INTRODUCTION

Changes beginning in 1997 had a major impact on the direction and organization of the Office in 1998. New responsibilities relating to the enactment of privacy and access legislation, the opening of a regional Office in Brandon, the recruitment of an additional eight staff, office renovations, along with a significant increase in complaints added to a workload that continues to be backlogged.

Delays in the investigation and finalization of complaints and the production of annual reports are the most visible signs of the impact the changes have had on this Office. However, there are other activities mandated under legislation that are not up to speed. Unfortunately, limited resources had a negative effect on our ability to meet the increasing demands on the Office.

It is anticipated that the additional resources added to our Office in 1998 will result in a improvement in service delivery and in fulfillment of the obligations placed on our Office by legislation. Nevertheless, we will need to carefully review the issue of resources over the upcoming years. I am fortunate to have a dedicated, hardworking team of staff who have spent many late nights and weekends demonstrating their commitment to meeting the challenges we face.

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Expanded Role
Of The Ombudsman

When the Manitoba Office of the Ombudsman was established in 1970, the Ombudsman was described as an independent, non-partisan Officer of the Legislature who is charged with the responsibility of **thoroughly and impartially** investigating complaints involving departments or agencies of the provincial government, relating to matter of administration. While the basic role and function of the Office remains the same, extensive changes have taken place in terms of broadening the jurisdiction and scope of the Ombudsman. The changes to *The Ombudsman Act* and recent enactment of *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA) have resulted in the *Manitoba Office of the Ombudsman* having broader jurisdiction then any legislated Ombudsman Office in Canada.

While complaint investigation is still our primary function, activities relating to auditing, monitoring, informing the public, commenting on programs affecting the public's right to privacy and access to information and engaging in or commissioning research are now mandated under the Legislation. The following is an overview of the mandate of the Manitoba Office of the Ombudsman under the respective Legislation.

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The Ombudsman Act

The mandate under The Act is to investigate complaints received against departments or agencies of the provincial government, and municipal governments including administrative tribunals, quasi-judicial boards, all Crown corporations such as Manitoba Public Insurance, Manitoba Hydro, Manitoba Lotteries Commission,

Manitoba Liquor Control Commission, Civil Service Commission, Workers Compensation Board, over two hundred municipal corporations and thirteen Regional Health Authorities and hospitals. Essentially, the only public bodies not subject to *The Ombudsman Act* are educational bodies such as universities, colleges and school divisions or districts.

Investigation under *The Ombudsman Act* must relate to matters of administration. Although this may seem limiting, in a dispute between the Ombudsman of British Columbia and the BC Development Corporation together with the First Capital City Development Company Limited, the Supreme Court of Canada in 1984 rendered a unanimous decision in favor of the Ombudsman's interpretation of "*a matter of administration*". The decision written by Mr. Justice Dixon stated: "In my view, '*a matter of administration*' encompasses everything done by a governmental authority in the implementation of government policy. I would exclude only the activities of the Legislature and the courts from the Ombudsman's scrutiny."

Mr. Justice Dixon held that the words administration or administrative "are fully broad enough to encompass all conduct engaged in by a governmental authority in furtherance of government policy." This interpretation of "*a matter of administration*" clearly strengthens and broadens the mandate of the Ombudsman.

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The Freedom of Information and Protection of Privacy Act

This Act was passed by the Legislature on June 27, 1997 and was proclaimed on May 4, 1998. The Act provides a right of access to records in the custody or under the control of public bodies. It provides individuals with a right to access records containing personal information about themselves, which are in the custody or control of public bodies. It also controls the manner in which public bodies collect, use, disclose and retain personal information.

All provincial government departments and agencies, including Crown corporations and the City of Winnipeg, are subject to the Act. It is anticipated that in 1999, the Act will also apply to educational bodies such as universities, colleges, school divisions and schools, health care bodies including Regional Health Authorities and hospitals and all municipalities and local government districts, encompassing literally hundreds of authorities.

The Ombudsman's mandate is to provide an independent review of the decisions made by public bodies under the Act. This involves conducting investigations, auditing and monitoring to secure compliance with the Act. In addition, the Act places responsibilities on the Ombudsman to inform the public about the Act and to comment on the implications of legislative programs or schemes impacting on access to information and protection of privacy.

This new legislation provides the Ombudsman with broad powers to investigate, recommend, report publicly and, in exceptional circumstances, to initiate court action.

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The Personal Health Information Act

Proclaimed in December 1997, this Act speaks to the sensitivity and confidentiality of personal health information and the need to have clear rules for its collection, use, disclosure and destruction. The Act is comprehensive in establishing an individual's right of access to his or her personal health information and the right to request corrections to one's personal health information. The Act places restrictions on health

information's collection, use and disclosure, and places responsibility for its protection and security on those who collect or maintain it. Contravention of the Act could result in fines up to $50,000.

The Ombudsman's responsibility under this Act are similar to those under *The Freedom of Information and Protection of Privacy Act*. The Ombudsman is responsible for investigating, auditing and monitoring to ensure compliance with the Act. As well, the Office is responsible for informing the public about and commenting on the programs or legislative schemes that have implications on access to, or confidentiality of personal health information.

The scope of jurisdiction of the Ombudsman under *The Personal Health Information Act* is exceptionally large. This Act applies to private sector trustees of personal health information, as well as public sector trustees. A trustee is defined under the Act as a health professional, health care facility, public body, or health services agency that collects or maintains personal health information. This includes hospitals, personal care homes, psychiatric facilities, medical clinics, laboratories, the Manitoba Treatment and Research Foundation and community health center and all other facilities in which health care is provided. Also included are health professionals who are persons licensed or registered to provide health care under an Act of Legislature.

The Act applies to all public bodies as defined under *The Freedom of Information and Protection of Privacy Act* (PHIA). This includes all provincial government departments, Crown, Corporations, municipalities, R.H.A.'s, hospitals universities, colleges and schools. The inclusion of a legislated Ombudsman role in private sector offices will provide an opportunity to demonstrate to these offices the value of an independent, impartial and objective review of their administrative actions and decisions. I believe having an independent Ombudsman role involved in complaint resolution under the PHIA will prove to be a positive means of demonstrating commitment to the principals of accountability and openness.

YEAR IN REVIEW

In 1997 formal complaints rose by 27%, bringing the total number of complaints to 905 from 710 the previous year. Telephone enquiries increased slightly to 3,620.

The broadening of the Ombudsman's jurisdiction to municipalities added significantly to the workload. Time was spent in informing municipalities about the role of the Ombudsman and the processes followed by our Office. In addition, our Office needed to gain an understanding of the practices and perspectives of Municipal Governments. The additional 76 complaints and many telephone enquiries relating to Municipal Government had an impact on our services delivery and our ability to address our backlogs.

We carried over 201 files to 1998, an increase of 22 files over what was carried over from the previous year. We completed 704 or 78% of the files opined in 1997. Of these, over 50% were either partially resolved or resolved, or closed by providing information or assistance.

It is important to note that only two formal recommendations were made, although 160 cases were either resolved or partially resolved. This speaks to the informal, non-adversarial approach our Office takes in complaint investigation and dispute resolution, which I would suggest, creates a positive and effective relationship with government departments and agencies.

I believe over the years there has been a growing acceptance of the Ombudsman role as an integral component of democratic governments. The Ombudsman role not only promotes fair and equitable treatment, but it enhances widely accepted principles of accountability, openness and transparency in government.

Our experience in 1997 suggests that Manitoba's public service supports these principles as demonstrated through its cooperation and openness with our Office.

STAFFING AND BUDGET

As of April 1, 1997 our budget was $921,200 broken down as follows:

14.10 staff years -------- $758,300

Other expenditures --.$162,900
(This includes $45,000 for leasing costs)

In late 1997 the Legislative Assembly Management Committee approved an additional 8 positions to accommodate the expansion of jurisdiction under *The Ombudsman Act*, *The Personal Health Information Act* and *The Freedom of Information and Protection of Privacy Act*.

Two positions were provided to assist the Ombudsman in carrying out the duties and responsibilities resulting from the extension of jurisdiction to municipalities which took effect January 1, 1997.

Six positions were designated to assist the Ombudsman in the new duties and responsibilities under *The Personal Health Information Act* which was proclaimed in December 11, 1997 and *The Freedom of Information Act and Privacy Act* which was proclaimed on May 4, 1998. Funds were also allocated to equip the new staff and establish a Regional office in Brandon.

This brought our 1997/98 budget to:

22.10 staff years ------- $1,124,500

Other expenditures ---- $577,700

Our office staff as of December 31, 1997 was the following:

Barry E. Tuckett	Provincial Ombudsman
Donna M. Drever	Deputy Ombudsman
Corinne Crawford	Investigator
Robert W. Gates	Investigator
E. Joy Goertzen	Investigator
Jack Mercredi	Intake Officer/Investigator
Gail P. Perry	Investigator (Freedom of Information)
Kris Ramchandar	Investigator
Cheryl Ritlbauer	Investigator (Child & Adolescent Services)
Aurele Teffaine	Investigator
Laura Foster	Office Manager
Helen Hicks	Administrative Secretary
Jacquie Laberge	Administrative Secretary
Felicia C. Palmer	Administrative Secretary

STATISTICS

Our office received 905 formal complaints and 3,620 concerns and enquiries by telephone in 1997. The following statistics detail against whom the complaints were lodged, from where the complaints originated, the disposition of the complaints and the cases carried forward to 1998.

Complaints and Telephone Enquiries Received by Year

Year	Written	Telephone	Total
1970	333	-	333
1971	396	-	396
1972	487	-	487
1973	441	-	441
1974	641	-	641
1975	651	-	651
1976	596	-	596
1977	606	-	606
1978	543	-	543
1979	531	-	531
1980	510	-	510
1981	526	-	526
1982	551	348	899
1983	728	1,179	1,907
1984	807	1,275	2,082
1985	858	1,826	2,684
1986	674	1,347	2,021
1987	757	3,261	4,018
1988	843	2,262	3,105
1989	829	3,004	3,833
1990	753	2,609	3,362
1991	857	2,614	3,471
1992	786	3,263	4,049
1993	720	3,033	3,753
1994	777	3,581	4,358
1995	718	3,423	4,141
1996	710	3,582	4,292
1997	905	3,620	4,525
Totals	**18,534**	**40,227**	**58,761**

Concerns and enquiries received by telephone in 1997

DEPARTMENTS

Agriculture (16)	
General	12
Manitoba Crop Insurance Corporation	4
Civil Service Commission (5)	
Consumer and Corporate Affairs (102)	
General	7
Consumers' Bureau	24
Manitoba Securities Commission	4
Public Utilities Board	7
Residential Tenancies Branch	53
Superintendent of Insurance	7
Culture, Heritage & Citizenship (3)	
Education and Training (24)	
General	19
Student Financial Assistance	5
Environment (3)	
Executive Council (1)	
Family Services (312)	
General	39
Child & Family Services	97
Income Security	176
Finance (13)	
Government Services (11)	
Health (109)	
General	41
Mental Health	28
Brandon Mental Health	15
Health Sciences Centre	11
Selkirk Mental Health Centre	9
Additions Foundation of Manitoba	3
Manitoba Adolescent Treatment Centre	2
Highways and Transportation (62)	
General	17
Driver & Vehicle Licencing	45
Housing(44)	
General	29
Manitoba Housing Authority	15
Industry, Trade & Tourism (2)	
Manitoba Labour (27)	
General	12
Employment Standards	5
Manitoba Labour Board	10
Ministry of Justice (537)	
General	75
Agassiz Youth Centre	3
Brandon Correctional Institution	83
Headingley Correctional Institution	76
Milner Ridge Correctional Institution	8
Portage Correctional Institution	39
Winnipeg Remand Centre	57

