

## Access to Justice in English Project

# Federal Correctional Services in English in Quebec

Final Report and Recommendations to  
The Correctional Service of Canada

*October 25, 2022*



# Access to Federal Correctional Services in English in Quebec:

## Final Report and Recommendations to The Correctional Service of Canada

### Introduction

QCGN's Access to Justice in English project ("the Project") identifies and researches areas where the English-speaking community are experience difficulty accessing their rights, with a strong focus on community access to public services. It leverages information as a strategic resource to understand and improve access to justice in English in Quebec.

The first issue studied by the Project was access to federal correctional services in English in Quebec. Our research methodology included a thorough investigation of the issue along four main lines of inquiry: the relevant policy and legal framework, the internal organization and administration of services, how inmates navigate the continuum of federal correctional services from intake to conditional release into the community, and firsthand population experience obtained through quantitative and qualitative research.

This investigation uncovered several **systemic barriers to English-speaking inmates accessing programs and services in English in Quebec**, in facilities operated by the Correctional Service of Canada (CSC).

We then validated these findings through a targeted outreach to 70 organizations between December 2021 and April 2022. This yielded some 25 informational interviews with a range of community organizations, halfway houses, Citizen Advisory Committees, and federal government agencies. Finally, we approached CSC directly, and presented our findings and issues of concern to a team led by Katherine Cole, Director of Citizen Engagement at CSC's Communications and Engagement Sector. Ms Cole was instrumental in securing some additional information for us on CSC programming and on the specifics of the Quebec region.

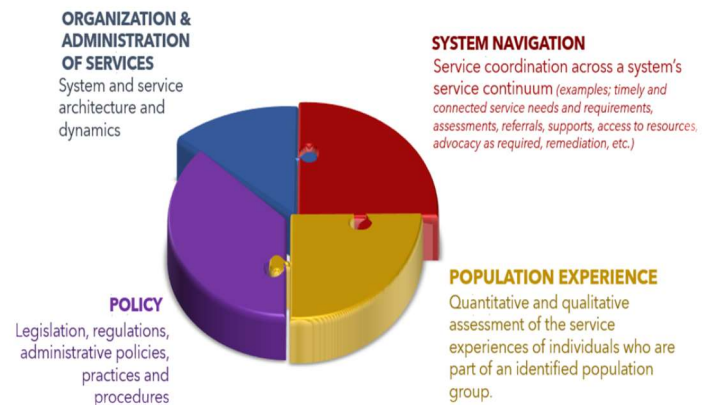
The present document contains an **executive summary of our top findings**, informed by our research and validation process. This is followed by a series of **eight recommendations** presented by QCGN's Access to Justice in English project to the Correctional Service of Canada for further consideration. These recommendations have been reviewed by a coalition of community partners who are all involved in some way with CSC's inmate clientele and who have all expressed an interest in being part of a potential solution.

## Methodology

Our findings are based on a mixed methodology combining the following strands of research:

- A review of the existing framework of policy law pertaining to federal correctional services and official language minority rights;
- An external legal opinion submitted by Power Law on March 12, 2020;
- An analysis of available literature on CSC's systemic and organizational practices;
- A series of qualitative interviews conducted by Quorus Consulting with recently released English-speaking federal inmates and service providers to Quebec-based CSC institutions in Spring 2021; and
- A quantitative survey of English-speaking inmates at Joliette Institution for Women, conducted in collaboration with the Elizabeth Fry Society of Quebec in Spring 2022.

These findings served to complete the four dimensions of the information strategy that governs the structure of the final report: Organization & Administration of Services, System Navigation, Population Experience, and Policy (see Fig. 1, right).



## Research Highlights

This section provides a high-level summary of the knowledge obtained within each dimension of the information strategy.

