describe them again.
- Online training at the time of hiring. New staff must complete a detailed online learning module on the active offer and bilingual services during the first week of their contract with Horizon.
- Repetition of online training. All staff members must retake annually the module referred to in the above bullet.
- Distribution of tools and reminders to staff and managers. The tools mentioned in the earlier resolution letters are distributed to staff:
 - During active offer dialogue sessions;
 - At the request of managers or staff;
 - Periodically – Employees of the Official Languages Department have regular discussions with unit managers to make sure they have the tools they need.
- Progress tracking tool in the units. Horizon's Official Languages Department asks the unit managers to use a tool for tracking progress on each individualized plan for the purpose of improving the quality of bilingual services. These monthly progress reports enable the units to tailor their solutions to their individual needs, while maintaining accountability.
- Active Offer Relaunch initiative. In the fall of 2019, Horizon's Official Languages Department will roll out the Active Offer Relaunch. The members of this team will tour the main facilities and set up highly visible information booths. The goal will be to interact with patients, visitors, and staff and to discuss bilingual services. We believe this initiative will enable us to help the public better understand their rights and what they can expect from Horizon. It will also enable us to continue communicating to our staff our commitment to equal services.

12) What percentage of patients at the Moncton Hospital

a. receive the survey?

Answer

2018 Horizon Survey – the Moncton Hospital

A total of 1,182 patients were discharged from the Moncton Hospital in 2018. Of those patients, 72% were offered the survey. We did not offer the survey to individuals who did not have the necessary cognitive capacities and did not have a family member present. Sixty-six (66%) of those offered the survey agreed to complete it, and 40% returned it.

b. for Horizon

Answer

A total of 4,802 patients were discharged from a Horizon facility in 2018. Of those patients, 75% were offered the survey. We did not offer the survey to individuals who did not have the necessary cognitive capacities and did not have a family member present. Seventy percent (70%) of those offered the survey agreed to complete it, and 38% returned it.

13) Is the survey given to members of the public who are not patients of the Moncton Hospital (e.g., visitors to the hospital, members of patients' families, and friends of patients)?

Answer

No. The provincial acute care survey and Horizon's interim survey are offered only to inpatients.

14) If the answer to question 13 is "yes," what percentage of members of the public who are not patients

a. receive the survey?

Answer

Not applicable.

b. return the survey?

Answer

Not applicable.

15) If the answer to question 13 is “no,” how does your institution make sure the Moncton Hospital complies with the OLA when dealing with members of the public who are not patients, and how do you measure the hospital’s performance?

Answer

Please refer to the answer to question 11. At the moment, we do not measure compliance with the active offer and the contingency plan in dealings with visitors.

16) What percentage of patients in the psychiatry unit

a. receive the survey?

Answer

2018 Horizon survey: 75% of inpatients receiving mental health care who were discharged were offered a survey – 55% of them agreed to complete the survey, and 32% returned it.

b. return the survey?

Answer

In all, 32% of patients hospitalized for mental health care who were discharged and were given the documentation opted to return the survey.

17) Is the survey given to members of the public who are not patients of the psychiatry unit (e.g., visitors to the hospital, members of patients’ families, and friends of patients)?

Answer

The provincial acute care survey and Horizon’s interim survey are offered only to inpatients.

18) If the answer to question 17 is “yes,” what percentage of members of the public who are not patients of the psychiatry unit

a. receive the survey?

Answer

Not applicable.

b. return the survey to you?

Answer

Not applicable.

19) If the answer to question 17 is “no,” how does your institution make sure the psychiatry unit complies with the OLA when dealing with members of the public who are not patients, and how do you measure the performance of the psychiatry unit?

Answer

At the moment, we do not measure compliance with the active offer and the contingency plan in dealings with visitors.

20) What percentage of patients in the intensive care unit

a. receive the survey?

Answer

At the moment, we do not give the survey to patients in the intensive care unit or their families.

b. return the survey to you?

Answer

At the moment, we do not give the survey to patients in the intensive care unit or their families.

21) Is the survey given to members of the public who are not patients of the intensive care unit (e.g., visitors to the hospital, members of patients' families, and friends of patients)?

Answer

No

22) If the answer to question 21 is "yes," what percentage of members of the public who are not patients of the intensive care unit

a. receive the survey?

Answer

Not applicable.

b. return the survey to you?

Answer

Not applicable.

