

# **A FALSE IMPRESSION OF FAIRNESS**

An Investigation of One Person's Appeal of the  
Loss of Subsidized Daycare

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## 1.0 Executive Summary

1. Mr. K complained to the Ombudsman that the Children's Services Division (CSD) unfairly withdrew subsidized daycare for his children. The City also wanted him to pay back about \$23,000. The City said Mr. K failed to provide notice of his loss of employment, although Mr. K contended that he had done so and CSD was penalizing him for their own error in losing the documents.
2. After initial enquiries, the Ombudsman decided to conduct an investigation, notifying the City on March 18, 2011. The investigation focused on the CSD appeals process, investigation process and record-keeping practices.
3. The K family had six children in subsidized daycare. Mr. K lost his full-time job in October 2008. He said that at the end of November, he took his unemployment records to Children's Services, spoke to an employee and left them there for scanning. He looked for work and retraining while his spouse was in school. The children remained in daycare. Mr. and Ms K went for their annual review in April 2009. At that meeting CSD learned Mr. K was unemployed; they had no record of him reporting this. As the job search period had expired, the children were no longer eligible for subsidized care. CSD gave them two weeks notice to withdraw the children, not telling them they would be billed for that period. CSD later told them they owed almost \$23,000 to the City.
4. The City investigated to determine whether Mr. K owed money to CSD. The Ombudsman found this internal investigation flawed. For example, the staff person only spoke to Mr. K for three minutes by phone and did not interview relevant City staff or look into his claim about the missing document. The final report was poorly written and does not explain the investigation, evidence or conclusions.
5. Mr. K appealed the decision three times. The appeals administrator, publicly described as "an advocate for parents" failed to forward the first appeal, sent in May 2009. Mr. K never received a decision.
6. After Mr. K complained to his City Councillor in December 2009, the administrator told Mr. K to appeal again. Although the administrator did send the second appeal to the committee, she failed to mention Mr. K's main grounds for appeal: that he had delivered the required documents. Two of the committee's three members voted. Instead of obtaining the third member's vote, the administrator issued a denial in February 2010 with only two votes received. The Ombudsman found documents that indicated this happened in at least 182 other cases. The decision letter to Mr. K did not provide details and incorrectly said the committee had met in person on a particular day.
7. In March 2010, Mr. K contacted the Mayor's office, who e-mailed the appeals administrator. She told Mr. K to appeal a third time. In September, he received a letter warning of legal action if he did not pay \$23,000, at which time he filed an appeal. In her description of the third appeal, the

administrator suggested Mr. K had only recently begun to say he had provided documents that the City had lost.

8. The investigation found the appeals process for Mr. K was unfair and that CSD failed to adequately investigate the Complainant's allegations.
9. The Ombudsman found serious errors and systemic problems with how the division handles appeals, investigations, communications, record-keeping and staff training.
10. Mr. K's case is not an isolated incident. This is the process for all parents who appeal decisions.
11. The investigation found a lack of policy and procedure establishing how appeals will be determined by the Committee.
12. The Ombudsman also found communication problems. Decision letters are misleading, provide incorrect information, and only vague policy reasons for an appeal being denied. CSD provides no information to parents about the appeals process.
13. CSD did not keep copies of correspondence to clients or record salient information.
14. There was a lack of training for staff in the investigative and appeals process.
15. The City's actions and omissions in dealing with Mr. K breached principles of procedural fairness, were unreasonable and wrong. Fundamental procedural fairness was ignored in the appeals process.
16. The Ombudsman recommended that the City apologize to Mr. K for the manner in which his claim and appeals were handled and requested CSD review his case.
17. The Ombudsman also made nine recommendations to address the systemic issues. These included creating policies and processes for the Appeal Committee; payment plans for recoveries from low income families; record-keeping protocols; clear, accurate and complete communications; and training for staff involved in the investigative and appeals process.
18. The City Manager agreed with every recommendation. He noted that CSD was committed to implementing them and understood that this would strengthen internal systems and customer service. The City's response acknowledged the systemic issues raised by the investigation.

## **2.0 The Complaint**

19. My office received a complaint from Mr. K that the Children's Services Division (CSD) unfairly withdrew subsidized daycare for his six children and sought to recover approximately \$23,000 in childcare subsidy. The City claimed that Mr. K failed to provide them with notice of his loss of employment, however, Mr. K alleged that he had met his obligations by providing written notice, and that CSD was penalizing him for their own error in losing the documents.

## **3.0 The Investigation**

20. Ombudsman staff made preliminary enquiries with CSD.
21. Notice of a formal investigation was issued to the City Manager on March 18, 2011.
22. My investigator interviewed the Complainant, his spouse and City staff. She examined the Complainant's file, the Appeal Committee's records and the relevant policies, procedures and legislation.

## **4.0 The Issues**

23. The investigation addressed the following issues:
  - i. the appeals process;
  - ii. the investigations process;
  - iii. record-keeping practices.

## **5.0 The Facts**

### **5.1 Notice of Loss of Employment**

24. Mr. K's two eldest children had been in subsidized daycare since 1999. The family grew and by the time of the events in question, six children were in City-subsidized daycare. The youngest were in full-day care, and the oldest were in part time care, before and after school. In 2008, the Complainant worked a full-time job and another part-time one. His spouse had recently left full-time work to attend school and obtain her high school diploma.
25. On September 27, 2008, Mr. K left his part-time job to care for his mother-in-law following a car accident. On October 7, 2008 Mr. K lost his full-time job. A Record of Employment (ROE) was issued on October 8, 2008. After he received his ROE, Mr. K applied for Employment Insurance

(EI). Confirmation of his application was issued by Service Canada on October 14, 2008.

26. The Complainant waited to attend at CSD until he had proof of his first EI payment. He said that after years of experience with CSD, he knew they required proof of any income.
27. After Service Canada issued two benefit statements, dated November 26, 2008, he took copies of his ROE and the two EI statements to the CSD drop-off desk at Metro Hall. He does not know the date that he attended, but believes it was in late November and that he went around lunch-time. He recalls entering the "triage" area and seeing a long line-up and only one employee, a woman, at the counter. He had learned from previous visits that if you only need to drop off documentation, you can leave it with staff at the front counter.
28. The Complainant interrupted at the front of the line and asked if he could leave a document. She told him to put it on the counter and she would scan it. He left.
29. Mr. K looked for work and applied to Human Resources and Skills Development Canada (HRSDC) for a retraining program. His spouse remained in school to graduate in June, and the children continued in their school and daycare programs. He knew that he was allowed a "job search period" in which his children could stay in care. He did not know the time allowed, but believed that before this period was over, he would be notified of the last day of care for the children. This had been the case when he was last unemployed ten years previously.

## **5.2 The Annual Review**

30. The Complainant and his spouse allege that they received a notice for their 2009 annual review and attended on the date indicated, sometime in February or March. This was their expected time for the annual review. Their previous annual review had been on February 1, 2008. When they arrived, the caseworker told them that they did not have an appointment for that day and they were not scheduled for one until April.
31. There is no record of this visit or the notice letter on the CSD information system. Mr. K did not retain a copy of the letter. One caseworker corroborated that there have been cases in which an auto-generated letter has information inconsistent with the bring-forward dates in the system.
32. There is a file note that the couple did not appear for the April 9, 2009 scheduled annual review and were sent a letter rescheduling it for May 8, 2009. The couple attended early on April 23, 2009 instead, and were seen then.

### 5.3 CSD's Discovery of Mr. K's Job Status

33. CSD has no record of Mr. K delivering documents in late November. It did not become aware that he was unemployed until his annual review.
34. On April 23, 2009 the couple met with Caseworker A. Her notes state that she asked the Complainant for proof of work or school documentation and he told her he had stopped working in October 2008. Her notes then say "writer asked if [the Complainant] notified office and he stated he didn't – not declared." Her notes indicate that she gave two weeks notice to the couple and the daycare centre that their children would be withdrawn. She told them they must return to complete their case review on May 8, bringing all their documents.
35. Caseworker A printed a withdrawal letter with one child's name on it, as a "promise to appear" on that date. The form letter provided two weeks notice that subsidized care would end, as required by CSD policy. It stated that the subsidy would end on May 8, 2009, following which, the family would be responsible for the full cost of care.
36. It did not inform the Complainant that he would later be billed for the next two weeks of subsidized care.
37. The family was not given the option of removing their children from care immediately to prevent incurring further debt. The daily rate for City daycare for the six children was \$273.72. As Mr. K was not given the option of immediate removal, he accrued a further \$2,737.20 in childcare fees over the ensuing two weeks.
38. Caseworker A said she did not have a good memory of this meeting, and relied on her notes and her general practice. She stated that if a client mentioned a missing document, she would have recorded that, and raised the issue immediately with her supervisor. Mr. K and his spouse do not recall the April 23 meeting very well either, and understood it as a warning that they needed to submit further documents or their children would be removed from daycare.
39. Mr. K and his spouse returned on April 27, 2009 with the employment documents to complete their case review. Caseworker B met with them. She told my investigator she did not raise the issue of whether Mr. K had notified CSD about his employment status, because she had already seen in the file that he had not reported his job loss. Instead, the discussion focused on his ineligibility because he was not working full-time, and had exceeded the job search period.