### The Policy Dimension

- The relevant sources governing the policy and legal implications are the *Constitution Act*, the *Canadian Charter*, the *Official Languages Act* (OLA) and regulations, and the *Corrections and Conditional Release Act* and regulations. CSC internal policies include Commissioner's Directives, Interim Policy Bulletins, Policy Bulletins and Guidelines.
- The framework points to the criterion of **significant demand**, as described in Commissioner's Directive 087, which determines whether the CSC institution will have basic official language obligations or comprehensive ones. An institution satisfies the significant demand criterion when 5% or more inmates indicate English as their official language of choice.
- The OLA sets out three important considerations:
  - The public's **right to communicate** with and be served by federal institutions in the official language of their choice;
  - Federal employees' **right to work** in the official language of their choice; and
  - The government's commitment to **provide equal opportunities** to English and French speaking Canadians in federal institutions.
- On sentences served in the community, the OLA specifies third-party obligations regarding services offered in both official languages. The applicable test to determine whether a third party will be bound by the OLA obligations is the *Eldridge* test as set out by the Supreme Court of Canada.

## The Organization and Administration of Services Dimension

- The CSC has three core areas of responsibility: care and custody; correctional interventions; and community supervision.
- It performs these responsibilities through a system of 43 correctional institutions, 14 community correctional centres (CCC) and 92 parole and sub-parole offices throughout the country. In Quebec, there are 12 correctional institutions, 6 CCCs and 17 parole offices. Most institutions also include a citizen advisory committee composed of members of the public.
- With regards to community supervision, the CSC collaborates with various community organizations to provide supervision, correctional programs, and other services.

## The System Navigation Dimension

- The inmate's journey through the correctional system (see Fig. 2, right) has several **critical navigation points with regards to English services**.
- These include the intake assessment, the establishment of a correctional plan, receiving information on rights and recourses, daily communications, accessing correctional programs, transfers, and conditional release into the community.



Throughout these critical navigation points, inmates may experience issues with being placed or transferred to institutions with comprehensive official language obligations, receiving information in English (and delays in translation), accessing programs and services in English, and being charged with a disciplinary offence resulting from their misunderstanding of orders being issued unilingually.

## The Population Experience Dimension

- Language complaints made to the Office of the Commissioner of Official Languages (OCOL) from Quebec-based CSC institutions since 2016 indicate significantly more complaints about a lack of service in English than in French. It should be noted that OCOL does not record whether the complaints originate from inmates as opposed to personnel or others within CSC facilities, nor does it record the complainant's first language. With these caveats, there is nonetheless an important discrepancy. While we find it likely that the drop in complaint numbers from 2020 onward was due to circumstances related to the COVID-19 pandemic, OCOL was not able to confirm this.

Language of incident*	2016	2017	2018	2019	2020	2021	2022 (as of Aug. 25)	Total
English	6	12	11	10	1	1	2	43
French						1		1

\*Language in which the complainant would have liked to receive service.

Source: OCOL (data inquiry completed, August 25, 2022).

- These data are an important complement to our population research on perceptions of services in the federal system. We first conducted a series of qualitative interviews with 14 stakeholders, including four service providers and 10 offenders completing their sentences in the community.
- Key issues emerged from these interviews:

- Significant delays, challenges in receiving documentation translated from French to English.
- Everyday communications such as loudspeaker announcements are primarily in French.
- Inmates encountered difficulty in accessing programs in English, both within the institution and in the community.
- The major impact of these issues is a **delay in conditional release**. This may be in violation of inmates' right to life, liberty, and the security of the person (s. 7 Charter), and/or of their right against arbitrary imprisonment (s. 9 Charter).
- These findings were further strengthened by a separate survey of 15 English-speaking inmates at Joliette Institution for Women. Roughly half indicated that they were unable to speak to their intake officer in English. A majority indicated that they:
  - Were not told at intake about choosing an official language and how their choice could impact them.
  - Could not always understand what is said over the intercom or by the guards.
  - Found **programs** the most difficult thing to access in English.