23) If the answer to question 17 is "no," how does your institution make sure the intensive care unit complies with the OLA when dealing with members of the public who are not patients, and how do you measure the performance of the intensive care unit?

Answer

Please refer to the answer to question 11. Since June 2019, the nurse manager of the intensive care unit has been making daily rounds to meet and speak with families and visitors. She asks them if their needs are being met. She visits the floor more frequently to see if the *Official Languages Act* is being complied with. If necessary, corrective action is taken, and she notes appropriate behaviour.

24) Did the complainant, [REDACTED], receive the survey? If no, why not? If yes, did he return it to you?

Answer

Mr. [REDACTED] did not receive the acute care survey because it is for patients receiving medical, surgical, or obstetrical care who are just about to be discharged.

24) Does your action plan address “manager accountability?” What does that mean? What specific measures are/will be put in place to hold managers accountable when there is a failure to provide equal services in both official languages?

Answer

Manager accountability is part of the culture of the equality of language services that Horizon promotes among its managers. They manage complex situations with multiple variables, language being one of the significant variables. Horizon’s official languages team works closely with the management team to come up with personalized solutions to the issues of recruitment, language support, and accountability. Below you will find some of the measurable objectives with respect to accountability that the Official Languages Department requires of managers:

- Progress tracking tool on the units. Horizon’s Official Languages Department requires that unit managers use a tool for tracking progress made on each individualized plan to improve the quality of bilingual services. These monthly progress reports enable the units to tailor their solutions to their individual needs, while maintaining accountability. Also, the regional official languages advisors can track progress within each unit and take action, if need be.
- Participation in active offer dialogue sessions. These sessions are central to the development of a culture of accountability and empathy. At each session, staff members are encouraged to discuss freely any difficulties they have had to cope with in the provision of bilingual care and to come up with solutions. Most difficulties are related to the shortage of staff. The Official Languages Department documents the number of participants in each unit. We contact the managers when a low participation rate is documented. The regional official languages advisor will find a solution to accommodate these units. In most cases, managers would like to send employees to active offer dialogue sessions, but they have too few staff members to reduce the number of care providers. In such cases, the official languages advisor will often hold a separate session during the unit’s training time. So far, over 3,600 Horizon employees have taken part in these sessions.

25) Under the strategic theme Learn and Apply, the action plan deals with the needs of staff. What staff needs have you identified to help Horizon comply with the OLA?

Answer

Staff have identified many difficulties in the provision of equal language services. This section looks at some of the more important issues raised by staff members during the active offer dialogue sessions.

- Lack of staff is the most serious problem. Most units find it hard to recruit staff with medical skills, regardless of language of communication. This makes it difficult to carry out standardized critical procedures such as direct primary care. Horizon staff are proud of their work and endeavour to provide the best care possible, despite the difficulties. This pride extends as well to services offered to patients, family members, and visitors in their language of choice. However, there are instances where staff members must show some ingenuity to find a bilingual person because of the employee shortage. Such situations can result in a slowdown in the delivery of bilingual services.
- During the active offer dialogue sessions, employees often say that they would like to have better access to paid training in French as a second language. They generally feel that more employees would be likely to take such training if it were paid as normal work hours and offered outside the usual hours of work.

26) When you met with our Office's staff last March, you mentioned a new language proficiency testing process. Please provide an update on that process.

Answer

Horizon is currently carrying out the second phase of the project, which involves ensuring the validity and reliability of the assessment process. We hope to complete this phase and introduce the process in March 2020.

27) Even though your action plan dates back only a few months, have you noticed any changes (for example, a change in organizational culture with respect to official languages)? If so, what changes? If not, how do you plan to adjust your plan?

Answer

It is hard to measure changes in the organizational culture. However, tangible evidence suggests that some progress has been made. As we explained in our answer to question 27, the Official Languages Department works with the Human Resources Department to reorganize standardized second-language testing practices. We note that there is better collaboration between the Official Languages Department and other key units. The complaints resolution process is another example of this. Official languages complaints concerning issues related to procedure or behaviour are now being handled using the same methodology. When a complaint is based on the outcome of a faulty process, it is important to change the process in question to prevent it from being repeated. Quality Service has started working with the Official Languages Department to develop a methodology that can be used not only to resolve procedure-related complaints but also to increase accountability. We see more examples of collaboration with the Official Languages Department, and we are sure this situation will have positive repercussions elsewhere within the Horizon network.