Manitoba Human Rights	9
Manitoba Legal Aid	25
Public Trustee	59
Manitoba Youth Centre	16
Courts	33

Natural Resources (33)
Northern Affairs (2)
Rural Development (6)

BOARDS

Workers Compensation Board (136)

CORPORATIONS

Corporations and Extra Departmental (395)

General	1
Manitoba Telephone System	2
Manitoba Lotteries Corporation	6
Manitoba Hydro	35
Manitoba Public Insurance	351

OTHER

Federal Departments & Agencies (200)

General	93
Customs	3
Unemployment Insurance	42
Health & Welfare Canada	25
Superintendent of Financial Institutions	2
RCMP Public Complaints	10
Revenue Canada	25

Municipalities/Cities/Towns (257)

General	139
City of Winnipeg	118

Private Matters (1,320)

General	1,123
Consumer	115
Doctors	30
Lawyers	26
Schools	16
Hospitals	10

Total **3,620**

Sources of Complaints

Anola	1
Arborg	1
Balmoral	1
Beausejour	7
Belair	1
Belmont	2
Benito	1
Birtle	2
Bismark	1
Bissett	3
Blanchard	1
Bloodvein	1
Boissevain	3
Brandon	66
Broad Valley	1
Camperville	1
Cartwright	1
Churchill	2
Clandeboye	1
Clanwilliam	2
Cormorant	1
Cromer	1
Cross Lake	2
Dallas	1
Dauphin	4
Deleau	1
Douglas	1
Dufresne	4
Dugald	4
East Selkirk	2
East St. Paul	4
Eden	2
Elie	2
Elphinstone	1
Emerson	1
Erickson	1
Eriksdale	1
Fisher Branch	2
Flin Flon	3
Foxwarren	1
Garson	1
Gimli	5
Glenella	2
Grand Rapids	1
Grandview	1
Griswold	1
Hadashville	1
Headingley	27
Holland	1
Ile Des Chenes	3
Inwood	1
Kinosota	2
La Broquerie	1
Lac du Bonnet	1
Landmark	1
Leaf Rapids	1
Libau	4

Little Grand Rapids	1
Long Plains	1
Lorette	3
Lundar	1
MacGregor	2
Manigotagan	1
Margaret	1
Marquette	1
Mather	1
Matheson Island	1
Matlock	1
McCreary	1
Miami	1
Milner Ridge	1
Miniota	1
Minitonas	3
Minnedosa	1
Moosomin	1
Morden	4
Morris	1
Neepawa	2
Notre Dame de Lourdes	1
Oak Bluff	1
Oakbank	1
Otterburne	1
Oxford House	2
Pilot Mound	1
Piney	1
Plum Coulee	2
Portage la Prairie	38
Rapid City	2
Rathwell	1
Rivers	1
Roblin	6
Rorketon	1
Russell	2
San Clara	1
Sandy Hook	1
Seddon□s Corner	1
Selkirk	24
Shilo	1
Shoal Lake	1
Sidney	1
Snow Lake	2
Somerset	1
Souris	1
St. Adolphe	2
St. Andrews	4
St. Claude	1
St. Germain	1
St. Laurent	1
St. Norbert	1
Ste. Agathe	1
Ste. Anne	5
Ste. Rose de Lac	1
Steinbach	3
Stephenfield	1

Stonewall	4
Stony Mountain	3
Swan River	7
The Pas	10
Thompson	4
Tilston	1
Tolstoi	1
Vermette	1
Virden	1
Wanipigow	1
Warren	1
West St. Paul	2
Winkler	1
Winnipeg	496
Winnipegosis	1
Woodridge	2
Subtotal	**874**
Alberta	6
British Columbia	8
California	1
North Dakota	1
Ontario	6
Quebec	4
Saskatchewan	4
Wisconsin	1
Subtotal	**31**
Total	**905**

MANITOBA AGRICULTURE

Formal complaints received - 11
Concerns and enquiries by telephone - 16

Formal complaints involving Manitoba Agriculture increased by 4 from the previous year to a total of 11 in 1997. Complaints raised questions concerning the lease and sale process for Crown land and compensation issues with the Manitoba Crop Insurance Corporation.

The first case summarized here focuses on the sale of Crown land. The second reviews a decision by the Crop Insurance Appeal Tribunal which precipitated reimbursement for a crop insurance claim to the complainant.

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Are You Eligible to Buy Crown Land?

On August 26th, 1996 an individual contacted the Provincial Ombudsman about the potential sale of Crown land, adjacent to his property, to a neighbour.

Our complainant believed that his neighbour, from whom he had rented land which had been leased from the Crown, was not eligible to hold a lease or purchase the land. Agricultural Crown Lands (ACL) confirmed with our office that these concerns had been investigated.

ACL also explained Crown land sale procedure and upheld its conclusion that the applicant was operating within his lease agreement and was eligible to purchase the land.

In reviewing this matter, we noted that potential purchasers of Crown land must be eligible Lessees, according to Policy 101-1, ***Sale of Agricultural Crown Land under Lease,*** Section III - *General Conditions*. This applicant had met age, citizenship, residency and legal business requirements.

However, the applicant seemed to breach Clause 3 of the Forage Lease Regulations which required him to actively manage and work the leased land, along with members of his family. In addition we noted that the land usage clause of the policy required the Lessee to own and pasture only his own livestock on the leased land. These conditions appeared to be breached as the Lessee had sold his cattle in 1991 and had rented his leased land to his neighbour (our complainant).

Notwithstanding these infractions of Legislation and policy, the ACL reaffirmed that they were satisfied that the livestock on the leased land was under the applicant's care and control, and that he had made reasonable efforts to maintain his operation by way of livestock purchases.

The Ombudsman's Office reviewed the ACL's files relating to this parcel of Crown land in December 1996. Unfortunately, by this date the sale of the leased land had been completed with ownership registered in the name of the applicant.

After a thorough review of ACL's files, we met with departmental officials to discuss whether legislation and policies had been applied fairly and equitably in this case.

Following this meeting, we wrote to the Department documenting concerns about interpretations of lessee eligibility clauses as they affect the sale of Crown lands. I suggested to the Department that it appeared that the applicant had not met the conditions of his lease agreement in 1992, 1993 and 1994.

Our investigation showed that the Department had concerns about land usage and had discussed compliance to the policy with the applicant. Nevertheless, the ACL was satisfied that the applicant had met minimum lease standards and therefore in support of his application to purchase Crown land, forwarded it to Manitoba Natural Resources.

Locked Out

As a result, opportunities for interested parties other than this applicant to apply to purchase the land were rejected because of the Department's position that the applicant was in compliance with his lease agreement.

We invited comments from the Department before finalizing our report.

In response to our report, the Department advised that they had no difficulty with the key facts as we presented them. However, they believed that the applicant met a certain minimum standard of eligibility but was not necessarily a leaseholder in good standing.

Sweat Equity

The ACL justified approval of the purchase bid based on the client's long history of proper land use and extensive improvements made to the land. In their judgment, their action was fair and reasonable based on minimum eligibility requirements, to enable the client to purchase and thereby recoup sweat equity invested in the land.

This position did not appear to consider that improvements made by a lessee are recovered through the increase in productivity of the Crown land. As well, improvements paid for by a lessee are recoverable under the conditions for sale noted in Crown Land's policy directive through credits in lease payments.

In December 1997 we wrote to our complainant advising of our findings and conclusions as presented to the Minister of Agriculture.

> "In summary, (our complainant) had, over several years, raised concerns with the Department about the eligibility of (the applicant) to hold forage lease #_____. Several investigations were carried out by the Department which appeared to support that (the applicant) was not meeting his obligations under the lease agreement. Nevertheless, (the applicant) continued to hold the lease and subsequently applied to purchase the Crown land. The sale was approved, with the endorsement by Manitoba Agriculture that the applicant was eligible under Agricultural Crown Land policy.
>
> I understand the sale of agricultural Crown land to a lessee is contingent upon the principle that an applicant is an eligible lessee when the sale is approved. I also understand to be considered an eligible lessee, an applicant must be in compliance with Agricultural Crown Land policy. Based on our investigation of this matter, I am of the opinion that the decision by Manitoba Agriculture to support the sale of the agricultural Crown land to (the applicant) on the basis that the applicant was eligible under Agriculture Crown Land policy was wrong."

In conclusion, I advised our complainant that his concern over the sale of agricultural Crown land adjacent to his property was justified. However, while our investigation identified problems with the Branch adhering to its policy on the sale of Crown land in this case, I unfortunately did not feel there was any recommendation that I could make that would resolve our complainant's grievance.

The Department seemed to depart from normal practice in this case. In my opinion, the ambiguous interpretation of the minimum eligibility standards resulted in an inequity in the allocation and purchase of this parcel of crown

land.

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Fair Process Compromised

Our complainant advised our office that his crops had sustained hail damage in August 1994. A claim was made, his crops were inspected and damages assessed by adjusters for the Manitoba Crop Insurance Corporation (Corporation). Our complainant disagreed with the assessments and appealed to the Manitoba Crop Insurance Appeal Tribunal (Tribunal). The Tribunal supported the Corporation's assessments.
Our complainant raised a number of issues with our office arising from the Tribunal hearing. In his opinion, the Tribunal had failed, or neglected, to fully and fairly consider evidence and information presented at the hearing. He provided specific examples to illustrate his concerns.

Our office met with Tribunal members and a Tribunal adjuster, reviewed adjusters reports and other documentation, and listened to tapes of the hearing. We also reviewed the process used by the Tribunal to arrive at its decision.

We found that at the outset there was confusion as to who would initiate the appeal. This resulted in delayed field inspections by the Tribunal's adjusters. The field was inspected by the regular adjuster and a second adjuster who was being considered as a replacement for the regular adjuster who was retiring. The Chairperson also attended the fields to meet the potential new adjuster. At that time, he viewed some of the crops. The Tribunal's adjusters completed their inspection and assessed damage higher than had been assessed by the Corporation.

The Tribunal hearing was held in October 1994. The Corporation was represented by its lawyer, with adjusters submitting evidence to support their assessments, as well as other staff. Our complainant, represented by his brother, introduced evidence from private insurance company adjusters indicating that the hail storm damage was greater than the Corporation had assessed. He also provided letters from experienced growers which supported his position regarding the severity of losses his crops had sustained.

Only the retiring adjuster was present to give evidence at the hearing. The other adjuster was not present. After the hearing, one Tribunal panel member questioned the Tribunal adjuster about matters relating to this appeal, with neither the Corporation nor our complainant's representative present.

Following the hearing, the Tribunal upheld the Corporation's assessments. We understood that the Tribunal had discounted the assessments of the other adjuster who was present at the hearing because of the delay in completing the inspection. We also learned that the private adjuster reports were rejected by the Tribunal. From discussions with the Chairperson it appeared that the Chairperson had formed an opinion relating to the loss as a result of viewing the crops, but had not made his opinion known during the hearing.