40. There were also notes that Ms K was not in school full-time. She had previously told CSD that she was enrolled in the maximum course load available at that time. This fact had not previously led to ineligibility.
41. Mr. K and his spouse understood the children were being removed from childcare, and that they might be charged an overpayment for the time the children were in care after the permitted job search. Caseworker B re-printed the form withdrawal letter, this time providing one for each child. Each letter stated in part:

Clients have the right to appeal Children's Services policies by submitting a letter of appeal to their caseworker. Appeal Board meetings are held once a month.

42. On the same day, the District Office Supervisor (Supervisor) made a note to file that the worker was to prepare a "fraud referral form" to submit to Risk Management<sup>1</sup>. There is no record of this form. The Supervisor does not recall how she came to know about the issue or what instructions she would have given.
43. The children were withdrawn from childcare on May 8, 2009. The Complainant's spouse graduated from secondary school on June 25, 2009.
44. It had been Ms K's plan to become a culinary manager. She was to begin college in September of 2009 and had paid a deposit for the program. She lost her deposit and was unable to attend school or return to work due to the lack of childcare.
45. Mr. K, who had been looking for a job in computer technology and pursuing training through HRSDC, returned to his former part-time job at a grocery store. He now also provides on-call computer support for another employer.

## **5.4 The CSD Appeal Process**

### **5.4.1 Client Liaison Consultant Position**

46. Parents make appeal requests at one of the four district offices. These are then sent to the Client Liaison Consultant (CLC)<sup>2</sup>.

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<sup>1</sup> Note that at the time of the events in question, the unit investigating "fraud" was called "Quality Assurance." However, their name changed just prior to our investigation, and we use their current title for consistency, and to prevent confusion with another group in the Division now called "Quality Assurance."

<sup>2</sup> Then known as the Children's Services Ombudsperson.

47. Her primary role is to manage the appeals process and related responsibilities. She also deals with enquiries from the Mayor and City Councillors.

48. The CLC described her role in the following manner:

As the City Ombudsman investigates, so do I. I act as an advocate for fairness and for families, and a resource person who can help you get the child care answers you need. ...Basically I act as an advocate certainly through the Appeal Committee, through the whole appeal process. I act as an advocate, if it's appropriate. You have to understand that requests made by clients are not always reasonable or within our resources to give them what they want.

49. The General Manager said the CLC is an "advocate to the extent that she can be – she's a City staff person..." The Policies and Procedures Manual states that the CLC "acts as an advocate for the applicant and manages the appeals process." The website also describes her as a parent advocate.

50. The CLC is a seasoned public servant. When asked what training she received for her current role, she said her predecessor and the Director provided some orientation before she took the position.

#### **5.4.2 Appeal Committee**

51. The Committee is comprised of three members. The positions are currently held by the General Manager of CSD, who acts as the Chair; a program manager in the Service System Planning and Policy Development Section of CSD, acting as the internal member and a director in Shelter Support and Housing Administration, acting as the external member.

52. Until June 2010, a director in the Social Development, Finance and Administration Division held the external member position. She stated that she had served in that role for eight to nine years.

53. Until 2005, the Appeal Committee met in person monthly to consider that month's written appeals. As the volume grew, the previous General Manager of CSD initiated an electronic system.

54. The process now operates entirely by e-mail. The CLC and Committee members were unanimous in saying that the electronic system is a vast improvement. The caseload is more manageable and the decisions more

timely. Most thought that any loss of case discussion was a minor sacrifice.

55. The appeals process begins with the CLC receiving the client's appeal letter and accompanying form from a CSD caseworker. At the time of this investigation, the practice was to shred the form, although now it is retained. The CLC may contact the client, caseworkers or other agencies to collect information, which she presents in her appeal summary, although sometimes she does not speak to anyone. She then e-mails her summary and any attachments to the Committee.
56. The members review the e-mail and reply to the CLC with their vote. The members do not typically copy each other. If a member has a question, she will usually e-mail the CLC only. The current external Committee member remembered only one case over the last year in which the CLC copied the whole group on an issue raised by a member.
57. The CLC explained that the practice is to have unanimous decisions, that if not, the Committee will discuss the issue by e-mail, and if that does not lead to consensus, they meet in person. If there still is no unanimity, the Chair has the final say.
58. The CLC suggested that since the move to electronic appeals there had been "three or four" in-person meetings of the Committee, where the group was required to address a specific appeal. The Committee members said there had not been an in-person meeting about a specific case since the move to electronic appeals.
59. After the Committee votes, the CLC is to record the decision and draft a decision letter to the appellant. This is a form letter into which she adds some specific details about the decision or policy in question.
60. There is no written information available about the process for appellants.
61. Records for appeals in 2010 show a 39% denial rate. Appellants are not told what the CLC will recommend. She explained that she does not have a vote, only the power to recommend. However, she said that in about 95% of the cases, the Committee agrees with her recommendations immediately without debate, and 99% of the time, they will agree after she provides clarification.

## 5.5 Appeal Letter #1: May 6, 2009

62. Nine days after the family's final case review, the Complainant submitted an appeal to the CSD District office. It stated in part:
- Dear Children Service Board...A few months ago I lost my job and dropped off my record of employment and E.I. benefit slip at 55 John St. 10<sup>th</sup> floor front desk to inform the caseworker. During our subsidy review the caseworker indicated that they haven't received these information. We are appeal for your decision of childcare subsidy recovery to be withdrawn...We are also appealing not to withdraw our children from ... daycare. (sic throughout)
63. CSD did not initially provide my office with a copy of the May 6, 2009 appeal letter. We learned of its existence through the Complainant, who had kept a copy.
64. The caseworker at triage wrote his file number and the word "Appeal" on the letter. The appeal letter was processed that day and the CLC received it two days later. Her file notes indicate that the appeal was referred back to the Supervisor "for appropriate follow up re recovery owed." Her notes state "appeal will not be pursued at this time."
65. The CLC told my investigator that she "did not believe it was an appeal letter – it's not specific, there's nothing we could do for him as they were not meeting eligibility..." She reported that she told the Supervisor to speak with him and proceed to recovery of funds. She said Mr. K's May 6 letter was not about recovery, but about continued eligibility.
66. As set out above, the Complainant's letter stated he wanted to appeal both issues.
67. The CLC stated that the case could not have gone to appeal then, because Risk Management had not completed its investigation, which meant the total recovery amount had not been verified. However, the recoverable amount had already been calculated at \$23,539.92 and recorded on file by Caseworker B. Risk Management later calculated the amount as about \$550 less, representing two fewer days of childcare. The final amount was \$22,992.48, representing the period from January 12, 2009 to May 8, 2009.
68. On May 8, 2009, the Complainant's City Councillor contacted the CLC. Mr. K did the same. The CLC made notes of a conversation in which Mr. K told her he had advised the office of his unemployment as required and the CLC explained that his family did not currently meet eligibility requirements. There is no note of discussing his appeal.

69. The CLC noted on May 12, 2009, that she "discussed the file" and referred it back to the Supervisor "for follow up." The Supervisor told my investigator she was not sure from the note what follow-up was required, but if the CLC had already had a conversation with Mr. K, it would not be necessary for anyone to speak with him again. Neither the CLC nor the Supervisor had notes or an independent recollection of their conversation with one another.
70. The Complainant contacted the CLC again on May 14, 2009 and the documented conversation shows the Complainant again insisted that his children should not have been removed from care, because they had provided notice to CSD. The CLC explained that the recovery was being investigated and that his children were ineligible. There is no note of discussing his appeal.
71. The Supervisor made a note on May 14, 2009 that she had reviewed the file with both caseworkers: "file to be frauded to [Risk Management] as recoveries are over ... \$5000." Caseworker A does not recall speaking to the Supervisor about this case, and her last day of work prior to going on leave was May 13, 2009. She was almost certain that there was no conversation but acknowledged that it was possible that the Supervisor could have spoken to her. Caseworker B also said that the Supervisor had not spoken to her. The Supervisor did not recall either, but said she would not have made this note if she had not spoken to the two caseworkers.
72. There is no record of a conversation in which a CSD staff member discussed the appeal letter with Mr. K. He was not provided with a written response to his appeal request. Mr. K states that he never heard about the outcome of his May 6, 2009 appeal letter.
73. There is no policy that a family must be advised if their appeal will not proceed.
74. The Committee members had different ideas about the process by which appeals reach the Committee but each one believed that if a parent insisted on appealing, they would have a hearing, even if the case was a "lost cause" or one over which they did not have jurisdiction. The current external Committee member said she was told that clients have a right to appeal any issue.

