

Manitoba mbudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2017-0368

MANITOBA JUSTICE (MANITOBA YOUTH CENTRE)

REPORT ISSUED July 16, 2018

SUMMARY

Manitoba Ombudsman received a complaint from a female resident of the Manitoba Youth Centre (MYC) who raised health and hygiene concerns due to a change in policy that restricted residents from having or wearing their own underwear¹. Under the new policy, these MYC residents were issued institutional underwear, which was randomly distributed to them after laundering. Concerns were also expressed that there was no advance notice of the policy change nor any opportunity for consultation and consideration of resident concerns.

As a result of the concerns raised by residents and in response to our inquiries, MYC changed the operation of this policy and now provides female residents with three pairs of institutional underwear, which are personally labelled for female residents' exclusive use during their stay at MYC, and which are returned to the residents after laundering.

The complaint is supported in part because while MYC had the statutory authority to change its policy, the implementation of the change was inconsistent with administrative fairness practises. However, as a result of operational adjustments to the policy in question, the complaint has now been resolved.

We are making two suggestions for administrative improvement relating to this policy:

- We suggest that MYC reconsider using mesh laundry bags in the facility so that all residents' personal clothing could be kept together and separate from others.
- We suggest that MYC considers establishing procedures in its standing orders to assist with information sharing, and to encourage a consultative approach whenever possible and appropriate on process and policy changes (such as clothing restrictions directly affecting residents) with input from residents and their guardians.

¹ For the purposes of this report, underwear refers to underpants, not bras. Institutional clothing is provided by facilities and also generally includes outerwear pants and tops, a T-shirt and socks.

MYC indicated it has no concern with our report.

OMBUDSMAN ROLE AND JURISDICTION

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. Recommendations and administrative suggestions may be made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

In September 2017, a female youth, who described herself as a long term resident of the Manitoba Youth Centre (MYC), wrote to our office about concerns with a new policy that required residents to wear only MYC issued underwear. Underwear was not kept separate or labeled and therefore was not necessarily returned to the same resident.

This sharing of underwear raised concerns among the female residents about health (infections) and hygiene (stained and ripped undergarments).

Following the complainant's contact with our office, we also received several calls from other female residents of MYC voicing similar health and hygiene concerns with MYC's practice of having institutionally issued underwear randomly distributed after laundering.

ISSUES

In response to the complaint, the ombudsman determined an investigation would be conducted into the following administrative issues under section 15 of the Ombudsman Act:

- 1. Was Manitoba Justice (MYC)'s policy about restrictions on underwear for female residents consistent with applicable law, policy and aligned with practices in other correctional facilities?**
- 2. Was the way in which MYC changed the policy and practice about underwear consistent with the legislation and principles of administrative fairness?**

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Discussions with the superintendent, MYC, deputy superintendent, Brandon Correctional Centre (BCC), deputy superintendent, Women's Correctional Centre (WCC)
- Relevant legislation, regulations, policies, guidelines and standing orders
- Documentation including responses from MYC and information from Manitoba Justice
- Discussions with the complainant

ANALYSIS OF ISSUES AND EVIDENCE

1. Was Manitoba Justice (MYC)'s policy about restrictions on underwear for female residents consistent with applicable law, policy and aligned with practices in other correctional facilities?

MYC advised our office that in 2017, it began changing its policy and practice so that by November 1, 2017, it would no longer allow visitors to provide residents with their own underwear for their stay at MYC.

We noted that before this change, MYC allowed the following articles to be given to young persons by visitors, as stated in the MYC Visitor Handout:

*Underwear, shoes, money (maximum \$40.00)
(to be PRE-APPROVED BY THE CASE MANAGER)*

Also, residents had been allowed to keep whatever underwear they had been wearing. The related Standing Order 02-605, originating in 2005, stated, "*admits are allowed to keep their eyeglasses, socks, underwear and shoes...*"

As of November 2017, the standing order had been changed to state, "*admits are allowed to keep their eyeglasses and shoes.*"

At that point, MYC was providing its female residents with institutional underwear that were randomly distributed after laundering. The complainant and others who contacted our office raised possible health and hygiene concerns associated with this essentially shared (although washed) underwear. We asked MYC to provide us with information about the policy change, and what steps it was taking to address the complaint.

MYC explained its reasons for the policy change:

- MYC does not allow male youth to wear non-institutional issued underwear
- Underwear becomes a status symbol, can be used for bartering and can result in girls being "muscled" (being bullied) for these items
- MYC is liable for missing property claims
- The same practice applies at the Women's Correctional Centre

We reviewed MYC's practice on institutional underwear supply and distribution in the context of the relevant legislative and policy benchmarks.

