



Recommendations 2010

Third Quarter Update



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July - September 2010

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 investigation. For those complaints that require investigation, 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 investigation. 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 and Children's Advocate Act*, 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 third quarter of 2010, Ombudsman Saskatchewan's recommendations statistics are:

Recommendations Made: 8
Accepted: 6
Partially Accepted: 0
Not Accepted: 2

Recommendations

Following is a brief description of the complaints that resulted in recommendations and were closed during the third quarter of 2010. The names of those involved have been changed to protect their privacy.

Who Should Pay?

Ministry of Health

Christopher was experiencing several worrisome symptoms, including migraine headaches, vision loss, and low blood pressure. Over the next several months, he visited his family doctor and several specialists, but none could provide a definitive diagnosis. With his condition deteriorating and the next specialist appointment months away, Christopher decided to go to an out-of-country clinic for an assessment. He knew that he would be responsible for the cost of the assessment and was prepared to pay for it.

The clinic diagnosed Christopher with a brain tumor and gave him the option of having surgery there within a few days. Alternatively, Christopher could return home to Saskatchewan with the diagnosis and rely on the provincial health system to provide a similar remedy. Based on Christopher's experiences so far, he chose to go ahead with the operation.

Christopher found out that he should contact the Saskatchewan Out-of-Province Special Committee for Health Services with his request to have the province pay for the operation. The day before the operation, he faxed his request to the committee and copied the Minister, the Deputy Minister, his MLA and his family doctor.

The committee received his request and made a decision not to pay for the surgery. They did not contact the clinic or Christopher to ask for more information. They called Christopher's home phone number and left him a voice message that the request was declined. They also faxed a letter to his home phone number with the same information. Christopher was away, at the clinic and nobody else was home.

Christopher, meanwhile, had his surgery and when recovered, returned home to find the telephone message and letter. He contacted the Ministry of Health and the Minister, but the response did not change. He then contacted our office.

We investigated the matter and found that:

- The criteria that the Ministry of Health has in place for out-of-country health coverage are valid. These are: the procedure is medically necessary, it is unavailable in Canada, and the funding is approved prior to the procedure. At the same time, there needs to be flexibility in

their application. For example, for a procedure to be considered available in Canada, it must be available within a reasonable and meaningful time for the patient.

- It was reasonable for Christopher to take the opportunity for speedy surgery because of his experience in Saskatchewan. Several Saskatchewan health professionals had been unable to diagnose his condition correctly. In Christopher's case, this constitutes special circumstances that are relevant and should be taken into account.
- It was not reasonable for Christopher to expect that the Ministry could respond to him so quickly when he sent in his request for coverage for the operation the day before the proposed surgery.
- The Ministry knew that Christopher was not at home when they responded to him at his home address. They should have contacted him to let him know about the rules and to let him know if they needed more time to assess his request. The Ministry had an obligation to let Christopher know what his options were so he could assess his financial risk and make an informed decision. It did not do so. As a result, Christopher did not receive any information about whether the procedure was available in Saskatchewan in a reasonable time.

Recommendation

1. That the Ministry of Health pay to Christopher the monies that it would have paid to the out-of-country clinic had it approved his request for out-of-country health coverage.

Status: Not Accepted

The Ministry disagreed on the basis that Christopher travelled for an initial consultation at his own expense, that his remedy about his treatment in Saskatchewan rests with the College of Physicians and Surgeons, that he did not follow process, that they are not able to determine in hindsight what priority he would have had if he had returned to Saskatchewan for treatment, and that the Minister does not have full discretionary authority to authorize payment.

The Ombudsman disagrees for the reasons described in the above case summary.

Blood Tests, Re-tests and Results

Ministry of Health

Carl contacted our office because he believed that the Saskatchewan Disease Control Laboratory (SDCL) had lost his bloodwork three times over the course of eleven years. He was particularly concerned about this because he had been diagnosed with Hepatitis C and believed he may have gone untreated for several years. After undergoing some treatments, a negative test result led him to question the initial results. He began to wonder if he had been incorrectly diagnosed as well.

