

# REPORT CARD

## Coroner's Report on the implementation of the Rogers Inquest recommendations

### Introduction

In 2001, Kimberly Rogers died while under house arrest for committing social assistance fraud. Her 'crime' was receiving both social assistance (Ontario Works) and a student loan.

In response to the tragic death of Ms. Rogers, a Coroner's inquest was called. The mission statement of the Coroner's Office is to "speak for the dead to protect the living." The role of the office is to serve the public interest through high quality death investigations and inquests to ensure that no death will be overlooked, concealed or ignored. The findings are used to generate recommendations to help improve public safety and prevent future deaths in similar circumstances.

A year after the Coroner's jury that examined the death of Kimberly Rogers made its recommendations, the Coroner of Ontario released his report, in March 2004, on the status of the implementation of the jury's recommendations. The Coroner receives reports from the various bodies responsible for the areas related to the recommendations and then rates the status of implementation. The codes are: i) implemented, ii) will be implemented, iii) alternate implemented, iv) alternate will be implemented, v) under consideration, vi) unresolved issues, vii) rejected, viii) rejected due to flaws, ix) rejected due to lack of resources, x) not applicable to assigned agency, xi) no response and xii) unable to evaluate.

Below you will find all of the recommendations made by the jury, their rationale, the Coroner's evaluation of their implementation status and ISAC's evaluation of their implementation status.

ISAC is concerned that few of the recommendations have been taken seriously, especially by the McGuinty government. As a result, public safety has not been improved, despite the obvious lessons from Kimberly Rogers' death

### Recommendation #1

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** The zero tolerance lifetime ineligibility for social assistance as a result of the commission of welfare fraud, pursuant to *Ontario Works Act, 1997, O. Reg. 134/98 Section 36*, should be eliminated. The temporary ineligibility in the instance of offences that have occurred prior to April 1, 2000, should also be eliminated.

**Rationale:** Evidence indicates that this would have a devastating and detrimental effect on our society. To prevent anyone of having to go without food and/or shelter, to be

deemed homeless and therefore and most importantly, to prevent the death of impoverished individuals.

**Coroner code:** *Implemented.* The ban was repealed on December 24, 2003.

**ISAC code:** *Implemented.*

### **Recommendation #2**

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** A provision should be added to the *Ontario Works Act*, permitting the Local Ontario Works Administrator to exercise discretion in the use of any suspension of Ontario Works benefits, in instances that could be life threatening to the client and/or dependants.

**Rationale:** Evidence indicates that suspension of benefits is detrimental to the client and the community.

**Coroner code:** *Implemented.* The Ministry of Community and Social Services (formerly the Ministry of Community, Family and Children's Services) reports it has repealed the lifetime and temporary bans and that OW policy allows discretion to be used in determining if a suspension for non-compliance is appropriate.

**ISAC code:** *Rejected.* The lifetime and temporary bans from social assistance for those convicted of fraud have been removed. However, three and six month bans for non-compliance with "participation agreements" remain. While current policy provides OW administrators with discretion in determining if a suspension for non-compliance with a "participation agreement" is justified, discretion is rarely used and there is often no investigation as to what prevented the recipient from complying with their "participation agreement". As a result, people's benefits are often unjustly suspended leaving them without income and in significant danger of not being able to meet their needs.

### **Recommendation #3**

**To:** The Government of Ontario - The Minister of Corrections, Probation and Parole

**Recommendation:** When someone is serving a custodial sentence of house arrest, the government should ensure that adequate housing, food and/or medication is provided to the person.

**Rationale:** An individual placed under house arrest, who is faced with a suspension of Ontario Works benefits, and has no other financial resources, would find it difficult to survive, and should not be dependent on Charitable Organizations.

**Coroner code:** *Implemented.* In its response to the Coroner, the Ministry of Community Safety and Correctional Services (formerly the Ministry of Corrections, Probation and Parole) stated that it does not provide housing, food and/or medication to an offender who is serving a conditional sentence with house arrest condition. However, the Ministry also reported that it is required to monitor the offender to ensure they have adequate housing, food and/or medication.

**ISAC code:** *Rejected.* The Ministry of Community Safety and Correctional Services and the Coroner fail to understand the jury's concern that custodial sentences must be safe and access to basic necessities must be ensured. The basic needs of persons who are incarcerated are provided by the Ministry. Similarly, the basic needs of persons serving conditional sentences must be the responsibility of the Ministry where persons do not

have adequate resources to serve the sentence safely. Poverty must not be a barrier to receiving and serving a conditional sentence.

