

# Annual Report 2010

## WHAT WE ARE

Fair  
Independent  
Impartial

## WHAT WE DO

Negotiate  
Investigate  
Mediate

HAS GOVERNMENT BEEN FAIR?





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April 2011

The Honourable Don Toth  
Speaker of the Legislative Assembly  
Province of Saskatchewan  
Legislative Building  
Regina, Saskatchewan

Dear Mr. Speaker:

In accordance with Section 30 of *The Ombudsman and Children's Advocate Act*, it is my duty and privilege to submit to you the thirty-eighth annual report of Ombudsman Saskatchewan for the year 2010.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin Fenwick". The signature is written in a cursive, flowing style.

Kevin Fenwick Q.C.  
Ombudsman

promoting fairness

## Vision, Mission, Values & Goals



### Vision

Our vision is that government is always fair.

### Mission

Our mission is to promote and protect fairness in the design and delivery of government services.

### Values

In pursuit of fairness, we will demonstrate in our work and workplace:

- independence and impartiality
- respectful treatment of others
- competence and consistency
- timely delivery of our services

### Goals

Our goals are:

- to provide effective service to individuals, using appropriate methods of service.
- to lead by example, demonstrating fairness in all we do.
- to assess and respond to issues from a system-wide perspective.
- to provide education and training to promote the principles and processes of fairness throughout the province.
- to have a safe, healthy, respectful and supportive work environment.
- to promote, provincially, nationally and internationally, Ombudsman Saskatchewan and the institution of the ombudsman.

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## Ombudsman's Observations



*Kevin Fenwick Q.C., Saskatchewan Ombudsman*

2010 was a year of both stability and change for Ombudsman Saskatchewan.

There was stability in the sense that the number of complaints made to our office about government services remained relatively stable for the fourth consecutive year. We believe that this is due at least in part to our proactive work to anticipate the underlying issues behind individual complaints, and to work with and advise government agencies about how to make systemic changes that have a long-lasting and wide-reaching effect.

It was a year of change as well, partly in anticipation of additional responsibilities and higher expectations of our office in 2011, and partly as the result of continuing evolution in the work of the office that began several years ago.

We believe that every person who brings a complaint to the Ombudsman deserves to have her or his issue addressed with an appropriate method of service. For some that means formal investigation. For others it means assisted negotiation, mediation, coaching, or a referral to an appropriate agency. As a result, our work is more complex than it used to be. Indeed, the need for a parliamentary ombudsman arises from the increasing complexity of government.

### Fairness in a Changing Society

If you imagine yourself living in Saskatchewan 400 years ago as a member of a First Nation community, there would be little need for an ombudsman. Your community would be small in number. The chief and the elders in your village would be able to

balance the needs of the community with the needs and circumstances of its individual members. While the community would have its own rules of conduct, it would not have been difficult to make exceptions to those rules when appropriate to take into account individual circumstances.

For the first few decades after European settlement began, communities were also small and government was relatively uncomplicated. Again, the governing institutions of a mayor and village council would have been able to take into account an individual's needs and circumstances and apply the community's rules in a fair and equitable manner taking those individual circumstances into account.

As villages became towns and towns became cities, however, and as the provincial and federal governments played an increasing role in the day-to-day lives of citizens, the ability of government institutions to take individual circumstances into account became much more difficult. It is the "inevitability of bureaucratization." While necessary for efficiency in a highly organized society, the need to apply rules and laws in a uniform manner comes at a cost. Treating everyone equally is not always equitable or fair. This is one reason why the role of the modern ombudsman is important.

In some ways, the ombudsman's role is not unlike that of the chancellor in Britain 300 or 400 years ago. The chancellor was the king's chief advisor and presided over the courts of equity. The courts of equity were a parallel system to the courts of law with which we are most familiar today. And in appropriate circumstances, where fairness and equity required it, the chancellor could overrule decisions of the courts of law and essentially say "that may be correct but it just isn't right."

Today's ombudsman performs a similar function. There are times when "correct" decisions are made in accordance with established policies that result in unfairness and inequity. In those circumstances, with discretion and when appropriate, the Ombudsman's job is to say "that may be correct but it just isn't right."

In recent years that role has become more important because citizens' expectations of their governments have changed. Fifty years ago, if you asked someone on the street what was his or her expectation of government, the answer probably would have been relatively straightforward: "I think government should make good decisions." Ask that question today, however, and the answer is likely to be more complicated. Certainly, citizens still expect that governments will make good decisions, but they also expect that the processes used to make those decisions will be accessible, transparent and inclusive. And while decisions that affect them are being made, citizens believe that they deserve to be treated with respect.

This change in expectations is reflected in the way that an ombudsman in Canada performs her or his role. It is no longer enough for us to look at what was decided – the substantive decisions. We also look at how the decision was made – the process, and how people were treated while the decision was being made – the relational aspects of governments' interactions with citizens. We talk about a "fairness triangle" that takes into account people's substantive, procedural and relational needs.

In Saskatchewan, the evolution of the office of the Ombudsman has also seen a shift in focus from primarily looking at the past, finding fault and assigning blame, to a more future-focused approach using a best practices model. We are now less

concerned with whether government achieved a basic minimal standard of fairness and more with whether it could have done better. We talk about "raising the bar," working to ensure that government acts as fairly as possible rather than achieving the basic minimal standard.

We are fortunate that our democratic institutions are strong enough that an ombudsman in Canada can concentrate on matters of administrative fairness and best practices. In other countries, the ombudsman has a very different role. In some countries the ombudsman's primary role is the protection of basic human rights. In others the ombudsman operates on a slightly higher plane, protecting basic democratic rights. Even in more mature democracies many ombudsmen still work to ensure that government achieves the basic minimal standard of fairness. We are fortunate in this country that the ombudsman can concentrate on "raising the bar."

## The Power of Persuasion

We must remember that an ombudsman only has the power to recommend. In a mature democracy, ultimate responsibility rests with those elected, in our case the Members of the Legislative Assembly. The power of an ombudsman comes not from an ability to impose his or her will, but through persuasion and trust in the institution.

This need for trust in the institution results in an interesting dilemma. To be effective, an ombudsman needs to have a respectful working relationship with executive government. This is especially so among those ministries and agencies with which there is the most interaction, and the greatest need for collaborative

The power of an ombudsman comes not from an ability to impose his or her will, but through persuasion and trust in the institution.

problem-solving. An ombudsman must be diligent, however, to ensure that this collaborative working relationship does not compromise the independence and integrity of the office.

In order to be effective as we work to raise the bar and try to ensure that government treats everyone fairly all the time, it is necessary for us to park our institutional ego and recognize that it is often better to let the government agency take credit for solving a problem than it is for the ombudsman to receive credit for solving it for them. This is partly due to the irony that the majority of complainants who bring issues to the ombudsman have an ongoing and necessary relationship with the very agency they are complaining about. It can be argued that the chief role of the ombudsman should be to make her or his office redundant, to strive to ensure that government always treats its citizens fairly so that there is no need for an ombudsman.

And that takes us back to our vision and mission statement. Our vision "that government is always fair" makes no mention of our office. Our mission, "To promote and protect fairness in the design and delivery of government services" acknowledges the importance of both the reactive part of our work – protecting fairness in the delivery of services, and the proactive part of our work – promoting fairness in the design of services. We offer to government the benefit of our "fairness lens" while programs are

in the design stage rather than waiting until programs are in the field and complaints result.

While some might suggest that this proactivity is beyond the scope of the traditional ombudsman, we would argue that it is a logical evolution of the historical role.

## Common Issues From Coast to Coast

In 2010, Saskatchewan was pleased to host the annual conference of the Canadian Council of Parliamentary Ombudsmen.

There are ten provincial parliamentary ombudsmen in Canada. Every province except Prince Edward Island has one, although we do not all operate under the same name. In addition, there is an ombudsman for the Yukon. The ten of us gather every year for two days of discussion about common issues. It was my honour to host the gathering in Regina in June.

It was apparent from our discussions over two days that many of us deal with very similar issues in our respective jurisdictions. More than any other, two common themes emerged from the 2010 conference.

The first of these issues is the continuing and increasing concern about overcrowding in correctional facilities. This is an issue that we anticipate will continue to escalate and be problematic for all of us. Our federal counterpart, the Federal Corrections Investigator, has also raised the issue as an ongoing concern. It is worth noting, however, that despite the pressures on the system caused by overcrowding, the number of complaints received by our office about the Ministry of Corrections, Public Safety and Policing actually decreased in 2010. Credit

should be given to the Ministry and its staff for their efforts to treat people fairly in difficult circumstances.

The second common theme arising from the 2010 conference was the presence of significant mental health issues facing all of us. Although it is almost impossible to determine exactly what the percentage is, we all believe that a significant percentage of people coming to our offices with complaints about unfair government treatment are affected directly or indirectly by mental health issues. Our society does not do a good job of addressing mental health issues. Far too many people fall through the cracks between government programs or have no programs designed to meet their needs. The cost to society for the lack of appropriate services is significant.

## Growth and Change in 2011

We anticipate that 2011 will be a very busy year for Ombudsman Saskatchewan.

We have decided that we will pay particular attention to mental health issues in 2011. Our plan is to be especially diligent for the first several months of the year to identify mental health issues as they relate to government services, or lack thereof, that impact on those with mental health concerns. Our hope is that we can identify areas where we can play a larger and more effective role in addressing those concerns. This may result in a systemic review of some particular area of mental health, or it may result in some changes in the way we do business on a day-to-day basis.

This additional attention being paid to mental health will fit very

appropriately within our expanding capacity to deal with health issues in general. The present government announced during the 2007 election campaign that it would consider the establishment of a health ombudsman for Saskatchewan. To the government's credit, it recognized that Ombudsman Saskatchewan was already doing significant work, and good work, in the health field. We also recognized, however, that with additional resources there was much more that we could do.

"Our society does not do a good job of addressing mental health issues. Far too many people fall through the cracks between government programs or have no programs designed to meet their needs. The cost to society for the lack of appropriate services is significant."

Government has indicated that it will provide significant additional resources to us in 2011 and our plan is to use those resources to substantially enhance our level of service. We will increase the level of expertise within our health team, we will increase the level of awareness of our services within the health sector, and we will devote resources to more systemic work on issues related to the provision of health services in Saskatchewan.

As this annual report is being prepared, a bill is before the Legislative

Assembly to create the office of a Public Interest Disclosure Commissioner for Saskatchewan. The bill being considered by the Assembly provides that the Ombudsman may be appointed as the Public Interest Disclosure Commissioner. This legislation parallels legislation currently in place in Manitoba and Nova Scotia where the ombudsman in those provinces also serves as the Public Interest Disclosure Commissioner.

This new legislation protects civil servants from reprisals when they make disclosures in the public interest where failure to make such disclosures would result in significant harm. Sometimes referred to as “whistleblower” legislation, the Act would provide a safe and confidential mechanism for public servants to make such disclosures. Should those responsibilities be given to Ombudsman Saskatchewan, we will establish a new team within the office to discharge those duties.