As was mentioned earlier, the action plan has been in place for only a few months. Horizon believes that this plan is the result of reliable research and is realistic. We also believe that it would be wise to complete the stages of the action plan before any major changes are made.

Part 3: Measures Taken

In its response of August 15, 2019, the institution provided us with the following information, in the section entitled Part 3: Measures Taken. This section is reproduced below in its entirety.

Horizon undertakes to comply with the Official Languages Act of New Brunswick and to offer equal services in both official languages. We therefore recognize that certain corrective measures must be taken. Below you will find some of the measures that have been taken on the units and by the targeted services to limit the possibility of having linguistic deficiencies recur.

Intensive care unit: Most of the incidents occurring in the intensive care unit were related to the active offer and the delayed or incorrect implementation of the contingency plan. Corrective measures will be designed to ensure that these recurring problems are addressed.

- 1) It was determined that the intercom at the entrance to the unit is a problematic area. To solve this problem, the unit agreed to take the following measures:
 - a. post active offer reminders on the receiver;*
 - b. place some materials (common phrase cards, pens, key rings, etc.) near the workstation;*
 - c. do active offer and contingency plan drills with staff members who use the workstation regularly;*
 - d. inform the rest of the staff about workstation operations and possible implications for their work.**
- 2) The speed with which staff members adapt to the complainant's request is another problem source. Points 3, 5, and 6 are intended to correct this potential deficiency in the services provided.*
- 3) Team meetings are key moments for speaking with staff. They are held once a week, during the transition from the day team to the night team and again during the opposite transition. The nurse manager has agreed to reinforce appropriate behaviour with respect to bilingual services during these key meetings. Also, the official languages advisor must attend these meetings as well to discuss ideas and solutions.*

- 4) *Active offer dialogue sessions are still being held within the Horizon network. The nurse manager has agreed to send employees to the sessions if staff shortages allow. Two sessions will be held at the Moncton Hospital in July and August. The local official languages advisor has been invited to speak to staff during informal meetings of the intensive care unit team, which will be held in the fall and will focus on work improvement.*
- 5) *The nurse manager must discuss the precise use of the active offer and the contingency plan and make staff members put these measures into practice. As mentioned in point 2, these discussions and this training will now take place every week.*
- 6) *The nurse manager has agreed to observe interactions between staff, patients, family members, and visitors more closely. If necessary, she will reinforce appropriate behaviour using the internal Horizon system called Bravo and will correct faulty behaviour. She has indicated clearly that she will take disciplinary action against any employees who refuse to meet their obligations.*

Psychiatry: As in the intensive care unit, most incidents in the psychiatry unit result from delayed or inappropriate use of the active offer and the contingency plan. Below you will find some of the measures that have been, and will continue to be, put in place as a result of this complaint.

- 1) *The director of Mental Health Services for the Moncton region indicated clearly that she wanted the complainant to contact her directly if another incident were to occur. The complainant has the director's contact information and has used it before. She hopes to provide the complainant with a direct link to senior management within the unit in question. Horizon believes this direct communication will lead to greater change and will enable all stakeholders to achieve the best results. Our aim is to offer top-quality services, and we believe this privilege is an ideal way to fulfill our values.*
- 2) *At random intervals, the nurse manager started to check on whether employees were using the active offer in phone calls. These audits are recorded and a monthly report is given to the regional official languages advisor.*
- 3) *The nurse manager is committed to reinforcing behaviour by discussing the use of the active offer and the contingency plan during monthly staff meetings. This opportunity will serve not only to remind staff of their obligations, but also to express difficulties and find solutions that can be used within the unit.*
- 4) *The contingency plan was updated and will be updated twice a year.*
- 5) *One newly hired nurse is taking French courses.*

6) *The local official languages advisor toured the units with the nurse manager to ensure that staff have the necessary tools.*

Staff at Horizon's Official Languages Department are committed to working with colleagues in other units and will continue to do so to provide the highest quality of care. In this case, we are working with the Physical Resources Department to update our signage as soon as possible.

Complainant's feedback vis-à-vis the institution's response

We were very surprised to read, in the institution's response to the incidents of February 15, 2019 (No. 1) and June 3, 2019 (No. 13), that the complainant had at one point opted for English as the official language of choice. On August 28, 2019, we therefore forwarded the institution's response to the complainant.