In view of the above, our office felt fair process may have been compromised by the manner in which evidence was accepted, rejected or considered by the Tribunal. Our investigation of the claim and the appeal process supported our complainant's concerns about the process.

As a result, I wrote to the Deputy Minister, Manitoba Agriculture, making him aware of my opinion. It was felt that, while the Tribunal acted in good faith, a proper process had not been followed in this particular case. I recommended that the Department consider the claim with a view to providing further compensation.

Following my report to the Deputy Minister, we were advised that the Department was prepared to reimburse our complainant the sum of $1,341.50, which the Department felt reasonably reflected a fair settlement to our complainant's claim. In addition, the Deputy Minister advised us that the Department had given serious consideration to my comments about process issues. It was decided that information sessions would be provided

on natural justice issues to tribunals in the future.

As this resolved the matter, I reported to our complainant accordingly.

MANITOBA CONSUMER & CORPORATE AFFAIRS

Formal complaints - 28
Concerns and enquiries by telephone - 102

The number of complaints increased by 4 over last year. The majority of complaints (19) involved the Residential Tenancies Branch.

These generally related to decisions by the Branch on landlord/tenant issues, such as security deposit disputes. Following is one such case example.

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Decision Delayed – Payment Made From The Fund

Our office was contacted by complainants about their concern with an unreasonably long delay in the adjudication of a security deposit claim by the Residential Tenancies Branch (RTB).

The tenants had filed their complaint with the Branch in October 1996. When the complainants wrote to us at the end of October 1997, a decision from the RTB had not yet been communicated to the tenants.

We contacted the Residential Tenancies Branch which agreed there had been a long delay in security deposit adjudications. The RTB suggested that a staffing problem during the time frame in which our complainants had made their claim was responsible for the delay. The Branch Director apologized to our complainants for the long delay and advised that steps had been taken to address the problem. We were informed that a decision had been issued on October 31, 1997, and could be appealed by either side until November 19, 1997.

Shortly after the Department's response to our enquiries, we were in contact with one of the complainants, who advised that the adjudicator had decided that she was entitled to the security deposit. Although this was positive progress towards concluding her concern, our complainant advised us that the Branch was unable to locate the landlord to collect the money.

As we felt that the delay in adjudicating the matter could quite possibly have contributed to the difficulty in collection, we contacted the Branch once again. We were advised that there are provisions under *The Residential Tenancies Act* which authorize the Branch Director to pay a tenant from the security deposit compensation fund. This disbursement would be in the amount that remained unsatisfied by an Order. Less than two weeks later, our office was advised that our complainants had received payment of their security deposit award plus interest. The Branch intended to continue collection proceeds against the landlord.

Considering the Department's response to our investigation, we were satisfied that the complainants' concerns were addressed and that appropriate and timely steps were taken to address the issues raised.

MANITOBA EDUCATION & TRAINING

Formal complaints received - 8
Concerns and enquiries by telephone - 24

Our office received 8 formal complaints about Manitoba Education and Training in 1997 on a variety of issues. The following case involved a complainant who was unable to access an interpreter during her hairstyling examination.

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Official Languages Only?

Our complainant expressed concern that the Department would not allow her to have an interpreter to assist in translation during her hairstyling examination. Qualified hairstylists are licenced by the Apprenticeship Branch, Manitoba Education and Training.

We attained the Canadian Council of Directors of Apprenticeship (CCDA) policy on interprovincial examinations. We were advised that it was the practice of all jurisdictions, both provincial and territorial, to use interprovincial examination standards, rather than provincial for certification.

The policy guidelines required that "*for reasons of security and safety, the Interprovincial Red Seal Examinations are to be administered in both official languages only."*

Following discussions with our office, the Department agreed to find a way to accommodate our complainant, who had been tested seven times previously, with an improvement in her score each time. Unfortunately, the Branch was unable to reach our complainant before the next scheduled test to inform her that she would be allowed to have a translator during the examination. Nevertheless, our complainant wrote the test and passed, without the aid of an interpreter.

As the Department demonstrated flexibility in their willingness to accommodate the individual, the complainant expressed full satisfaction that her concern had been addressed.

The Department has since advised that *The Apprenticeship and Trades Qualifications Act* is scheduled for major amendment, and this issue would be the subject of discussion before the Canadian Council of Directors of Apprenticeship. This review will provide an ideal opportunity for policy changes which reflect the diversity of our population in the province of Manitoba and across our country.

MANITOBA FAMILY SERVICES

Formal complaints received - 66
Concerns and enquiries by telephone - 312

Formal complaints involving Family Services decreased by 4, while telephone enquiries increased by 25. The majority of calls and complaints related to income assistance and child and family services issues.

It should be noted that there are many more telephone enquiries than formal complaints. This is not unusual. When people call with concerns, they are given advice and suggestions on pursuing issues internally with the Department prior to our office becoming formally involved. Information is provided on internal and statutory avenues of appeal. Listening to concerns, clarifying and offering suggestions in many cases reduces concerns. As well, these actions assist individuals in successfully pursuing or resolving issues on their own.

Following are two case examples. One involves income assistance and the successful resolution to a complaint brought to our attention. The other case example involves a situation that was not as successfully resolved, with the Department of Family Services not accepting a recommendation made in this particular case.

The Child and Adolescent Services section of the Annual Report also provides examples of case summaries involving Manitoba Family Services.

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Double Jeopardy

Our office was contacted by two Employment & Income Assistance recipients who at one time had been roommates. Although they now lived separately in different areas of the City of Winnipeg, both of our complainants still received benefits from Employment & Income Assistance.

They indicated that, while roommates, they received budgeted funds to pay for their utility bills. However, they had not used these funds for this purpose and the bills remained unpaid. When this situation came to the attention of the Employment & Income Assistance Office, they were assessed an overpayment and were told that in addition, they were responsible for paying these utility bills from their own funds.

Our complainants told our office that they felt this situation was unfair. It seemed as if they had been penalized twice. Firstly, they had to give the original money budgeted for utilities back through a deduction of this money from future benefits. Secondly, they were now required to pay the utility bills themselves. They indicated they did not have the money to pay for these utility bills because it had been deducted already from their social assistance benefits by the Department. Our office could certainly understand our complainants' point of view.

Through discussions with each complainant's Employment & Income Assistance Office, two different solutions were proposed to resolve our complainants' situation.

In one case, our complainant had paid the outstanding bill for the portion of the utility costs, and thus was issued a payment to cover these costs. In the other case, the Employment & Income Assistance Office paid the utility bills directly. Our office felt that both solutions were reasonable.

Our office did not condone our complainants' decision not to pay the utility bills when the Department had

advanced funds for this purpose. However, we felt that our complainants should not have to suffer double jeopardy when it became known that they had not paid their utility bills. We felt the Department's actions after our involvement were reasonable and reflected our complainants' eligibility for future funding to cover utility expenses.

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Licence or Letter of Approval?

In this case, our complainants had operated two adjacent residential care facilities in a small town. Each facility provided accommodation for three adult residents under a Mental Retardation Program. The facilities operated under separate Letters of Approval from the Department of Family Services.

Regional staff suggested operating a single home under one licence as opposed to two separate homes with separate Letters of Approval. Each home was independently equipped and designed to accommodate the clients. But, primary social interaction between residents and meals took place at one of the facilities. For efficiency and convenience, the single licence option was considered.

Open to suggestions

Our complainants advised they had not initiated discussion about combining the homes under a single licence, but when it was presented to them, did not object and were open to suggestions.

The regional staff then contacted the Director of Residential Care licencing and requested that he provide consideration to granting a licence as opposed to two separate Letters of Approval. The Region requested the Director to explore the situation further, but did not intend to initiate the processing of an application for a licence.

After receiving the request from the Region, the Director requested an inspection of the premises to make sure that it met the fire and safety requirements. A number of deficiencies noted by the Fire Commissioner's Office and the Department of Labour needed correction before approval could be considered.

In the following months, a number of discussions were held between our complainants and the Fire Commissioner's Office as well as representatives from Manitoba Family Services. Several options were presented to our complainants in order to satisfy that the premises complied with legislation, regulations and standards governing fire safety and public health protection.

The complainants had demolished a portion of the structure connecting both buildings as it had been identified by the Fire Commissioner's Office as a combustible area. While this appeared to resolve the concerns of the Fire Commissioner's Office, the complainants were very dissatisfied with what had transpired.

Essentially, the complainants felt that the action initiated by the Department to approve the facilities under a licence rather than two Letters of Approval, resulted in unnecessary costs. The complainants felt that they had been treated unfairly and had been subjected to substantial harassment by the Office of Residential Care licencing. They requested compensation for costs incurred for demolishing the structure that had connected the two buildings.

As a result, our office undertook an extensive investigation into the allegations and concerns raised. This entailed a review of what had transpired with both the Department of Family Services and the Department of Labour.

Grievance Suffered

After carefully considering all the facts relevant to this case, I felt that our complainants had suffered a grievance. Involvement of the Fire Commissioner's Office in inspecting the premises did result in the discovery of deficiencies in meeting fire safety standards, and was appropriate.

However, there seemed to be confusion about zoning, licencing and fire safety standards. Our office was also unclear as to who should be the designated authority to make decisions respecting legislation, regulations and standards governing fire safety. The Office of Residential Care licencing and the Office of the Fire Commissioner appeared to disagree on these issues.

We noted that once the Fire Commissioner's Office became involved and identified deficiencies, there was a dilemma as to whether the deficiencies could be ignored. Nevertheless, we felt the complainants were caught in the crossfire between Residential Care licencing and Fire Commissioner's Offices.

Unclear Expectations

We felt the situation was compounded by the issues of delay and unclear expectations for compliance. Had the Department, albeit in good faith, not initiated the licencing process, the homes could have continued to function under two Letters of Approval. Independently, each home had been inspected and approved as meeting fire and safety standards to the satisfaction of the Region. The complainants had relied on the advice and guidance of regional staff for compliance requirements for their premises.

When our investigation was complete, it still wasn't clear to our office that demolition to a portion of the building was necessary. In this regard, I provided the Department with a Statement of Claim submitted by the complainants which represented the cost of removing the structure. While I did not have grounds to recommend compensation for the removal of this structure, I was of the opinion that confusion, delays and misunderstandings had contributed to the deterioration of the situation. With this in mind, I believed the Department should give some consideration to compensating the cost of the demolition of the structure on a without prejudice basis.

In addition, I recommended that:

1. Manitoba Family Services and Manitoba Labour clearly determine who has the authority to conduct inspections of residential care facilities for the purpose of satisfying the licencing authority that the premises comply with legislation, regulations and standards governing fire safety, public health protection and subsequently issuing a Letter of Approval;

2. Manitoba Family Services determine whether other residential care facilities which have been issued a Letter of Approval under Manitoba Regulation 484/88R comply with legislation, regulations and standards governing fire safety and public health protection; and

3. The complainants receive an apology from Manitoba Family Services for any misunderstandings and confusion which may have existed with them, resulting from the differences of opinion and disagreements between Manitoba Family Services and the Fire Commissioner's Office relating to the upgrading of their facility.

The Department of Family Services responded to my recommendations.

