

Recommendations 2012

First Quarter Update

January - March 2012

Written notification to an individual
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Overview

At Ombudsman Saskatchewan, we promote and protect fairness in the design and delivery of government services. One of the ways our office does this is by taking complaints from citizens about unfairness in government services.

We assess each complaint we receive to determine whether it is within our jurisdiction and if so, what is the most appropriate method of service: coaching, negotiation, mediation or review. For those complaints that require a review, several outcomes are possible. For example:

- We may determine that the government office was fair and that no further action is needed.
- The government office may discover and voluntarily correct an error.
- We may recommend that the government office make a change or do something differently.

An Ombudsman recommendation is different from a suggestion and is a much more formalized process. Each recommendation is the result of thoughtful research and review. It may be specific to the individual that brought the complaint or it may be broader, impacting policy, processes and future interactions for many people.

Although government is not obligated to accept our recommendations, it usually does - and so it should. Recommendations are not made lightly and the applicable government office always has an opportunity to review and comment on a recommendation before it is finalized. This step, which is mandated by *The Ombudsman Act 2012*, is part of a fair process and provides an opportunity for government to state any objections they may have or challenges they may face in implementing the recommendation.

Unless there is some good reason to withdraw or change the recommendation, it remains as it is. It is then up to the ministry or government agency to determine whether it will comply with the recommendation and respond accordingly.

For files that were closed in the first quarter of 2012, Ombudsman Saskatchewan's recommendations statistics are:

Recommendations Made: 1
Accepted: 1
Partially Accepted: 0
Not Accepted: 0

Recommendations

Following is a brief description of the complaints that resulted in recommendations and were closed during the first quarter of 2012. The names of those involved have been changed to protect their privacy.

Providing Complete Information

Workers' Compensation Board

Ethan had been injured at work and was receiving benefits from the Workers' Compensation Board (WCB), but he had some concerns.

- He did not agree with the way his benefits were being calculated and believed that the WCB was using the wrong year as a basis for these calculations.
- He did not think that his EI and CPP deduction amounts had been correctly assessed.
- He had completed the classes for a retraining program and all that remained was a practicum. Partway through the practicum, he aggravated his injury and had to take some time to recover. When he was ready to return, the practicum placement was no longer available and he believed that his case worker had canceled it. He believed that he should have been paid the benefits he would have received while on the placement.

Ethan had appealed all three of these decisions but none of them changed. He did not think the WCB was acting fairly, so he contacted our office.

We reviewed the concerns that Ethan brought forward and found that, in the instance of the first two, the calculations and deductions were correct. In the third instance, we learned that the workplace providing the practicum had decided that it could no longer support practicum placements. At the same time, the university offering the program had decided that a practicum was no longer necessary. Since Ethan had already completed his classes, he was deemed ready to work. The WCB had continued benefits for several weeks to allow for a period of job readiness, acclimatization and transition. Our office found that the WCB was not responsible for the change in the university's program and that it could not be expected to provide funds for a practicum that was no longer required.

During the course of our review, however, we determined that there was a fourth issue: Ethan was not provided the summary document related to his appeal.

We found that this was a general practice of the Board. Prior to hearing an appeal, Board members would review a summary of the file, which had been prepared by WCB staff. The information in the summary was not new and the worker and his or her advocate would be familiar with the details in the file, but there was the possibility that the summary might contain errors or present information in a way that the worker or advocate would disagree with. Procedural fairness requires that any information that the decision-maker is relying on and that may be potentially adverse in interest be shared with the affected parties – even if it is a summary of existing information. As a result, we made the following recommendation.

Recommendation

1. In any appeal where a summary report is prepared for the Board, the summary report be automatically provided to the worker and his or her advocate prior to the hearing. The summary report should be provided prior to the hearing and in a timeframe that would allow the worker and their advocate the opportunity to review the report.

WCB Response

The WCB reviewed our recommendation and considered any impact it may have on the timing of the overall process. In the end, the Board agreed to begin releasing copies of the summary on any cases where hearings are scheduled after February 1, 2012. A copy of the summary will now be provided in any case where the appellant has previously obtained a copy of the file. The Board will provide the copy far enough in advance of the hearing for the worker or advocate to review it. Since the summary is a recap of existing information, the amount of time provided for review may be shorter than it would be if new information were being provided.

On non-hearing cases, the Board will not provide a copy of the summary unless there are other reasons to provide the worker with an update of the information on file. However, the summary will be placed on the claim file.

Based on the WCB's response, we consider this recommendation to be accepted.

Status: Accepted