On September 16, a member of our staff met with the complainant in order to receive his feedback. Among other things, he informed us of the following:

Contrary to what was written by the institution in its assessment of the facts of the incidents of February 15, 2019 (No. 1) and of June 3, 2019 (No. 13), the complainant said that he never chose to receive services from the institution or communicate with it in English. On the contrary, he always chose to express himself in French. Whenever he accepted to use English with the staff of the institution, it was because he felt that the institution was unable to provide him with service in French. The complainant therefore chose to protect the interests of his family members to the detriment of his own linguistic rights.

Our office then forwarded the complainant's comments to the institution. On November 4, 2019, the institution informed our office that its intention was to indicate to us that, initially, the complainant did not object to being served in English, and that, when he opted to be served in French, he would have to wait for the staff to bring in a bilingual employee.

Analysis

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

27. Le public a le droit de communiquer avec toute institution et d'en recevoir les services dans la langue officielle de son choix.	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. 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. 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. 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.	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.

The 13 incidents described in the complaint

We will first consider the 13 incidents described by the complainant, which occurred between February 15, 2019, and June 3, 2019.

February 15, 2019 (No. 1)

It should be noted that we are extremely disappointed with the institution's response to incident No. 1. This is mainly due to the institution stating that, "according to the staff, at no time did the complainant demand service in French during these preliminary interactions. Moreover, the staff were surprised when the complainant changed his language of choice."

First of all, the institution is well aware that, under section 28.1 of the OLA, a visitor to the hospital is not required to request service in either language. On the contrary, it is up to the institution to inform visitors that its services are offered to them in the official language of their choice.

Then, as the staff informed the institution that the complainant never “requested service in French during these first interactions,” we wonder how much these staff members understand language rights, and in particular the concept of the active offer of service. No staff member with adequate training in official languages should be of the opinion that the onus is on a member of the public to request service in either official language. The responsibility of informing members of the public of their language rights rests entirely with the institution.

Additionally, in its response to incident No. 1, the institution wrote that “the staff were surprised when the complainant changed his language of choice.” Surprised by that statement, we contacted the complainant for his feedback, and he advised us that he had never changed his choice of language. He said that he acquiesced a few times to service in English because the conversations concerned the health of his family members and, therefore, were of the utmost importance to him. French was always his language of choice.

After receiving this feedback from the complainant, the institution explained to us that, in its response, “choice” meant that the complainant did not object to being served in English rather than waiting for a bilingual employee. Yet, to that, we wonder if service in French was even available at the times when the complainant agreed to be served in English, and how long the delay would have been if the complainant had chosen to wait to be served in French.

Lastly, although the institution clarified what it meant by using the word “choice” in its response, the fact that that word was used concerns us. Choosing your language of service, in the world of language rights, means selecting one of the two official languages, without sacrificing the quality of service, after an active offer has been made. But in these cases, the complainant did not receive the active offer of service. He was not given the choice. On the contrary, it was the staff who chose the language of service. In our view, the fact that the institution and its staff used the verb “choose” to signify that the complainant consented to service in English demonstrates a lack of understanding of the spirit of the OLA.

On February 17, 2019 (No. 2), on February 18, 2019 (No. 3), on February 19, 2019 (No. 4), on February 23, 2019 (No. 6), on March 1, 2019 (No. 8), on March 9, 2019 (No. 9), on March 20, 2019 (No. 10), on March 31, 2019 (No. 11), and on April 24, 2019 (No. 12).

Concerning incidents 2, 3, 4, 6, 8, 9, 10, 11, and 12, the institution recognized, or at least did not deny, the allegations of the complainant. We therefore accept the complainant’s version of the facts and note that his language rights were not respected in each of these incidents. Before continuing, however, we would like to make a few comments.

Regarding incident No. 4, the institution informed us that “the person who answered the phone was therefore the replacement for the replacement.” In previous cases involving this institution, we have advised how essential it is to have a solid contingency plan. We therefore take this opportunity to remind the institution that it must implement a contingency plan to remedy the following situations:

- When employees are on break,
- When employees are sick,
- When employees are with another client/patient,
- When employees are on vacation, and
- Staff turnover.

With respect to incident No. 6, it is important to note that, had the complainant chosen to be served in English, he could have been served (it was his sister’s nurse who greeted him). However, when he finally received service in French, his sister’s nurse was no longer available. As a result, owing to his choice of language, the complainant was not able to be served by the institution.