## **5.6 Risk Management / Fraud Investigation**

75. The Risk Management Unit in CSD investigates allegations of client fraud and reviews internal risk management. Its stated objective is to "complete a risk/quality control assessment of Children's Services Operations in

support of the [City's] fraud policy."<sup>3</sup> When the unit was first created in 1995, it was called the "fraud unit."

76. The unit consists of two staff, a supervisor and a caseworker. The Risk Management Caseworker (also called "investigator" in the Risk Management Manual) is an experienced public servant. When asked what training she received in conducting fraud investigations, she said there was some on-the-job training and that in the past, they had attended police conferences.
77. The Risk Management Caseworker told my investigator that in most cases, their investigations confirm a fraud had occurred. She did not know the exact numbers, but said that only "occasionally" Risk Management investigations found no fraud.
78. On June 8, 2009, the Risk Management Caseworker noted that the investigation was approved by her supervisor. On June 23, 2009, a municipal labour disruption began, lasting until July 27, 2009. On August 28, 2009, her investigation started.
79. The Risk Management Caseworker contacted Mr. K's previous employer to confirm the dates the ROE was issued. She also found out about the employment insurance application to determine when EI would have issued confirmation of benefits. She explained that this was so that she could establish Mr. K had received the ROE and EI statements in November when he claimed to have dropped off the documents.
80. She expressed confusion that there were two ROEs; one from the part-time job for compassionate care leave on September 27, 2008, and one for the full-time job that terminated on October 7, 2008. She had not asked him about the two ROEs and said it was "strange" that he had voluntarily left one job.
81. She told my investigator she reviewed the Complainant's file on the CSD information system and checked if there was a record of Mr. K coming to the office to drop off documents. She could not review any of the form letters sent to the family, as the system automatically discards these once they have been sent out.
82. The Risk Management Caseworker recorded only one telephone conversation with Mr. K on September 22, 2009. She said the call was brief, no longer than a few minutes, and that Mr. K "kept repeating himself" and was difficult to understand.

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<sup>3</sup> s. 2.3 of the Risk Management Reference Manual.

83. In the file, she states that the Complainant told her that he dropped the documents off on November 12, 2008, "one week after his wife dropped off [her school records]."
84. There is no other record of Mr. K giving a specific date in any other communication or correspondence. He told my investigator that he did not know the specific date he attended, but that he thought it was late November.
85. The Risk Management Caseworker said that she did not ask him about the details of dropping off the document, or whether he could describe to her who was at the front desk. She mentioned she does not know if front-desk staff "wear nametags."
86. They do not. The Risk Management Caseworker's office is on the same floor.
87. The Risk Management Caseworker said that she spoke with "the intake people at Metro Hall" but only provided the names of Caseworker A and the Supervisor. There was no record of these conversations, as the Risk Management Caseworker says it is not her practice to keep notes about her meetings. Her Supervisor agreed that this is not required for an investigation, as "only the objective facts" are to be noted in the information system.
88. Both Caseworker A and the District Office Supervisor told my investigator that the Risk Management Caseworker never met with them or spoke to them about the case.
89. On May 14, 2009 Caseworker A went on leave. The Risk Management Caseworker did not start her investigation until August 28<sup>th</sup>. Caseworker A states that she would have remembered if the Risk Management Caseworker had contacted her while she was away. The Risk Management Caseworker, on the other hand, told my investigator that she relied on her interview with Caseworker A for the final report, rather than the file notes.
90. She said that Caseworker A told her she was working at the front desk, noticed there was no activity listed for the Complainant and that he said he was not looking for work and had not submitted anything about looking for work.
91. This is contrary to Caseworker A's testimony and the file records. She was not on triage, but was on call in her office and had this meeting assigned to her by triage.

92. The Risk Management Caseworker said she met with the Supervisor sometime after September 22, 2009, and that she showed her the process for receiving documents and said that no one would "just throw [a document] in the basket." She claims in this meeting that the Supervisor told her that she had never seen the triage centre as busy as Mr. K alleged. She says the Supervisor showed her the program used for intake appointments. The Supervisor's evidence was that she had not spoken with the Risk Management Caseworker about this case and that the triage area often gets very busy.
93. The Risk Management Caseworker could not recall if she spoke with another caseworker on this matter. She said that she did not speak with Caseworker B, who she said "was not involved with the final withdrawal." The file and Caseworker B confirmed that it was she who implemented the final withdrawal.
94. The Risk Management Caseworker told my investigator that the document drop-off procedures were reliable, and that the documents would not have been lost. She suggested that any caseworkers who said that documents sometimes go missing were merely disgruntled employees "unhappy at work and very defensive, down on anything."
95. The product of the Risk Management Caseworker's investigation was a nine page report dated November 9, 2009 and submitted to her supervisor. The intended audience was the "Special Review Committee" which meets quarterly to determine if high value cases will proceed to criminal prosecution, and includes a crown attorney, and representatives from City Legal and police. Because this case was under the \$25,000 threshold, it was ultimately not presented to that Committee.
96. Of a nine page document, four were title pages and only one half of the final page deals with the issue in question.
97. The report ends, stating "based on this misrepresentation," CSD was seeking recovery of \$22,992.48.
98. When asked to what misrepresentation she was referring, the Risk Management Caseworker said that the term was not accurate, there was no misrepresentation and the language had merely been a standard ending. She said that technically there was no "fraud" in this case, and that it would be more accurate to say that Mr. K was ineligible for service and owed monies. She said that Risk Management "do not use the word fraud."
99. The Risk Management documents delivered to my investigator were labelled "fraud investigation." The Risk Management investigation was referred to as "the fraud investigation" by most CSD staff my investigator

interviewed. The Risk Management Manual states that its caseworkers deal with "referrals of fraud allegations."

100. In the Risk Management Caseworker's report, there is no description of the investigation, no references to whom she spoke, what documents were reviewed, questions asked or conclusions made.
101. The Risk Management Caseworker's supervisor signed off on her completed review. He did not identify any problem with the investigation.
102. The Risk Management Caseworker stated that the Complainant had attended the triage office several times after he claimed to have dropped off the document in question, and if he had really delivered the document, he could have mentioned his loss of employment then.
103. The Risk Management Caseworker later corrected her view, stating that there was no record of him attending between the alleged drop-off date and the annual review on April 23, 2009.
104. Mr. K attempted to contact the Risk Management Caseworker. She told my investigator that he attended at Metro Hall one day to see her, but he did not have an appointment, so she did not meet with him. This was likely on October 21, 2009 as the information system notes he attended and complained that the Risk Management Caseworker had not returned his calls. Mr. K told my investigator that no one would meet with him that day, and he returned home. No subsequent appointment was scheduled.
105. The file indicates the Complainant left five messages between November 13 and November 24. In return, the Risk Management Caseworker left one voice-mail on November 24.
106. The Risk Management Caseworker made notes about the Complainant's November 24, 2009 voicemail stating in part, "[Mr. K] reported change at CP [case review] date April 2009 with [Caseworker A] and told her that he had not reported the change previously."
107. My investigator asked the Risk Management Caseworker if the Complainant had said that in his voicemail, as it would contradict his other communications. She could not recall, and that she may have merely re-typed the caseworker's April 23, 2009 notes.
108. On November 19, 2009, the Risk Management Caseworker was instructed in writing by her Supervisor to issue a recovery letter. She did so.

Her letter stated that eligibility had been reassessed and the debt was owed. It stated:

You are therefore required to repay the amount of \$22,992.48 to Children's Services. This amount is now due.