With respect to the first two recommendations, we were advised that the Fire Commissioner's Office has authority with respect to fire safety inspections of residential care facilities, and that facilities are reviewed and inspected on an on-going basis to ensure compliance with standards and codes. The Department was to continue to work in conjunction with the appropriate authorities to ensure that residential care facilities comply with public health and fire safety regulations and standards.

To this end, the Director of Residential Care licencing had been working more closely with the Fire

Commissioner's Office in the previous year, to review current standards and practices in fire safety at approved facilities. More stringent annual licencing inspections were planned for other approved facilities. Therefore, I felt confident that my first two recommendations had been addressed.

Regarding the third recommendation, the Department concluded that an apology to our complainants was not necessary as there had been no malicious intent or negligence on the part of staff towards our complainants. The Department was of the opinion that confusion and delays in the licencing process were a direct result of efforts to assist our complainants in complying with fire safety requirements.

My third recommendation had not inferred malicious intent, negligence or action taken in bad faith. The Department had acknowledged that there was some initial confusion about whether facilities required a licence or a Letter of Approval. Indeed, I felt this admission supported the acceptance of my recommendation that an apology be extended.

On the issue of compensation, the Department felt costs incurred for bringing the facility into compliance with fire safety regulations were not eligible for reimbursement. Manitoba Fire and Building Codes stipulate that the owner of a building is responsible for carrying out provisions of the code and for renovation costs incurred in meeting standards. More than one alternative had been suggested to the complainants to achieve compliance with fire safety codes. They chose to remove the passageway connecting the buildings.

I was disappointed that the Department did not take ownership for initiating the licencing process, its subsequent delays and lack of clear direction to the complainants. The Department has chosen to reject my recommendation for an apology or consideration of compensation. I do believe that our complainants suffered a grievance because of the way the situation was handled, and it appeared they were faced with more stringent requirements than similar facilities.

After thoroughly discussing our respective positions with the Department of Family Services, our differences of perspective and opinion remain unresolved. Although I have decided not to pursue the matter further, our complainants have engaged the services of a lawyer with the intention of pursuing the matter through the Courts.

MANITOBA FINANCE

Formal complaints received - 7
Concerns and enquiries by telephone - 13

Complaints involving Manitoba Finance increased from 2 last year to 7 this year. One case example follows.

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A Taxing Issue

Our complainants advised they had purchased a used truck for $9,700. When they registered and insured the vehicle, they were advised that the wholesale book value of the vehicle was $12,375 with sales tax calculated and owing on this larger amount. The additional sales tax expense of $187.25 was not anticipated by the complainants.

Our office contacted the Taxation Division regarding this complaint. We subsequently received clarification that *The Retail Sales Tax Act* required tax to be paid on used motor vehicles calculated on the fair value of the vehicle. Fair value in relation to a used motor vehicle means the greater of its purchase price or of its average wholesale price as determined in the manner authorized by the Minister. The average wholesale price for the truck was determined to be $12,375.

When our complainants were advised of this, we learned that the vehicle had previously been written off by Manitoba Public Insurance. Therefore, they believed the vehicle was not worth as much as the wholesale book value indicated.

We informed the Taxation Division that the vehicle had previously been written off. On confirmation, the Department accepted the amount our complainant had paid for the vehicle as the actual value of the vehicle and issued a reimbursement to our complainants' satisfaction.

MANITOBA GOVERNMENT SERVICES

Formal complaints received - 11
Concerns and enquiries by telephone - 11

Complaints against this Department increased from 2 in 1996 to 11 in 1997.

The following is an example of a case begun in 1996 and resolved in 1997.

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A Tender Issue

In this case, the complainant, self-employed in the upholstery business, had quoted on a Government Services tender requested by the Department of Health, Home Care Equipment and Supplies.

Our complainant believed that his product had met all tender specifications, and that his bid was lower than that of the company which was awarded the contract.

Prior to contacting our office, the complainant had brought his concerns to the attention of the Department. He had apparently been advised that he had not provided a sample as required by the tender. Our complainant's position was that samples were only required if alternative products were to be used. Since he was not using an alternative product, he felt that he was not required to supply a sample.

He had also been informed that other firms that had quoted on the tender had been asked whether they were using an alternative product. Our complainant, however, advised he had not been contacted. Although he had not been requested to, our complainant did supply a sample that met required specifications, after the tender had been awarded.

Because he did not feel that his concerns had been adequately addressed and responded to by the Department, he contacted our office. Our investigation into the tender process found merit in our complainant's concerns.

Departmental officials had acknowledged that the wording on the tender was misleading. The tender did not clearly define what was meant by alternative products. We felt it was reasonable for our complainant to conclude that he did not need to provide a sample since his product met all of the specifications and therefore would not be considered an alternative.

Had the wording on the tender been clear, it is conceivable that our complainant would have supplied a sample prior to the closing date. There was no documentation to support that the complainant's company had been contacted to assess the product and to request samples. There appeared to be considerable confusion as to what had transpired. As well, given that his bid was lower than that of the company awarded the contract, it was reasonable to conclude that he would have been awarded the tender, had he provided samples earlier.

Based on information received, it was my conclusion that our complainant's bid was not fairly considered due to inadvertent miscommunication and a lack of clarity in the posted invitation to tender document. While the Department had taken steps to rectify this on future tenders, I was of the opinion that the Department should reimburse our complainant the sum of $200 for costs he had incurred in satisfying the Department of the quality of his product after the contract had been awarded.

We submitted a report to the Deputy Minister of Manitoba Government Services on our investigation and

findings. I informed him that I was considering a formal recommendation; however, before doing so, I forwarded a report for his consideration. I am pleased to advise that the Deputy Minister concurred with my findings. Our complainant was reimbursed $200 on a without prejudice basis.

MANITOBA HEALTH

Formal complaints received - 64
Concerns and enquiries by telephone - 109

In 1997, our office received 64 complaints concerning Manitoba Health. As has been our experience over the years, many of these complaints were from patients in mental health facilities who felt their confinement was unwarranted. Such complaints are to be expected where actions exercised under legislation can result in restrictions of fundamental rights. While our office does not investigate the professional decisions of medical practitioners (for example, whether a person should be hospitalized under *The Mental Health Act*), we continue to consider complaints about administrative actions in mental health facilities.

Two interesting cases from 1997 are highlighted below. One relates to an administrative concern raised by a mental health patient in which she alleged that she was not advised of her rights under *The Mental Health Act*. While the complaint could not be substantiated, our review resulted in a change of process to ensure patients are advised of their rights under the Act. The second case, outside of the mental health field, concerns fair and timely release of information. It resulted in an apology and monetary compensation.

Both cases are very different, but common to both are issues of proper administration and positive action taken by Manitoba Health.

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Do Patients have Rights?

A patient of the Brandon Mental Health Centre (BMHC) contacted our office with various concerns, one being that she had not been informed of her rights upon admission to the facility. Enquiries were made and records at the facility were reviewed.

The Mental Health Act provides that, upon a person's arrival for an involuntary psychiatric assessment, or as soon as the person appears to be mentally competent to understand the information, he or she shall be informed of where he or she is being detained, the reason for detention and his or her right to retain and instruct legal counsel.

Our office was advised that, upon arrival at the BMHC, the complainant would have received a standard information package. This package consists of pamphlets entitled Patients' Rights, Know Your Rights and information about the patient's ward and right to legal counsel, among other things. Upon its distribution to each patient, this package is discussed with a staff member.

It was the facility's usual procedure to distribute and explain, as soon as possible, patient rights information to all incoming patients. However, there was no standard documentation by the facility to show whether and when the policy was followed for each particular patient. Accordingly, there was no way to substantiate what happened in the complainant's situation. The only record on point concerning the complainant was a nursing assessment, shown to be prepared on the date of admission, which indicated that the reason for the complainant's hospitalization had been addressed.

In discussing this issue of documentation with the facility, we were advised that a check-off system would be implemented to record the distribution of the facility's standard information package to each incoming patient. As well, to cover all information requirements of *The Mental Health Act*, the facility advised that the check-off system would indicate that a person had been informed of the reason for and location of detention.

Subsequently, our office was provided with new forms introduced by the facility which indicated whether a patient had been given the package concerning legal rights and the reason for admission. We were advised that

the initial nursing notes placed on a patient's chart would also address all admission guidelines.
The new documentation of the facility's standard procedure was a good initiative. It served to remind staff of responsibilities under *The Mental Health Act* and addressed compliance under the Act, should the issue of notification of patients rights arise again.

This case serves as a good example for other facilities if they are not documenting legally required procedures.

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Slow to Release Information

The complainant, a member of the media, expressed concern that a delay in release of information by the Department resulted in prejudice to her work. She sought an apology and, in light of the larger circumstances of this case, compensation to her employer for legal expenses.

In May 1995, on behalf of her employer, a media outlet, the complainant applied for access to a list of provincial doctors who had billed Manitoba Health Services Commission for services along with total amounts paid to these doctors over four fiscal years. Manitoba Health denied access to this information, and the complainant filed a complaint under *The Freedom of Information Act*. This resulted in a review by our office and a recommendation that the requested records be released.

The Department subsequently advised that it did not accept the recommendation, and the media outlet appealed the issue of release to the Court of Queen's Bench. I understand that the media outlet agreed to adjourn the legal proceedings on the basis that, with the passing of *The Public Sector Compensation Disclosure Act*, the information requested would be released.

The legislation became law on November 19, 1996, and Manitoba Health began gathering the requested records for release to the complainant. Unfortunately, before the information could be conveyed to our complainant, another media outlet requested and received similar information from a different source within the Department, three to four days before our complainant received it.
Our review of this matter did not disclose any bad faith in the handling of the request for information. The Department, in fact, acknowledged that if all staff handling the request were aware of the circumstances in this case, they would have endeavored to get the information to the complainant before, or at least no later than, any of her competitors.

Nevertheless, there appeared to be miscommunication resulting in an untimely release of information to the complainant. Accordingly, I recommended that the Department:

1. Extend an apology to the complainant and her employer for releasing the requested records to a competing media outlet before they were released to them; and

2. Reimburse the complainant's employer for legal fees and disbursements associated with the appeal to the Court of Queen's Bench under *The Freedom of Information Act.*

I am very pleased to advise that the Department concurred with the recommendation. The Department compensated the employer for legal fees incurred and apologized for any inconvenience that may have occurred as a result of the delay in releasing information.

The actions taken by the Department in response to this complaint show, in my opinion, a commitment to principles of responsibility and accountability.

MANITOBA HIGHWAYS & TRANSPORTATION

Formal complaints received - 30
Concerns and enquiries by telephone - 62

The number of complaints involving Highways and Transportation increased by 6 over last year. Of these, the majority of issues raised related to the Driver and Vehicle licensing Division wherein complainants attempted to get driver's licenses reinstated or renewed. Many complaints were not substantiated after review, while some reached resolution by simply providing information to clarify the situation.

One formal recommendation was made to the Department in 1997, although not reflected in the statistics because the Department's response was not received until early 1998. Therefore, this file is shown as pending in this report.

The case involved a provincial government employee who advised our office that he had been promoted and relocated from one rural Manitoba town to another as part of the Department's regionalization initiative. However, it had taken several years to sell his home and property. The final sale price of the property was significantly less than the appraised value.

The government has a policy pertaining to the sale of employees' homes and property if they are required to sell due to relocation. Subsidies are available to compensate for forced sale at less than market value in order to expedite the move.