Our investigation found that, in the first instance, his blood tested positive for Hepatitis C and the lab sent the results to the doctor who ordered the blood test. We do not know what attempts the doctor made to contact Carl, since doctors are responsible to the College of Physicians and Surgeons. We did find that the lab also sent the results to Public Health Services, which made three attempts to contact Carl at the address they had on file for him. They were unsuccessful in contacting him.

In the second instance, the blood test was again positive for Hepatitis C and the lab sent the results to the doctor (not the same doctor who made the first request). Since this was a re-test, the policy only required that the information be sent to the doctor. We believed there was a legal obligation – and it would be a best practice – to consistently track and communicate all tests and re-tests related to reportable communicable diseases.

Some years later, Carl was tested by yet another doctor, learned his diagnosis, and that he had been Hepatitis C positive when he had been tested years prior. He took some treatments. Following this, he was tested again and the test came back with negative results. Carl began to question the positive previous test – but they had been correct.

Sometime after this, Carl's doctor requested blood work again. Two vials of blood were taken at the hospital: one for a set of tests that could be done there, and a second which was to have been sent to the SDCL for further screening. SDCL said it never received the vial. The health region had conducted an internal investigation and provided Carl with their findings and an apology.

We explained to Carl what happened with each of his blood tests and provided our recommendations to the Ministry of Health.

Recommendations

1. That the Ministry ensure that the Saskatchewan Disease Control Laboratory report all tests (first and any additional re-tests) that find or confirm a reportable communicable disease to the appropriate medical health officer.

Status: Accepted

2. That the Ministry of Health, in consultation with the health regions, create a consistent reporting and tracking process as it relates to reportable communicable diseases throughout the province. This would include the reporting and tracking of all first test and re-tests.

Status: Accepted

3. That the Ministry of Health implement recommendation 13 of the Patient First Commissioner's Report which is as follows:

That the Ministry of Health, in consultation with the health regions, the Cancer Agency, and clinical leaders, invest in and accelerate the development of provincial information technology (IT) capabilities within a provincial framework. This will involve:

- a. Developing an e-Health implementation plan by early 2010;
- b. Securing and stabilizing funding for both the provincial electronic health records requirements and health region implementation requirements; and
- c. Determining the preferred service delivery structure for IT at the health region level to ensure the realization of one provincial system.

Status: Accepted

Living Conditions in Unit 4

Ministry of Corrections, Public Safety and Policing - Regina Correctional Centre

In response to inmate complaints about Unit 4 of the Regina Correctional Centre, Ombudsman Saskatchewan opened an investigation on its own motion. Unit 4 is part of an old building, constructed in 1964. Ombudsman Saskatchewan's 2002 *Locked Out* report on the province's correctional centers pointed out several issues with this unit and the Ministry had agreed only to use it as a last resort in overflow situations or emergencies.

The current investigation found that Unit 4 has seen regular use and that since 2009, has been a permanent unit with assigned staff and a team leader. Temperature regulation, which was thought to have been improved, remains an issue, mainly due to a lack of proper insulation. Access to washrooms is a challenge because there are no toilets in the cells. The centre continues to make trips to the washroom available, but there are limitations that cannot be remedied without in-cell toilets.

Recommendation

1. That the Ministry repair Unit 4 at the Regina Correctional Center to ensure that it meets current building code standards or, alternatively, replace Unit 4 with a new facility.

Status: Accepted

The Ministry agreed with our recommendations: that Unit 4 is not an appropriate place for inmates to live and that the space will be renovated or a new accommodation provided. Given the current number of inmates, the unit is being pressed into use in the short term.

The Power to Make Exceptions

Saskatchewan Social Services Appeal Board (SSAB)

Chloe needed to move to a new apartment. She has disabilities and allergies, which made her search more difficult. She finally found one that was available, reasonably safe, within her price range and able to accommodate her needs. When it came time to pay the damage deposit, the landlord wanted cash. As a Social Assistance recipient, the process for Chloe would normally be to ask the Ministry of Social Services to issue a letter of guarantee instead, but she knew the landlord would not accept this and she needed an appropriate place to live. She paid cash.