#### **Recommendation #4**

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** The Ministry of Community, Family and Children Services and the Ontario Works Program should assess the adequacy of all social assistance rates. Allowances for housing and basic needs, should be based on actual costs within a particular community or region. In developing the allowance, data about the nutritional food basket prepared annually by local health units, and the average rent data prepared by the Canadian Mortgage and Housing Corporation should be considered.

**Rationale:** To ensure that social assistance rates are adequate and adjusted annually if necessary.

**Coroner code:** *Under consideration.* The Ministry of Community and Social Services (formerly the Ministry of Community, Family and Children's Services) reported to the Coroner, "In the context of the current fiscal situation, the ministry is looking at options to address social assistance rates. The ministry is committed to making positive changes to the social assistance system and to treating social assistance recipients with dignity and fairness. The government is committed to helping those who need it most."

**ISAC code:** *Rejected.* While the Coroner reports that this recommendation is "under consideration", it has clearly been rejected by the Liberal government. The government has increased rates by 3%. Even this inadequate increase is delayed due to problems associated with the computer system designed and installed by Accenture.

For a single mother with one child, a 3% increase means \$28.71 more a month – enough for a bag of diapers and a couple of bags of milk. The Rogers jury, however, was recommending meaningful raises that would ensure mothers no longer have to go days without food so that their kids can remain housed and fed.

The Rogers jury is the second Coroner's jury to recommend a review of social assistance rates to ensure they reflect the real cost of living; the Hadley jury made the same recommendation.

#### **Recommendation #5**

**To:** The Government of Ontario - The Minister of Health; The College of Physicians and Surgeons

**Recommendation:** Physicians should be educated on the potential risks of tri-cyclic anti-depressants in the treatment of depression, and should be encouraged to use the safer class of anti-depressants, such as Selective Serotonin Reuptake Inhibitors (SSRI) as a first line drug therapy. Wherever appropriate, physicians should encourage patients to access supportive counselling services in the community.

**Rationale:** To encourage the use of extreme caution in the prescribing of medications. By encouraging the prescribing of a less dangerous or lethal drug.

**Coroner code:** *Implemented and alternate implemented.* The Ministry of Health, in reporting on the status of this recommendation, states that the Ontario Guidelines for the Management of Anxiety Disorder in Primary Care was distributed in December

2000. The College of Physicians and Surgeon plans to publish an article on the issue in its publication *Members' Dialogue*.

**ISAC code:** *Rejected*. The Guidelines referred to by the Ministry of Health were distributed before Kimberly Rogers died. Kimberly Rogers's death clearly demonstrates that the December 2000 distribution of the Guidelines was insufficient. It is unclear how the Coroner has concluded this recommendation has been implemented, when it has so obviously not been.

### **Recommendation #6**

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** Ontario Works should continue its efforts to detect ineligibility or fraud at the earliest possible time in order that corrective measures may be taken short of prosecution or criminalization.

**Rationale:** To eliminate and/or reduce fraud convictions.

**Coroner code:** *Implemented*. In its report to the Coroner, the Ministry of Community and Social Services (formerly the Ministry of Community, Family and Children's Services) reiterated its efforts to crack down on fraud. The Ministry highlighted the Consolidated Verification Process and the Welfare Fraud Hotline, among other measures.

**ISAC code:** *Rejected*. While the government continues to put a significant amount of resources into so-called fraud control, the majority of these resources are used in ways that are fiscally inefficient, invasive and degrading to recipients. Fraud convictions remain less than 0.1% of the social assistance caseload. Further, the Ministry has failed to establish any corrective measures, as recommended by the jury. Such measures might include working with the recipient to address the root causes of the overpayment (which is generally, at least initially, dealt with as potential fraud). Finally, the Ministry has done nothing to address the terrible economic pressures placed on recipients by restrictive income rules and horribly inadequate benefit levels.

### **Recommendation #7**

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** A committee should be established by the local delivery agents for Ontario Works under the auspices of the Ontario Municipal Social Services Association composed of various stakeholders including representatives of the Ministry of Community, Family and Children's Services (now the Ministry of Community and Social Services), the Ontario Social Safety Network and the Steering Committee on Social Assistance. This committee's mandate would be to develop a model to be used throughout the province for the assessment of whether cases involving allegations of welfare fraud should be referred for prosecution. Such a model could be based on an enhanced version of the Sudbury model and would include an evaluation of the life circumstance of the recipient and the consequences of a conviction on both the recipient and/or dependants.

