

Patrick.Rouble

From: Hank.Moorlag
Sent: Thursday, September 08, 2005 3:34 PM
To: Patrick.Rouble
Subject: Workers' Compensation Act Review and ATIPP

Greetings Patrick,

I browsed through the Workers' Compensation Act Review Discussion Paper 2003-04 and came upon item #54 on ATIPP.

The statement is made that the ATIPP Act no longer applies to the YWCHSB. This statement is based, I believe, on a letter I sent to the Board as Information and Privacy Commissioner following the decision by the Yukon Court of Appeal following a court challenge by the Yukon Medical Council. The definition of a 'public body' under the ATIPP Act was at issue. The Act only includes boards, commissions, etc. as a public body if they are established as an 'agent of the Government of the Yukon'. The Court of Appeal ruled that the primary function of the Yukon Medical Council (to decide who can practice medicine in the Yukon, and decide matters related to complaints of professional misconduct) is sufficiently at arms length from government direction and control to exclude the YMC as an agent of the government.

Since I had several matters before me as Information & Privacy Commissioner involving the YWCHSB, I examined the Board's enabling legislation and applied the Court of Appeal's reasoning to the Board's function. I concluded that it is equally independent in its function as the YMC, and therefore is not an agent of the Government of Yukon, and therefore not a public body under the Act.

This left the YWCHSB without a legislative base for access to information or privacy protection. In my discussions with the Board President and Chair at the time, I suggested that a policy embracing the same principles as the ATIPP Act could be adopted. The current policy was put in place. However, it was understood that such a policy should only be applied on an interim basis, pending either an amendment to the ATIPP Act clarifying the definition of a 'public body', or a review of the Workers' Compensation Act and a recommendation to amend the WCA to make it a public body under the ATIPP Act notwithstanding the YWCHSB is not an agent of the Government of Yukon.

Comments in the Discussion Paper seem to suggest that the current policy should be made permanent on the basis that being under ATIPP legislation is contrary to the Meridith Principle on the independence of the Board. In my view, being a 'public body' under the ATIPP Act in no way interferes with the independent role and function of the YWCHSB. It simply sets rules for fair information practices, and provides an independent process for the review of decisions made under the ATIPP Act. I question the current policy's ability to provide the same level of independent review.

To my knowledge, there is no Workers' Compensation Board in Canada that operates outside the provincial information and privacy legislation. The reference in the Discussion Paper to Manitoba's provision related to conflicts between the Workers' Compensation Act and the Access to Information and Protection of Privacy Act, does not take Manitoba's Board out of the jurisdiction of the Act.

I would be pleased to discuss this with the review committee further.

Regards,

Hank Moorlag
Information & Privacy Commissioner