## **5.7 Appeal Letter #2: December 15, 2009**

109. Mr. K's City Councillor's office contacted the CLC again on December 4, 2009. The same day, the CLC spoke to Mr. K. The CLC's notes state that she "advised him of the appeal process and his right to appeal." She reiterated this in her e-mail to the Councillor's office. Neither her notes nor her e-mail mention Mr. K's May 6, 2009 letter of appeal.
110. The Complainant said that the CLC told him to appeal. He asked what had happened to his first appeal from May 6, 2009; she said she did not know but told him to submit another one.
111. The Complainant wrote his second appeal letter dated December 15, 2009 which he delivered on December 16. The CLC received the appeal on December 21.
112. Mr. K contacted the CLC on January 27, 2010, to see if there was a decision and was told he would be advised of a decision "ASAP."
113. The CLC sent out the appeal materials to the Appeal Committee on February 2, 2010. The e-mail contained her appeal summary and attachments, which included the Complainant's December 15 letter of appeal and a standard cover with general information about the children and finances of the family at the time of the last review. The Complainant's earlier May 6, 2009 appeal letter was not included or mentioned.
114. The former external Committee member told my investigator, that if she had known that Mr. K had appealed the issue immediately in May 2009, "it might have made a difference."
115. The CLC told my investigator she always attaches file remarks. The Committee members said they only occasionally receive file remarks as part of a package. In one of her interviews, my investigator asked to see a sample appeal. There were no file remarks attached. Following this investigation, CSD informed my office that the electronic appeal system automatically attaches this information, but the system was not consistently doing so; this is now being addressed.
116. The CLC told my investigator that the reason the first appeal letter did not go to Committee but the second one did, was because Risk Management had by then completed its investigation. The Appeal Committee was not

provided with access to that investigation. The CLC said she had seen the final Risk Management report, but had not read it recently; she thought however that it was very thorough and showed a finding of fraud.

117. The CLC's appeal summary states that the clients are requesting the recovery be waived. It does not mention the Complainant's other request to have his children re-admitted to daycare.
118. It does not mention Mr. K's main grounds for his appeal, namely, that he had provided written notice of job loss.
119. The CLC thought she had summarized his grounds for appeal, but in reviewing her summary with my investigator, she found she had not. She acknowledged that Committee members might only read her summary and not the attached appeal letter, and that this might mean that the members would not have known that he claimed he had provided written notice.
120. On February 3, 2010 two of three members e-mailed their votes to the CLC. On February 4, 2010, the CLC made a note that the Committee had denied the appeal. She explained that she decided to move forward without the third member's vote, two days after sending the appeal because she knew the member had a backlog of other appeals, to which she had not yet responded.
121. The CLC said that the General Manager was aware of the situation, and explained that the member later stepped down. The General Manager, who had been in her role only two months at the time of Mr. K's second appeal, told my investigator she was aware of delayed responses from the member and the plan to move forward without her vote.
122. On February 19, 2010, the CLC issued a decision letter denying the Complainant's appeal. It stated in part that:

On February 4, 2010 the Children's Services Appeal Committee met to consider your request... Clients are required to provide accurate information and to report changes in their situation...

The decision did not address Mr. K's claim that he had met his reporting obligation. The CLC said that she did not address this because "it was a delicate topic, and bottom line, we had no verification that he submitted anything."

123. On April 14, 2010, the CLC wrote to the member who had not yet voted on the appeal.

124. The CLC stated that she did not have that member's responses for 183 appeals, but that the other members had agreed with the CLC's recommendations and the decisions had been communicated for those cases.
125. The CLC wrote that she was "ok" with the committee member sending one e-mailed vote for the outstanding 183 appeals.
126. The former external Committee member e-mailed on April 28, 2010, stating that she agreed with the recommendations of the CLC for every one of the 183 appeals.
127. The former external Committee member decided to step down, because of her workload. In June, a director from Shelter Support and Housing Administration replaced her.
128. My investigator was told that CSD recently created a system of "alternates." As of June 14, 2011 two of the three members had been assigned an alternate.

#### **5.8 Appeal Letter #3: October 1, 2010**

129. On March 16, 2010, Mr. K contacted the CLC about the decision. She advised Mr. K that the decision was final, but that she would "check again for the missing document."
130. On March 17, the Mayor's office e-mailed the CLC to ask about options. The CLC replied the same day stating that the Appeal Committee had denied the appeal, but that she had told Mr. K "that he had the right to appeal a second time if he has new information to provide."
131. My investigator was not originally provided with the e-mail from the Mayor's office. The CLC did not recall that contact, and stated that it would have been recorded in the file. The contact was not recorded. On checking, the CLC found the e-mail communications and provided them.
132. Mr. K told my investigator that the CLC then called him and told him to appeal for a third time. He told her that he did not have anything new to add. He states she said just to put everything in his letter. The CLC's instruction to Mr. K to appeal again is not recorded in the file.
133. The Complainant did not immediately submit a third appeal. However, after receiving a recovery letter from the City's legal division dated September 23, 2010, Mr. K wrote a third appeal letter dated October 1, 2010.

134. On November 17, 2010, the CLC made note of a conversation with Mr. K:
- Appeal Committee is reviewing his request and he will be provided with a decision ASAP.
135. The CLC e-mailed the Committee an appeal summary the same day. She attached the Complainant's October 1, 2010 letter of appeal. Most of the appeal summary was identical to the previous one. There was no mention of the first May 6, 2009 appeal that never reached the Appeal Committee.
136. She did mention that the Committee had already heard and denied the previous appeal. Another new section stated:
- Also, [Mr. K] now claims in his letter of appeal that he provided the division with a record of employment in November 2008 and he states that the Division misplaced the documentation. There is no record of documentation received in November 2008 other than a school letter for [Ms K].
137. In her interview, the internal Committee member stated that from this summary, she understood the Complainant was only just now, two years after the incident, suggesting he had dropped off the document. Had she known that he had been maintaining this position from the outset, she said it was possible that it would have affected her decision. She would have asked the CLC "if we were sure that he didn't drop off the document" and whether the office had verified this.
138. Two of the three Committee members voted the following day, November 18, 2010, and the third voted on December 3, 2010. All ultimately agreed with the CLC's recommendations, however, the current external Committee member raised concerns.
139. She was concerned about the financial impact on the family and wrote that before agreeing, she would need to know the options available, such as waiving repayment until both parents were working, or a repayment plan.
140. The CLC replied that "our division is always willing to establish an affordable and appropriate repayment plan" and that this file was with Legal Services who would establish an "appropriate / flexible repayment plan."
141. The current external Committee member "strongly recommended" that CSD review the policies and work with Legal Services to develop a policy to "acknowledge that placing a family in danger of eviction etc. ... would not be in the best interest of the client or the City."

142. The policy issue was never raised.
143. A decision letter was issued on December 10, 2010, denying Mr. K's appeal for a second time. It stated that the Committee had met on December 6, 2010 to consider his appeal.
144. The CLC and the internal Committee member both thought that if a document was dropped off, there should have been a note to the system that the client had attended. However, the Supervisor told my investigator that "sign-ins" at the front desk are only required for caseworker appointments. If a document was not scanned, there would be no record of the visit. Paper originals are shredded after two months.
145. Committee members all thought the Complainant was responsible for the three months of childcare. They said he was a long-time client and should have known his duty to report. The internal Committee member said that "there were no ESL [English as a second language] issues" so he should have understood.
146. English is Mr. K's third language.
147. When asked about the fact that Mr. K said he knew his reporting obligations, and had met them by submitting documents, the Committee members stated he had an additional obligation to "follow up."
148. The General Manager mentioned that the Complainant "kept appealing" and the CLC stated that "he's telling us the same things again. I guess I felt it had been dealt with, he understood, he was ineligible for continued child care ...." The members were not told that he re-appealed only after direction from the CLC and after his first appeal had not been sent to the Appeal Committee.

## **5.9 Recovery Process**

149. The CSD's Central Billing Unit (Billing) is responsible for invoicing.
150. After Risk Management completed its investigation, the file was referred to Billing, who sent a recovery letter to Mr. K on January 21, 2010. The letter stated that the outstanding balance of \$22,992.48 was owed, that arrangements for repayment were to be made by February 4, 2010 and that, "if payment is not received, your file will be forwarded to the Toronto Legal Department for further action." The letter set out payment methods but did not mention payment plan options.
151. The Supervisor of Billing stated that ordinarily recovery letters would not be sent out while an appeal was pending.

152. Billing sent its letter while Mr. K was waiting for the Committee's decision on his December 15, 2009 appeal.
153. When Billing did not receive a response, staff left Mr. K a voice-mail on March 29, 2010. Billing then sent the file to Legal on June 21, 2010.
154. The file notes that the Complainant called the CLC six days after the recovery letter was issued. Mr. K says he asked whether they could halt recovery because he was in the midst of the appeal process. However, the CLC noted only that he would be advised of the decision "ASAP."
155. Legal first wrote to Mr. K on September 23, 2010 requesting the family arrange for payment within 15 days or it would commence legal action. Similar letters followed on November 10, 2010 (while the final appeal was proceeding), January 10, and February 16, 2011.
156. To date, no legal proceeding has been commenced.