2011 appears to be a year of change and expansion for the office. I am confident that we can continue to provide the high level of service to which the citizens of Saskatchewan have become accustomed while accepting new responsibilities in the health field and with respect to public interest disclosure legislation. That confidence comes from recognition that we have dedicated and experienced staff in our offices in Regina and Saskatoon. We look forward to the challenge.

## Health Services Update



Members of the public concerned with the fairness of decisions of the Ministry of Health, Saskatchewan health regions, and the Saskatchewan Cancer Agency have always been able to raise their concerns with the Ombudsman. People value the neutral, arm’s length, fairness lens that the office brings to complaints.

Historically, the office has received about 100 health complaints each year, but as seen in this report, these numbers are rising.

Over the last few months, we have taken several steps aimed at:

- strengthening our services in the area of health.
- increasing knowledge within the health system of our mandate, our work and our expectations for fairness in the administration, design and delivery of health services.

For example:

- We completed a series of in-house education sessions to further our own understanding of the various structures, roles, and pieces of legislation that comprise and affect the health system.
- We have delivered “Fine Art of Fairness” workshops to people working in the system to increase their understanding of what fairness is and how to incorporate it in their decisions and actions.
- We have been meeting with health system representatives to hear their ideas and advice and to enhance their understanding of our work and expertise.

Our meetings with people working in the system have gone extremely well. People have been quick to welcome us to the table, and see ready alignment between the Ombudsman’s mandate to ensure fairness and their mandate of planning, delivering, and administering quality health care services.

## Complaints from Individuals



We often remind government that, when it comes to decision-making, one size does not fit all – that policy must be applied thoughtfully, taking unique situations into account. We approach our own work in the same way, recognizing that one method of service would not be ideal in all situations.

Each time we receive a complaint, we aim to use the most appropriate method or methods of service. This can range from coaching to referral advice to facilitated communication to a formal investigation. It can be a combination of any of these things. In this way, we tailor our service, doing our best to make sure it fits the situation.

We could say that coaching is at one end of the spectrum of service and an investigation where recommendations are made is at the other end, but there is another option. Government offices are beginning to take us up on our offer of a more proactive step: consultation. Where a government office is considering a new policy or program and wants to determine how fair it is, that office is welcome to contact us. We can apply a “fairness lens” review of the proposed policy

or program, then offer suggestions to enhance fairness and anticipate issues before they are raised by the public.

Overall, using both proactive and reactive methods, we continue to pursue our mission to promote and protect fairness in the design and delivery of government services.

Following is a series of case examples that demonstrate the range of our work.

*Names have been changed to protect the confidentiality of those involved.*

### Fairness Consultation

#### A Proactive Approach to Harm-Reduction in Corrections

*Ministry of Corrections, Public Safety and Policing – Pine Grove Correctional Centre*

In January 2011, the Ministry of Corrections, Public Safety and Policing was

planning to implement a one-year field study to assist female offenders housed at the Pine Grove Correctional Centre, who have been diagnosed with HIV, Hepatitis C or other blood-borne infections. The study, which supports the work of the Provincial HIV Strategy, will provide additional support services to women while incarcerated and after release to help them manage their health and prevent the spread of these diseases.

While they were in the planning stages, Corrections officials invited several community stakeholders including Ombudsman Saskatchewan, to review the program and provide feedback.

We told the officials that we supported their efforts and their proactive harm reduction approach in helping incarcerated women who have been diagnosed with HIV/HCV. We made some suggestions, based on our experience and perspective.

- We were concerned about the women’s access to treatment and handling of confidential information once they are released. As a result, we suggested that the women also be able to opt in or



out of sharing their health status with the probation officer, if one is assigned.

- The side effects of treatment may make it difficult for some women to work after their release. Stable housing and income are important in maintaining treatment. Upon release, some of the women may be applying for Social Assistance or disability benefits. We noted that women may be afraid to mention their health status for fear of reprisals, so we suggested that Corrections officials liaise with the Ministry of Social Services to plan ways to address this potential risk.

We are pleased with the proactive approach taken by CPSP in dealing with this very important health issue and their commitment to actively involve not only Ombudsman Saskatchewan but other community stakeholders as well. This valuable and needed study is now underway.

**Status: Complete**

## Early Resolution

### Dressing with Dignity

*Ministry of Social Services – Income Assistance and Disability Services Division*

Chuck was taking chemotherapy treatments and his weight dropped to under 100 pounds. He had no money and could not work, so applied for Social Assistance. He was approved for rent, disability allowance and transportation to his treatments. He was told, however, that he could not have extra money for clothing unless he had a doctor's note stating that he had lost at least 25 pounds. He had lost 150 pounds and was keeping his pants up with a shoelace. His doctor was away for two weeks, so it looked like it would be some time before he

could get the right documents signed and processed. He contacted our office to see if there was anything we could do.

We made some inquiries and, thanks to a fair-minded supervisor at Social Services, were able to speed up the process so Chuck could buy a few basic items of clothing. He was relieved and thanked us for the help.

**Status: Resolved**

### A Trial Run Please?

*Ministry of Advanced Education, Employment and Immigration – Student Financial Assistance*

Cary wanted to go to university and applied for a student loan, but was reminded that he had a previous student loan from that had not been paid. Cary had recently declared bankruptcy and had thought that the loan had been included. It hadn't, so he had it added. This did not solve the problem, however, because Student Loans was showing the loan as unpaid. If he removed it from bankruptcy protection and paid it, his student loan application would be processed and he might or might not be approved for a new loan. To pay it, he would have to borrow money from his elderly parents. He did not want to do this unless he was sure that the new loan would then be approved.

He called Student Financial Assistance several times to ask for a written answer to his question. Each time he was given only a verbal answer, sometimes yes and sometimes no. He didn't think it was fair that he couldn't get a definite answer, so he called our office.

We talked with Student Financial Assistance and they

offered to do a mock assessment. They would review Cary's application as if the debt were paid and let him know where he stood. They cautioned that this was not a guarantee, but hoped it would help him make his decision. It did. The result of the mock assessment was positive, Cary borrowed money from his parents to pay the old loan and the application was officially assessed. His new student loan was approved and he was able to start his classes.

**Status: Resolved**

### Starting Over

*Ministry of Social Services – Income Assistance and Disability Services Division*

Caitlin lived with her mother, who passed away. Caitlin then decided to continue living in the house and applied to transfer the utility bills into her name. It was then she learned that the power bill was in arrears. Caitlin was on Social Assistance and could not be given money to pay a debt that was not in her name – but SaskPower would not transfer the service unless the debt was paid. Caitlin did not think her situation was fair and called our office.

We contacted Social Services and explained the situation. A supervisor



confirmed that a bill could not be paid in someone else's name. Instead, he reasoned that they had both been benefitting from the utilities and, had Caitlin's name been on the bills, he would have been able to approve payment of her half. Given the circumstances, he decided to pay for half the amount and provide the other half as an overpayment – essentially a loan.

**Status: Situation Improved**

## Facilitated Communication

### When it Hurts to Eat

*Ministry of Health – Drug Plan and Extended Benefits Branch*

For 25 years, Cleo had a partial dental plate made of metal, which worked well for her. Unfortunately, the teeth that anchored the plate were crumbling, so she needed a new one. Cleo was eligible for the plate through the Supplementary Health benefit, which provides for some dental necessities. The new plate was acrylic and unlike the metal one, covered the roof of her mouth instead of just following her gumline.

Cleo soon discovered she was allergic to the new plate. Sores developed and her mouth became swollen whenever she wore it, so she took it out and could only eat soft foods or liquids. She requested a new metal plate through the Supplementary Health benefit and, based on policy, was only approved for another acrylic one. If she wanted a metal plate, she would have to pay the extra costs herself – about \$500. She did not have the money to pay for this.

She had already begun the first of two possible appeals, but did not want to risk waiting too long for a solution. She had already lost 20 pounds and had some health problems that could be made worse by not being able to eat normally.

We usually wait until all appeals have been completed, but given the urgency of her situation, we made an exception. We decided to approach this file as an opportunity to facilitate communication to help ensure Cleo received fair and timely appeals. The response to the first appeal was negative, so Cleo began preparing for



the second level of appeal. She had not been present at the first appeal and believed that this was part of the problem. If those making the decision could see her and understand the impact of using one plate compared to another, she believed they would view her request differently.

We began working with the Ministry to see if this could be arranged. Before the date for the second appeal, however, the Ministry's dental consultant reviewed Cleo's case with her doctor and recommended the Ministry make an exception. Cleo was relieved and eager to get back to eating normally.

**Status: Resolved**

### A Long Wait

*Ministry of Corrections, Public Safety and Policing – Prince Albert Correctional Centre*

About 20 inmates at the Prince Albert Correctional Centre (PACC) were being housed in the gym due to overcrowding. There is no washroom in the gym, so the men had to take turns using a washroom across the hall. Access to the washroom was monitored by corrections workers and was allowed for 15 minutes of every hour. A sign was posted to this effect, reminding inmates of the rule.

This time limit was becoming problematic. If a few inmates used the washroom for several minutes, those who were still in line would have to wait another 45 minutes or more for their turn. Some inmates had bladder or bowel problems and those who felt they could not wait, sometimes used garbage cans. The inmates did not think this was fair or sanitary and one of them contacted our office.

When we inquired into the situation, the Team Leader said that staff were allowed to make exceptions if necessary, but the inmate who complained said that the 15-minute rule was being strictly enforced.

Shortly after this, the Ombudsman Saskatchewan team member working on the file happened to be conducting a fairness workshop for some of the corrections workers at the PACC. The workshop discusses what fairness is, the value of exercising discretion and the benefits of finding out about people's interests (needs). Without mentioning names, he brought up the case he was working on as an example because it was directly relevant to the group. They had a good discussion and the workers explained their interests and why the guidelines were in place:

- Staff have to supervise the comings and going of inmates and must take care to unlock the door each time an inmate uses the washroom. This takes extra time and effort and cannot be done continually.
- The hall between the washroom and the gym also leads to the admitting area. Staff need to be careful about which inmates might come into contact, even in passing, in order to prevent a conflict, assault or worse.
- Staff need to ensure all inmates are accounted for and nobody can be in the washroom or moving between these areas during a count.

They also talked about the interests (needs) of the inmates, how these could be accommodated, and how the inmates could be included in the problem-solving process. There was a recognition that, as long as the gym was being used for a dorm, the situation was less than ideal and regular communication between the staff and inmates would be important.

The team leader encouraged staff to use their discretion and offered to update the sign to reflect that. This resolution continued until the gym was no longer being used as a dorm.

**Status: Resolved**

## May I Tell My Side of the Story?

*Saskatchewan Institute of Applied Science and Technology (SIASST)*

Catherine was taking the first portion of a SIASST program at another post-secondary institution. While in class, Catherine had a physical altercation with three other students. As a result, all four were expelled, including Catherine. She did not think this was fair and wrote a letter of appeal to the school and to SIASST.