## Areas of Unmet Need

These insights, combined with further details emanating from our validation process described on page 1, allowed us to identify three overarching areas of unmet need. This section details the specifics of each.

### Theme 1: Misunderstandings, Delays and Translation

**1. Intake assessments conducted by francophone officer:** If an inmate's intake assessment is conducted by a unilingual francophone officer, or one with a limited knowledge of English, there may be misunderstandings (risk of confusion) between the inmate and the officer conducting the assessment. In these situations, the meeting notes are often written in French, which can lead to translation delays.

- **Information obtained during the validation process includes:**
  - ✓ Joliette survey findings, where about half of respondents said they couldn't communicate with their intake officer in English.
  - ✓ Confirmation from two informational interviews.
- **CSC Response:** CSC has highlighted to QCGN its statutory obligation in operational units with significant demand for minority official language services to actively offer and provide offenders with all substantive communications and services in their official language of choice – an obligation that applies to both CSC employees and contractors acting on behalf of CSC.

The response highlights Paragraph 23 of *CD 705-7* (Security Classification and Penitentiary Placement) and Article 28 of the *Corrections and Conditional Release Act* as conditions which make the risk of misunderstanding or confusion during the intake process "seem very unlikely."

However, our initial qualitative interviews specifically targeted paroled offenders from institutions with significant demand. Further, our Joliette survey found widespread evidence of difficulty communicating with intake officers in English. While Joliette is not an institution with significant

demand, these findings still reveal a need for greater access to intake officers with a strong proficiency in written and spoken English.

**2. Daily Communications:** Research findings suggest that daily communications at operational units in the Quebec region are often conducted only in French. This has been noted for communications via loudspeakers, between correctional officers and inmates, and as part of healthcare and psychological services.

- **Information obtained during the validation process includes:**

- ✓ Qualitative interviews with former inmates, who said that many loudspeaker communications were done only in French. Those that were also available in English were often difficult to understand due to the quality of the translation or the sound.
- ✓ Joliette survey findings, where a majority of English-speaking inmates surveyed said that communications in French either through the intercom or by the guards are not always translated to English and they (the inmates) do not always understand what is being said.
- ✓ Details from informational interviews:
  - While most intercom announcements seem to be done bilingually, the risk of misunderstanding remains high.
  - Healthcare services and psychological aid are sometimes only available in French, and Cowansville appears to be the only institution with an English-speaking psychologist.
  - English speakers applying to work for CSC must take a bilingualism test, and that failing this test means that a correctional officer cannot have any English-speaking inmates on their case load, even if their first language is English.

- **CSC Response:** CSC provided QCGN with a detailed response outlining CSC's official languages obligations under Section 22 of the *Official Languages Act*, Part IV, Paragraph 6(1)a) of the *Official Languages Act* (Communications with and Services to the Public) Regulations, and Commissioner's Directive 087 on Official Languages. The response confirms CSC's requirement to "provide service in both official languages in all institutions where there is a significant demand," and further clarifies that "all operational units must apply the same laws, regulations and directives in a uniform manner," with no variation by operational unit.

On the issue of loudspeakers, CSC acknowledges in response to past complaints to the Office of the Commissioner of Official Languages, "several institutions have implemented a communication system with pre-recorded messages in both official languages."

On the issue of correctional officers, CSC notes the presence of an official languages training component within both the mandatory correctional training program (CPT) and the new employee orientation program (NEOP).

Finally, on the issue of health and psychological services, CSC lists the number of bilingual health and psychological employees per operational unit within the Quebec region as of September 2022. According to this list, all operational units have several bilingual health workers on staff. The operational unit with the smallest number of bilingual mental health staff (4) is the Regional Mental

Health Centre. The operational unit with the smallest number of bilingual physical health staff (3) is La Macaza.

**3. Translation of important communications:** Delays are occurring in the translation of important communications that must be translated from French to English. These include intake assessment documents, disciplinary hearing documents, transfer and placement documents, etc.