Our complainant had been granted a subsidy equivalent to 15% of the appraised value of his property. However, he did not feel this was fair. Prior to the sale of the property he had discussions with senior management and had believed that he would receive a subsidy higher than this amount.

After reviewing the circumstances, I was not satisfied that the subsidy of 15% was fair and equitable, particularly in light of similar cases where higher subsidies had been approved. As a result I recommended that the Department reconsider its decision on the amount of subsidy provided and that it consider forwarding a request to the Treasury Board to approve a further subsidy.

I was pleased to receive a response from the Minister advising that, based upon my recommendation, the additional subsidy had been approved. This satisfactorily resolved the issue for the complainant.

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To Drive Or Not to Drive

An individual contacted our office following a decision by the license Suspension Appeal Board of Manitoba Highways and Transportation. He stated that the Appeal Panel had asked few and insignificant questions concerning his appeal and as a result, he concluded that they did not provide a proper review of his application.

The individual was employed as a limousine driver and had his driver's license suspended as a result of having accumulated too many demerit points. He therefore appeared before the license Suspension Appeal Board to appeal the Registrar's decision to cancel his driver's license.

Following the hearing, he was informed that the license Suspension Appeal Board had given careful consideration to his application and made the decision to refuse to reinstate his driver's license. Because his driving suspension continued, he requested that we review the decision as well as the process by which this decision had been made.

During our review, we held discussions with representatives from the Driver and Vehicle licensing Branch (DVLB) as well as the license Suspension Appeal Board. Our investigation confirmed that our complainant had appeared at the Show Cause Hearing at DVLB and advised the officer that he needed his driver's license for work purposes. The complainant felt that by presenting his case to the Show Cause Hearing officer, he did not have to restate his position to the license Suspension Appeal Board (Board). He understood that because both agencies were part of the same structure, they would be able to access the same information.

Independent Bodies

Therefore, when he appeared before the License Suspension Appeal Board, he did not know that because of its independence from the Driver and Vehicle Licensing Branch, the Board had not heard his statements to the Show Cause Hearing Officer.

We reviewed this matter with the license Suspension Appeal Board and listened to the tape of the hearing. We were satisfied that the process undertaken by the Board afforded our complainant a proper and reasonable opportunity to present all relevant information in support of his claim.

During our discussions with the Board, we were informed that the Board would consider new information presented before it. However, the Board did not have access to the information held by the Driver and Vehicle Licensing Branch through the Show Cause Hearing. The Board was aware that a continued driving suspension might cause hardship to our complainant. However, it maintained he had not provided information suggesting that reinstating his license would be in the public's best interest.

Following discussion with our office, the Board met to consider a written request from the complainant to review new evidence and grant another hearing. The Board subsequently granted our complainant a restricted license for work purposes. The Board is also considering developing a brochure to provide details of the hearing process and permissible evidence for consideration. These steps brought a successful resolution to this matter.

MANITOBA HOUSING

Formal complaints - 14
Concerns and enquiries by telephone - 44

Both formal complaints and enquiries by telephone decreased in 1997. Complaints and enquiries received focused on financial issues such as rent calculations or arrears, access to housing units and eviction notices. The following is an example of the kinds of issues we reviewed.

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New Job Brings Eviction Notice

Our office received an urgent fax from a resident of a Manitoba Housing apartment. She advised our office that in June the amount of rent she was required to pay changed as she had started working. She reported that, for the previous three months, she had been corresponding and speaking with staff at Manitoba Housing about the amount of rent she should be paying. As her wage fluctuated each month, she had been sending her pay stubs to Manitoba Housing so that they could adjust her rent.

The situation became more urgent for our complainant when she received a letter of eviction for non-payment of her rent. She indicated that the letter advised her she would be evicted with one week's notice unless she paid an additional $143 per month for the last two months. She was concerned that, even though for the last three months she had provided her pay information to Manitoba Housing and asked them to discuss the situation with her, she had not received any replies to her messages until she received the letter of eviction.

Our office asked senior personnel with Manitoba Housing to review our complainant's situation. When the matter was reviewed, they felt that an adjustment should have been done in June when they received sufficient data to calculate a new average increase in rent. It was felt that if this adjustment, had come into force in June, along with better communication with the tenant, than much time, effort and bruised feelings could have been spared.

Our complainant received an apology for the poor quality of service she received from Manitoba Housing and was notified of the fixed amount of rent per month she would be required to pay until the end of her lease.

MANITOBA HYDRO

Formal complaints received - 8
Concerns and enquiries by telephone - 35

As in past years, most of the complaints and enquiries received against Manitoba Hydro related to billing issues. The following case illustrates how cooperation and a single phone call can settle a complainant and relieve the considerable stress on a complainant.

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Whose Bill Is It?

An individual contacted our office advising that her daughter had recently moved back into her home. Shortly thereafter, Manitoba Hydro (Hydro) informed her that her daughter's bill of approximately $800 would be added to her own bill of approximately $900, which she had expected to pay off by the end of the summer. However, she reported that Hydro had advised that, unless a substantial payment was made, they would disconnect service.

Our complainant expressed her opinion that adding her daughter's bill to hers was unfair. She suggested Hydro should make payment arrangements directly with her daughter and not disconnect her own service.

Enquiries were made with Hydro. We were informed that, when a child moves back into the parental home, it is not Hydro's policy to collect from the parents any outstanding bill the child may have incurred. However, if the parent and child moved into a new location together, and both had outstanding bills, then Hydro would collect the total outstanding amount owed.

In this case, Hydro had apparently understood that the mother and daughter had moved to a new location together. When it was confirmed this was not the case, Hydro advised it had erred and should not have chosen disconnection of the mother's service as the consequence of daughter's arrears. Arrangements were to be made directly with the daughter regarding her outstanding account. Our complainant was advised of the information received and was pleased with the outcome.

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Joint Accountability Unfair?

Our office received a phone call about an outstanding Hydro bill. Our complainant had not paid for service she received at a previous address where she was living with her ex-husband. She was concerned that only she was held accountable for an outstanding Hydro bill because her ex-husband was presently not receiving Hydro service. She was told by Manitoba Hydro that if she did not make payments, her wages would be garnished. She

responded that she would be starting part-time employment the next week.

On contacting Manitoba Hydro, our Office was advised that a reasonable payment towards the outstanding bill could be arranged. Our complainant subsequently agreed to pay $75 every two weeks once she started working at her part-time job. This was acceptable to Manitoba Hydro.

Later, we also learned that when our complainant had moved out of the home she was sharing with her ex-husband, her ex-husband continued to live at that home for several months. Although she had informed Manitoba Hydro of this when she moved out, it had not been taken into account when the outstanding bill was calculated.

On our suggestion, Manitoba Hydro verified that, in fact, our complainant had been responsible for Hydro service that only her ex-husband received. As a result, her outstanding bill was recalculated and her account was credited in the amount of $358.20. Manitoba Hydro advised it would attempt to collect this amount from complainant's ex-husband.

MANITOBA JUSTICE

Formal complaints received - 269
Concerns and enquiries by telephone - 537

As in other years, the 269 formal complaints against Manitoba Justice dealt with a cross section of issues involving various branches and divisions within the Department. The number of formal complaints increased by 35, and the number of telephone enquiries decreased by 76.

Complaints from inmates in provincial institutions consistently represent a significant percentage of the total number of complaints received against Justice. There was a total of 170 complaints from the adult and youth correctional facilities. Inmate complaints are quite varied. These include such issues as medical treatment, transfers, denial of temporary absence passes, conduct of staff, lost property, disciplinary action, concerns about policy or programs, allegations of mistreatment and placement in segregation.

Following are some case examples of the complaints received. Specific examples of cases relating to Justice and youth, and information on our specialized role in this area, can be found in the Child and Adolescent Services section of this report.

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Adult or Child?

An inmate being held at the Winnipeg Remand Centre (WRC) contacted our office and advised he was a youth but that his charges had been raised to adult court. He indicated he had been placed in the youth section of the WRC rather than in the adult section. He also advised he was not the only youth in this situation. He stated that youth who have been raised to adult court did not receive the same benefits as adult inmates at the WRC and, further, that many more restrictions were placed on them than on adult inmates. He advised he believed they should be treated in the same manner as adults because their charges had been raised to adult court.

We contacted the Acting Superintendent of the WRC regarding this issue. We were subsequently advised that the WRC reviewed its policies regarding the handling of youth offenders raised to adult court. We were advised that a new policy was implemented, requiring young persons transferred to the WRC under certain sections of *The Young Offenders Act* to be treated as new adult arrivals.

Our complainant was transferred to another adult facility prior to implementation of the policy. However, he was advised of the changes which resulted directly from bringing forward his complaint.

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Accident, Seizure or Assault?

In March 1996, an inmate of the Winnipeg Remand Centre (WRC) contacted our office and alleged he had been assaulted by correctional officers while being escorted in an elevator. He reported his hands were handcuffed

behind his back and that he had been ordered to kneel down against the wall. He stated that, while doing so, his legs were pulled out from underneath him, causing him to fall. He reported that his face hit the floor and he split his chin. He was taken to hospital and received stitches to his chin.

Our office contacted the WRC, who provided us with copies of the Incident Reports. We were informed that the inmate had suffered an epileptic seizure and that this was what had caused him to fall. We were also advised that Adult Corrections was investigating the incident. We wrote to the Department and requested we be advised of the outcome of their internal investigation. However, a riot at Headingley Correctional Institution cased some delay in completing the investigation.

The complainant subsequently received a letter from the Department informing him that, based on the evidence provided by staff, medical and health personnel and his own recollection, the findings of their investigation were inconclusive. The Department advised it could not conclude that the fall was a cause of deliberate staff action, or in the alternate, accidental or condition-related epileptic seizure.

When we contacted our complainant to review the contents of the report with him, he advised he was not satisfied with the response he had received from the Department and would be consulting his solicitor. He expressed his opinion that the WRC findings were an attempt to whitewash the incident. Because the WRC Report stated that the incident might seem suspicious and the internal investigation was inconclusive, we made additional enquiries with the Department for clarification of the incident.

Further discussions with senior officers of the Department about their internal review did not indicate any cover-up or whitewash of the incident. The review did not substantiate the complainant's allegation nor was our office able to determine what had transpired in the elevator.

However, our review did suggest that Adult Corrections Branch Policy on Police Referrals had not been adhered to.

The Policy states that police are to be called to investigate and consider the laying of charges whenever any person has been injured to the extent that medical attention is necessary. In this case, police were not called to investigate even though our complainant had required medical attention and stitches to his chin as a result of the incident.

We were informed it was the Department's experience that police will not normally attend an institution unless the victim or complainant clearly states that he wishes to file a complaint against another inmate or staff member. The Department indicated police will not investigate an incident when an inmate states he does not wish to pursue the matter through police. The Department had documented that our complainant had informed staff he would prefer calling his lawyer instead of filing a complaint with police because he believed police would not give his situation serious attention.

We advised the Department that we understood its rationale for not contacting police in light of their experience and of our complainant's decision not to contact police. However, it would have been appropriate for the Department to request that the police investigate the matter, given the inconclusive findings of the review and the Department's acknowledgment that the incident was suspicious. The police would then determine whether or not to pursue the matter. This independent action would have minimized any perception that the Department was trying to cover up or whitewash the complaint.