Subsection 2(1) of the Correctional Service Act (CSA) sets out its purpose and general principles:

Purpose

2(1) The purpose of this Act is to contribute to a safe, just and peaceful society by providing for:

- (a) the management of custody sentences and supervision orders imposed on persons, with the appropriate degree of custody, supervision and control essential for public safety;
- (b) the safe, secure and humane accommodation of persons who are in lawful custody;

...

General principles

2(2) The purpose of this Act is to be achieved, and this Act and the regulations are to be construed and administered, in a manner consistent with the following principles:

- (d) The degree of supervision and control imposed on offenders shall be as restrictive as is reasonably necessary and lawfully possible for the protection of society.
- (e) Discipline and restrictions imposed on offenders otherwise than by a court shall be applied by a fair process and with lawful authority.
- (f) The policies, programs and practices used or provided in the administration of this Act should take into account the age, sex, cultural differences and abilities of offenders whenever appropriate.
- (g) Offenders, and the guardians of offenders who are young persons, should be involved in decisions made in the administration of this Act that affect the offenders whenever appropriate.

Section 3(1) of the CSA stipulates that "Unless the context otherwise requires, this Act applies equally to offenders who are adults and to offenders who are young persons."

We asked MYC about its legal requirement to apply restrictions "by a fair process and with lawful authority," as outlined in the general principles of the CSA.

MYC indicated its actions are in line with the section 34 and clause 43(2) (b) of the CSA:

Institutional clothing

34 The facility head of a custodial facility may require an inmate of the facility to wear institutional clothing and may limit the use by an inmate of the inmate's own clothing.

....

Seizure

43(2) A property or substance may be seized and dealt with or disposed of in accordance with the regulations

...

(b) where there are reasonable grounds to believe that the property or substance may, or may be used to, adversely affect the health or safety of a person or the security or maintenance of order within a custodial facility;

MYC advised us that the previous policy, reflected in the original standing order, had been in place since 2005. It confirmed that there had been no reported incidents of muscling and bartering, or other security concerns, around underwear. However, MYC told us that the change in policy was a preventive measure in anticipation that underwear being brought in to the facility could result in unwanted behaviours.

We note that it is standard practice in other correctional facilities with female residents to supply a complete institutional uniform, including underwear, for consistency and to alleviate issues that could affect the safety and security of the institution, such as the concerns identified by MYC.

We acknowledge the legislated authority for the facility head to put in place restrictions on clothing. MYC's reliance on sections 34 and clause 43(2) (b) of the CSA permitting these restrictions on clothing is reasonable.

However, the main focus of the complainant's concern was not about being given institutional clothing, but was rather health and hygiene worries from getting randomly distributed underwear after laundering.

We note that MYC providing institutional underwear is consistent with other correctional facilities. However, randomly distributing the underwear after it has been laundered did not align with procedures at other correctional facilities that house female offenders, such as the Women's Correctional Centre (WCC) and the Brandon Correctional Centre (BCC).

We learned that labelled mesh bags and institutional-sized washing machines are generally used in correctional facilities for laundering of uniforms and other items. Some living units in these facilities have regular-sized washing machines for inmate laundry and smaller loads of laundry in mesh bags can lessen concerns of wear and tear on these washing machines.

We were advised that other methods to randomly distributing underwear are in place at these other Manitoba Corrections facilities. Such methods include, as noted, the use of mesh bags for washing and distribution of an individual's institutional clothing, and opportunities for residents to hand wash their own underwear.

During this investigation, MYC acknowledged it would review these alternative methods in the context of the CSA, relating to preserving safe, secure and healthy conditions of confinement.

Given the legislative and policy requirements under which it operates, and the laundry practices in other Manitoba Corrections facilities, MYC advised our office it had considered alternatives to address the complaint. As of April 2018, MYC confirmed that it had taken the following steps:

- MYC now supplies three pairs of black coloured undergarments to female youth residents at the facility.
- The female resident's underwear is now labelled with the resident's name, using a marker.
- The laundered underwear in the female units is being returned to the individual for their exclusive use while in custody at MYC.
- A group discussion led by MYC staff was held with the affected residents to explain these developments.

In May 2018 MYC advised our office that if a youth requests to do so, they will also be permitted to hand wash their undergarments.

Regarding possible privacy concerns, we also asked whether MYC would consider other ways of labelling underwear, such as the use of temporary fabric tape, so that the name of the resident is not permanently marked. MYC said that it will continue to use a marker as it was found to be a quick, effective and cost-efficient method, and it identifies the underwear to be solely used for that youth. MYC further advised that for privacy, once the youth is released, the name on the underwear is covered up with the marker, and depending on the condition of the underwear, it would either be re-used, or discarded.

