

A Duty to Care

The Ombudsman was asked to investigate a complaint that the City had acted unfairly in cutting down a tree on the property of a senior with dementia.

Municipal Standards and Licensing (MLS) had inspected a tree on the senior's property at a neighbour's request, issued an order requiring the removal of the tree, and removed the tree, charging the owner for the work.

As the complaint was made by the son of the property owner and raised broader issues about the manner in which the City treats people with dementia or diminished capacity, the Ombudsman decided to investigate the complaint on her own initiative.

The investigation revealed that MLS failed at every turn to deliver the level of service residents are entitled to expect. The owner was treated unfairly in substance and procedure. There was no attempt to adapt to the circumstance of a resident with dementia and who was therefore unable to understand the consequences of the City's communications, let alone mount a defence against the inaccuracies and failures in the process. MLS failed in its handling of this file in ways that would have had adverse consequences for any resident. For someone so vulnerable, the failure was particularly egregious. MLS was unreasonable, improperly discriminatory, unjust and mistaken in both law and fact.

In recognition of the increasing prevalence of dementia in our rapidly aging population, the Ombudsman recommended that the City establish fair procedures and policies for individuals with dementia. The Ombudsman also recommended restitution to the resident for all levies imposed and replacement of the lost tree.

Equitable Fairness

Dementia is increasingly prevalent in Toronto and will accelerate as the population ages. Many seniors with dementia live alone.

Equitable fairness is about ensuring that people are treated fairly, not necessarily identically. It requires taking into account the needs of a vulnerable resident, in this case someone who has dementia. Treating people differently to provide access to the same result is critical.

There is a heightened need for specific policies and procedures when dealing with individuals with dementia, to ensure that residents understand notices and orders made against them and have a meaningful opportunity to respond.

The Substance

The order to remove the tree alleged that the tree was diseased, decayed or damaged but was difficult to understand and vaguely worded. The owner was not capable of understanding such a notice, a fact of which the officer was aware.

Over a period of 9 months, the owner's son sought information but did not receive a satisfactory explanation as to why the tree needed to be cut down. He hired two arborists who both said the tree was healthy and could be stabilized with inexpensive cables. The City acknowledged that the tree was healthy with a structural defect and it could be cabled. The tree was not described as unhealthy, diseased or damaged.

Nevertheless MLS required the son to obtain an arborist report certifying the tree to be safe, something that was not required by law and which MLS knew could not be done. Further, the City relied on an erroneous arborist's opinion (naming a different species of tree) to justify its removal, which was provided by the neighbour who had requested the inspection in the first place.

In the end, ignoring the son's requests at every step, the City cut down the tree under a by law that was inapplicable, when it posed no immediate danger and when there was a cheaper alternative - and then charged the owner thousands of dollars for it.

The Process

At no time did the MLS inspector make any effort to ensure that the owner was able to understand the enforcement action it was taking. He refused to contact the son when offered his contact information. The inspector was cavalier and dismissive throughout.

The Ombudsman decided that the owner's caregivers and son were more credible. She rejected the inspector's claims that he did not know about the owner's dementia, that he did not talk to the son, and did not say to the son that he had no supervisor.

The son complained about the inspector's conduct to his supervisor but was still unable to obtain satisfactory explanations; neither was the MLS complaint procedure followed.

Ombudsman Recommendations

The Ombudsman made two sets of recommendations, to address both the individual case and the broader systemic issues.

At a system-wide level, the Ombudsman's recommendations are intended to put in place policies and processes that will prevent situations such as this from occurring in the future. They are designed to improve communications and public service generally

and specifically they are intended to meet the needs of residents with dementia and diminished capacity.

MLS is to establish new policies and procedures to meet the needs of residents with dementia or diminished capacity by March 2011. The procedures are to include provision of full and proper notice, contact with a person responsible for the resident's affairs, and an escalation protocol.

MLS is to ensure that its notices and orders contain sufficient information, develop a service standard, follow and train managers on its Complaint Compliance Protocol, and performance manage employees and managers.

MLS is to apologize to the resident, reverse all levies charged for the removal of the tree and replace the tree at its own expense.

The City did not dispute the Ombudsman's findings, accepted her recommendations and acknowledged the need to address the range of systemic issues identified by the Ombudsman immediately.

Toronto's Ombudsman is an impartial and independent officer of City Council, providing an appeal of last resort for people who feel they have been adversely affected by a decision, act or omission of City Administration. The Ombudsman also undertakes investigations into systemic problems that cause equitable, substantial and procedural unfairness in City administration.