

Manitoba Ombudsman

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January 6, 2009

The Honourable Raymond E. Wyant
Chief Judge
Provincial Court of Manitoba
5th floor – 408 York Avenue
Winnipeg MB R3C 0P9

Dear Chief Judge Wyant:

Re: Inquest into the Death of Dennis Robinson

I am writing to advise of the results of the inquiry made by my office concerning the inquest report dated March 21, 2007 issued by the Honourable Judge Brian Corrin into the death of Dennis Robinson.

On February 28, 2004, 52 year old Dennis Robinson, died as a result of an epileptic seizure which led to cardiac arrhythmia (irregular heartbeat), which in turn caused a fatal oxygen deficiency in his heart. At the time of his death, Mr. Robinson was a resident of the Manitoba Developmental Centre (MDC).

Pursuant to *The Fatality Inquiries Act*, the Chief Medical Examiner directed that an inquest be held to determine the circumstances under which his death occurred, and determine what can be done to prevent other deaths of a similar nature from occurring in the future. Judge Brian Corrin heard evidence from a number of witnesses and received 48 exhibits.

As you are aware, it is the practice of my office to follow-up on inquest recommendations if they involve a provincial department, agency or municipality. In this case, my office made inquiries with Manitoba Developmental Centre (MDC) (Manitoba Family Services and Housing), and Manitoba Infrastructure and Transportation.

Each of the recommendations contained in the report is noted below followed by the response my office received from the appropriate department(s):

Recommendations

1. Hiring Panels to Contact PNA Applicants' Former Employers

[67] It is recommended that hiring competition panelists contact applicants' former employers and volunteer placements when the applicant's work history discloses prior related employment experience. Such a practice would provide a useful source of information relative to essential selection criteria, i.e., whether an applicant possesses good interpersonal and communication skills and is physically able to perform duties.

MDC Response

The Manitoba Developmental Centre's (MDC) hiring practice follows the "Principles and Policies for Managing Human Resources" as they are outlined by the Manitoba Civil Service Commission under Section 2.3.4 Staffing. The policy indicates that "reference checks are conducted before appointment to verify the assessed merits of the qualified candidate and to further assess past performance".

Applicants must provide their written consent and a member of the selection board conducts reference checks. At MDC, staff ensures that a minimum of two references are completed for each candidate. Questions are open-ended and are formulated to elicit work-related, factual and behavioural information. Staff keeps detailed notes on a reference check form. In this process, MDC abides by the requirements of both the Personal Investigations Act and the Freedom of Information and Protection of Privacy Act.

2. Public Postings of PNA Position Openings

[68] It is recommended that MDC post all PNA position openings in a timely fashion prior to selecting suitable candidates for interview paneling. Such postings should be province-wide and include advertisements in newspapers possessing such circulation profiles.

MDC Response

All posting for open competitions are made available to the general public. It should be noted that internal competitions are only posted in the workplace as per agreement with the Manitoba Government and General Employees Union.

Postings are placed on the Government of Manitoba's employment opportunities website, and MDC also ensures that postings are sent to the Canada Employment Centre, Portage On-line website, Portage Learning Centre and Portage Friendship Centre. The MDC regularly receives a large quantity of applications that are filed in the Human Resource Services office and reviewed on a regular basis by the Program Directors.

With modern technology, access and availability have broadened, and offer more access to the public. The MDC has also utilized the local newspapers to advertise employment opportunities.

The procedure used at MDC conforms to Section 9 of The Civil Service Act which reads: “the Secretary of the Board shall give such notice of a proposed competition as in his opinion will give all eligible persons a reasonable opportunity of making an application.”

3. Mandatory Interviewing of All Applicants Possessing Health Care Aide Certificates

[69] It is recommended that any PNA job applicant possessing a Health Care Aide certificate from a recognized educational institution such as Red River Community College be interviewed. Such persons should by virtue of their extensive related education be prima facie presumed to possess the necessary qualifications to satisfy MDC’s pre- interview screening criteria.

MDC Response

The Manitoba Developmental Centre’s (MDC’s) hiring practice follows the “Principles and Policies for Managing Human Resources” as they are outlined by the Manitoba Civil Service Commission under Section 2.3.1. The policy indicates that “all applicants are screened consistently and fairly, using screening criteria that are derived from the selection criteria. Only candidates who meet the screening criteria are short-listed for further assessment.”

When filling PNA positions the MDC has always given preference to candidates with Health Care Aide certification. These credentials would meet the essential screening criteria for PNA positions. The screening of applicants is done by a selection board which is comprised of two or more individuals to ensure a balanced perspective. The principles of merit, equity and fairness are served when only candidates who meet the screening criteria are short-listed.

4. Establish Formalized Caregiver Testing Program at MDC

[70] It is recommended that MDC implement a comprehensive testing program designed to ensure that all caregivers are fully familiar with details of all pertinent resident safety policies and procedures.

MDC Response

The Manitoba Developmental Centre is initiating a formalized testing program of pertinent resident safety policies for all new staff. The testing will be incorporated into the employee’s orientation and 3 month probationary performance review. Existing staff who are identified as needing a “refresher” due to performance issues are presently required to re-take relevant sections of orientation. In future, they will also be required to pass the new employee test.