## **6.0 Background**

### **6.1 Past Experience with Reporting and Job Search Period**

157. Mr. K experienced the CSD's job search process in 1999. At that time, two notices were mailed to advise him of the approaching end of his allowed job search period.
158. Mr. K states that some years, caseworkers would remind him of the obligation to report any changes in their situation. He does not recall being told the duration of the permitted job search period.
159. At the annual review, the caseworker is to give the parents a brochure called "child care fee subsidy: What you should know" and to "briefly explain" the policies and procedures. The parents are to sign the brochure, indicating that they understand. There were no recorded signatures from the Complainant or his spouse on these brochures from 2006 onwards, but it appears the process changed so that there were only signatures on annual eligibility assistance form stating:

I/ we agree we will advise Children's Services of any changes in my / our household composition, marital status, employment, schooling or residence as they occur and provide documents in support of reporting such changes.
160. Historically, the brochures had set out the job search according to policy in a given year, and there has been significant change since the family first came to CSD in 1998. In the Complainant's file, the brochures given each

year stated the job search period allowed was:

- from 1998-2001: four months
- from 2002-2005: one month
- 2006: no document on file
- 2007: the pamphlet said that you should "contact your worker... to find out if you qualify" but it did not give a duration for job search;
- 2008: three months.

## **6.2 Record Keeping**

161. My investigator requested all documents related to this file. The majority of CSD correspondence sent to the client was not provided. There are only electronic files.
162. CSD did not have copies of most of their outgoing correspondence, and my investigator was only able to review the few letters that Mr. K himself had kept, along with information system notations stating that a letter would have been issued.
163. My investigator learned the computer automatically issues letters which are signed by an employee (not necessarily the caseworker) and sent to the client. No signed copy is scanned. The form letter is automatically "cleared" from the system.
164. The system is intended to reduce paper and the burden that otherwise falls on caseworkers to send large volumes of correspondence. In the last year, the practice has changed so that staff scan final letters, but not other correspondence.
165. My investigator found that e-mail records related to a case were not ordinarily saved or attached to the information system file system. The CLC does save e-mailed political enquiries for her own records.

## **6.3 Caseworker Issues**

### **6.3.1 Triage**

166. Toronto's licensed child care system including child care centres and home child care agencies operates 56,382 childcare spaces, with 19,500 children on the wait list. The available funding provides for 24,000 subsidies.
167. The triage protocols are set out in the CSD Manual and were described by caseworkers and the District Office Supervisor. In that office, there are currently ten caseworkers who are rotated on triage duty, one per day.

168. Although protocol states that a clerk is assigned to assist the caseworker on each shift, the caseworkers said that this support is often not present. One caseworker estimated a clerk would be assisting only about 50% of the time. At the time of my investigator's site visit, no clerk was at the front desk.
169. Some parents have appointments and others are "walk-ins." Clients with appointments are seen on a first-come first-served basis, with appointments assigned only for a particular day, not a specific time.
170. As of September 2010, at the direction of Risk Management, a policy was initiated that clients could not meet with the same caseworker who conducted their previous annual review. This was designed to prevent caseworkers from becoming overly familiar with parents and "bending" the rules for them.
171. Triage occurs in an open reception area. Each caseworker said that the triage role was stressful and hectic. One described it as "spinning multiple plates in the air." They explained that in the past, clerks performed the triage reception function, and suggested that was more appropriate, allowing caseworkers to meet with clients as necessary and focus on casework.

### **6.3.2 Missing Documents**

172. Every caseworker interviewed said that documents can and do go missing. One stated that documents "used to go missing like crazy in the old days" but that this has now improved with less reliance on paper.
173. Another caseworker said that documents are lost "all the time" although they are usually found after a search. Staff will often find them at the front counter or in a pile of backlogged scanning. The caseworker also reported problems with faxed and e-mailed documents due to paper jams and difficulty opening attachments.
174. Only the Supervisor said that she did not know of another instance in which someone claimed to have dropped off documents that went missing.

### **6.3.3 Document Drop-Off / Scanning**

175. A document delivered at triage will ordinarily be scanned and returned to the client. If the client does not require a copy, the caseworker may place it in a tray to be scanned later. There is also a drop box outside the office.
176. Previously, the closest functioning scanner was outside the triage desk area, requiring the caseworker to leave the area to access it. In the week

before my investigator's scheduled site visit, a scanner was set up in the triage area.

177. Until a few months before interviews, the door to the triage area was locked and opened only by pressing a buzzer at the front desk. Staff scanning documents in the back area would have to go to the front desk to "buzz in" parents.

## **6.4 Appeals**

178. Both the General Manager and the CLC said that the number of appeals has increased consistently over time. In 2010, there were over 800, an average of about 16 appeals a week to deal with.
179. My investigator asked what proportion of appeal requests proceed to the Committee. The CLC initially stated the numbers would be identical: if 400 parents requested an appeal, the Committee would hear 400.
180. The Complainant made three formal appeal requests and two reached the Committee. In response to questions about this, the CLC explained that a minimal number of appeals are sent back to the district office to be resolved. If it solved the problem, the appeal would not proceed.

### **6.4.1 Appeal Committee Training**

181. The CLC said she provides the Committee with training by presenting them with the Policies and Procedures Manual and meeting with new members to discuss process, eligibility and case examples. She says that she met with each of the three current members to train them.
182. The newest member stated she had been sent the Manual, but received no training. My investigator reviewed the Manual and found that there was only a half page devoted to the Appeal Committee. There is no detailed information about process or member responsibilities.
183. Other members had less recollection, but thought they had a meeting with the CLC in which she explained the processes and policies to them.

### **6.4.2 Appeal Committee's Review of Documents**

184. Members had different practices on reviewing documents. The CLC said she was not sure if the members read attached documents, and said she thought "sometimes they just rely on my appeal form."
185. The current external Committee member said she does not always look at attached files because her experience was that they did not add value to

the CLC's summary. She said the CLC is responsible for providing the facts of the case.

186. Similarly, the General Manager said that she does not always open the attachments, on "straight-forward" cases. She says if there was some "controversy" about a case, she would do so.
187. The other members stated that they do review the attached documents. The former external Committee member said that she made it a point to examine an appellant's letter as "sometimes the reasons for the appeal is reflected in the letter, that might not be contained in the summary."

### **6.4.3 Decision Letter**

188. None of the Committee members had ever seen an example of the decision letters issued to appellants. My investigator showed one to each of them and asked them to comment. Each agreed the statement that "the Appeal Committee met on X date" might suggest that there had been a meeting. The General Manager and the current external Committee member said that this was a real problem, giving the wrong impression about the process. The other members interviewed did not think this was important or relevant.
189. Members commented on whether adequate reasons were provided in the decision letter. The current external Committee member thought that it would be helpful to include more details about Mr. K's specific claim that CSD had lost the submitted document.
190. The other members thought general policy statements were adequate reasons.

### **6.4.4 Assessing Credibility**

191. My investigator asked if members thought it would have helped to assess credibility by hearing Mr. K in person.
192. One member said it might have been useful, but noted that she would also have needed to speak to the caseworker and supervisor to decide if they were credible as well.
193. The other members, along with the CLC, thought hearing the Complainant would not have assisted in the process.

### **6.4.5 Who Can Waive Recovery**

194. There was confusion as to who has the power to waive a recovery owing. The CLC told my investigator that it was up to Risk Management, and said

that a supervisor would also have authority. The Risk Management Caseworker said that only management has the authority to waive recovery.

195. One Committee member believed that client debts for those under the Low Income Cut-Off (LICO) would not be sent to recovery, due to a corporate policy to protect vulnerable clients.
196. After my investigation began, the General Manager and the CLC discussed whether the recovery could be waived because of the family's low income status. The CLC and General Manager said that they found there was no corporate policy to forgive debt to persons under LICO.
197. Historically, LICO debts were not sent to recovery, although the debt stayed on record, precluding further services until it was repaid. The policy subsequently changed to a recovery process regardless of the client's socio-economic status.

## **7.0 Policies, Procedures and Practice**

### **7.1 Provincial Legislation and Guidelines for Fee Subsidy**

198. The provincial government allocates funding of children's programs. Under the *Day Nurseries Act*, the City of Toronto is designated as a Consolidated Municipal Service Manager (CMSM). In this role, Toronto administers some functions of Ontario's childcare fee subsidy programs. CSD determines eligibility and provides assistance as set out in the *Day Nurseries Act*.
199. Some direction is provided in the *Ontario Child Care Service Management Guidelines (2006)*.
200. Section 1.23 states that municipal partners "should establish and communicate internal policies for complaint and appeal processes." There are no specific requirements for an Appeal Committee or a CLC role.
201. The guidelines suggest CMSMs review complaints and appeals policies on a regular basis, at least annually, to monitor trends and areas for improvement.