Chloe then went back to her social worker, explained the situation and asked for reimbursement. Based on policy, the social worker said no. To Chloe, this was a lot of money and going without it would be difficult. Chloe appealed at the regional level, and then to the SSAB. The response did not change, so she contacted our office.

When we investigated the matter, we found that the SSAB did not appear to be exercising the authority within its mandate to make exceptions when policy is too strictly applied.

Recommendation

1. That the Provincial Social Services Appeal Board consult with legal counsel and obtain a legal opinion as to the extent of its jurisdiction with respect to appeals heard pursuant to *The Social Assistance Act and Regulations*, and, in particular, its ability to make exceptions to the strict application of policy in appropriate circumstances.

Status: Accepted

The SSAB unanimously agreed that their role was greater than to simply decide whether policy had been adhered to. They did not see the need to consult legal counsel, but chose to change their approach.

Repairable?

Saskatchewan Government Insurance - Auto Claim

Curt and Cynthia were involved in a serious accident and their vehicle was extensively damaged. They thought SGI's appraisal was too high and that the vehicle should have been written off. Instead, it was repaired and the cost of repair ended up being higher than originally determined.

They did not want to be reminded of the accident, so Curt and Cynthia traded in their repaired vehicle and purchased a new one. They had done some comparison shopping and tried to get a good price, but the trade-in amount ended up being much less than the appraised value assigned by SGI.

Our investigation found that SGI's appraisal of the vehicle did not take into consideration that:

- the couple had purchased the vehicle a year before for less than the appraised value.
- the estimated repair costs were close to the vehicle's appraised value.
- the vehicle needed extensive repairs, which can impact the future purchase price.

Curt and Cynthia received significantly less for the trade-in than they would have had the vehicle been written off. Based on this very large difference in price, we found that some measure of compensation was in order.

Recommendation

1. That SGI pay to Curt and Cynthia the difference between the price they paid for the vehicle less the cost of repairs.

Status: Accepted

What are the Chances?

Workers' Compensation Board

Claudia worked in a health unit for over a year. She was then diagnosed with an infection, which was followed by a period of time away from work due to illness. Upon her return to work, she found that she had developed sensitivities that made it impossible to work in a hospital environment. As a result, she began looking for other work in the health field and began taking courses to improve her qualifications.

Following her initial diagnosis and illness, Claudia had applied for Workers' Compensation but was denied. The Workers' Compensation Board determined that, while it was possible for Claudia to have become infected through the workplace, there was no evidence that this was so. Their medical information indicated that the most likely cause of this type of infection is contaminated food or water and the least likely cause is contamination by human feces – which is what Claudia suggested must have happened at work. The Board also said that because she was so careful about cleanliness that it was the least likely that she contracted the infection through contact with feces. The Board also noted that no other cases of the infection were reported in her workplace. As a result, it concluded that there was a better possibility that the infection came from elsewhere. Claudia disagreed with the decision and felt that the Board had made factual errors. She appealed, but was denied, so she contacted our office.

Our investigation found that the medical opinions provided to the Board in addition to further information about the conditions in the workplace would strengthen the possibility that Claudia may have contracted the infection at work. Therefore, in our view, the balance of probabilities appeared to be equal. Both *The Workers' Compensation Act* and the Board's policy state that when evidence is approximately equal, the decision should be made in favour of the worker. We also noted that the courts and a similar body in another province have made decisions based on the balance of probabilities rather than requiring a conclusive causal link.

Recommendation

1. That the Workers' Compensation Board reconsider and reverse its decision that Claudia did not contract the infection at work.

Status: Not Accepted

The Board's view was that there was a greater likelihood that she contracted the infection away from work, but our view is that the medical evidence was equally persuasive on both sides, in which case the benefit of the doubt would go to the worker.