SIASST sent Catherine a letter stating that it supported and respected the decision of the other school. Catherine would not be allowed to attend classes – in this program or any other – at SIASST for the next three years unless she participated in an anger management program. She would also not be allowed to appeal SIASST's decision unless she was first reinstated as a student in the other school.

Catherine called SIASST and was able to arrange a telephone interview. The person she spoke with was sympathetic and offered to help with the anger management requirement – but only if Catherine was reinstated in the other school first.

Catherine called our office. She did not think it was fair for SIASST to impose these restrictions based on the other school's decision. She felt that she was the victim, that she had acted appropriately, and that if she could fully explain her situation, SIASST officials would understand and agree with her.

The school Catherine had been attending was not within our jurisdiction, so we could not review its decision to expel her. We could, however, look at SIASST's decisions and decided to work toward facilitating communication between SIASST and Catherine.

It seemed odd that SIASST allowed appeals for all students, but this did not apply to Catherine because she would not be considered a student until the other school reinstated her. We discussed Catherine's situation with representatives from SIASST. They told us that their violence policy was new and they were still working out some aspects of it. They took our concerns back to other SIASST officials and made a decision: the threat assessment team would hear Catherine's appeal.

After the appeal, SIASST decided that its decision would not change.

Despite this, Catherine felt that she had finally been heard. She understood the decision better and was prepared to accept it.

We broke this complaint down into four issues, which were closed as follows:

*Issue #1 Was it fair that SIASST relied on the other school's investigation to make its decision?*

**Status: Situation Improved**

*Issue #2 Was it fair that conditions were placed on Catherine's future enrollment into her existing program?*

**Status: Situation Improved**

*Issue #3 Was it fair that Catherine was denied access to an appeal?*

**Status: Resolved**

*Issue #4 Was it fair that Catherine was denied access to additional programming?*

**Status: Situation Improved**

## Investigation - Voluntarily Acted Upon or No Action Required

### Is the New Lease Rate Fair?

*Ministry of Tourism, Parks, Culture and Sport*

Cory owned a cabin at a provincial park and leased the property from the provincial government. For several years, the lease rates remained low, but when the government decided to reassess their leased properties, he understood that his rates could go up significantly. They did. He learned that he would have to pay about three times the previous rate, so he and other cottage owners complained and a

ceiling was placed on the amount the lease could go up that year. Still, he feared that over time, the rates would rise sharply.

Even with a cap on increases, the new assessment scheme meant that overall, Cory's lease rate increased by more than 50% in three years. Cory did not think his property was assessed fairly in comparison to other properties in the same park. He also did not think it was fair that cottagers in another park were paying lower rates for property that he thought was worth more than his.

When Cory appealed the lease increase, the adjudicator explained that the appeal process did not allow comparisons with other parks, only with other cottagers within the same park. As a result of the appeal, Cory received a 10% lease reduction. He was not satisfied with this change and contacted our office.

We investigated the appeal process and found that it had been fair. The adjudicator had reviewed the facts related to Cory's lease rate compared only to others in the same park, which was what the legislation required. He listened to Cory's concerns and adjusted the rate downward based on some of the negative aspects of Cory's location, such as traffic and noise.

From a broader perspective, however, we found that the comparative rates from park to park were not fair because they were based on inconsistent assessment processes. For example, at one park, the assessments were based on the property values in a nearby resort community, while at another park the assessments were based on the property values in a nearby hamlet. This resulted in significant differences in lease rates.

The Ministry also became aware of this problem but explained that assessments at the park where Cory had his cabin were probably more accurate than those in some other parks where the values were assessed lower. To address the problem the Ministry had started the process of having all parks reassessed so that compared to one another the assessments would be consistent and the resulting lease rates, fairer. Although this action did not change lease rates for Cory in the short term, we believed that the Ministry addressed the issue in a reasonable period of time, and also agreed that once properly assessed, Cory's lease rate was not unreasonable in comparison to other parks.



During the course of our investigation, we noticed another issue that Cory had not raised. The legislation only allows cottage owners to appeal in the year following an assessment, or within any other period that the Minister may allow. This is different from municipal assessment appeals, which can happen in any year. We were concerned that this limitation would mean that cottage owners could only appeal once every four years or so. When we raised this with the Ministry, they reviewed the legislation, but decided not to change it. Instead, with new assessments in the works, they offered to extend the

appeal period for an extra year. They would also continue to consult with the Cottage Owners Association in an attempt to address any ongoing concerns.

We had identified three issues in Cory's complaint and closed them with the following statuses.

*Issue #1: Were the appeal process and decision fair?*

**Status: No Recommendation Made**

*Issue #2: Were the assessments fair from one park to another across the province?*

**Status: Resolved**

*Issue #3: Was one year a sufficient timeframe for appeals?*

**Status: Situation Improved**

## You Can't Wear That in Here

*Ministry of Corrections, Public Safety and Policing*

Celia was transgender and viewed her identity as female. She was in a correctional centre and wanted to wear make-up so asked if she could have the make-up that was stored with her property. This was denied. Intent upon achieving a female look, she tried using other materials as a substitute.

She wrote to the Director for permission to have make-up and he responded that since make-up is not a hygiene item, it was not considered essential, so she could not have it. Celia did not think this was fair and contacted our office.

We noted that there were legitimate concerns on both sides. Celia wanted to maintain her identity and officials at the correctional centre were concerned about safety. They didn't want to give anyone the ability to use make-up as part of an escape plan.

An inmate with make-up, they reasoned, could help a stuffed dummy look realistic or could make an inmate look substantially different. We also checked with another institution that houses female inmates. There, women are only allowed to wear make-up if they are going to court.

During our inquiries, the correctional centre changed its policy. The Director would be able to make exceptions at his discretion if make-up were needed for medical reasons, which could include psychological reasons. It would not mean that Celia would automatically be allowed to wear make-up, but would at least have the possibility of wearing it, if it were deemed medically beneficial and a low security risk.

**Status: Resolved**

## Interesting Weeds You Have There...

*Saskatchewan Crop Insurance Corporation (SCIC)*

Clive's conventional canola crop had a heavy infestation of weeds, which he identified as wild mustard. He hired a custom sprayer to apply the herbicide required for conventional canola, but most of the weeds continued to thrive. He made a crop loss claim to SCIC and an adjuster came out to view the field, but the claim was denied for uninsured cause of loss due to the heavy weed infestation. Clive appealed the decision but the appeal was also denied.

Clive believed he had used appropriate farming practices by choosing the right herbicide for his conventional canola crop and applying it at the right time. The company that made the herbicide assured him that there was nothing wrong with their product. The custom sprayer had applied the right mix of herbicide in the right

conditions. Clive thought it was unfair that SCIC did not honour his claim, so he contacted our office.

During the course of our investigation, we questioned why the weeds persisted. Were they resistant to the spray? It was now the following spring, so we asked if Clive and an SCIC representative could take samples of the same young weeds that were coming up in the field again, as well as some of the weed seeds from the previous fall and submit them to the Crop Protection Laboratory for testing. An agrologist went to Clive's farm and they collected the samples together. The lab grew the plants and examined the seed pods and sent back word that the plants were not wild mustard as everyone had assumed; they were wild radish.

This provided a whole new perspective and the question became: should Clive have been able to identify and spray for wild radish? The facts were interesting:

- Wild radish is not a common problem in Saskatchewan and it closely resembles wild mustard, especially in the early stages of growth. Even the mature plants are similar, although one of the key features that distinguishes wild radish from wild mustard is that the pods constrict around the seeds.
- Neither Clive nor the adjuster nor the agrologist identified the plants as wild radish.
- If Clive had been growing a herbicide-resistant canola, a different herbicide would have been appropriate and it would have killed a broad spectrum of weeds, including wild radish.
- Clive had chosen conventional canola because it reaches maturity quickly. His field had been wet and by the time it was dry enough to seed, it was too late to seed the

other types of canola. He needed to seed a variety that would mature in 90 days.

- Clive used the right herbicide registered for the conventional canola and the weed he believed was in his field.
- There are no herbicides registered for use on wild radish in conventional canola.

Based on these findings, we concluded that Clive had good reasons for making the farming decisions he had. Given the information he had – and could reasonably be expected to have – he protected his canola crop by taking the appropriate steps in the appropriate manner.

We met with SCIC officials to explain our findings and after reviewing the information the Crop Protection Laboratory provided, they agreed to pay out Clive's claim.

**Status: Resolved**

## Should That Count as Income?

*Ministry of Social Services; Ministry of Justice – Maintenance Enforcement Office*

*The following case was taken forward by the Ombudsman "on his own motion." While there is not a specific story related to it that came to our office, we understand that several cases like this exist each year. We present this hypothetical example as an illustration.*

When Coralee and Cameron divorced, the court ordered that Cameron pay \$550 each month: \$400/month in child maintenance plus a special expenditure of \$150/month so their son could continue working with a math tutor. Coralee registered the court order with the Maintenance

Enforcement Office, which collected the funds on her behalf.

Coralee had a disability and was unable to find a job, so she applied for Social Assistance. Since maintenance payments are considered income, she signed a form to allow the maintenance payment to be turned over to Social Services. She would then receive the usual rate for a single parent with one child, plus a disability allowance.

Coralee asked if the \$150/month could be paid to her in addition to her regular Social Assistance cheque so she could continue paying the tutor, but her worker told her that this was not possible. Coralee would have to find a way to pay the \$150/month herself. She found that she was unable to do this and her son had to forego tutoring, even though his father was paying for it.

Although this is a hypothetical example, our office was aware that real examples of this nature existed, so the Ombudsman wrote to the Deputy Minister of Social Services to provide notice that this office would investigate the matter. The Ombudsman was concerned that funds being paid as a result of court order were being used in a way that was contrary to the original intent and that, as a result, children were losing out. Tutoring is just one example of a special or extraordinary expense of this nature. Other examples include medication, dance classes, hockey, school expenses or child care.

Shortly after the investigation began, the Ministry responded favourably to the Ombudsman's letter and promised to find a solution. Minister's Orders have now been signed so that the Saskatchewan Assistance Program and the Transitional Employment Allowance Program will no longer

include these special expenses in the calculation of the parent's income.

**Status: Resolved**

## Did Anyone Ask?

*Saskatchewan Government Insurance*

Conrad bought two gravel trucks and his son-in-law, Colton, went to SGI to buy the insurance. Colton brought in the receipts for \$30,000 and \$50,000 and believed that the trucks were being insured for those amounts.

A few weeks later, the \$50,000 truck was destroyed in a fire and Conrad discovered that he was only insured for \$15,000 per truck. He discussed the matter with SGI and was told that the salesperson would have asked Colton the insured value and that he must have agreed to \$15,000. Colton said that he was never asked the question and he believed the insurance would be based on the receipts he brought in. SGI was prepared to pay out the \$15,000 and nothing more. Conrad did not think this was fair and contacted our office.

Colton told us that the clerk who began the transaction with him was interrupted and asked for a supervisor to help her. He said she was distracted and that neither of them asked him

about the insured value. The supervisor did not remember the transaction clearly.