### **7.2 CSD's Policies and Procedures Manual**

202. This is an internal manual. Relevant to this case, it deals with eligibility requirements, parents' reporting obligations, job search and the role of the Risk Management Unit. The relevant policies are described in Appendix A of this report.

203. The Manual contains one half page on "appeals." This does not provide detailed information about the policies and procedures of the Appeal Committee or the CLC.

### **7.3 Risk Management Reference Manual**

204. During her interview, the Risk Management Caseworker gave my investigator an excerpt from a document under revision (dated March 2011) entitled "Risk Management Policies and Procedures Manual" and said she would provide the rest of the document on request.
205. Two months later, when requested, the Risk Management Caseworker said she did not know what document my investigator was referring to, and then, said that it did not exist. Eventually, the Risk Management Caseworker said that she had deleted that document, that it no longer existed and that she should not have shared it.
206. The Risk Management Supervisor provided the document. Although it has been shared with senior management, it has not been distributed to CSD, and it remains in draft, last dated May 27, 2011.
207. The Risk Management Supervisor referred to his unit's work as "eligibility reviews" and not "investigations" although that term is used throughout the Manual and by CSD staff. Similarly, although the Manual states that caseworkers must carefully review files for proof of "intent to defraud," the Risk Management Supervisor said that the caseworkers primarily look at facts, not motive.
208. The Risk Management Supervisor stated that they follow the policies and procedures in the Manual. When asked about specific sections describing practices differing from those used in Mr. K's case, he explained processes different from those contained in the Manual. Questioned on the inconsistency, the Risk Management Supervisor insisted that his unit follows the policies in the Manual and that it was accurate.
209. For example, according to the Manual, the Risk Management Caseworker is to send a "Risk Management Client Appeal Letter" at the outset of an eligibility review, advising of a 30 day limit to appeal the matter. If the client appeals, Risk Management halts the review until the CLC and Committee address the appeals process. If there is no response, or if the appeal is not successful, Risk Management then proceeds.
210. Both the CLC and the Risk Management Supervisor explained the procedure was the opposite: that is, Risk Management will not halt their investigation if there is an appeal, but instead, the appeal would wait for the outcome of the investigation.

211. No letter was sent to Mr. K at the outset of Risk Management's review.

## **8.0 Ombudsman Findings**

212. The commitment of CSD employees was evident throughout this investigation. However, this investigation revealed serious errors and systemic problems with the appeals process, internal investigations, communication, record-keeping and staff training.

213. This investigation focuses on City processes. I make no finding as to whether Mr. K submitted the documents as he claims. It is irrelevant to my investigation whether he did so, as the City should act fairly and have adequate processes to deal with claims and complaints, whether they are accepted or not.

### **8.1 Unfair Appeal Process**

214. There is no reasonable answer for why the Complainant's May 6, 2009 appeal did not proceed to the Appeal Committee. His letter raised two appealable issues: his children were removed from care and he was told there would be an overpayment recovery.

215. I do not accept the explanation that this letter was not an appeal. "Appeal" was written across the top by a City employee.

216. In the second appeal, which proceeded to Committee, I find that the CLC made a serious error by omitting from her summary the single most critical detail of Mr. K's appeal, namely, his claim that he submitted documents that would meet his reporting obligation.

217. The CLC did not mention that Mr. K had appealed nine months earlier, or explain why the matter had not reached Committee until February, 2010.

218. Some Committee members were not aware of the grounds for his appeal. This in itself prevented the Complainant from access to proper consideration and denied him procedural fairness.

219. The CLC issued a decision without the third member's vote. This error was further accentuated by the fact that the CLC waited only two days before proceeding without the final vote.

220. There is an absence of policy or guidance on how to deal with a situation where one member does not vote on an appeal.

221. My investigation confirmed that this was not an isolated case that fell through the cracks. Although this investigation set out to look at one complaint, I found evidence of 183 appeals decided without a third vote.

222. This case illustrates a systemic issue raising concerns about how the Appeal Committee makes decisions and what information and recommendations are placed before it.
223. The CLC did not raise the issue of delivery of the necessary documents until Mr. K's third appeal, suggesting he only recently made this assertion. This was misleading and unfairly prejudiced Mr. K.
224. In most situations, an electronic hearing may adequately meet the procedural requirements for an appellant's right to be heard and their appeal considered. In exceptional circumstances, a hearing in person may be required. One such circumstance might be when the credibility of the claimant is at issue.
225. The Committee should have met in person, at least to hear the Complainant's evidence on the issue of the lost document. His credibility cannot be assessed in an appeal summary or letter. Where this is a central issue to an appeal, the Committee has a duty to test witness credibility on the disputed issue and then reach a decision.

Where only the credibility of the party affected is in issue, that party should be heard orally, even though the rest of the hearing may be conducted in writing.<sup>4</sup>

## **8.2 Failure to Investigate**

226. There was an inadequate response to Mr. K's assertion about his submitted documents.
227. No one spoke with triage staff about the allegation of missing documents.
228. No one performed a computer scan of documents received in the appropriate time period to check for mis-filing in another client's file.
229. No one spent time looking through paper documents in the office.
230. No one asked the Complainant to describe the details of the day he delivered the document or to describe the caseworker he spoke to.
231. No one attempted to locate the caseworker involved.
232. In effect, there was a failure to investigate. Re-checking the Complainant's file is not an adequate response.

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<sup>4</sup> Blake Sarah, *Administrative Law in Canada*, 4<sup>th</sup> ed. (Markham: Lexis Nexis, 2006) at p. 64. See also *Khan v. University of Ottawa*, [1997] O.J. No. 2650 (C.A.)

233. The current Risk Management investigations are ineffective. A three-minute call to the claimant and a document review does not constitute an investigation.
234. Given the economic stakes, particularly for the group of low-income residents eligible for subsidized care, this practice is unacceptable.
235. The Risk Management Caseworker's statements are troubling. She claims she met with the Supervisor and Caseworker A. Neither recalls speaking with her. Caseworker A was on leave when the meeting was to have taken place.
236. When I weigh the Risk Management Caseworker's credibility against those of the two other staff, their evidence appears more reliable. I have serious doubts about the integrity of the information the Risk Management Caseworker has attributed to others. There are no records of these interviews and the caseworker's evidence does not reflect basic knowledge of field office operations.
237. The final Risk Management report is poorly written and focuses on irrelevant facts. Only a half page deals with relevant information, and does so without explaining the investigation, evidence or conclusions drawn. Yet, the Risk Management Supervisor signed off on this report, indicating to me that this quality of work was seen as acceptable and sufficient to lead to recovery proceedings.

### **8.3 Poor Communication**

238. CSD failed to communicate with the Complainant about the disposition of his first appeal. It is unacceptable that a client who has submitted a formal appeal letter would not be given a considered explanation. There is no record of a written or oral explanation of the disposition of his appeal.
239. His second appeal letter states that he never received a response to his first written request for an appeal. Even after raising this in his letter of appeal, no one from CSD enquired into the status of his first appeal.
240. CSD decision letters are misleading. They give a particular date on which the Committee "met" to consider the appeal. However, no such meeting occurs. Neither is the date relevant because it is merely the date on which the CLC enters the decision into the system.
241. The final withdrawal letter given to Mr. K states that "Appeal Board meetings are held once a month." That is untrue. The Committee neither meets nor works on a monthly basis and have not done so for the past five years.

242. Decisions are unexplained and obscured under a mantle of general policy-speak.
243. Administrative fairness requires the provision of reasons for a decision, which is particularly important when there is no oral hearing. Reasons demonstrate that the matter was adequately considered.
244. Mr. K maintained that he knew of his duty to report changes in his employment and claimed he had met this obligation through submitting documentation. The decision letters do not acknowledge his claim, and instead, inform him that he is required to report changes in status.
245. The Risk Management Caseworker failed to meet basic client service standards in her communications with Mr. K. He left multiple voice-mails for her and once attended to meet with her, which she declined. Her failure to communicate appropriately was unacceptable public service.
246. No information is provided to fee subsidy applicants about the appeals process. It is not available on the website or any other publication. That is not only contrary to the provincial guidelines, but does not meet the most rudimentary expectation of open and transparent communication.
247. Having regard to all the facts, the City's description of the CLC as an "advocate for parents" is misleading. It is simply untrue that the position advocates for parents.

