

**Loss of eyesight after delay in receiving eye surgery  
(01HDC13673, 24 June 2003)**

*Public hospital ~ Eye Department ~ Vitreo-retinal specialist ~ Ophthalmology  
~ Retinal detachment ~ Delays in typing referral ~ Resource constraints ~  
ACC and funding issues ~ Rights 4(1), 6(1)(a), 6(1)(b)*

A complaint was received by ACC about the services provided by a vitreo-retinal specialist and a public hospital to a 42-year-old patient who sustained a penetrating eye injury. The complaint was that the vitreo-retinal specialist did not: (1) inform the patient in a timely manner that he required further surgery on his left eye; (2) inform the patient about the need to contact ACC himself about the further surgery; (3) follow up his advice in writing, owing to the delay in the typing of his letter; and (4) advise ACC directly about the need for the patient to receive further surgery on his left eye.

The patient alleged that the vitreo-retinal specialist owed him a duty to take reasonable steps to ensure he received the necessary surgery, and that due to the specialist's negligence he did not receive the surgery needed to save the vision in his left eye.

The Commissioner reasoned that:

- 1 although there was clearly some misunderstanding about the process involved in seeking funding approval from ACC, there was no substance to the allegation that the patient was not informed about the need to contact ACC himself, and it was clear that the patient was informed about the requirement for further surgery;
- 2 a four-week delay in the typing of correspondence in an acute surgical setting is unacceptable, even in a resource-constrained public hospital;
- 3 the primary matter that led to a failure to provide adequate services was the lack of understanding about the required referral process from the public to the private sector for ACC-funded surgery; and
- 4 the Code does not include a right of access to health care services, and the Commissioner has no jurisdiction to consider whether sufficient funding is available to ensure delivery of timely services.

It was held that the vitreo-retinal specialist did not breach Right 6(1)(a) or Right 6(1)(b) because there was no requirement for him to contact ACC directly about the patient's need for further surgery on his left eye; and it was reasonable to have assumed that the letter was in the post and that the patient would receive it.

The hospital breached Right 4(1) as it did not take reasonable steps to ensure that urgent letters were typed and posted.

There is no jurisdiction for the Commissioner to consider whether the actions of ACC in relation to the patient were in breach of the Code, as ACC is not a health care provider when it funds surgery in the private sector.