- **Information obtained during the validation process includes:**

- ✓ Joliette survey findings, where a majority said communications are not always translated.
- ✓ Details from informational interviews:
  - Area of concern particularly for psychiatric evaluations.
  - Guards often rely on each other to help translate as needed.
  - English-speaking correctional officers can be asked to translate documents despite not being professional translators. These requests can be made in last-minute situations such as the day before a parole board hearing. Potential impact of translation error is significant for inmates being assessed for risk of recidivism – example given of indicating a base of maximum instead of medium.

**4. Translation of disciplinary hearings:** Disciplinary hearings may be translated by a person conducting the hearing or by another CSC staff member (with no conflict of interest).

- **Information obtained during the validation process includes:**

- ✓ Informational interview found that translation is often done directly by inmates' lawyers.

## Theme 2: Unavailability of Programs

**1. Information provided at intake on impact of language choice:** It is uncertain whether, when and how inmates are informed of the impact of their choice of language, including the possibility of program unavailability. It is also unclear whether the possibility exists for inmates to change their choice of official language or whether they are able to take a program in another language.

- **Information obtained during the validation process includes:**

- ✓ Joliette survey findings, where a strong majority indicated that it was not explained to them on intake that they had to make a choice of official language for their file, or the impacts this choice could have.
- ✓ One informational interview, which indicated that unilingual Anglophones may request a transfer to the Cowansville institution if they cannot access their programs in English where they are initially placed.

- **CSC Response:** CSC has noted to QCGN that it makes every reasonable effort to offer services to offenders in their official language of choice, whether they are provided by CSC employees or contractors acting on behalf of CSC. This language preference is based on the official language offenders choose during their intake assessment. CSC has not confirmed to QCGN whether the consequences of official language choice are explained to offenders as part of the intake assessment process.

CSC further points out that “choosing English as a language of choice does not automatically translate in[to] delays in getting correctional programs.” A lack of clarity remains on what happens in the instances when such delays do occur.

**2. Unavailability of correctional programs:** When correctional programs are unavailable in English, three significant consequences are observed for English-speaking inmates: (1) inmates must take the program in another language (which may compromise the impact of the program); (2) delays in the offering of programs until there are enough participants requesting it in English; and (3) inmates may be required to transfer to another institution – sometimes in another province – where the required program is offered in English.

- **Information obtained during the validation process includes:**

- ✓ Office of the Correctional Investigator’s 2020-2021 Annual Report, which stated many sentenced women from the Alberta-based Edmonton Institution for Women were transferred to the Joliette institution due to overcrowding. They specifically mention that staff and programs were not available for English-speakers, specifically for Indigenous English-speakers, and that while this has started to change, there remains no English-speaking Elder available.
- ✓ Joliette survey, where two in three respondents said programs were the most difficult thing to access in English at Joliette.
- ✓ Details from informational interviews:
  - There are no vocational programs or culturally sensitive programs for racialized youth specifically.
  - Clients of two non-profit organizations who were unable to complete their education program in English in a Quebec-based CSC facility.
  - Experiences of long delays and indications that legal clients in Quebec operational units have been transferred to Ontario to access programs in English. Indication that there should be one program in English for every two programs in French, but in practice this is not the case; inmates may have to take the course in French instead.
  - While some efforts have been made to allow smaller groups to participate in English programs (to avoid the need for transfers), the COVID-19 pandemic has meant that many programs have been put on hold or are held in much smaller groups, which often get cut.

- **CSC Response:** “Correctional programs within CSC are available in both official languages, and as such, an offender should not be required to take a program in a different language than their choice. In turn, an English-speaking offender should not be required to take a program in French. However, an offender may participate in a correctional program that is not in their preferred official language if they are assessed as capable and choose to do so. Further to this, program material such as worksheets are also accessible to offenders in their preferred official language. While correctional programs are usually delivered in group sessions, in order to best meet the offenders’ linguistic needs and to ensure meaningful participation, in certain instances correctional programs may be offered one-on-one.”