The Department acknowledged that the policy suggested there was a requirement for police to be contacted by the institution in all cases where medical attention is rendered. Since this had not occurred in this case, they advised that policy and practice would be reviewed. As it appeared the Department was prepared to take appropriate action in future if a similar situation arose, we reported to our complainant and closed our file.

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Medicine Switched

An inmate from Brandon Correctional Institute contacted our office to advise us that he had been given the wrong medication while in segregation. He indicated that he regularly received prescribed medication required for an ulcer, but incorrect medication he had received in error had caused him to become nauseated.

Following our enquiries, the institution confirmed that, in fact, the inmate had received the wrong medication. A correctional officer had switched two inmates' medications. It was explained that the packages containing the medication were clearly labeled with the name of our complainant and the other inmate; however, due to human error, the correctional officer gave the wrong package to each inmate.

Due to the seriousness of this situation, the medical supervisor at the institution further reviewed the process followed in this case. Our complainant had been placed in segregation because of disruptive behavior and had not received his medication at the usual time, when it was dispensed by the nursing staff. This resulted in a correctional officer dispensing the wrong medication sometime later. After reviewing the matter, the Medical Supervisor directed that only nursing staff be authorized to give medications to inmates to minimize the potential for a recurrence of this type of incident.

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Unacceptable Living Conditions

Through review of individual concerns and tours, our staff is in contact with institutions on a regular basis to monitor conditions in these facilities.

During a tour of Portage Correctional Institution, a correctional facility for women, I had the opportunity to see the state of the facilities in the Segregation Unit, located in the basement area. This detention area houses inmates who are deemed to be behaving in a manner that disrupts the good running of the institution. In viewing this area, I was concerned about the adequacy and suitability of this location for housing inmates for any extended period of time. I noted that the cell area was quite small and was equipped with only a toilet. It did not have a sink with running water for drinking or washing purposes.

Our office had previously raised the issue of the lack of hand-washing facilities in this area with Manitoba Environment officials and the Superintendent at Portage Correctional Institution. Manitoba Environment felt that if the institution provided a dipper and water pail and drinking water, public health requirements would be met. This recommendation from Manitoba Environment was based on information that inmates remained in this area for only two to three days at a time.

Since then, it had come to our attention that at least eight inmates had resided in this segregation area for between six weeks to six months. Often a dipper and water pail were not provided, with the explanation that sometimes a dipper and water pail could not be provided because of the erratic and destructive behavior of the inmates residing there.

We were quite concerned about one particular inmate who has resided in this area continuously for over six months. It was reported that, due to her behavior, the Institution was unable to provide her with a mattress because she would destroy it. The area had no raised platform and thus, for the most part, she slept on the cement

floor with blankets.

Sleeping on Cement

Our office expressed concerns to the Executive Director of Adult Correctional Services about these conditions. We were told that a plan to renovate this area was awaiting Treasury Board approval. We later learned that this project, with its significant costs, was considered to be a low priority compared to other renovation projects.

I was quite concerned about this response, because I felt that the conditions in this segregation area were unacceptable for human habitation. It was also becoming increasingly apparent to our office that inmates were being kept in that area for extended periods of time.

We continued to press the urgency of this situation with Department officials. Subsequently we were advised that the Superintendent was given permission on an urgent basis to complete the renovations in that area. Among other things, toilets were replaced and much needed sinks installed in the Detention area.

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Public Trustee

Some of the statutory functions of the Public Trustee include acting as committee on behalf a person who has been found incapable of managing his/her affairs; official administrator; reviewer of all applications for private committeeship; litigation guardian of infants and mentally disordered persons; and trustee for funds payable to infants.

In 1997 our office received 31 formal complaints relating to the Public Trustee. The complaints were usually initiated by relatives of clients of the Public Trustee or the client themselves. Concerns pertained to fees charged, decisions made regarding the disposal of assets, denial of client information to family members and Public Trustee's decisions relating to a client's living situation.

We continue to receive excellent cooperation and timely responses to our enquiries. The following are two examples of cases investigated.

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Who Owns What?

If clients of the Public Trustee who are hospitalized or otherwise confined outside their homes are likely to return home, their furnishings and other nonperishable belongings will be stored. If a client is not likely to return to their home, their belongings may be sold at public auction and the proceeds credited to the client's account.

Our office was contacted by an individual expressing concern that some of her furniture and antiques were going to be sold at an auction. She explained that her belongings were located in the home of a client of the Public Trustee, and the Public Trustee had authorized an auction sale of that client's belongings which was to occur in a few days. She stated that an advertisement for the auction had appeared in the local newspaper and many of the items listed were her belongings, not the client's. She had attempted to resolve the situation with the Public Trustee's office, but had been unsuccessful.

When our office contacted the Public Trustee we were informed that it would withdraw the items that were in dispute from the auction. The Public Trustee then contacted our complainant and requested proof from her

regarding the ownership of the items in question before they would release the items to her. Our complainant agreed and was pleased that she was given the opportunity to prove her claim. Accordingly, the immediate concern about the pending sale of her belongings was resolved.

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He Said, She Said

If a client dies without a Will, a relative resident in Manitoba may be appointed administrator of the estate. If there is no such person, the Public Trustee may apply to the Court to be appointed administrator. The estate will then be dealt with in accordance with the provisions of the *Intestate Succession Act*. This Act sets out who will inherit from a person's estate if there is no Will.

Following the death of a client, the policy of the Public Trustee's office is to contact all known next-of-kin living in Manitoba to determine whether one was prepared to administer the estate. In this particular case, the client had not left a Will and there remained a sizable estate to distribute.

Three years after the death of a Public Trustee client, our office received a complaint from the deceased's family member who lived out of province, expressing concerns relating to the Public Trustee's handling of the estate. Our complainant specified a number of actions that the Public Trustee had taken that she and other family members did not agree with. Central to the complaint was her concern that a relative in Manitoba had not been contacted and invited to administer the estate, as was required by law. She felt that, had this been done, this relative would have agreed to administer the estate and present estate issues would not have occurred. She had contacted the Public Trustee's Office about her concerns but was unable to resolve the matter and therefore requested our Office's assistance.

Our Office made inquiries with the Public Trustee, and was told that all known next-of-kin in Canada had been contacted and had expressed their wishes that the Public Trustee administer the estate. Our Office conveyed this information to the relative who was a Manitoba resident. The Manitoba resident was adamant that the Public Trustee's office had not asked her if she wished to administer the estate. The Public Trustee's office was just as adamant that the Manitoba resident had been contacted in this regard.

We discussed the matter with the Client Administration Officer that had been involved in the initial contacts with the family. It was revealed that, while the Manitoba resident may have been contacted, she had not been asked if she wished to administer the estate. This was confirmed following which the Manitoba resident expressed her desire to administer the estate. The Public Trustee then referred this matter back to the Court, to determine if the Manitoba resident should be appointed or if the Public Trustee should continue to administer the estate.

Our complainant was pleased with this outcome and satisfied that the situation would be appropriately addressed by the Court.

MANITOBA LABOUR

Formal complaints received - 19
Concerns and enquiries by telephone - 27

Manitoba Labour complaints involved Employment Standards, Workplace Safety and Health, Mechanical and Engineering, the Worker Advisor Office and the Manitoba Labour Board, among others.

A case initiated by the Ombudsman on the issue of deposits required to appeal an order to the Manitoba Labour Board is summarized below.

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Who's the Boss?

An individual raised a concern with our office regarding his dealings with the Employment Standards Branch of Manitoba Labour. He felt that the Employment Standards Branch did not have jurisdiction to review a claim for unpaid wages, as an employer/employee relationship had not been established. He considered the workers to be subcontractors and not employees. He also felt he was denied the right to appeal this matter because of the requirement to file a deposit with the Labour Board in order to have the matter heard.

Our office reviewed this complaint and could not conclude that Employment Standards had exceeded its jurisdiction or that its decision was unreasonable. We advised the complainant that we were unable to make a recommendation on this matter.

Currently, the right to appeal an order of the Employment Standards Branch, requires the appellant (other than the employee) to pay a deposit equal to the lesser of the wages ordered paid or $300 for each employee, in accordance with *The Payment of Wages Act*.

The Chairperson of the Board has the discretion to reduce this amount if the number of employees is not less than 20; and if the amount of unpaid wages is not less than $10,000 and if payment of the deposit would cause undue hardship to the applicant.

In reviewing this case, we were of the opinion that our complainant was financially unable to provide the required deposit and was therefore unable to appeal the order of the Director of Employment Standards to the Labour Board. This raised the concern about possible inequity that could result from this legislation, if an employer of a small business was unable to pay a deposit to have an appeal of an order heard by the Manitoba Labour Board.

While unable to change the law, the Ombudsman may recommend that any law be reconsidered.

I wrote to the Minister of Labour and recommended that the legislation establishing the requirement for a deposit and the restrictive conditions under subsection 8(12.3)(b) be reviewed.

The Minister of Labour responded to my recommendation stating that the requirement to pay a deposit was introduced in 1992, after reviewing similar experiences in other jurisdictions that had introduced similar provisions. At the time, the Department of Labour felt that the substantial influx of appeal cases delayed and withheld monies owing to employees.

The Minister also advised that the Department was currently in the process of preparing a bill which would consolidate *The Vacations with Pay Act*, *The Payment of Wages Act* and *The Employment Standards Act* into a single Labour Code. He advised that the process, while not intended to introduce any substantive changes to the legislation, had resulted in administrative changes. The Department was consulting extensively with the labour management community on the Consolidated Code through the longstanding Labour Management Review Committee. The Minister had asked staff to incorporate the concerns I raised for consideration during the current review.

I was pleased with the action taken and requested update of proposed changes to the legislation once the review was completed.

MANITOBA PUBLIC INSURANCE

Formal complaints received - 152
Concerns and enquiries by telephone - 351

Since 1994 we have seen complaints double against Manitoba Public Insurance (MPI). As I indicated in last year's Report, this is not necessarily an alarming statistic. In recent years, we have noticed that MPI seems to be advising their customers of the option to bring their concerns to our office. Typically, the issues presented relate to coverage disputes, total loss settlements and assessments of liability for traffic accidents.

The following case summaries illustrate a sampling of our involvement in considering complaints against MPI. Our office continues to receive good cooperation from MPI, and I believe the following cases are good examples of the way MPI interacts with our office.

A youth-related MPI case pertaining to MPI's Road Safety Driver Education Program can be found in the Child and Adolescent Services section of this Report.

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Change in Liability Assessment

While driving the family vehicle in front of her home, our complainant's daughter signaled to make a right turn into her driveway. A vehicle following from behind apparently attempted to pass between the family vehicle and the boulevard, and a collision took place. The other driver reported that the daughter had first made a move to the left before making the right-hand turn. In this case, there were no witnesses, independent or otherwise, to assist MPI with its assessment of liability for the accident. MPI assessed 75% of the responsibility against the daughter because she veered in the direction opposite to her signal.

Initial information received indicated that MPI felt that the assessment of liability was appropriate on the basis that responsibility would normally go against the vehicle making the change in direction. However, after carefully considering the circumstances of the accident and reviewing *The Highway Traffic Act*, it seemed that a greater responsibility should have been placed on the other driver as he was attempting to overtake on the right, which is prohibited under *The Highway Traffic Act*.