Two days later, Conrad and Colton realized that SGI had registered the trucks as semis, so Colton went back in to have this error corrected. This salesperson, in a written statement to SGI, said that she remembered the transaction clearly. She said Colton was on his cell phone and distracted during the transaction. She said that she asked him if he was aware that the trucks were only insured for \$15,000 each and that he would have to buy more plate insurance or another policy if he wanted to insure them for more. She said he told her he would check into it.

Colton said that he was not on the phone during this transaction and that he was never asked the question. The date and time of the transaction were printed on the truck registration. When compared with his cell phone bill, it became clear that Colton had not been using his cell phone while buying insurance. We provided this information to SGI, which then chose to treat the truck as insured for the full amount and pay Conrad the \$50,000.

**Status: Resolved**



## Accolades

Our thanks - and Accolades - to public servants who showed a dedication to fairness in 2010. Somewhere along the way, we found you making a situation more fair.

### **Nancy Wolff-McIntyre and the Debt Management Team**

*Manager, Debt Management & Debt Management Team, Canada Student Loans, Ministry of Advanced Education, Employment and Immigration*

You and your team acted quickly on a last-minute request to help a potential student decide whether to apply for a student loan. In response to his unusual situation, you developed and implemented a mock student loan assessment, which told him what he needed to know.

### **Syd Bolt**

*Director, Health Services, Adult Corrections, Ministry of Corrections, Public Safety and Policing*

Thank you for your proactive approach in involving community stakeholders, including Ombudsman Saskatchewan, with the HIV/HVC Strategy Field Study at Pine Grove Correctional Centre.

### **Marni Williams**

*Senior Program Consultant, Child Care Subsidy, Ministry of Social Services, Income Assistance and Disability Services Division*

Thank you for quickly assessing the situation of a disabled dad with joint custody who was having trouble getting a school allowance for his children. You were aware of a difference of interpretation of the rules in your region and noted that a policy review was underway to correct the situation.

### **Gerry Pinay**

*Kitchen Supervisor, Regina Correctional Centre*

In addition to ordering soy milk for a lactose intolerant inmate who could not eat the regular breakfast provided, you also went out and picked up a small supply so the inmate would not have to wait on the order.

### **Wayne Randall**

*Adjuster Three, East Claims Centre, Saskatoon, SGI*

Thank you for great service to a client who was questioning the appraised value of her car. You remembered that she had a claim on the same car a year prior, and pulled the old file. It supported her belief about the car's value and eliminated the need for a second appraisal.

### **Sandy Creighton**

*Manager of Driver Program, Driver & Vehicle Safety Services, SGI Licensing Department*

Thank you for making a discretionary decision that saved a lot of time and effort for a terminally ill man. You allowed him to use alternative documentation in order to get a photo ID.

### **Sherry Yasinski Smith**

*Fair Practice Intake & Inquiry Officer, WCB Fair Practice Office*

Thank you for quickly attending to the needs of an injured worker who had become stuck between two bureaucracies. You took the initiative to get his case moving so a decision could be made and benefits could begin.

### **Beth Adashynski**

*Executive Director, Quality and Privacy, Cypress Health Region*

After attending one of our "Fine Art of Fairness" workshops for health services, you believed it would be beneficial for your workplace and arranged a special session for 60-70 managers in your health region.

## Recommendations

*Following are summaries of all recommendations from 2010.*

### **What Happened to My Application?**

*Ministry of Municipal Affairs*

Clyde owned a quarter section of land next to an expanding community. He wanted to subdivide the land into lots so he could sell them. He applied to the Ministry of Municipal Affairs for approval.

More than a year later, with no decision from the Ministry, he learned that his land was going to be annexed into the neighboring community. As a result, he would have to pre-pay thousands of dollars per lot if he wished to sub-divide and sell the lots to the general public. Had he known his land would be annexed, his development plans could have been altered. Clyde believed that the Ministry's slowness in processing his application delayed his development plans. When his inquiries about why his application was not processed in a timely manner to the Ministry went unanswered, Clyde contacted our office.

We found that the delay was due to a drainage issue and that the Ministry was waiting for a response from the community about the matter. Once the land was annexed, the ministry of Municipal Affairs closed the file because the land now fell under the jurisdiction of the municipal government.

The Ministry did not follow its policy to review files every 30 days and notify applicants regularly, so Clyde did not know that his file was being delayed because of a drainage issue. The Ministry also did not impose the

40-day deadline for hearing back from the various organizations that have to respond to queries about the application. Finally, the Ministry did not inform Clyde of their process, so he did not know that if he did not have a response after 90 days, he could consider his application denied and would then have been able to appeal.

While we determined that it would be more appropriate for a court to decide on the financial aspects of this case, we made the following recommendations to prevent similar situations in the future.

### Recommendations

1. That the Ministry reviews all outstanding applications for subdivision approval to ensure that they meet ministry policy and provincial legislation.

**Status: Accepted**

2. That in those instances where a subdivision application does not meet Ministry policy or legislation, steps be taken to advise applicants of the status of their applications and rights of appeal.

**Status: Accepted**

3. That the Ministry provides at the time of application the process that will be followed in assessing the application and the applicant's rights of appeal.

**Status: Accepted**

### Repairable?

*SGI*

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 first vehicle less the cost of repairs.

**Status: Accepted**

### Saving Sight

*Ministry of Health*

Cyril needed an eye operation to avoid blindness. He was referred to the only doctor in Canada able to perform the specialized surgery, received approval from the Ministry of Health, and had the required operations.

While his hospital stay was billed directly to the Province of

Saskatchewan, he only received partial payment for surgery expenses and the devices used during surgery. We found that the province normally pays for these kinds of medically necessary costs when the surgery takes place in Saskatchewan, so we recommended he be reimbursed.

We made four specific recommendations, naming the tests and devices involved. To ensure confidentiality of this report, we have summarized our recommendations as follows:

### Recommendation

1. That the Ministry of Health reimburse Cyril the remainder of the cost for the devices and tests related to his eye surgery

**Status: Accepted**



### 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 the application of these criteria. 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.

- However, the Ministry knew that Christopher was not at home when they responded to him at his home address. They should have contacted him where he was (not at home) 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: Accepted**

*The Ministry initially rejected this recommendation, but it has since been accepted.*

### Suspended Benefits

*Workers' Compensation Board (WCB)*

Chris was receiving Workers' Compensation benefits for Carpal Tunnel Syndrome (CTS) and was on a waiting list for a surgical assessment to determine what if anything could be done to improve his CTS. WCB required the surgical assessment. When Chris received a call to come in for the diagnostic wrist surgery the next day on a cancellation, he could not because he was already scheduled for unrelated cancer surgery on that same day.

WCB determined that Chris had a good reason for not accepting the diagnostic wrist surgery date and then

notified Chris that his benefits would continue for four more weeks and after that they would be suspended until the wrist surgery could take place. Two months after his benefits were suspended, he had the diagnostic wrist surgery and his benefits were reinstated. He did not think the suspension was fair and appealed the decision. He lost the appeal and brought the issue to our office.

Our investigation found that the WCB had based its decision on their policy which allows for a maximum of four weeks of benefits when a recipient refuses treatment for a good reason, followed by suspension of benefits until the recipient can resume treatment. This policy applies when recovery is delayed.

In Chris's case, however, the diagnostic wrist surgery revealed that nothing more could be done to improve his wrists and a few months after the wrist surgery, WCB decided that Chris was not physically able to return to his pre-injury employment. He would be expected to find alternate employment and WCB would top up his salary, so from then on his benefits were reduced but ongoing. Postponing the diagnostic wrist surgery, therefore, did not delay the recovery of Chris's wrist because it was not going to recover.

We determined that in this scenario WCB used the wrong portion of its policy and a different portion of policy would apply, which speaks to the issue of benefits paid retroactively when the delay of treatment did not affect recovery from a compensable injury.

In Chris's case, if the wrist surgery had taken place when initially proposed, the only change would be that this ongoing benefit arrangement would have been worked out sooner. As a result, we determined that Chris should be reimbursed the reduced

amount for the months his benefits were suspended.

### Recommendation

1. That the Workers' Compensation Board pay to Chris two additional months' reduced benefits.

**Status: Accepted**

### Surprised Sponsor

*Ministry of Social Services*

Colin married and sponsored Cora, who was from another country. The relationship didn't work out and she left him a short time later. Without resources, she applied for and received social assistance. Colin was unaware of her circumstances.

Ten years later when Colin applied to sponsor another non-Canadian, he discovered that he owed the Ministry of Social Services more than \$25,000 for Cora's support. This was a surprise to Colin since it was such an old debt and beyond the Statute of Limitations and he had never been notified.

When we investigated the matter, we found that Colin indeed owed the money as part of his sponsorship agreement with the federal government and that the Ministry should be better prepared for situations of this nature. We made the following recommendations.

### Recommendations

1. That the Ministry of Social Services enter into discussions with the federal government to address the issue of sponsorship default in cases where the sponsored individual received social assistance benefits.

**Status: Accepted**

2. That the Ministry of Social Services develop a means to collect, within the time frame as set out in *The Limitations Act*, money paid as a result of a sponsorship default in cases where the sponsored individual receives social assistance benefits as a result of sponsorship breakdown.

**Status: Accepted**

### Blood Tests, Re-tests and Results

*Saskatchewan Disease Control Laboratory*

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 tests – 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 tests 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**

### 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 Services 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 Saskatchewan Social Services Appeal Board (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**

*Note: The SSAB members 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.*

## Looking for a Fair Process

Ministry of Health – Community Care Branch

Connie was operating a personal care home. When the Personal Care Homes Program at the Ministry of Health received a complaint about the home, the Ministry investigated and placed conditions on the home's operating license. Connie did not think the conditions were achievable or fair, so she contacted our office.

Our investigation found that the Ministry had not used a fair process. For example, a fair process requires that a person who will be affected by a decision should be informed of the decision that is being considered and should be given an opportunity to respond. Connie was not given that opportunity.

We also found that Connie had met one or more of the conditions but the conditions still remained on the licence.

## Recommendations

1. That the Ministry review the conditions attached to Connie's personal care home to determine what, if any, conditions should apply.

**Status: Accepted**

2. That an operational review on Connie's home be completed.

**Status: Accepted**

3. That in the event that the Ministry believes that conditions be attached to the operations of the care home, Connie be given the opportunity to respond prior to the conditions being attached.

**Status: Accepted**

*Note: Connie chose to withdraw from the process, so while the Ministry was prepared to carry out our recommendations, it was unable to do so.*

## What are the Chances?

Workers' Compensation Board (WCB)

Claudia worked in a health unit for over a year. She was then diagnosed with a rare 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. She applied for WCB benefits but was denied because the Board was not convinced that the infection and related symptoms were linked to the work place.

The source of Claudia's infection was never determined with certainty.

Claudia, with support from her specialist and other health professionals, argued that it was more likely than not that she contracted the infection at work because of the nature of her

work in the health unit. The specialist suggested that this rare infection can be acquired through human feces, and Claudia's work involved this type of contact through patients. In his view, this raised the possibility of her acquiring the infection at work more likely than her contracting it outside of work.