Moreover, concerning complaint No. 6, the institution indicated in its response that the patient’s choice of language was English. However, after the complainant reviewed the institution's response, he informed us that his brother is Francophone and that he would never have chosen to be served in English. But, since this investigation concerns the complainant and not his brother, we will not deal with this question.

As for incident No. 8, the last sentence in the institution’s response is worth noting: “the patient is very comfortable with [REDACTED] and [REDACTED], who provided her with care.”

First, we have no reason to believe that the complainant’s sister did not receive excellent care. In fact, after reviewing the institution’s response, the complainant recognized that his sister was very satisfied with these two nurses. This complaint, however, was not filed by the patient. And we remind the institution that, in addition to patients, any member of the public has the right to be served in the official language of their choice. The fact that the complainant’s sister was served in the language of her choice in no way diminishes the complainant’s right to be served in his.

With respect to incident No. 12, the institution wrote, “Although the employee who answered did not use the active offer, she did use the contingency plan and found a bilingual employee, the nurse manager.” In fact, although it believed that the contingency plan had been used correctly, the institution did not dispute the complainant’s assertion that the employee had told him, “one moment please. I will get someone who speaks French” and “no one is in the unit at this time to speak French to you. I will transfer you.”

We remind the institution that a contingency plan involves more than just finding an employee who can serve the member of the public in their language of choice. It also means informing the person, in their language of choice, of what is going on. With regard to incident No. 12, the complainant chose French. It was therefore unacceptable to have said, "I will get someone who speaks French," and "I will transfer you." To demonstrate an adequate contingency plan, the employee could have said, "Un moment s'il vous plaît" before transferring his call. This is a way of making it clear, in his language of choice, that the employee will go and find someone with the language skills required to help him. We wonder why a contingency plan with such a simple message has not already been implemented.

Concerning incident No. 5, the institution informed us that the complainant's sister chose to be served in English. Although the complainant has a power of attorney for his sister, we have no reason to believe that his sister is unable to make her own decisions. And we accept the institution's statement that she chose to be served in English.

As for incident No. 7, we conclude that, upon his arrival at the hospital, the complainant did not receive an active offer of service. As for the psychiatrist who left without saying anything, there is nothing to indicate that he acted this way due to a question of language; therefore, we will not delve deeper into this matter.

We will now discuss incident No. 13. Had the complainant, during the call on June 3, chosen to be served in English, he would have immediately received the information concerning his sister. However, since he chose French, he was put on hold. And he had to wait so long that he eventually hung up. What is more is that it was only the next day that the complainant was informed of his sister's medical condition. That situation is completely unacceptable and could have been avoided had a solid contingency plan been in place.

Furthermore, as indicated above, we feel it is important to discuss the following comment from the institution:

Staff members said the complainant opted to speak to them in English during several interactions and then suddenly switched to French. They felt trapped, particularly since the complainant used these incidents to file a complaint.

As indicated in this analysis, we believe the complainant when he says that he never chose to be served in English by the institution, that he agreed to service in English only because it was in the best interests of the others. The institution must understand that accepting service in one language while the other, the preferred language, is not available, does not amount to service in the language of one's choice. If a member of the public accepts service in a language because service in the language of their choice is not available, that does not mean that the institution may ignore their language rights in the future.

Questions asked by the Office of the Commissioner

The active offer and the contingency plan

The institution responded to the series of questions asked by our office. In its responses, it detailed the steps taken following previous cases with the same complainant. For example, the institution said that memos on the active offer and the contingency plan were sent to staff and that the contingency plans are updated periodically. Although we recognize that these were genuine efforts on the part of the institution, we note that the complainant filed a complaint comprised of 13 incidents, 12 of which are founded, over a short period of approximately three and a half months. It should have been obvious to the institution as early as February, since it failed to respect the complainant's language rights four times in February, that its efforts were not working and that other measures needed to be taken. It is unacceptable that staff said, for example, "come on in" instead of "veuillez entrer" and "one moment please" instead of "un moment s'il vous plaît."