#### **8.4 Poor Record Keeping**

248. The failure to retain copies of correspondence mailed to clients seems short-sighted. The failure to maintain basic records means that client files are always incomplete.
249. This investigation demonstrates a failure to record information such as conversations, interviews and e-mails. In that context, tracking the decision-making process or confirming that an issue was duly considered becomes a very difficult exercise.
250. The Risk Management Unit said it only records "factual, objective" information. The fact that a caseworker spoke with a witness to obtain information is an objective fact, and necessary to establish the source of evidence. It is unacceptable that interviews are not documented.

#### **8.5 Lack of Training**

251. It is valuable to maintain institutional memory by promoting from within. However, when promoting, there is an obligation to ensure that the

successful candidate is provided with adequate training and has the required expertise. Specialized training may also be required.

252. Training in investigative techniques, evidence collection, analysis, identifying relevance, establishing credibility, file maintenance and report writing are all lacking in the Risk Management Unit.
253. Training is also deficient for those involved in the appeals process. An introduction to policies and a review of job duties is insufficient. An understanding of procedural fairness and principles of natural justice are also required.
254. Such training is particularly critical for the CLC position because her recommendations are followed "99%" of the time.
255. It appears that there is a high volume of work for this position. It may be unduly onerous for a single incumbent to fulfil all of these duties.
256. The lack of expertise and training resulted in unfairness to the Complainant and points to the need for systemic remedies.

## **8.6 Inconsistent / Unclear Policies and Practices**

257. My investigation found an absence of procedure and process for dealing with allegations of missing documents.
258. Since this investigation commenced, the General Manager has made efforts to address this omission.
259. The CLC and the Risk Management Supervisor said that a Risk Management investigation must be completed before an appeal can proceed to Committee. In fact, the Risk Management Manual sets out the opposite. There is obvious confusion about process.
260. CSD failed to consider a serious policy issue raised by a Committee member in Mr. K's third appeal regarding the effect of recoveries on low income families.
261. One of the Manual's stipulated roles for the Committee is to "make recommendations through the Chair to the City Manager or Council when they consider it is warranted to amend policies and procedures."
262. There was general confusion about the role of Committee members, demonstrated in one member's comment that the Committee was an "administrative committee" not "a policy committee."

263. The stated Risk Management practices, currently in draft, do not reflect the actual practices of the unit. Different practices were used in Mr. K's case, and Risk Management's explanation of actual processes was confusing and inconsistent.
264. The stated practice of Billing is not to send a recovery letter while an appeal is in progress. However, in Mr. K's case, that is exactly what happened.
265. There is confusion about who has the authority to forgive a debt, and in what circumstances.
266. Further, there appears to be a widely shared but inaccurate belief that clients are offered very modest payment plans in cases of recovery. No one ever offered that to Mr. K. Payment plans are not mentioned in correspondence which instead state that the entire amount is owed within two weeks or legal proceedings may ensue.

## **8.7 Issues Specific to the Complainant**

267. In the Complainant's only other experience with a job-search period, he received written correspondence warning him when the job-search period would end. The permitted length of the job-search period has changed repeatedly, sometimes without setting out the timeframe to the client.
268. As a result of his only other experience, it would seem reasonable that if he delivered documents in November 2008 as he says he did, he would think he would be contacted before his children were withdrawn from care.
269. The CSD has internal rules stating a parental obligation to report changes within one month, but this timeframe is not set out in client materials.
270. If Mr. K did in fact provide the documents, it would seem that this constituted adequate notice as required by policy.
271. At the point that Mr. K's children were removed from care, he no longer met eligibility criteria, as he had been unemployed for over three months.
272. Had he been given notice of his pending ineligibility, as would happen in the normal course of events, Mr. K would have had the opportunity to take the necessary steps to come into compliance, including working multiple part-time jobs such as he now does.
273. Appeal Committee members and other staff repeatedly suggested that Mr. K had an additional duty to follow-up after dropping off his document. If it is true that Mr. K submitted documentation as required, he met the reporting obligation, and in doing so, discharged his obligation. He should

not additionally be responsible if it is the case that CSD lost his document. Calling or re-visiting the CSD office to make sure they have the information he delivered is in excess of stated obligations. A \$23,000 debt and care for six children cannot turn on an unwritten obligation.

274. Mr. K and his spouse claim that they attempted to have an annual review a month or two before the one they ultimately had on April 23, 2009. They state they were turned away, told the letter was incorrect and their case review was not until April. If they are correct, any amount owing should have been discovered one or two months earlier and could have saved the family thousands of dollars of accumulated debt.
275. I can make no finding on this issue of fact, and note that there is no record in the file of such a visit. This issue should be considered by CSD in fairness to the Complainant and his family.
276. Rather than offering Mr. K and his spouse the option of immediately withdrawing the six children from care, the caseworker followed policy and issued two weeks notice of withdrawal. The withdrawal letter stated that subsidized care would continue for that period, yet the cost was added to his debt.
277. The policy is clearly intended to provide fairness to parents, allowing them time to make alternate arrangements when childcare is withdrawn.
278. In this case, rigid adherence to the policy created unfairness. The family was not able to opt out. In the two weeks after the meeting with the caseworker, they accumulated a further debt of \$2,737.20.
279. A policy whose intent and spirit is to provide fairness to families, should not be used to create the opposite.

## **9.0 Ombudsman Conclusions**

280. Toronto Municipal Code Chapter 3, section 3-36 provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been contrary to law, unreasonable, unjust, oppressive or improperly discriminatory; based wholly or partly on a mistake of law or fact; based on the improper exercise of a discretionary power; or wrong.
281. There are generally accepted definitions of these terms in both case law and the ombudsman field. I have considered those definitions in reaching my conclusions.
282. My findings demonstrate the City's actions and omissions breached principles of procedural fairness and were unreasonable and wrong.

283. My investigation found that basic procedural fairness was ignored in the appeals process.
284. Mr. K's right to be heard was violated in a most fundamental way when his first appeal did not go before the Committee, and about which he was never told.
285. His second appeal went to Committee but the summary did not mention his main grounds for appeal and was decided without all members voting.
286. In his final appeal, the summary claimed Mr. K only recently had raised his main issue for appeal. His credibility was central to the matter and warranted a hearing in person at least to deal with the claim of the missing document. The final appeal, pressed upon him by the City, was only a response to political enquiries.
287. The CLC's direction that Mr. K should appeal once more, having told him that the decisions were final, and hearing that he had no new information, appears to be an attempt to placate him in response to ongoing enquiries from Mr. K and political staff.
288. There was a significant gap in the way that complaints about missing documents are handled, particularly ones that key decisions depend on.
289. Risk Management's "fraud investigation" failed to meet basic investigatory requirements. The resulting report contained irrelevant information and had no evidence upon which to base a reasonable decision.
290. There is a complete lack of information provided to the public about the processes of the Appeal Committee.
291. CSD has poor record-keeping practices regarding client communications.
292. My investigation revealed a paucity of training for specialized roles such as investigators, Appeal Committee members and administrators.

## **10.0 Ombudsman Recommendations**

293. I have taken into consideration all the evidence gathered in arriving at my recommendations.
294. Recommendations 1-9 are made in the public interest and address the systemic issues arising from the complaint. Recommendations 10-12 pertain to the Complainant.

295. I recommend:

1. That CSD ensure there are comprehensive policies and processes put in place for the Appeal Committee. These must include, but not be limited to:
  - i. that an appellant will be sent an explanation in writing should his or her appeal not proceed;
  - ii. that the rules for processing appeal requests are clarified;
  - iii. that the relationship and sequencing between internal investigations and appeals be clarified;
  - iv. that the documents which are to be presented to the Committee are clearly defined;
  - v. that criteria be established for the reconsideration of appeals;
  - vi. that criteria be established for holding in-person hearings and that the Committee be given discretion to decide when this step might be necessary;
  - vii. that a policy be put in place to establish decision making alternatives when members are not responding or are unavailable.
2. That the CLC position be accurately described and communicated to the public.
3. That all correspondence related to the appeals process be clearly and accurately described.
4. That CSD review its mandatory two-week notice policy as it relates to withdrawals ordered by CSD, namely:
  - i. to ensure that accurate information is provided to parents about the financial implications of the notice period
  - ii. whether parents should have the ability to remove their children within the notice period to avoid further debt
5. That the practice with respect to recoveries from low income families be addressed and a policy developed and communicated to staff.
6. That the CSD Billing Unit be required to offer a payment plan for debts incurred before referring the matter to Legal Services.
7. That CSD develop record-keeping protocols, including the following:
  - i. a document-receipt protocol;
  - ii. a procedure for saving all correspondence to clients;
  - iii. a requirement to record all case-related communication;

- iv. a protocol to deal with claims of lost documents;
  - v. a requirement that Risk Management record its relevant investigative communications.
8. That the implementation of recommendations 1 through 7 be completed and reported back to my office by March 1, 2012.
  9. That skills development and training be provided to all incumbents of positions related to the investigative and appeals process, including
    - i. the CLC, Appeal Committee members and alternate members, in relevant appeals process and administrative fairness;
    - ii. Risk Management staff, in investigative techniques, including but not limited to evidence collection, analysis, identifying relevance, establishing credibility, file maintenance and report writing.
  10. That by November 30, 2011, the General Manager of CSD provide Mr. K with a written apology for the manner in which his claim and appeals were handled as noted in this investigation.
  11. That by November 25, 2011, CSD consults with my office on the draft of the above apology prior to its issuance.
  12. That the City review the Complainant's case to ensure a fair resolution.