**Rationale:** There should be a full appreciation of the person's life circumstances and the impact of the consequences of a fraud conviction. During this inquest, it was noted,

that the various Organizations, including Charitable Organizations, assisted the deceased prior to her death, therefore they should have an active voice in this Committee.

**Coroner code:** *Alternate implemented.* The Ministry of Community and Social Services (formerly the Ministry of Community, Family and Children's Services) reported to the Coroner that *Fraud Referral Considerations: A Resource Document*, prepared by the Ontario Municipal Social Services Association, was distributed to municipal social assistance delivery agents for their consideration. The Ministry also reported that "cases of suspected fraud are thoroughly reviewed before any referral to police is made."

**ISAC code:** *Rejected.* A report entitled, *Fraud Referral Considerations: A Resource Document*, was released in November 2003. The committee that produced the report included the Ontario Municipal Social Services Association, the Steering Committee on Social Assistance and the Income Security Advocacy Centre. Representatives from the Ministry of Community and Social Services were invited to join the Committee, but declined.

OMSSA requested that the Ministry endorse and adopt the Resource Document for both Ontario Works and the Ontario Disability Support Programme Benefits. However, the Ministry has declined to do so. In fact, the Ministry announced a policy directive change in 2004 that prevents administrators from exercising discretion in determining whether suspected cases of fraud are referred to the police. OW Policy Directive 45.0 and ODSP Policy Directive 12.1 state that suspected cases of fraud **must** be referred to the police. These policy directives are inconsistent with the intent of the jury's recommendation and recommendations made in OMSSA's *Fraud Referral Considerations: A Resource Document*.

### **Recommendation #8**

**To:** The Government of Ontario - The Minister of Community, Family and Children's Services

**Recommendation:** Ontario Works benefits for drug therapy for the treatment of medical conditions that threaten life or cause serious symptoms should not be discontinued during any Ontario Works suspension.

**Rationale:** Evidence showed that discontinuation of drug therapy would be life threatening.

**Coroner code:** *Under consideration.* The Ministry of Community and Social Services (formerly the Ministry of Community, Family and Children's Services) reported to the Coroner that it would "consider this recommendation further as we examine ways to improve the social assistance system."

**ISAC code:** *Rejected.* The Ministry has taken no steps towards protecting recipients from the danger created by being without both income and drug therapy. Eliminating temporary suspensions altogether would be in the best interest of the health and well-being of recipients.

### **Recommendation #9**

**To:** The Government of Ontario - The Minister of Health; College of Physicians and Surgeons

**Recommendation:** Consideration should be given to the creation of a computer access Internet program such as British Columbia's PharmaNet system. For example, by using a health card that would permit pharmacies to access a patient's drug dispensing records from other pharmacies as well as to alert other pharmacies of a patient's past attempts to utter forged prescriptions. Pharmacists should be required to notify the prescribing physician of any attempts by the patient to alter the prescription.

**Rationale:** Evidence showed that several different pharmacies were used to fill prescriptions. This will give pharmacists a history of a patient's prescriptions.

**Coroner code:** *Unresolved issues.* According to the Ministry of Health, no such database is currently available and its viability is limited by concerns regarding privacy and confidentiality.

**ISAC code:** *Unresolved issues.* The Ministry of Health has substantial regulatory power and should consider taking more responsibility for this important issue.

### **Recommendation #10**

**To:** The Government of Ontario - The Minister of Education; Colleges & Universities

**Recommendation:** The Ontario Student Assistance Program (OSAP) should amend the application form by highlighting the possibility of criminal prosecution, future ineligibility and loss of loan forgiveness as a result of providing false declarations.

**Rationale:** Evidence showed that there was false declarations submitted repeatedly.

**Coroner code:** *Implemented.* The Ministry of Colleges and Universities has amended the application for OSAP to highlight the possibility of criminal prosecution, future ineligibility and loss of loan forgiveness as a result of providing false declarations.

**ISAC code:** *Implemented.* It is ISAC's position however, that students should be able to receive both social assistance and student loans. While there are many structural and systemic forces contributing to poverty and unemployment, education, in some cases, can increase a person's economic security.