We reviewed the matter further at MPI and met with the Director of Claims Operations to discuss the liability assessment. Following this meeting, MPI gave further consideration to the claim and advised that liability against our complainant's daughter would be reduced to 25%.

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Denied Coverage

This complaint was filed with our office after MPI refused to provide coverage for a theft claim because the individual involved had not renewed his Autopac insurance. Apparently, his Autopac renewal date was February 23, and our complainant believed that the renewal date was February 28. He explained that he had been paying his premiums at the end of February for the last 20 years with no consequence. However, this year his vehicle was

stolen on February 26, three days after his actual renewal date and two days before he believed it was due.

Prior to coming to our office for assistance, our complainant and his lawyer had approached MPI requesting an ex gratia compensation. MPI refused this request explaining that the customer has a responsibility to review his registration documents. They pointed out that the stickers that are placed on the license plate clearly indicate the day and month of expiry, as does the registration card. The burden of responsibility for awareness of renewal date change was the driver's.

Technically speaking, MPI's decision to deny the claim was correct. However, after considering the circumstances of this case, my office asked MPI to reconsider the matter. MPI advised that no consideration would be given to extend coverage for the loss because coverage had lapsed. After reviewing the customer history, MPI noted that the Corporation had made our complainant aware of his renewal dates several times. The Corporation believed it had fulfilled its obligation to him. He failed to adhere to payment requirements and would be denied coverage.

I had difficulty with MPI's position and felt that the decision to deny, although technically correct, was harsh. Accordingly, I spoke to the Vice President of Claims asking that he review the matter. Following his review, we were advised that there was sufficient customer history to show that the failure to renew coverage was an exception to his prior renewal practices. MPI was prepared to accept that this was simply an oversight and unintentional on the part of the customer. MPI agreed that to deny coverage would be harsh and inequitable.

Accordingly, MPI provided ex gratia consideration of the claim. Our complainant was pleased with the outcome and indicated that in future he would make sure that he renewed his coverage by the due date.

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Pay on Time or Get a Fine

An individual telephoned our office and advised that his final payment for his insurance premiums were due on a Sunday. He advised that the MPI forms stated individuals could pay their premiums on the next business day, if the due date fell on a weekend. The individual calling our office was from rural Manitoba, and the next business day in his town was Tuesday, as the Autopac agency was closed on Monday. He stated that when he attended on Tuesday to pay, he was informed there would be a late payment penalty fee of $40.

When our complainant contacted MPI, they upheld the $40 penalty fee. He felt this was unfair given that the next business day in his community was on Tuesday rather than Monday.

Enquiries were made with MPI, and after confirming that the next business day was in fact Tuesday, MPI waived the $40 late payment filing fee. This satisfactorily resolved the issue for our complainant.

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How Much is it Worth?

As usual, some MPI complaints related to settlement of total loss claims. In one case, we were contacted by an individual who advised that MPI had offered her $1,025 for her vehicle. Our complainant advised that she was told this was MPI's final offer unless she could support that her vehicle had a higher value. Our complainant advised us that she had kept her vehicle in top shape and that any necessary repairs were done immediately. She

described her situation with Autopac as being at an impasse.

We contacted MPI to enquire into the basis for its valuation. After receiving our enquiry, MPI obtained a back-up valuation, which showed numerous comparable vehicles upon which to establish a reasonable value. Given the low mileage of our complainant's car, MPI increased its offer of settlement to $2,000. Our complainant was happy with this offer of settlement and decided to finalize her claim with MPI.

Apparently our complainant had never voiced her objection to MPI directly. MPI advised that it was not until we contacted them that they were aware there was a problem. Once they were aware of the dispute, additional steps were taken to verify their valuation of our complainant's vehicle.

In a similar situation, we were contacted by a person who advised that MPI had undervalued her vehicle at $1,300. She also expressed concern that her claim was subject to two deductibles, which she felt was unfair.

In an effort to clarify matters, we contacted MPI and confirmed that the complainant had appropriately been assessed two deductibles as a result of two previous claims. The damage from these claims had never been repaired. The existing damage to the vehicle was considered in determining the amount of settlement offered.

Although, it appeared that our complainant's concern related to the unfairness of being subjected to two deductibles, it became apparent the issue related to the offer of settlement. As a result of our inquiries, MPI conducted a further review of the ACV of the vehicle. They obtained a back-up valuation which resulted in an adjustment to the ACV. Our complainant's complaint was resolved when she received an additional payment of $346.28.

Our understanding is that the back-up valuations are requested when MPI becomes aware that there is a dispute about the actual cash value offer. In both of these situations, a back-up valuation had not been requested because MPI was not aware that the ACV was in dispute. Once brought to their attention, the cases were settled to the complainants' satisfaction.

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Please Say You Are Sorry

We received a letter from an individual who explained that she had been in two car accidents and had sustained an injury that required surgery. As a result of this injury, she had submitted bills to MPI from two separate businesses. MPI wrote to our complainant advising that these bills would not be paid. A copy of this letter was also sent to the two businesses.

The letter contained a great deal of personal medical information which neither business required, nor were they entitled to receive. Our complainant was upset that her private and confidential medical information had been sent to these parties. She felt that MPI had breached her privacy by sending them this information.

MPI advised that it is not a standard practice for letters containing personal information to be shared with other parties. The situation was unfortunate and the matter has been discussed with the adjuster involved.

After speaking with the complainant, it was my opinion that a letter of apology would be appropriate, and this was discussed with MPI. The Vice-President of Claims subsequently wrote to the complainant, extending his sincere apologies and advising that steps were taken to ensure that such an incident did not recur.

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Underage Driver – Claim Denied?

While the cases included in this section have dealt with difficulties that we had with the positions taken by MPI, I have included this case which involves a complaint that we had received from an individual whose Autopac claim was denied for good reason.

In his letter to our office, our complainant advised that he was a resident of rural Manitoba and that in September, he was almost finished harvesting when his grain truck broke down. While repairing the truck, he realized he was going to need assistance. His 13-year-old son had just come home from school so he sent him to bring back help from the field. His son, while driving a half-ton truck alone down a municipal gravel road, lost control of the truck and it went into the ditch and rolled over. Fortunately, the son was not injured. The truck sustained almost $20,000 in damages.

In his letter to my office, the father recognized that in allowing his underage, unlicensed son to drive he had broken the law, but he did not feel he deserved to be penalized $20,000. He explained that he buys insurance to protect himself financially in the event of a disaster, and that he did not think that an act of bad judgment should void his insurance coverage.

I noted that in a letter denying his claim, MPI referred to several sections of *The Manitoba Public Insurance Corporation Act*, which clearly supported the denial. In conversation with MPI staff, it was explained that the claim was denied on the basis that our complainant knowingly allowed the vehicle to be operated by an individual who was not qualified and authorized by law to operate it. This was described by MPI as a fundamental breach of policy conditions.

In view of the circumstances, we did not feel that the Corporation's decision to deny coverage was harsh or inequitable. We advised our complainant that MPI's position on coverage was reasonable in accordance with legislation.

MANITOBA NATURAL RESOURCES

Formal complaints received - 22
Concerns and enquiries by telephone - 33

Our office received 22 complaints from individuals expressing concerns about Natural Resources issues. Generally the concerns relate to drainage, permits, service fees and Crown land sales. The following cases relate to Crown land sales.

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Delayed Land Purchase

Our complainant had applied to purchase 12 acres of Crown land and in the fall of 1995 he was advised that the sale had been approved as all requirements had been met. A cheque for the total amount of the sale was submitted to the Department and was cashed. However, nine months later, the sale had not been completed and a complaint was filed with our Office.

Enquiries were made with the Department following which our complainant received a letter from the Department in October 1996 advising that, as a result of a regular departmental review, the sale was rejected. No reason was given and the Department advised our complainant that the full purchase price of the land would be refunded with interest.

The Department then wrote to our Office indicating that the sale was based on the Applicant's "past unsatisfactory business dealings" with the principals involved.

Our Office reviewed this matter and it was noted that our complainants had not been advised of the reasons for revoking the sale nor were they advised of a right to request a review of the decision through the Provincial land Use Committee. Accordingly, our Office contacted the Department to raise these concerns. Subsequently, a letter was sent to the Applicant by the Department advising him of the reason for revoking the sale and the avenue of appeal open to him.

The complainant was quite dissatisfied with this turn of events and expressed concerns with our Office over the reasons given stating that he had no knowledge of any past unsatisfactory business dealings with the Department.

Arrangements were made for our Office to review the Department's files relating to this sale. Our review did not reveal any information that would support a revocation of the sale. I wrote the Department indicating that the delay and lack of documented reasons for revoking the sale raised questions about the fairness and equity in the processing of our complainant's application. I requested any information the Department could provide to support its decision to revoke the sale.

The Department responded to our letter indicating that if our complainant felt his application had been unfairly denied he should follow the appeal process and apply for a review by the Provincial land Use Committee.

Our complainant through his solicitor applied for a review on November 25, 1996. This however did not end our involvement as it was apparent a timely review was not forthcoming.

In a letter from the Deputy Minister dated February 14, 1997, we were advised that the appeal process was proceeding on a "priority basis" and that the next meeting of the Committee was scheduled for March 11th. However, a series of postponements resulted in the decision being delayed until June 11, 1997. It was not until July 30, 1997 that our Office was provided with formal notification of the committee's decision to approve the sale. We were advised that before the sale could be finalized, an Order-in-Council would be necessary. In September 1997, the Order-in-Council was approved, and arrangements were made to complete the sale.

While this resolved the matter with our complainant, the process followed and the delays encountered in this case were unreasonable.

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Title to Land Postponed

In January 1997, we received a complaint from a former resident of Manitoba now living in British Columbia. He had seen an advertisement in the Winnipeg Free Press in June of 1996 advising of some Crown land for sale. He expressed his interest in buying the land, and in July, returned a signed Agreement to Manitoba Government Services to purchase the land with a money order to cover the associated costs. Land Management Services told him that he would be receiving title to the land shortly.

When our complainant contacted our office six months later, he still did not have title to his land.

Our office made enquiries with Land Management Services and was advised that the problem rested with the Land Information Division of Manitoba Natural Resources. Enquiries were made with the Division and we were advised that the delay was due to staffing difficulties. Only one person was handling these requests in addition to this person's other responsibilities. Necessary documents including an Order-in-Council had to be prepared to authorize the sale. It was apparently the necessary preparation of these documents that had caused the lengthy delay.

Our complainant did receive title to his property in April of 1997. We understand that the Department is seeking extra staffing to assist in preparing and filing documentation to minimize land transfer delays.

WORKERS COMPENSATION BOARD

Formal complaints received - 49
Concerns and inquiries by telephone - 136

The number of formal complaints involving the WCB rose by 6 in 1997. The number of telephone inquiries increased by 26. The majority of the complaints related to claim disputes.

Claimants are first encouraged to pursue the existing avenues of appeal within the WCB, and to the Appeal Commission, prior to our Office becoming involved. However, as with other departments or agencies of government, we may also make enquiries to obtain information to determine whether it is reasonable to expect the claimant to exercise his/her right of appeal.

I am pleased to report that we have a very good working relationship with the WCB and have established a productive system for obtaining the specific information through the office of the Chief Operating Officer of the WCB. From time to time staff from my Office attend meetings with the Chief Operating Officer and staff of the WCB to discuss issues and to ensure that our working relationship is effective.