Formal testing and recertification for First Aid, Food Handling, WHMIS, Fire Safety training and Handling of Dangerous Goods has been in place for some time.

Random audits of safety procedures have been initiated and conducted since 2004 to determine compliance with safety policies.

5. Amend the Highway Traffic Act to Protect Mentally Challenged Persons

[71] It is recommended that section 186(6) of **The Highway Traffic Act** be amended to include mentally challenged persons who are passengers in motor vehicles. Such a provision would require drivers to ensure that all such persons are secured by a proper seat belt assembly when a vehicle is being driven.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION RESPONSE

On June 10, 2008 the Department advised:

The department has conducted an extensive review of the transportation of disabled persons in Manitoba which examined provincial legislation and regulation, federal and industry safety standards, and the policies and practices of transportation service providers.

Given the complexity of the issue and the number of Government departments involved, Infrastructure and Transportation is considering establishing an inter-departmental working group to coordinate further review.

The Department is currently assessing the use of a consultant to undertake the consultations; and the preparation of the report on transportation of the disabled.

On December 4, 2008 we were advised:

The Department has engaged a consultant to review best practices in the transportation of disabled persons; prepare a framework document for stakeholder consultations highlighting regulatory and policy options; conduct stakeholder consultations; and develop a strategy document outlining proposals for policy and regulatory change for consideration by Government. The consultant began work on October 30, 2008 and is expected to complete the contract by March 31, 2009.

The Department was giving consideration to the establishment of a project oversight committee to review and provide feedback on all interim and draft documents provided by the consultant. The Department recognizes the importance of an oversight committee and will be seeking participation from a number of Government departments as well as Manitoba Public Insurance.

6. Electronic Monitoring on Outings

[72] It is recommended MDC consider the feasibility of the utilization of GPS wrist or ankle bracelets electronically tuned to pinpoint the whereabouts of the wearer at all times when residents are off campus on outings.

MDC Response

GPS monitoring is used exclusively by the corrections system for surveillance of people who are a threat to others. Residents of MDC do not pose a threat. MDC has implemented alternative

measures for keeping track of individual residents including accounting for residents' whereabouts every 15 minutes when residents are away from the MDC. Staff are required to take an outing binder with them containing ID cards, clothing checklist and Accountability Checklist which must be signed off every 15 minutes by the person in charge. Residents at risk of elopement are closely supervised "eyes on" at all times when off their residential area. MDC is investigating a GPS vehicle tracking system which provides detailed logs and visual maps of each trip and transfers this information to a computer. Discussions will be required with the union prior to trialing the GPS system in vehicles.

7. Publication of All Disciplinary Sanctions to Caregiver Staff

[73] It is recommended that henceforth MDC publish all caregiver disciplinary sanctions so that staff are aware of consequences resulting from breaches of MDC policies/ procedures relative to neglect of duty. Such a practice would assumably have an educative impact that would deter other caregivers from engaging in similar misconduct.

MDC Response

Employee discipline is a confidential internal issue. Employee privacy is protected under The Freedom of Information and Protection of Privacy Act and is in keeping with sound human resources and management practice. Publishing personal outcomes could negatively impact the relationships between our employees and therefore have a negative impact on the therapeutic relationship between staff and residents. All staff are oriented to their responsibilities with regard to resident protection and The Vulnerable Persons Living with a Mental Disability Act.

8. Installation of Vehicle Warning Devices re Unfastened Seat Belts

[74] It is recommended that MDC explore the availability of seat belt warning devices. Such devices would immediately alert escorting caregivers to unsafe situations and ensure optimal passenger safety when residents were on van excursions.

MDC Response

Fleet Vehicle Agency was consulted regarding the installation of seatbelt warning devices for all passengers in a vehicle. We have been advised that altering the original equipment in vehicles post purchase would void the warranty. Therefore any safety feature modifications would have to be done at the manufacturer's level. At the present time, seat belt warning devices on all passenger seat belts are not standard equipment on fleet vehicles. MDC will continue to explore options with Fleet Vehicle Agency as vehicles are replaced. MDC recently introduced a new "buckle up" program to remind staff and residents of the importance of always buckling up seat belts. Random audits will be conducted in July and August by MDC Transport Services to monitor compliance with seat belt policy.

On December 24, 2008 MDC advised that random audits were again conducted in the summer, 2008 to ensure compliance with the seat belt policy. In addition, staff are required to review and

sign-off on this policy and nine other key policies every 2 years. New staff are required to complete a test on all policies as part of their new employee orientation program.

Based on our review of this matter, it would appear that the Manitoba Developmental Centre (Manitoba Family Services and Housing) and Manitoba Infrastructure and Transportation have given reasonable consideration to the above noted recommendations.

Accordingly, the files with my office will now be closed.

Yours truly,

Original Signed by

Irene A. Hamilton
Manitoba Ombudsman

c. Donna Bjore, Manitoba Developmental Centre
Andrew T. Horosko, Deputy Minister, Manitoba Infrastructure and Transportation
Dr. Thambirajah Balachandra, Chief Medical Examiner