In its response, the institution also referred to the contingency plans put in place. However, in order to demonstrate that such plans clearly cannot guarantee compliance with the OLA, it suffices to return to incident No. 8. During that incident, an employee from another unit came to speak with the complainant. However, according to the complainant's account, which was not disputed by the institution, the employee explained that she had to leave immediately and therefore could not provide him with the information he was looking for. As a result, owing to his choice of language, he could not receive service from the institution. Furthermore, the institution, in its response, stated that, "However, the staff used the contingency plan to have an employee come from another unit to talk to the complainant." We are very concerned by the fact that even though the complainant was unable to receive service in French, the institution determined that the contingency plan had been properly followed. If the contingency plan had actually worked, the service received in French by the complainant would have been of equal quality to that which he would have received if he had chosen English. Consequently, the institution must modify its contingency plans in order to guarantee that in the future, service will be of equal quality regardless of the language chosen by the public.

We also asked questions about the potential consequences if its staff do not comply with the OLA. In its response, the institution informed us that, regarding the intensive care unit, "none of the unit's staff is resistant to the active offer or to the delivery of bilingual care." However, with respect to incident No. 1, we accept the complainant's allegations that the employee said:

I don't understand why you are requesting to be able to speak French because just again this morning I spoke to you in English and you answered me in English and you understand very well all I said to you.

In incident No. 2, the employee said to the complainant, “Do you speak English?”. And in incident No. 6, the employee said, “You speak very good English. Can you speak to me in English?” These are just a few examples showing that the staff not only failed to follow the contingency plan, but also tried to force someone who wanted service in French to communicate in English. We therefore wonder how the institution moved so quickly from one culture of disrespect to another where “no staff member is resistant to the active offer or to the delivery of bilingual care.” We wonder whether the institution made that statement prematurely.

However, the institution indicated in its response that disciplinary measures would be implemented for non-compliance with the OLA by employees who did not make the active offer and who did not follow the contingency plan correctly. We believe this measure demonstrates the seriousness with which the institution intends to deal with language rights in the future.

No other complaints

The institution then responded to questions regarding complaints made directly to the intensive care unit and the psychiatric unit. It indicated that no other complaints had been made during the last 12 months. However, the absence of complaints does not mean compliance with the Act, especially since it was difficult for the complainant to obtain the active offer when he came to the hospital in person or when he called the unit. We therefore wonder how many other members of the public are not receiving the active offer from employees in the ICU or the psychiatric unit. We therefore believe that the institution must take steps to inform members of the public that they have language rights and how they can file a complaint when they believe that their rights have not been respected.

The survey

In our notice of investigation, we asked the institution several questions about the Moncton Hospital’s Patient Care Experience Survey. In its response to question 15, we find the following statement very disturbing: “At the moment, we do not measure compliance with the active offer and the contingency plan in dealings with visitors.” In addition to this case, our office handled files in 2018 where the allegations of a hospital visitor related to the active offer and the contingency plan. Therefore, from now on, we expect the institution to assess the satisfaction of visitors and patients with respect to their language rights.

Although it did not offer the survey to visitors, the institution indicated in its response to question 23:

Since June 2019, the nurse manager of the intensive care unit has been making daily rounds to meet and speak with families and visitors. She asks if their needs are being met. She visits the floor more frequently to see if the Official Languages Act is being complied with. Corrective measures are taken, if necessary, and good behaviour is highlighted.

It should be noted that our notice of investigation dates from June 3, 2019, the same month that the nurse manager started doing her audits. This seems to be an immediate response in good faith on the part of the institution aimed at trying to better comply with the OLA. We recognize this effort and hope that it, along with other innovative methods, will continue.

The institution's action plan

Last March, our office had a meeting with the President and CEO of the institution, at which time she provided us with the 2019-2021 Horizon Action Plan, entitled "A patient and family centered approach to services in your official language of choice" (Patient- and family-oriented approach to services in the official language of your choice).

In its response, the institution informed us of the following:

As was mentioned earlier, the action plan has been in place for only a few months. Horizon believes that this plan is the result of reliable research and is realistic. We also believe that it would be wise to complete the stages of the action plan before any major changes are made.

We recognize that this is a new action plan and that a lot of research and effort has gone into its development. We will therefore give the institution the time to use it. That said, we believe that there are some missing elements that would enhance its implementation.

First, the institution must identify and designate those responsible for implementing the action plan. Second, a timeline must be established. We believe that by identifying those responsible and establishing a viable timeline will ensure real progress is made toward reaching its targets.