The Workers' Compensation Board (WCB) disagreed. They determined that, while it was possible for Claudia to have become infected through the workplace, there was no conclusive evidence that this was so. They argued that 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. The Board also said that because she was so careful about cleanliness that it was unlikely that she contracted the infection in that way. 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. She felt that the Board had made factual errors and had not placed enough weight on the medical opinions of her doctors. She also took issue with the Board's suggestion that no other cases had come forward, because in fact no one else was tested for this rare infection. She appealed the Board's decision, 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 actually strengthen the argument 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**

*Note: 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.*

## Who Can be Considered a 'Child'?

*SGI*

Charlie was in a fatal motor vehicle accident and left behind six adult "step-children." His wife (their mother) had passed away sometime earlier and he had no biological children of his own. SGI had to determine whether the step-children were "non-dependent children" who would thereby qualify for the death benefit. The youngest sister was the only one Charlie had ever adopted and she was a half-sister to the others. SGI determined that she was the only one who qualified and paid her a benefit.

Based on their relationship with Charlie, the others believed that they too should qualify for a benefit and Caroline, the eldest sibling, contacted our office. We investigated the situation and found that the five older siblings had developed a strong relationship with Charlie. Even though they were older when he met their mother and

they didn't live in the same house, they all treated him as their father. He, in turn, would introduce them as his children and when he and their mother made their wills, their wish was that all six children be treated equally. After their mother died and Charlie became ill, one of the older siblings assisted him so he could manage on his own and upon his death, they provided some financial assistance for the funeral.

Given the evidence that we reviewed, our office found that SGI had not given sufficient consideration to the unique circumstances of these older siblings and their relationship with Charlie. We determined that there was enough evidence that Charlie stood in the place of a parent to them and that the five older step-children should also qualify as "non-dependent children."

### Recommendation

1. That SGI pay to Caroline and her siblings the lump sum benefit as provided by section 147 of *The Automobile Accident Insurance Act*.

**Status: Not Accepted**

*Note: SGI maintains that these "step-children" were not within the class of individuals that the legislation intended should benefit as "non-dependent children." The Ombudsman disagrees.*

## Waiting in the Dark

*Saskatchewan Cancer Agency*

Candice was diagnosed with breast cancer. A date for mastectomy surgery was arranged and she received an orientation letter from the cancer centre. The letter explained that her family doctor had referred her to an oncologist and that she would be contacted to arrange an appointment with the oncologist prior to beginning chemotherapy.

Several weeks after the operation, Candice did not have an appointment with an oncologist, so she began making inquiries. No matter who she talked to, she could not find out how much longer she would need to wait for the appointment. After many inquiries, an appointment was arranged and she started chemotherapy 12 weeks after surgery.

Candice had found the process frustrating and decided to contact our office. She was concerned about the lack of information provided to her while she was waiting for her first appointment with an oncologist, that the wait time to see a medical oncologist was longer than the recommended benchmark for breast cancer oncology treatment, and she believed she was treated in a particularly discourteous and dismissive manner during one of her inquiries.

When we reviewed Candice's concerns, we decided to launch a systemic investigation into the way the province manages breast cancer wait lists. For more information on that investigation, see page 24.

In addition to the systemic investigation, we made the following recommendations that were specific to Candice's case.

### Recommendations

1. That the Saskatchewan Cancer Agency offer an apology to Candice.
2. That the Saskatchewan Cancer Agency offer Candice the opportunity to meet with a senior executive so that she might describe her experience with the Agency.

**Status: Accepted**

## How Do We Appeal This?

*Ministry of Social Services, Income Assistance and Disability Services Division*

A couple with disabilities were overpaid the housing supplement on two different occasions – once through a Ministry of Social Services error and once through the couple's delay in notifying the Ministry of a change in their circumstances. They did not think they should repay the amounts and they disagreed with the appeal process.

When we reviewed the situation, we found that they indeed owed the money, but the process needed improvement. We also noted that this situation fit with some of our recommendations in a system-wide review that had been sent to Ministry officials for their comments. As a result, we reiterated recommendations from the review that were relevant to this case.

### Recommendation

1. The Ministry implement a two-step notification process that provides at a minimum:
  - Written notification to an individual against whom an adverse decision is being contemplated that a decision is pending and provides the individual with an opportunity to respond.
  - Following the decision, written notification of the decision, the reasons for the decision, and information with respect to appeals.

**Status: Accepted**

*Note: In its response, the Ministry noted that it planned to implement the recommendation, although this would be somewhat delayed until some technological changes could be made.*

## Why Denied?

*SGI*

While Cole was away from home, some property went missing. He filed an insurance claim with SGI Canada, which later notified him that his claim was denied because the matter was a family dispute. Cole did not agree with the response and contacted us.

Our investigation found that SGI had good reasons for denying the claim, but did not fully provide their rationale to Cole.

### Recommendation

1. That SGI provide to Cole a letter outlining the reasons for the decision to deny him coverage for the loss he reported to SGI in October 2008.

**Status: Accepted**

## Strict Rules on Student Loan Overpayments

*Ministry of Advanced Education, Employment and Immigration – Student Financial Assistance*

Cody received funding through the Provincial Training Allowance (PTA) for post-secondary education, but was unable to complete the year's courses, so the remaining funds (about \$600) were considered an overpayment. When Cody tried to return to his studies the next fall, he again applied for funding and was denied because he had not paid back the overpayment. He did not think this was fair and contacted our office.

Although Cody chose not to pursue his complaint, the Ombudsman decided to review the rules related to this matter. We found that the guidelines in place allowed for some flexibility up until 365 days after the overpayment is due. After this timeframe, if

payment in full or payment arrangements had not been made, there was no flexibility, regardless of the circumstances. When applied too strictly and without discretion, we found the guideline to be arbitrary and contrary to the intent of the program. We made the following recommendation.

### Recommendation

1. That the PTA guideline which does not allow the granting of further assistance to a person who is in an overpayment situation for more than 365 days or has not made payment arrangements within the 365 days be amended to provide for discretion in appropriate circumstances so that additional PTA funding can be granted before the entire PTA overpayment is paid. When such discretion is exercised and additional PTA is granted, collection of the existing overpayment can be made from future benefits.

**Status: Accepted**



## Operating Costs

*Ministry of Health*

Craig was approved for and received an out-of-province surgery. Later, he found that he had to pay part of the cost for a device used during the

operation. Our investigation found that the amount should have been covered.

**Recommendation**

1. That the Ministry of Health reimburse Craig the total cost of the device.

**Status: Accepted**

**Private Service Home Questions**

*Ministry of Social Services – Community Living Service Delivery*

Carla contacted our office because she believed that care in an Approved Private Service Home where a family member had lived was inadequate. We reviewed whether Community Living Service Delivery (CLSD) followed its policies and procedures with respect to the approval and oversight of the home and whether there was a process available to address Carla’s concerns.

We found that CLSD was regularly monitoring the home and following existing policies and regulations. There were, however, some gaps. The operator was a smoker and the resident was not, but there was no policy in place to protect him from second-hand smoke. There was no process in place for reviewing critical incidents and deaths. The operator had been hospitalized, but when she returned to work, there was no assessment done to determine whether she could reasonably continue to perform her regular duties.

**Recommendations**

1. The Ministry of Social Services immediately develop for implementation smoking and exposure to second hand smoke policies

for their Approved Private Service Homes.

**Status: Accepted**

2. The Ministry of Social Services develop a process of reviewing all critical incident and deaths of CLSD clients who are resident in Approved Private Service Homes at the time of critical incidents.
3. The Ministry of Social Services review its current policies and procedures to ensure that any medical concerns of an Approved Private Service Home operator’s capacity to fulfill obligations are annually reviewed and assessed to determine if those concerns potentially impact or affect the level of designated care.

**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 the old building, which was constructed in 1964. Ombudsman Saskatchewan’s 2002 *Locked Out* report on

the province’s correctional centres 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 dealt with 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**

*Note: The Ministry agreed with our recommendation: 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.*

**That’s What We Were Talking About**

*Ministry of Social Services – Income Assistance and Disability Services Division*

Clark had been on and off Social Assistance for several years. He received a notice that he had been overpaid some years before and would have to pay the money back. In order to avoid having the money

collected from his income tax returns, he made arrangements with the Ministry of Social Services and over the next few years made some payments. When he received another letter from the Ministry that told him the payments would now be collected through his income tax returns, he did not think this was fair. He contacted our office and told us that:

- he did not owe the Ministry any money.
- he did not understand why the Ministry thought he did.
- the debt was now so old that it was unfair to collect it.

We investigated the matter and did not find any reason to doubt that he had indeed received overpayments and that more recent attempts of the Ministry to communicate with him had been successful.

While we did not recommend that Clark's overpayment be removed, we did note that his file contains examples of historical practices that were problematic, including some of the issues identified in a systemic investigation report we sent to the Ministry earlier this year. In particular, Clark's records with the Ministry showed instances where the Ministry sent repeated notifications to an incorrect address even when they were returned to the sender and the Ministry continued to recover funds that were well past limitation dates and could no longer be pursued through the courts.

While we were reviewing Clark's file, we found that some years before, a \$300 payment had been received on his file to be applied against his overpayment – but there was no evidence that this payment had been done.

## Recommendation

1. That the Ministry of Social Services apply the sum of \$300 to Clark's present overpayment.

**Status: Accepted**

## Surprise Debt

*Ministry of Social Services – Income Assistance and Disability Services Division*

Camille had disabilities which prevented her from working full-time, so worked part-time and applied for Social Assistance. The worker who assessed her file determined that she was eligible for a shelter allowance because of the mortgage on her home.

Camille explained that the house had actually been paid off, but it was a collateral mortgage with a line of credit, which had been arranged to pay for necessities such as home improvements. The worker assured her that she indeed qualified for a shelter allowance and she began receiving it.

Several years later, she received a letter stating that the worker had made a mistake. Camille had not been eligible for the shelter allowance after all and would have to repay. She now owed thousands of dollars to the Ministry. In recognition of the mistake,

the Ministry accepted repayment at a rate of \$5/month. Even so, she now had a large debt and her financial institution told her that it would no longer allow her to borrow money.

Camille appealed the decision to the Regional Appeal Committee, but the appeal was rejected. She decided not to appeal to the Saskatchewan Social Services Appeal Board because she believed it would require her to travel, which was very difficult for her. She did not think it was fair for her to pay the money back when it was the Ministry's mistake, so she contacted our office.

We investigated the matter and found that, even though the Ministry made a mistake, Camille had been given money that should not have come to her and it should be repaid. We also found that one of the purchases she made on her collateral mortgage was a water system. This would have qualified as a health and safety necessity and was worth more than a third of the amount owing.