The concerns about institutional underwear distribution, as noted on page two of this report, have been addressed, since residents will now have underwear for their own use during their stay at MYC, and which will be returned to them directly after laundering. We therefore find that MYC's current approach to this issue is not unreasonable.

In speaking to the complainant, she confirmed with our office her understanding of the new processes on institutional underwear, and said that she, and others in her living unit, were satisfied with the recent changes made by MYC.

As we noted, other correctional facilities with female residents use mesh bags for laundry and/or allow those residents to hand wash and dry underwear in their cells, such as at Brandon Correctional Centre and Women's Correctional Centre.

MYC had indicated that using mesh bags is not practical in its facility because its laundry machines are regular-sized, top loading machines, and the use of mesh bags would likely result in frequent and costly equipment breakdown.

We were advised that WCC is using mesh laundry bags with regular-sized washing machines for some of its units comparable in size to the female youth units at MYC. While the need for machine repairs was acknowledged at WCC, it was also noted that these machines have performed satisfactorily since installation in 2012, especially with the amount of laundry being done.

While we accept that MYC's operational changes have resolved the concerns over random distribution of underwear to its female residents, we make the following suggestion based on what is done in other correctional facilities. Using mesh laundry bags can be an efficient way to ensure residents' institutional clothing is returned to them after laundering, eliminates the need to have to label resident underwear with a marker and block the names out upon release of the individual, and is consistent with other facilities practices.

We suggest that MYC reconsider using mesh laundry bags in the facility so that all residents' personal clothing could be kept together and separated from others.

2. Was the way in which MYC changed the policy about underwear for female residents consistent with the legislation and principles of administrative fairness?

This complaint was not just about how underwear is supplied and laundered at MYC, but was also about how the policy change occurred.

As noted, the CSA sets out general principles where offenders should be involved in decisions, when appropriate, that affect them. The Youth Criminal Justice Act (YCJA) describes how youth (ages 12-17) involved with the law are to be dealt with and acknowledges young people have to be treated differently than adults. This approach appears to be reflected in the general principles of the CSA, especially s. 2(2)(f). The language and intent of the MYC standing orders we reviewed during this investigation accordingly recognize these general principles and the importance of giving its youth residents opportunities for empowered engagement.

MYC Standing Order 02-0607 titled "Youth's Rights and Responsibilities," for example, outlines the rights and responsibilities of MYC residents, while recognizing that all youth have the basic right to be treated fairly, the right to grieve a violation of their rights or improper treatment, and the right to an opportunity daily for proper hygiene. This standing order states youth have the right to be informed of such matters, and of the rules they are expected to follow. It goes on to say that at MYC, each young person is expected to recognize and respect that staff and youth alike each have an obligation to contribute, in their own way, to a safe secure and healthy environment

MYC acknowledged that the change to the underwear policy was not discussed with the female residents or their guardians prior to its introduction throughout 2017 and the formalization of the new policy on November 1, 2017.

MYC took steps to end a long-standing practice of letting residents wear non-institutional underwear, without telling residents or their guardians of the planned change or asking for residents' input into how to address any related health and hygiene concerns. MYC's approach on this matter did not seem consistent with the resident rights and problem solving language set out in its standing orders. It also appears that principles of administrative fairness were not fully considered when MYC made the decision to change its policy and practice on this issue. Those fairness principles guide decision makers to ensure that those affected by decisions have notice

of the decision being made and what issues are being considered, along with considering opportunities for consultation and discussion.

We find that based on the evidence, the way MYC introduced the new policy on underwear was inconsistent with administrative fairness practises, and therefore the complaint was partly supported.

MYC indicated that in hindsight, it could have communicated information about the new underwear policy to residents and guardians in advance, and stated that it will “endeavour to provide information in advance to both youth and guardians prior to making changes when appropriate.”

We acknowledge MYC’s commitment to enhancing communication and we accept that the facility has the ability under governing legislation to make determinations as to when consultation is appropriate.

We suggest that MYC considers establishing procedures in its standing orders to assist with information sharing, and to encourage a consultative approach whenever possible and appropriate on process and policy changes (such as clothing restrictions directly affecting residents) with input from residents and their guardians.

CONCLUSION

We shared with MYC a confidential advanced copy of this report on June 28, 2018, for its opportunity to identify any factual inaccuracies in our report, and to comment on the two suggestions made. MYC responded on July 13, 2018 and indicated that after reviewing our report, it has no concerns with what is included.

This report concludes our involvement regarding this complaint.

MANITOBA OMBUDSMAN