**3. Impact on parole:** The Parole Board of Canada (PBC) does not take into consideration the unavailability of programs in their decision-making regarding conditional release.

- **Information obtained during the validation process includes:**

- ✓ Details from informational interviews:

- Confirmation from two organizations that the PBC does not take program unavailability into account in their decisions on community release.
- Program completion is a key element of PBC decision-making process; inmates will often not put in a request for a hearing if they haven't completed their programs since they know it will be refused.

### Theme 3: Law and Policy

**1. Inmate handbooks:** These handbooks are not required to contain information the impact of an inmate's choice of official language or other relevant information regarding official languages.

- **Information obtained during the validation process includes:**

- ✓ Confirmation from two informational interviews.

- ✓ English handbooks for all CSC facilities in Quebec, provided by CSC to the Access to Justice in English project. A study of the 17 handbooks received found that:

- All 11 primary handbooks (i.e. not SIU handbooks or annexes) contain the same standard section on Official Languages.
- However, Structured Intervention Units (SIUs) and Annexes to primary inmate handbooks do not contain information on official languages.
- Official Languages is folded into a much larger section of the inmate handbook, known as Management Services, and comes well after information on topics ranging from the canteen to laundry services.
- While two handbooks include a list of Commissioner's Directives that inmates are advised to familiarize themselves with, CD 087 – Official Languages is not included in either list.
- Only one handbook informs inmates of the possibility of transferring to a different institution due to a "linguistic environment best suited to the offender" or "to provide them with better access to programs and services in their preferred official language" under a 'Voluntary transfers' section that is separate from the Official Languages section.
- The Archambault handbook states that inmates have a maximum of two weeks to familiarize themselves with the handbook and then must return it. It is unclear if inmates in other institutions may keep their handbook. Given that the Official Languages section typically appears approximately halfway to two-thirds of the way into the lengthy handbook, it is uncertain how easily read and retained its information can be within a two-week period.

## Recommendations to CSC

Based on the available data on these areas of unmet need, we have developed eight recommendations for ways in which the Correctional Service of Canada can take action to improve access to federal correctional services in English in Quebec. We feel these actions are needed to ensure optimal CSC compliance with the Government of Canada's commitment, as set out in the Official Language Act, to provide equal opportunities to English and French speaking Canadians in federal institutions.

### **We recommend:**

1. That a policy be put in place requiring that the interviewer dealing with an English-speaking offender at the intake assessment have strong proficiency in written and spoken English.
2. That any official or important documents related to English-speaking offenders be translated into English, as quickly as possible, so as not to provoke any delay in the processing, sentence or parole process.
3. That disciplinary proceedings should be simultaneously interpreted by a professional and independent interpretation service. Related documents should be prepared in advance, within a reasonable delay to allow sufficient preparation time for the inmate and their representative.
4. That the intake assessment process communicate in clear language to inmates the impact of their choice of official language, including the fact that in Quebec, choosing French will likely provide them with more options in terms of rehabilitative program availability.
5. That CSC apprise the Parole Board of Canada of any delays in the inmate's eligibility for parole that were provoked by the unavailability of rehabilitative programs.
6. That sufficient programs and services (including healthcare, psychiatric care, etc.) be available to meet the needs of the English-speaking inmate population, and that procedures be implemented to ensure this occurs without undue delay.
7. That Official Languages should constitute a separate section within the Inmate Handbook, and closer to the beginning of the publication for added visibility. Further, that CSC 087 should figure prominently in any list of Commissioner's Directives included in such handbooks.

Finally,

8. **We invite the Correctional Service of Canada to explore tangible collaboration with QCGN and its partner organizations** to identify community groups possessing the capacity to complement the offer of English-language rehabilitative programming in Quebec-based CSC facilities, to be delivered either in person or remotely.