## Recommendations

1. That the Ministry reduce the overpayment presently assessed against Camille by the cost of the water purification system.  
**Status: Accepted**
2. That the Ministry offer Camille a written apology and acknowledge that it was the Ministry's error that resulted in the creation of this debt.  
**Status: Accepted**





## Systemic Reviews



Systemic reviews look at broad issues affecting a group of citizens or the community at large. These issues come to our attention in different ways. Sometimes several people come to us with the same complaint, and sometimes one person brings a complaint with provincial implications. Systemic investigations can take several months to complete and require dedicated resources. Though equally as important as our investigations into individual cases, systemic reviews tackle the comprehensive policy or structural concerns raised to us about government services. The goal of systemic reviews is to effect change that will provide a collective benefit to those most affected.

### A Matter of Time: An Investigation Into the Management of Waiting Lists for Breast Cancer Treatment in Saskatchewan

*Saskatchewan Cancer Agency*

In May of 2009 we received a complaint from an individual diagnosed with breast cancer about the availability and accessibility of oncology treatment from the Saskatchewan Cancer Agency (SCA). This individual was concerned, not about the clinical care she received from the provincial health care system and specifically the SCA, but what she believed were barriers to accessing timely care,

specifically chemotherapy, and her experience while waiting for care.

Waiting for care is never easy, no matter if that care is to address a routine matter or a fairly serious illness, like cancer, where the treatment is potentially life saving. Once an individual receives the needed health service, be it a diagnostic test, a specialist consultation, surgery or a clinical service, they often find the care to be excellent, but the wait to be disconcerting and anxiety-provoking.

Waiting for care and ultimately, waiting lists, are current realities within our publicly funded health care system. Given finite resources "it is safe to predict that there will always be a gap between the demand for health-care services and the resources available to provide them."<sup>1</sup> How these gaps are managed, how wait lists are administered, and how individuals are treated while waiting for care are as critical to the individual as the actual clinical services. In May 2009 we gave notice to the Ministry of Health and the Saskatchewan Cancer Agency of our intention to investigate the wait list for oncology services at the SCA as it relates to women diagnosed with breast cancer.

Our review is now complete and at the end of March 2011, the report was provided to the Ministry of Health and the SCA. Our process now allows for a series of discussions about the report and the tentative recommendations it contains. Once that process is complete the report will be released publicly, likely in the spring of 2011.

1. The Canadian Medical Protective Association (2007). Wait Times: A Medical Liability Perspective. Ottawa: The Canadian Medical Protective Association. Retrieved from [http://www.cag-acg.org/uploads/wait\\_times\\_2007\\_cmpa.pdf](http://www.cag-acg.org/uploads/wait_times_2007_cmpa.pdf).

## A Question of Fairness: The Collection of Overpayments in the Saskatchewan Assistance Plan

*Ministry of Social Services*

On September 8, 2008, we began our review into the Ministry of Social Services' (Ministry) use of the Canada Revenue Agency-Refund Set-Off program (CRA-RSO) to recover already-issued income assistance benefits.

When an individual receives a benefit that the Ministry believes the individual is not entitled to receive, the Ministry considers this to be an "overpayment." Overpayments occur for a variety of reasons and are considered to be debts to the Crown that must be repaid. Should an individual leave the Saskatchewan Assistance Program (SAP) with an outstanding overpayment, the Ministry collects the overpayment through the CRA-RSO program. Under the CRA-RSO program, the Canada Revenue Agency acts as a collection agency for the Province of Saskatchewan by intercepting an individual's income tax refund, GST rebate and provincial tax credits, and diverting that money to the province to repay the SAP overpayment.

We reviewed the decision-making process in the SAP system beginning with the initial decision that an overpayment occurred and followed that decision through to the appeal processes in place and finally to the collection of the overpayment. We found several deficiencies throughout the system that could or did result in individuals not being treated in a fair and reasonable manner. We made 32 recommendations to improve the current system. Nineteen (19) recommendations were directed to the Ministry, seven to the Social Service Appeal Board and the Regional Appeal

Committees (hereafter referred to as the tribunals) and three to the Government of Saskatchewan. One recommendation was directed to both the Ministry and to government, one to both the tribunals and to government and one to all three.

We provided our report, in draft form, to the Ministry on May 7, 2009. Ombudsman staff and Ministry officials met over several months to review the report and incorporate Ministry feedback where appropriate. On March 12, 2010, the Ministry and the tribunals were provided a final report along with the recommendations.

### Recommendations

Our recommendations were largely accepted by the Ministry, by the tribunals and by government. In March 2010 when the Ministry received our report, it developed a work plan to implement the recommendations that would improve its internal practices. On February 28, 2011, the Ministry officially responded that many of the recommendations were implemented. The Ministry accepted and implemented 16 of the 19 recommendations.

The SAP tribunal system is a loosely configured and disjointed system comprised of approximately 83 private citizens throughout the province, appointed by the Minister to hear SAP appeals. As such, the tribunals were in a much more difficult position than government, the Minister and the Ministry, to respond to the Ombudsman's report. Unlike the Ministry, the tribunals have no organizational structure, staff or resources to respond to and ultimately to address any perceived shortcomings.

Despite the obstacles, a core group of Regional Appeal Committee (RAC) and Saskatchewan Social Service Appeal Board (SSAB) chairpersons

and members did come together, at the invitation of the Ombudsman, and were able to provide a response to the seven recommendations directed to the tribunals. On behalf of both the SSAB and the RACs, the members accepted five of the seven recommendations.

Though accepting the majority of the recommendations, successful implementation will be challenging for the tribunals without adequate support from the Ministry and from government.

One of the key findings of our report was that the SAP tribunal system has been inadequately supported by government and the Ministry for a number of years. The Ministry historically has failed to understand its role and responsibilities within its own appeal system. As a result, the SAP appeal system is fundamentally flawed. In conducting our review we found that:

- Some tribunal members have limited understanding of their role and about their own hearing process. This potentially affects the manner in which hearings are conducted and can result in unfairness to those appearing before the tribunals.
- Many tribunal members improperly rely on Ministry staff who appear before them to act as experts in the interpretation of legislation and program policy.
- The adversarial hearing model used by the tribunals places the Ministry in an advantageous position to the detriment of individuals appealing Ministry decisions.
- The lack of accessible advocacy and support services available to individuals appearing before the tribunals can compromise their ability to appear and present their cases.
- The tribunal members are not provided adequate training to fulfill

their roles as impartial adjudicators.

The Ministry advised Ombudsman Saskatchewan that it has been hesitant to have its staff directly involved in supporting or training the tribunal members because it might interfere with the tribunals' independence or perceived independence. The Ombudsman acknowledges the Ministry's concern; but found that the lack of training available to tribunal members impacts their ability to ensure their hearings are procedurally fair.

In 2009 Ombudsman Saskatchewan, in partnership with the Ministry of Justice and the Dispute Resolution Office, created a training manual called *Practice Essentials for Administrative Tribunals*. We provided the Ministry, the SSAB and the RACs with copies of the manual and, as part of the SAP review, recommended that training be provided. The Ministry and the tribunals have accepted this recommendation and training is currently being provided through the Dispute Resolution Office. It is our sincere hope that this training will improve the tribunals' hearing processes.

The Ombudsman acknowledges and commends the Minister, the Ministry and the tribunals in their continued efforts to provide this needed and important training to all tribunal members. But training alone will not be enough.

### **Building a Foundation of Fairness Within the Ministry**

Ensuring fairness in Ministry decision-making is the responsibility of each individual employee and tribunal member in the SAP system. It requires, however, much more than the simple good intentions of an individual worker, manager, policy analyst or tribunal member. It requires changes both internal and external to the

Ministry that support and further the principles of fairness and equity in the Ministry's daily practices, whether a practice involves the provision of direct service, the development of policies, the implementation of legislation or regulations, or the adjudication of appeals.

Since receiving this report, the Ministry has undergone a significant reorganization aimed to improve program oversight and accountability. In addition, the Ministry has made a significant commitment to provide the Ombudsman's Fine Art of Fairness training to its Income Assistance program staff and policy consultants. The Ombudsman acknowledges and commends the Ministry for these changes, but believes that more is required.

Though the Ombudsman would agree in principle that many of the recent changes within the Ministry may lead to increased accountability, we have recommended that the Ministry also establish a Fair Practice Office (FPO) - a recommendation it has not accepted.

An FPO would enhance the Ministry's oversight capacity. An FPO, though part of the Ministry, would operate at arm's length from the Ministry's program management structure. An FPO would review matters that could not or should not be reviewed by the SAP staff, managers or policy analysts and do so in a manner that is and is seen to be impartial. An FPO can provide transparency to the Ministry and, in turn, greater public confidence in the Ministry's ability to provide effective program oversight and ultimately could lead to greater confidence in the Ministry's service programs.

When members of the public feel that they have not been treated fairly in the SAP system they can, in certain situations, appeal to the RAC and the SSAB. But when the external

appeal bodies are ill supported or ill equipped to carry out their roles, the Ministry's capacity to ensure fairness in decision-making and provide transparency in its review process will be impacted—often negatively.

Ombudsman Saskatchewan recognizes, however, that the Ministry of Social Services and the tribunals alone cannot address all the concerns we raised about the SAP appeal process. Many of the problems we saw with the SAP appeal process and with the tribunals were similar to issues we raised in our 2007 review of the provincial administrative tribunal system.

The review, called *Hearing Back: Piecing Together Timeliness in Saskatchewan's Administrative Tribunals*, made 27 recommendations to the government, meant to improve the tribunal system across the province. In *Hearing Back*, the Ombudsman recommended that the Government of Saskatchewan look to find ways to coordinate the provincial tribunal system to facilitate and maximize the sharing of resources. We repeated this recommendation in the SAP review.

What we found in the SAP review was simply that the Ministry of Social Services did not fully comprehend its role as a "host ministry" to the tribunals. The Ministry had historically taken a "hands off" approach to the tribunals, believing that if it provided training or additional supports, it would be interfering with the tribunals' independence. This is, indeed, a difficult balancing act for any host ministry not familiar with the purpose, role and function of administrative tribunals. The tribunals, left with little support, guidance or training, stated to the Ombudsman that, "there is a difference between independence and isolation."

## Coming Together to Support Administrative Fairness and the Provincial Tribunal System

In 2010, the *Saskatchewan Law Review* published an article authored by several staff at Ombudsman Saskatchewan. The article, "On the Road to Fairness: Redesigning Saskatchewan's Administrative Tribunal System," brought together all of our experiences from our previous reviews of administrative tribunals, not only in the Ministry of Social Services, but across government. In it, we called for changes to the way government supports its various tribunals and we suggested improvements across the provincial tribunal system.

Ombudsman Saskatchewan, as outlined in the "Road to Fairness" article, has encouraged the provincial government to create a central body that would be tasked with the co-ordination of the provincial administrative tribunal system. A centralized body would allow for the sharing of resources, including shared staff, technology and space. The centralized body would allow a standardization of hearing processes and procedures, and the creation of best practices. A centralized body would be able to provide training and independent legal advice to tribunal members, would have research capability, and be a resource to tribunals, their consumers, and to government. Ultimately and most importantly, a coordinated provincial tribunal system would improve accessibility and fairness for the citizens who appear before the tribunals.

