

9 November, 1982

YOUTH SERVICES SECTION

PROPOSAL FOR
DEPARTMENTAL ACTION IN MATTERS OF ALLEGED
ASSAULT : on staff by clients
 by staff on clients
 by client on client

THE CONTEXT

1. Greater community awareness of human rights
2. Increased industrial activity and V.P.S.A. involvement in a wider range of staff and Departmental activity.
3. Political climate of avoiding confrontation and working through negotiation and compromise.
4. Greater scrutiny of Departmental activity, policy and procedures.
5. F.O.I. Code and impending Bill.
6. Increasing perplexity about how to maintain appropriate standards of care, and how to terminate the services of demonstrably unsuitable staff.

The above context (which is not exhaustive and provided only in summary) has resulted in many recent situations in which proven unacceptable staff behaviour cannot be suitably sanctioned. Departmental decisions have not been carried out because the costs have outweighed the gains, in the short term. In the long term it is conceivable that all Departmental services will suffer as a direct consequence of the continuing employment of a growing group of unsuitable staff. Improved staff selection procedures have not stemmed the problem. Too often, local managers make human errors.

A further consequence of the existing system is that clients are treated unequally both in relation to each other and in comparison to the lack of consequences for staff who contravene laws and regulations.

Many examples of this are available:

1. Youth Officers at Turana recently argued for automatic transfer to prison for trainees who have been guilty of assaulting Officers. Staff do not apply the same arguments to themselves.
2. Youth Officers at Windsor Youth Welfare Service invariably charge clients when assaulted by them. Recent events have shown that Police are not called when clients are assaulted by staff.
3. Incidents of assaults on clients and staff in the past at some Y.W.S.'s and Y.T.C.'s have been handled within the Centre.

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The present system for the Department proceeding with investigation of alleged breaches of the law is demonstrably inadequate for achieving equitable and desirable results.

PROPOSED ALTERNATIVE

** In all cases of alleged assault by or on staff or clients within Departmental facilities, the party allegedly assaulted should be immediately provided with legal assistance.

Benefits

1. The decision about what action to take is removed from the ambit of the Superintendent's responsibilities. The present system allows for too much idiosyncratic decision-making in areas which have consequences for the integrity of the whole Department. Superintendents are not qualified to determine what constitutes an assault in law, and not qualified to provide impartial legal advice. This should be made available irrespective of programming and system considerations. The standards which apply are diverse across the various services. This is inequitable for staff and clients, and standards should be consistent from the outset of an incident.
2. The lawyer provides advice which is independent of the Department. This introduces a new party to the negotiations regarding appropriate action to be taken, and provides a space between the present players of Department and client, or Department and V.P.S.A. In this alternative, the rights of the aggrieved regardless of status, are protected.
3. Where police are to be involved, this will be at the request of the lawyer and his/her client. Being a trained and recognised member of the adversary legal system, the police are less likely to delay taking action, and less likely to consider alleged assaults as in-house Departmental business. The lawyer would assist his/her client in making the necessary complaints.
4. The inclusion of a lawyer in the process ensures the reinforcement of acceptable community standards in dealing with alleged assaults. Departmental Officers should not be judge and jury in deciding what can be managed within programming and what deserves the attention of other community systems. Legal assistance will provide safeguards in the process.
5. Where police are not to be involved, the decision will have been reached through consultation between the lawyer and the aggrieved party. Such independent consultation could circumvent the rise of any animosity felt by the party to the Department and/or to the perpetrator of the action.

DEPARTMENTAL INVESTIGATION

The foregoing proposal addresses only the question of police action or not, and who should provide advice in these instances. There are some wider gains, however, as outlined above.

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The largely separate considerations of Departmental investigation of incidents will still proceed as now. However, some of the groundwork will have been done for the legal/police process, and will not require repetition. Complications will still arise as they do now, in attempting to reinforce and ensure appropriate standards of staff behaviour, and in disciplining for inappropriate behaviour. However, the impartiality of the legal resource may assist in this regard. For instance, if a client proceeds to press charges against a staff member, and the charges are proven, the client and the lawyer together may retain a vested interest in following the situation through to a satisfactory conclusion. This could mean that pressure could be exerted to follow through with appropriate staff discipline. The players would no longer necessarily be only the Department and the V.P.S.A.

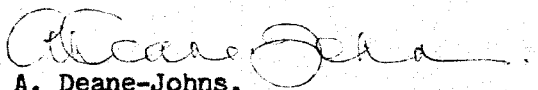
PROVISION OF LEGAL ASSISTANCE

Legal assistance to Departmental clients can be provided through the Legal Aid Commission. The incidence of alleged assault is not so prevalent as to warrant full-time legal support. One possibility may be for the Legal Aid Commission to agree to nominate one lawyer for each Departmental facility. Costs would only be incurred when the lawyer was actually called upon.

Provision of legal assistance for aggrieved staff in alleged assault incidents is more problematical. Ideally the same lawyer should be available. Perhaps the Department of Community Welfare Services could provide a retainer to the Legal Aid Commission to cover projected costs. Alternatively, V.P.S.A. lawyers should be provided to association members. This is not so desirable because of the lawyer's affiliations, although the necessary legal advice would still be available.

Any or all of the foregoing can be elaborated more fully if required.

The sketchy nature of the material is provided only to determine whether the proposal has merit. If so, detail can be more fully addressed.


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