## **11.0 The City's Response**

296. Prior to finalizing my report, I notified the City of my tentative findings and recommendations and provided it with an opportunity to make representations, pursuant to section 172(2) of the *City of Toronto Act, 2006*.
297. The City agreed with all of my recommendations and noted that CSD staff were committed to implementing them and understood that this would strengthen internal systems and customer service. The response also acknowledged the systemic issues raised by the investigation.
298. Beyond my recommendations, CSD took further steps to improve service. For example, in addition to establishing criteria for hearing reconsideration of appeals, the Division has committed to holding quarterly meetings of the Committee to "monitor trends, resolve issues, and identify areas for improvement."

299. The General Manager has already taken steps to address some of the problems identified, such as establishing a document-receipt protocol and providing training to staff on this process.
300. The City raised a number of points of clarification. These were considered and are largely reflected in my final report.

(Original signed)

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Fiona Crean  
Ombudsman  
November 22, 2011

## Appendix A

### Toronto Children's Services Policies and Procedures Manual

#### Eligibility

When a family applies for subsidized daycare assistance, Toronto CSD makes their decisions according to family financial and social information (such as special needs). They have employed an income-testing model since January 1, 2007 moving away from a previous model that was more intrusive and document-heavy to assess any potential family assets (s.7e.2).

#### Reporting obligations

The Policies and Procedures Manual states that caseworkers are to briefly explain policies and procedures annually at each in-person eligibility assessment (S. 6a.10). One of the items that they are to review is the "need to promptly report changes in marital status, household size, address, custody arrangements and changes in school/training, employment or Ontario Works activity" and to review the "job search policy." The worker is to briefly review twelve other policies in the meeting.

Clients are to report changes including changes "in their address, marital status, household size, custody arrangement and activity within one month of occurrence" (s. 8.3, s. 11.3). This requirement is not set out in the pamphlets given to clients.

#### Three month job search policy

Section 7b.8-9 of the Manual sets out the requirement that a person who has lost employment must provide a "separation slip, record of employment, employer's letter or affidavit to verify the last day of employment." A three month job search (within a twelve month period) is allowed. A caseworker is to explain to the parent the need to inform CSD when they find work.

The parent is to be sent a "Final Employment Letter" four weeks before the job search ends, to obtain information of whether that person is now in an "acceptable activity" (employed, in school full-time, etc.) (s. 7b.8). The parent is also to be given two weeks notice in advance that subsidy will end and be advised to contact CSD once he or she is in an acceptable activity (s. 7b.9).

The Manual also states that an extension to the job search period may be considered by the Appeal Committee in a number of circumstances including "family illness or emergency occurred during job search," and when "termination of child care would have a significant impact on a child's development and learning" or when "termination of child care would disrupt a child's school year." (s. 7b.9)

## Risk management unit

The Manual states that the Risk Management Unit works with the Operations' units "to prevent fraud, investigate allegations of fraud, set standards and control quality." (s. 11.2)

In cases in which the client "may have withheld information or provided false information, the caseworker is to "review the file thoroughly to determine if there is an issue that will require further follow up, including recovery and / or referral to the Risk Management Unit." In all cases of alleged fraud or recovery, the caseworker is to discuss the issue with the District Office Supervisor. (s. 11.3)

In cases where caseworker error is identified that would impact eligibility, "it will not be appropriate to pursue a recovery or a retroactive fee increase." (s. 11.4)

When the District Office Supervisor is satisfied that there is sufficient relevant information and cause for pursuing a recovery, the caseworker is responsible for calculating the amount of recovery and the period of disentanglement. (s. 11.4)

If the amount to be recovered is under \$5,000 then the caseworker will send out a recovery letter to them (s. 11.4). However, if the amount recoverable is greater than \$5,000, the case will be referred to Risk Management. (s. 11.5)

The Risk Management Supervisor will review the file and refer it to a caseworker for investigation, if appropriate (s. 11.5). The CSD Policies and Procedures Manual does not set out details about how to conduct the investigation: this is set out in the internal Risk Management Reference Manual.

The caseworker is to "record any relevant issues, calculations, discussions and additional information in the File Remarks on CSIS" (the information system) and to advise the client of the recovery and provide written notice of this. (s. 11.5)

The file is then to be referred to the Central Billing Unit to collect the recovery. The client is asked to repay the amount in full "whenever possible" but the option of a payment plan "will be negotiated with the Billing Unit Staff..." (s. 11.6).

## Appeals

Section 12 of the Manual states that applicants have a right to appeal "any policy, procedure or decision about their eligibility... [and] the child care fee." (s. 12.2)

The section on the Appeal Committee is only a half page long. It states that the Committee has discretion to make exceptions to policies and procedures "based on household need." It sets out who are the current members, by job description.

The Committee “Acting on behalf of the City Manager” must perform four responsibilities, set out in the Manual:

- regularly review appeals and make decisions on eligibility or an assessed fee
- consider appeals against policies, procedures and guidelines and the special circumstances of each applicant
- make recommendations through the Chair to the City Manager or Council when they consider it is warranted to amend policies and procedures
- make recommendations through the Chair to send any exceptional issues to the City Manager or Ministry for further consideration (s. 12.2).

No further policies or procedures related to the Committee are set out.

The District Office Supervisor is required to provide clients with the opportunity to exercise their right to appeal if they so choose, but also to consider all possible options before forwarding an appeal (s. 12.3).

The Manual also sets out responsibilities of the CLC with respect to appeals (s. 12.4). She must fulfill a range of responsibilities including:

- assist an applicant with the appeal process
- advocate for an applicant and act on their behalf
- review each appeal received from the District Office... and follow-up with the District Supervisor as needed
- prepare and e-mail the appeal package ...
- recommend a response that most benefits the applicant and supports the intent and philosophy of the Division, keeping in mind limitations that may be imposed by current policies and procedures ...
- liaise and follow-up in response to a complaint or appeal arising from the Office of the City’s Ombudsman as needed

## **Risk Management Reference Manual**

The document includes sample letters, forms and an appendix on “the Role of the Risk Management Investigator.” It covers topics such as client misrepresentation, standards for investigating and identifying fraud. It states “fair treatment of a client is a priority for Children’s Services and it is the right of the client to expect that applicable policies are fairly and impartially applied.”

After the caseworker begins an investigation, the Manual says she is to send a letter to the client advising them that there will be a “comprehensive eligibility review and that they have the opportunity to appeal the decision within 30 days” (s. 3.7). The Manual states that if the client sends a response, the information submitted will be sent to the CLC. If the appeal fails or no information is sent to appeal, the investigation will proceed.

The caseworker conducts the “comprehensive eligibility review” by conducting an “in depth review of the client’s complete file and analysis of all relevant information by the Fee Subsidy caseworker.” It states that where necessary, the caseworker may obtain information from outside sources (s. 3.7) Appendix 1 “Role of the Risk Management Case Worker” (called “Investigator” in the index) sets out a list of 15 duties including:

- receive information from various sources and attempts to secure as many details as possible to aid the investigation;
- conduct thorough investigations of alleged client fraud, compile evidence and establish disentanglement amount.

The Manual notes files are carefully reviewed to determine if there was *intent* to defraud (Appendix 2). Thirteen guidelines are given to help assess intent.

Appendix 3 sets out how to conduct an Investigative Interview, and notes that “if necessary” the Risk Management Caseworker will conduct an investigative interview.

The Manual notes that restitution or debt forgiveness is possible in “rare cases of client overpayment or those involving extenuating circumstances or acts of compassion, and on acting on advice received from Legal.”