## Starting at the Beginning

In the fall of 2010, Ombudsman Saskatchewan began a series of meetings with government to discuss the 27 recommendations made in *Hearing Back*. In 2009, the Ministry of Justice on behalf of the government responded to 16 recommendations but 11 remained outstanding. These remaining 11 recommendations were directed to government and the provincial tribunal system to improve the efficiency of the tribunal system as a whole and to provide a common foundation of best practice across the system. Included in these 11 was the recommendation that the Government of Saskatchewan look to find ways to co-ordinate the provincial tribunal system to facilitate and maximize the sharing of resources. An inter-ministry committee, lead by the Ministry of Justice, has now been formed to review the remaining 11 recommendations and to provide government with advice as to the feasibility of potential implementation.

Ombudsman Saskatchewan is hopeful that the work of the inter-ministry committee will strengthen the provincial tribunal system and in doing so assist the Ministry of Social Services, the Regional Appeal Committees, the Social Services Appeal Board and ultimately the SAP recipient. Our report, *A Question of Fairness* and the responses of the Ministry and the tribunals are available in full on our website.

## Presentations and Workshops



### Presentations

We appreciate the opportunity to share who we are and what we do and we thank the groups who have invited us in. These include schools, service clubs, government agencies and community organizations.

Just one example was the Saskatchewan Student Leadership Conference where about 700 high school students from across the province converged on Meadow Lake. The conference theme had a global flavour: "If the School Were a Village," so our booth and presentation were titled "What in the World Does an Ombudsman Do?" We enjoyed interacting with the students and talking about ombudsman work at home and around the world.

### Community Organizations

- Mental Health Coalition
- North Battleford Rotary Club
- Saskatoon Open Door Society (three presentations)
- Regina Open Door Society
- Wascana Kiwanis Club
- Newo Yotina Friendship Centre
- All Nations Hope

### Teachers and Students

- Law 30 Class, F.W. Johnson Collegiate
- Teachers' Conference, Saskatchewan Council of Social Sciences
- Grades 5-8 classes, Buena Vista School
- Bert Fox High School
- Provincial Student Leadership Conference (about 700 students)

### Provincial Government

- Orientation, Legislative Interns
- New Recruits, Regina Correctional Centre (two presentations)
- Corrections Worker Training Program, SIAST
- Corrections Workers, Saskatoon Correctional Centre
- Consumer Protection Branch
- Information Session, Government Constituency Assistants
- Information Session, Opposition Constituency Assistants
- New Recruits, Saskatoon Correctional Centre
- Information Session, Legislative Assembly and Independent Offices

### Other

- International Association of Administrative Professionals
- Admin/Labour Law South Section
- Waterwolf
- Recommendations Course, Forum of Canadian Ombudsman
- Ombudsman Fundamentals Course, Forum of Canadian Ombudsman

### "Fine Art of Fairness" Workshops

In 2006, when we piloted our first fairness workshop, we had a vision. We wanted to share an in-depth definition of fairness with public servants and make a positive impact on the way they make decisions. Now, five years later, hundreds of people have taken our course and we are noticing the difference.

In addition to having a greater knowledge of fair decision-making,

participants are also referring people to our office. Sometimes they recognize a situation may be unfair, but do not feel they have the authority to make a change, so will suggest a call to us.

To accommodate the growing requests for workshops, we designated one of our Assistant Ombudsman as Lead Trainer, a role which takes about 50% of his time. Other staff co-facilitate with him depending on the size and nature of the group.

- Saskatchewan Crop Insurance Corporation (two workshops)
- Quality of Care Coordinators, Ministry of Health
- Open Workshop for government employees, Regina (two workshops)
- Saskatoon Health Region
- Kilburn Hall Youth Centre
- Health Professionals from Across the Province
- North Battleford Youth Centre
- Income Assistance Division, Ministry of Social Services (two workshops)

## Reflections

Jeff Cain, Assistant Ombudsman and Lead Trainer

As I reflect upon the interactions our office has had with civil servants during our 2010 workshops, I have been impressed with the professionalism and dedication of government employees. I believe they truly care about the work they are doing and the decisions they are making. Their involvement in our workshops indicates they are striving to serve the people of Saskatchewan to the best of their abilities. We have learned from them as well.

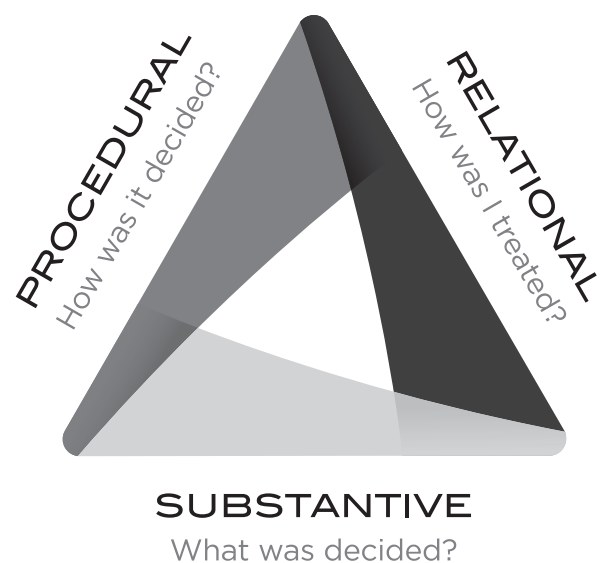
Some government ministries are delivering services under very difficult conditions (e.g., working in an overcrowded jail, delivering programs to vulnerable populations and having large caseloads and limited resources). Many sectors of government are being asked to do more with less. I believe government employees are looking for information which will help them do their jobs and deliver their programs in a more effective manner. At times our work might seem overly theoretical. The workshops however, help to demystify our work and the concept of fairness in the 'real world'. I consider it an honour and a privilege to meet directly with provincial government employees. Our service and focus are very specialized and we are very lucky to be able to share our optic and generate dialogue between service providers across government.

## What is Fairness?

Intuitively, most people have a sense of what they believe fairness is and they feel wronged if they think someone has been unfair to them. Much of our work in taking complaints involves reviewing what happened to determine whether government should do something different to improve the fairness of the situation.

But how do we decide what is fair? And for public servants working in a wide range of situations, are there some common principles that will assist with making fair decisions?

Throughout our "Fine Art of Fairness" workshops, we talk about fairness as having three aspects like a triangle. The **substantive** aspect deals with what was decided, the **procedural** with how it was decided and the **relational** with how the person was treated.



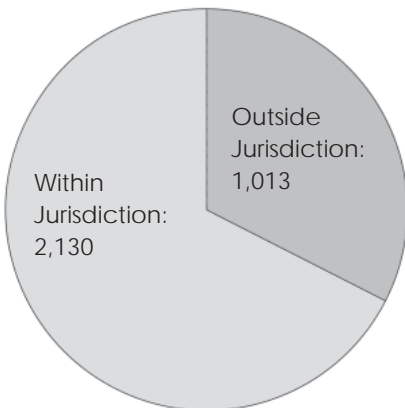
## Statistics



### How We Process Complaints

Whenever someone contacts us with a complaint, the first step is to determine whether it is about one of the government offices within our jurisdiction. About two thirds of complaints are within our jurisdiction and about one third are outside.

#### Complaints Within Jurisdiction



### Methods of Service

For complaints within our jurisdiction, the next step is to determine which method or methods of service best suit the situation. For example, we may coach the person to appeal the decision with the government office if she or he has not done so. We would also note that a call back to us is always welcome if the appeal results seem unfair.

We may also begin by making initial inquiries with government and the complaint may be resolved quickly. Another possibility is that we may decide to facilitate communication between the person and the government office.

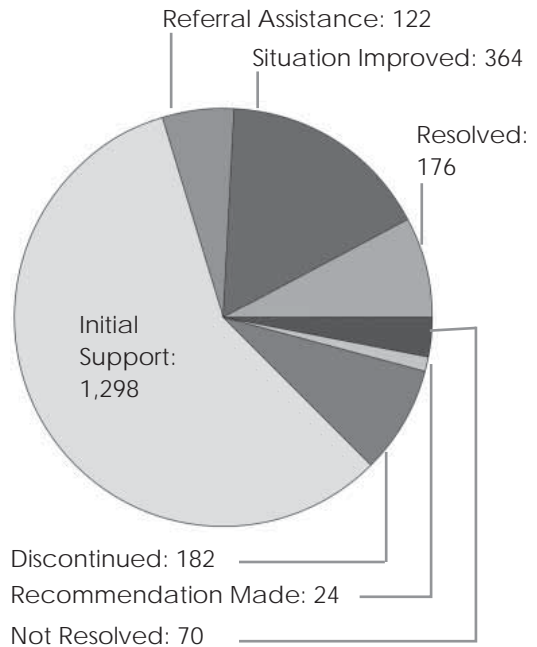
Sometimes we decide to proceed with a formal investigation. In that case, we write a letter to notify the government office of that decision. During the course of the investigation, the government may voluntarily correct or improve the situation. If we find that there is an unresolved

area where government could have done better, we will make recommendations. It is also possible that we may not find any reason to make recommendations.

### Closing Complaints

The variety of possible conclusions is reflected in the way complaints are closed. It is also important to note that some matters can be divided into multiple complaints and when we are wrapping up a file, we will assign a closing status to each complaint (or issue) we identified.

#### How Complaints Were Closed



### Recommendations

When we make recommendations, the decisions are carefully considered and the government office is provided a letter that outlines our findings and tentative recommendations. This step is mandated in *The Ombudsman and Children's Advocate Act* and provides an opportunity for the

government office to respond to our findings before we proceed with our recommendations.

Although government is not obligated to accept our recommendations, it usually does. In 2010, we made 34 recommendations on 24 complaints (issues) and 32 recommendations were accepted.

#### **Status of Recommendations**



#### **Time to Process Files**

Depending on the service method we chose and the complexity of the complaint, some files are closed within a few days and others may take several months. Overall, we strive to complete the majority of our files within three to six months.

Files Closed Within 90 Days  
Target: 90%  
Actual: 94%

Files Closed Within 180 Days  
Target: 95%  
Actual: 96%

Also worth noting is that, although it was not a specific target, we closed 85% of complaint files within 30 days.

## **Glossary**

Following are definitions of the terms used in the statistical charts on pages 32-41.

#### **Complaints Received**

The number of complaints received are counted from January 1 to December 31 of a given year. These complaints are considered within jurisdiction, although a very small number of them may later be determined not to be.

#### **Complaints Closed**

The complaints closed are counted from January 1 to December 31 of a given year and each is given a specific status. Keep in mind that some files contain multiple complaints, so may result in closing statuses in more than one category.

#### **Initial Support**

Our office provided initial support for these complaints. For example, we may have linked the complainant to a more appropriate step - perhaps an appeal process not yet tried, an advocacy service, or an internal complaints process.

At this stage, we also encourage people to bring their complaint back to our office if they still feel there is an unfairness after they have tried all the appeal routes available.

#### **Referral Assistance**

These complaints are mainly ones where, after beginning a negotiation, mediation or investigation process, we have referred the

complainant to an appeal route they have not yet tried or a more appropriate remedy.