### **Recommendation #11**

**To:** The Government of Ontario - The Minister of Health; College of Physicians and Surgeons

**Recommendation:** Physicians should be encouraged to write out prescriptions in both digits and longhand to prevent modification of the quantity by patients, e.g. "40, forty tablets".

**Rationale:** Evidence was introduced indicating possible quantity changes on the physician's prescription by the patient. This will prevent a patient from changing the numerically written number.

**Coroner code:** *Not applicable to the assigned agency and alternate implemented.* The Ministry of Health claims this issue not applicable to them. The College of Physicians and Surgeons of Ontario are raising the issue with their members through an article to be published in an issue of *Members' Dialogue*. The Ontario College of Pharmacists also communicated with its members regarding guidelines to identify forgery. The College of Pharmacists also encouraged its members, through an article in *Pharmacy Connection*, to stay current and be aware of dosage and side effect information.

**ISAC code:** *Unresolved issues.* ISAC reminds the Ministry of Health that it has regulatory powers and should consider using them on this matter.

### **Recommendation #12**

**To:** The Government of Ontario - The Minister of Health

**Recommendation:** Health Canada and the publishers of the Compendium of Pharmaceuticals and Specialities (CPS) should ensure that the information for both brand name drugs and generic drugs reflect the same information. For example, the current descriptive entries for Elavil (brand name) and Amitriptyline (generic name), while the same pharmaceutical/medicine, are noticeably different with respect to dosage for out-patients.

**Rationale:** To provide doctors with accurate information in regards to dosage and side effects.

**Coroner code:** *Not applicable to assigned agency, unresolved issues and unable to evaluate.* While the Jury directed the recommendation to the Ministry of Health, it is more relevant to the Canadian Pharmacists Association and the Ontario College of Pharmacists. According to the Canadian Pharmacists Association, brand name monographs contain information current at the time of market entry and are approved by Health Canada. Dosing information, adverse effects, precautions, etc. usually reflect pre-market knowledge about the use of that drug. Generic monographs are not consistent because they are usually written many years after a drug has been marketed and reflect current evidence and practice guidelines as well as post-market knowledge about the use of that drug. The Ontario College of Pharmacists did not reply to the recommendation.

**ISAC code:** *Unresolved issues.*

### **Recommendation #13**

**To:** The Government of Ontario - The Minister of Corrections, Probation and Parole

**Recommendation:** When a person is subject to a conditional sentence, as part of the prisoner's orientation, Probation and Parole should provide them with a written list of community-based agencies which advocate on behalf of prisoners, together with appropriate consent forms to permit information-sharing.

**Rationale:** To ensure the sharing of important information in regards to support services available in the community.

**Coroner code:** *Implemented.* The Ministry of Community Safety and Correctional (formerly Ministry of Public Safety and Security) Services has issued a memo to Probation and Parole staff ensuring that each office in Ontario has an updated list of community resources.

**ISAC code:** *Unresolved issues.* While it useful for each office to have an updated list of community resources, it does not seem steps have been taken to ensure prisoners receive the lists of relevant resources.

### **Recommendation #14**

**To:** The Government of Ontario - The Minister of Attorney General; The Government of Ontario - The Minister of Correctional Services and Probation

**Recommendation:** Ongoing professional training and development of materials should be provided to all of those involved in the investigation, charging, prosecution, sentencing and supervision in relation to all offences.

**Rationale:** The evidence showed that the Crown and Courts were unaware that upon conviction the accused would be subject to a suspension of Ontario Works benefits.

**Coroner code:** *Implemented.* The Ministry of Community Safety and Correctional Services (formerly Ministry of Public Safety and Security) reported to the Coroner that information on penalties for conviction of social assistance fraud and the applicable legislation were provided to the Ministry's staff training centre to incorporate into the basic training of Probation and Parole Officers, as well information regarding recent legislative changes with respect to social assistance eligibility.

According to the Ministry of the Attorney General, in order to ensure that Crown Attorneys and Assistant Crown Attorneys are aware of Ontario Works suspensions it has issued a memo setting out the specifics of the OW suspension provisions on its Criminal Law Division intranet. The AG is also planning on making a sentencing chart available that tracks sentences in welfare fraud and other fraud cases, going back two decades.

**ISAC code:** *Unresolved issues.* The Rogers jury was very concerned about finding alternative approaches to criminalizing those commit fraud. The steps taken by the Ministries, as outlined above, are unlikely to illuminate the availability of alternative measures such as pre and post charge diversion and mental health courts.