Moreover, much of the terminology used in the action plan is too general. Although the institution defined "managerial responsibility" in its response of August 15, 2019, such terms are not defined in the action plan. As such, we suggest an accompanying document, which not only defines responsibilities and deadlines, but which would also explain the strategic actions and objectives, as well as the specific methods for measuring these actions and objectives. The plan contains some excellent ideas, but a companion document is needed to put it into practice.

We also note that, before the 2019-2021 action plan came into effect, there was a 2016-2020 action plan. However, after three years under that plan, the employees of the institution were still unable, as of April 24, 2019, to provide the public with an active offer of service and to use the contingency plan effectively. Hence, in order to comply with the OLA, this new 2019-2021 action plan must be implemented and administered in a very different way from the previous plan. In order to be clear and operational, we believe that a companion document is necessary.

Lastly, we would like to touch on the issue of collaboration, which was raised in the answer to question 25. According to the institution:

The quality service has started working with the Official Languages Department to develop a methodology that can be used not only to resolve procedure-related complaints but also to increase accountability. We see more examples of collaboration with the Official Languages Department, and we are sure this situation will have positive repercussions elsewhere within the Horizon network.

We applaud this measure and encourage collaboration between Horizon units and departments as much as possible in order to find new ways to improve compliance with the OLA.

Part 3: Measures Taken

In its response dated August 15, 2019, the institution proactively included a section entitled *Part 3: Measures Taken*. We recognize the measures that the institution took to better comply with the OLA. We appreciate the fact that the institution took the initiative to provide a list of corrective measures in its response rather than waiting for us to make recommendations. In addition, we thank the institution for recognizing its shortcomings by stating that “certain corrective measures must be taken.”

After considering the measures that the institution has put in place as well as the measures it has undertaken to implement, it is clear that, since our notice of investigation, the institution is making real efforts to comply with the OLA. We trust that the institution will regularly assess the effectiveness of these measures and will modify or improve them as needed.

Conclusion

Our investigation has led us to conclude that the complaint is in large part founded; in 12 of the 13 incidents, the institution did not respect the complainant's language rights.

Our investigation into this matter has allowed us to determine that, in the psychiatric units of the Moncton Hospital, there was a very low rate of compliance regarding the provision of the active offer of service. We remind the institution that such an offer is one of the fundamental principles of language rights through which the public is informed that service is available in English and in French. It also demonstrates that the use of both official languages is supported within the institution, thus encouraging members of the public to use the language of their choice. It is therefore vitally important that the public receive a bilingual greeting at all times when they contact the institution.

Our investigation also revealed that the staff of the institution made sparing and/or incorrect use of their official languages contingency plan. Once a member of the public informs the institution of their language of choice, they are entitled to be served in that language, and said service must be of the same quality as that which they would have received if they had chosen the other official language. Much remains to be done by the institution to ensure that a reliable contingency plan is in place and that staff understand it and apply it properly.

Additionally, during the investigation, we had the opportunity to review the institution's 2019-2021 Official Languages Action Plan. Although the plan is based on rational principles and takes the organizational culture into account, we have determined that it lacks important elements, the absence of which compromises the institution's ability to fully execute its plan and to measure whether its objectives have been achieved.

We also recognize that achieving a positive change in organizational culture is not an easy task. It requires time, effort, and creativity. That said, until the institution's staff take language rights to heart, they must comply with the OLA at all times and provide service in the official language of choice of the members of the public. We are therefore making the following recommendations:

- THAT** the 2019-2021 Official Languages Action Plan be modified so that those responsible for its implementation are identified, a timetable is established, and the means to measure the achievement of the objectives of the action plan are defined;

- THAT** the Horizon Network's Official Languages Department carry out monthly audits with the psychiatric unit of the Moncton Hospital regarding the active offer of service and the use of the contingency plan by employees and that the results of these monthly audits be sent to the director of this unit as well as to the CEO of the Horizon Network;

THAT the Horizon Network CEO forward the results of the monthly audits described above to the Commissioner of Official Languages every six months so that the progress of the file can be monitored;

THAT the Horizon Network review the contingency plan for the psychiatric unit of the Moncton Hospital in order to guarantee the delivery of quality service in both official languages; and

THAT satisfaction surveys dealing with official languages be made available to visitors in clearly visible areas of the psychiatric unit of the Moncton Hospital.

In accordance with subsection 43(16) of the OLA, we submit this report to the Premier, the Deputy Minister of Health, the CEO of the Horizon Health Network, the Clerk of the Executive Council, and to 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 12th day of December, 2019