#### **Situation Improved**

The complainant may not consider the complaint to be completely resolved, but the situation has improved - perhaps for them and perhaps also for others who may encounter a similar situation.

#### **Resolved**

The complaint has been completely or largely resolved. This may mean that the complainant feels the complaint has largely been resolved, or that we have determined the complaint to be largely resolved.

#### **Not Resolved**

The complaint has not been resolved. For example, the complainant's situation is not significantly better and they remain dissatisfied with the government's decision or action, or there was no appropriate remedy available.

#### **Recommendation Made**

Our office has made one or more recommendations. This includes recommendations that are accepted and rejected.

#### **Discontinued**

Our office or the complainant has chosen to withdraw or discontinue the complaint. This includes situations where we find, after some involvement, that the complaint is outside our jurisdiction.



Complaints Received		Ministries
2010	2009	
8	19	<b>Advanced Education, Employment and Immigration</b>
12	6	<b>Agriculture</b>
		<b>Corrections, Public Safety and Policing</b>
31	75	Adult Corrections - Pine Grove Correctional Centre
77	116	Adult Corrections - Prince Albert Correctional Centre
170	245	Adult Corrections - Regina Correctional Centre
176	199	Adult Corrections - Saskatoon Correctional Centre
14	23	Adult Corrections - Other
16	10	Corrections and Public Safety - Other
<b>484</b>	<b>668</b>	<b>Totals - Corrections, Public Safety and Policing</b>
1	2	<b>Education</b>
12	10	<b>Environment</b>
5	9	<b>Finance</b>
2	1	<b>First Nations and Métis Relations</b>
1	3	<b>Government Services</b>
		<b>Health</b>
8	11	Drug Plan & Extended Benefits
47	31	Health - General
<b>55</b>	<b>42</b>	<b>Totals - Health</b>
9	3	<b>Highways and Infrastructure</b>

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
5	0	0	3	1	1	0
9	0	0	0	1	0	1
21	1	5	1	0	0	2
51	3	19	4	2	0	10
83	10	36	29	4	1	13
103	9	39	15	6	0	18
10	0	4	0	0	0	1
10	0	1	1	1	0	0
<b>278</b>	<b>23</b>	<b>104</b>	<b>50</b>	<b>13</b>	<b>1</b>	<b>44</b>
1	0	0	0	1	0	0
8	1	0	2	0	0	2
4	0	0	0	0	0	2
2	0	0	0	0	0	0
0	0	1	0	0	0	0
4	0	1	3	0	0	0
25	3	4	2	3	7	7
<b>29</b>	<b>3</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>7</b>
6	0	1	0	0	0	0

Complaints Received		Ministries
2010	2009	
		<b>Justice and Attorney General</b>
8	10	Court Services
32	40	Maintenance Enforcement Branch
18	21	Public Trustee
35	23	Office of Residential Tenancies / Provincial Mediation Board
12	17	Justice - Other
<b>105</b>	<b>111</b>	<b>Totals - Justice and Attorney General</b>
<b>18</b>	<b>20</b>	<b>Labour Relations and Workplace Safety</b>
<b>1</b>	<b>3</b>	<b>Municipal Affairs</b>
		<b>Social Services</b>
92	90	Child and Family Services
17	18	Housing - General
13	6	Housing - Regina
5	5	Housing - Saskatoon
27	25	Housing - Other Locations
6	4	Income Assistance and Disability Services Division - Community Living Service Delivery
21	57	Income Assistance and Disability Services Division - Income Supplement Programs - Other
4	*	Income Assistance and Disability Services Division - SAID
506	455	Income Assistance and Disability Services Division - Social Assistance Program
44	*	Income Assistance and Disability Services Division - Transitional Employment Allowance
11	9	Social Services - Other
<b>746</b>	<b>669</b>	<b>Social Services - Totals</b>
<b>8</b>	<b>4</b>	<b>Tourism, Parks, Culture and Sport</b>

\* These categories were not split out in 2009 and were included under Income Supplement Programs - Other.

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
7	0	1	0	0	0	0
20	2	7	5	0	0	2
7	2	4	1	0	0	4
22	1	7	2	0	0	5
8	0	1	2	0	0	1
<b>64</b>	<b>5</b>	<b>20</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>12</b>
<b>10</b>	<b>2</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>
<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	
74	6	3	2	0	0	4
8	0	6	3	4	0	1
8	0	2	1	7	0	1
2	0	1	0	0	0	2
20	1	4	1	0	0	1
2	0	2	0	0	1	1
13	1	7	2	2	1	0
1	0	0	1	0	0	0
322	44	94	40	8	4	25
18	3	12	8	0	0	2
5	0	1	1	0	0	0
<b>473</b>	<b>55</b>	<b>132</b>	<b>59</b>	<b>21</b>	<b>6</b>	<b>37</b>
<b>5</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>2</b>

Complaints Received		Boards
2010	2009	
1	11	Highway Traffic Board
3	1	Labour Relations Board
2	0	Regional Appeal Committee
		<b>Regional Health Authorities</b>
29	7	Regina Qu'Appelle Regional Health Authority
19	17	Saskatoon Regional Health Authority
36	14	Other Regional Health Authorities
<b>84</b>	<b>38</b>	<b>Totals - Regional Health Authorities</b>
1	1	Saskatchewan Arts Board
1	0	Saskatchewan Pension Plan
6	4	Saskatchewan Social Services Appeal Board
0	1	Water Appeal Board
0	2	Western Development Museum
112	125	Workers' Compensation Board

Complaints Closed in 2010							
Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued	
1	0	1	0	1	0	0	0
1	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0
15	1	4	1	0	0	0	5
8	3	2	2	0	0	0	3
21	2	5	0	1	0	0	6
44	6	11	3	1	0	0	14
1	0	0	0	0	0	0	0
0	0	1	0	0	0	0	0
1	0	0	0	2	1	0	0
0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0
85	6	8	4	7	2	0	13

Complaints Received		Crown Corporations
2010	2009	
1	0	Agriculture Credit Corporation of Saskatchewan
7	3	Information Services Corporation of Saskatchewan
9	7	Saskatchewan Crop Insurance Corporation (SCIC)
3	0	Saskatchewan Gaming Corporation
		<b>Saskatchewan Government Insurance (SGI)</b>
51	34	Auto Fund
85	93	Claims Division - Auto Claims
47	41	Claims Division - No Fault Insurance
34	15	Claims Division - Other / SGI Canada
8	12	SGI - Other
<b>225</b>	<b>195</b>	<b>Totals - SGI</b>
4	3	Saskatchewan Liquor and Gaming Authority
0	1	Saskatchewan Municipal Board
0	1	Saskatchewan Research Council
1	2	Saskatchewan Transportation Company
4	4	Saskatchewan Watershed Authority
35	49	SaskEnergy
66	55	SaskPower
42	35	SaskTel
1	0	SaskWater

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
0	0	0	0	0	0	1
2	0	2	1	0	0	1
3	3	1	2	0	0	2
3	0	0	0	0	0	0
36	0	7	4	0	0	4
54	8	6	5	3	1	7
32	2	5	2	3	1	6
21	2	4	1	3	1	2
6	0	0	2	0	0	0
149	12	22	14	9	3	19
2	0	1	0	0	0	1
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	2	0	0	0	0
3	0	1	0	0	0	0
22	0	8	2	1	0	3
29	4	16	7	2	0	9
21	1	9	6	3	0	2
0	0	1	0	0	0	0



Complaints Received		Commissions
2010	2009	
2	0	Apprenticeship and Trades Certification Commission
0	1	Automobile Injury Appeal Commission
0	6	Public Service Commission
0	1	Saskatchewan Financial Services Commission
9	9	Saskatchewan Human Rights Commission
35	32	Saskatchewan Legal Aid Commission
4	4	Saskatchewan Public Complaints Commission

Complaints Received		Agencies and Other Organizations
2010	2009	
0	1	Enterprise Saskatchewan
2	0	Saskatchewan Cancer Agency
0	1	Saskatchewan Human Rights Tribunal
3	3	Saskatchewan Institution of Applied Science and Technology (SIAST)

Complaints Received		Totals - All Categories
2010	2009	
2,130	2,166	

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
1	0	0	0	0	0	1
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
4	0	2	0	0	0	2
29	1	3	2	1	0	1
1	0	0	0	0	0	2

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
0	0	0	0	0	0	0
0	0	0	0	0	2	0
0	0	0	0	0	0	0
1	0	4	1	0	0	0

## Complaints Closed in 2010

Initial Support	Referral Assistance	Situation Improved	Resolved	Not Resolved	Recommendation Made	Discontinued
1,298	122	364	176	70	24	182

## Budget



		2008 - 2009	2009 - 2010	2010 - 2011*
<b>Budgetary Expenditures</b>				
	Personal Services	\$1,472,300	\$1,562,600	\$1,663,000
	Contractual Services	\$292,300	\$289,500	\$279,100
	Advertising, Printing & Publishing	\$40,000	\$28,400	\$65,700
	Travel & Business	\$39,800	\$38,000	\$49,000
	Supplies & Services	\$11,300	\$8,000	\$18,100
	Capital Assets	\$52,600	\$24,000	\$18,100
	<b>Budgetary Total</b>	<b>\$1,908,300</b>	<b>\$1,950,500</b>	<b>\$2,093,000</b>
<b>Statutory Expenditures</b>				
	Personal Services	\$172,600	\$194,550	\$201,000
	<b>Statutory Total</b>	<b>\$172,600</b>	<b>\$194,550</b>	<b>\$201,000</b>
<b>Total (Budgetary and Statutory)</b>		<b>\$2,080,900</b>	<b>\$2,145,050</b>	<b>\$2,294,000</b>

\*Due to the timing of this report, the 2010 - 2011 numbers reflect the budgeted amount rather than the actual.

## Staff



### Regina Office

Kevin Fenwick  
Ombudsman

Gordon Mayer  
General Counsel

Janet Mirwaldt  
Deputy Ombudsman

Leila Dueck  
Director of Communications

Brian Calder  
Assistant Ombudsman

Jaime Carlson  
Assistant Ombudsman(term)

Sherry Davis  
Assistant Ombudsman

Arlene Harris  
Assistant Ombudsman

Carol Spencer  
Complaints Analyst

Debra Zick  
Executive Administrative Assistant

Azteca Landry  
Administrative Assistant (permanent  
part-time)

Kelly Chessie  
Assistant Ombudsman (term)

Karen Topolinski  
Assistant Ombudsman

Barbara Schindel  
Complaints Analyst

### Saskatoon Office

Joni Sereda  
Deputy Ombudsman

Renée Gavigan  
Assistant Ombudsman,  
Program Manager of Intake

Christy Bell  
Assistant Ombudsman (term)

Connie Braun  
Assistant Ombudsman

Jeff Cain  
Assistant Ombudsman

Diane Totland  
Complaints Analyst

Lynne Fraser  
Manager of Administration

Michelle Baran  
Administrative Assistant

Ryan Kennedy  
Administrative Assistant (term)

promoting fairness