The case I have chosen to report on this year relates to our review of a complaint received regarding a decision of the Appeal Commission. It is an example of where a formal recommendation was not necessary and the case was resolved after I submitted a report suggesting reconsideration of the claim to the Chief Executive Officer.

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Justice Delayed...

Our complainant had injured her left wrist when working as a nurse in May 1991. The initial diagnosis was tendonitis. She had received workers compensation benefits while recovering from her injury. On the day of her return to work, in June 1992, she reinjured her wrist and benefits were reinstated.

In March 1993, Primary Adjudication advised our complainant that her wage loss benefits would stop on March 15. It was the opinion of the Benefits Division that the weight of medical evidence established that she had recovered from the effects of the workplace injury.

Suggestion was made at that time that she avoid certain activities to possibly prevent further injury. However, the Board determined there were no provisions in *The Workers Compensation Act* to compensate for such preventative measures. While the claimant continued to experience some medical problems, it was the Benefits Division's opinion that this condition was not a result of the workplace injuries.

Our complainant advised that various specialists had recommended that she be retrained and not go back to nursing. In September 1993, acting on the advice of her attending physicians, our complainant enrolled in a community college course related to her nursing profession. She successfully completed this course in 1994.

In the meantime, our complaint also appealed the WCB decision to terminate her benefits. She felt she was entitled to benefits beyond March 15, 1993, when she was retaining to avoid the activities that had resulted in her workplace injury.

The matter went before the Appeal Panel, and the Appeal Panel requested the WCB provide comments concerning the claimant's eligibility under the Workers Compensation Board Preventative Rehabilitation policy. The Panel was subsequently advised that the WCB was of the opinion that the claimant had demonstrated her intent not to return to the nursing profession, and by removing herself from the vocation, she had removed all predictable costs that may have been incurred by the WCB.

The Panel majority "reluctantly" concluded that there was no entitlement to compensation benefits and services beyond March 15, 1993. There was however a minority opinion that benefits and services should have been granted beyond March 15, 1993.

The injured worker contacted our Office in 1995 expressing her concern and disagreement with the Appeal Panel decision. Our review confirmed that medical information and recommendations on file showed that our complainant had suffered from tendonitis as a result of the workplace injury. However, vocational rehabilitation policies were not applied. It was noted that Board policy stated that vocational rehabilitation services can be provided to speed up or improve the chances of the worker returning to pre-injury or alternate work in circumstances where there is a risk of chronicity. Our review indicated that our complainant should have had the benefit of regular or preventative rehabilitation services prior to and following March 15, 1993.

I wrote to the Chief Executive Officer of the WCB in July 1996 and expressed my opinion that the Board erred by not applying the vocational rehabilitation policies in this case. The matter was referred to the Board with a request for further consideration of her claim in accordance with Section 60.9 of *The Workers Compensation Board Act***,** wherein the Board of Directors is provided with authority to set aside a decision of the Appeal Commission, when the Appeal Commission has not properly applied the Act, regulations or policy of the Board.

In September 1996, we were advised by the Acting Corporate Secretary of the WCB that he was of the opinion that the matter did warrant further consideration in accordance with the Board of Director's policy dealing with "Requests for Consideration Under Section 60.9". Pursuant to the policy, the claimant's employer was to be advised of our submission and allowed thirty days to provide a written submission.

In October we were informed that the employer had no disagreement with the decision to pay retroactive benefits, providing reconsideration was limited to information put forth by the Ombudsman pertaining only to retraining costs not covered by the Board. We were advised that our submission, as well as the employer's response, would be submitted for legal review. Both of these, along with the legal review, would then be submitted to the Board of Directors for consideration.

February 24, 1997 the Board of Directors considered our request, agreed to stay the decision and to refer the matter to the Appeal Commission for a new hearing. The Board of Directors had also asked that the WCB administration review the file prior to a referral for a rehearing. The Board of Directors directed the Appeal Commission to convene a new hearing in April 1997 .

Our complainant retained a lawyer to represent her at the new hearing. The Appeal Panel hearing was held in October 1997, and the decision signed on November 27, 1997 was that ***the claimant was entitled to rehabilitation benefits and/or services beyond March 15, 1993, less any long term disability benefits received and the period of time convalescing from her non-compensable condition.***

Our complainant advised our Office that she received her first payment in mid March 1998. While she expressed some frustration with what had been a rather protracted process, she was very pleased with the outcome.

CHILD & ADOLESCENT SERVICES

Formal complaints received - 90
Concerns and enquiries by telephone - 121

The specialized role of Investigator for Child and Adolescent Services continued throughout 1997. The number of complaints increased from 57 in 1996, to 90 in 1997, as follows:

Education\Schools - 5
Family Services - 28
Health - 3
Highways - 1
Justice - 53.

The number of telephone enquiries also increased from 86 in 1996, to 121 in 1997:

Education - 1
Family Services - 97
Health - 2
Justice - 15
Other - 6.

The Child and Adolescent Services Investigator continued to do outreach to youth through regular visitations and meetings with youth at the Manitoba Youth Center (MYC); Agassiz Youth Center (AYC); Ridge Point Work Camp and the Intensive Custody Unit (ICU) for youth at Brandon Correctional Institutional (BCI). In addition to meeting with the youth in correctional facilities, the Investigator met with residents of the Manitoba Adolescent Treatment Center (MATC). The purpose of these meetings was to provide information on our role and function, and give opportunities to answer questions residents might have. As part of our community outreach, our office once again had the honor of attending and participating in the annual Pow Wow at AYC.

The Investigator was also involved in staff training programs at the MYC and AYC, where jurisdiction and process for complaint handling was discussed.

In an effort to provide an overview and identify concerns raised throughout the past year, meetings occurred with the Children's Advocate and the Children and Youth Secretariat. This was an excellent opportunity to examine the interests, needs and rights of Manitoba children.

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FAMILY SERVICES

In 1997 our Office formally opened 29 files relating to children and youth within the Department of Family Services. 21 of these files pertained to Child and Family Services (CFS), 3 dealt with CFS systemic issues, 2 were adoption related, 1 involved monitoring the Inquest into the death of a child and 1 pertained to services for a special needs child.

The types of complaints received which involved Child and Family Services pertained to access and visitation, apprehensions, conduct of staff, child abuse allegations, accessing information, treatment issues and payments for children in care.

The broader systemic issues concerned the handling of custody disputes when child abuse allegations are involved, the long-term handling of unsubstantiated abuse allegations and the handling of service complaints from clients.

We also responded to 97 telephone enquiries pertaining to youth. Many of these involved explanations of the *Child and Family Services Act*, providing general information and clarifying issues. Once our complainants understood the avenues of recourse available to them within the Department, they were often willing and able to pursue their concerns on their own.

The following summaries are examples of the types of complaints our office investigated in 1997 that affected children.

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Investigation on Ombudsman's Own Initiative

The Ombudsman Act states:
Investigations
15 *The Ombudsman may, on a written complaint or on his own initiative, investigate*
(a) any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration in or by any department or agency of the government, or by any officer, employee or member thereof, whereby any person is or may be aggrieved;

The words on his own initiative are significant because they allow the Ombudsman to monitor the administrative processes of government without a requirement to have a specific complaint. If the Ombudsman, through contact with a department or agency, media reports, or through any other means, obtains information which raises concerns regarding matters of administration which fall under his jurisdiction, he may initiate an investigation into the matter. Investigations on the Ombudsman's own initiative quite often end with changes in policy and procedure, thereby being beneficial to all, rather than simply the few who may be aggrieved at the time.

Over the years, when investigating complaints in the Child and Family Services area, there has been concern that, in some cases, complaints raised by clients about the services they receive can get lost in the complexity of the work. This issue has been discussed on a case by case basis with both the Child Welfare and Family Support Branch and Child and Family Services agencies. In 1997, this issue was followed up through an Ombudsman's own initiative investigation, and enquiries were made with the Child Welfare and Family Support Branch.

It is our understanding that over the past year, steps have been taken to improve the responsiveness of agencies and the Branch in an effort to better meet the needs of clients and communities.

We were advised that the Branch, at the intake level, has been attempting to engage agencies directly with clients who are concerned about the type or quality of service received. There is recognition that sometimes the complaint process can get quite formalized and detached. This eliminates real dialogue between the agency and the client, and opportunities are missed to discuss and solve mutual problems.

The Branch indicated the Coordinator of Intake and Inquiry has been able to divert more issues to agencies, so that agency staff can appropriately address or resolve client issues. They also advised of their efforts to streamline complaints emanating from the Regions. If a regional complaint is received at the Branch level it is to be forwarded immediately to Regional Operations, so field staff can be directly involved in its resolution. When issues cross agencies or sectors, joint meetings would be encouraged or facilitated by Branch staff.

Independent Reviewers

The Branch advised that, where there appears to be no resolution of issues, independent reviewers are used to examine specific case situations.

Another area where the Branch believes change will benefit service to clients and communities is through the recent hiring of the Director of Community Development. The long-term goal of the Director is to make services more relevant to communities, thus benefiting clients.

Certainly, our 1997 statistics seem to reflect the positive outcome of these changes. Our Office responded to 97 telephone enquiries relating to Family Services and yet we only received 21 formal complaints pertaining to Child and Family

Services. People advised of their rights of appeal or review should be able to resolve their concerns through the Child and Family Services system.

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Accessing Information

Our office was contacted by a former client of CFS who wanted to access records of the time when she was a ward of CFS in Manitoba. She was interested in material relating to her placement with a particular foster family. Initially, the Child Welfare and Family Support Branch (Branch) advised our complainant that they were unable to comply with her request due to restrictions under *The Child and Family Services Act*.

Our office contacted the Branch with respect to this matter and was informed that our complainant had received an excerpted summary of the information on her file. However, if she had specific questions, they would check the record again and, if possible, respond to the questions.

Our complainant provided our office with additional sensitive information which we brought to the attention of the Branch. Our complainant was subsequently provided with further documentation relating to her time in foster care.

Following receipt of this information our complainant contacted our office advising that she appreciated the information provided by the Branch. However, she was unable to locate any file documentation between 1966 and 1970. In reviewing this with the Branch we were informed that the Branch was unable to locate any file dictation for that time period.

Our complainant was concerned that some documentation was not released to her because it might have negative implications for agency staff. However, she was reassured that our Office, as an impartial third party, had reviewed her files and confirmed that there was no recording/ documentation for that time period.

Due to the lack of documentation, our Office contacted the Branch to obtain clarification on what the file recording requirements were during the time in question. We were advised that, at the time, Child Welfare recording was generally to include process recording, summary reports and social histories.

A program review for that particular Region had recently been completed by the Branch. We reviewed the draft report of the review, which indicated that program standards concerning documentation presently exist and the Department at both the regional and program branch level now had processes in place to monitor compliance.

Based on our review it appeared the Branch had attempted to accommodate our complainant's request and provide as much information as they had available. The Region had acknowledged that the lack of documentation in our complainant's file for the time period from 1966 to 1970 was unacceptable case work practice.

They indicated that standards and processes to monitor compliance are now in place to ensure incidents like this do not reoccur. Accordingly, there did not appear to be any recommendation the Ombudsman could make in this matter.

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Allegations Affecting Licensing

Our office received a complaint from a licensed 24-hour home day care provider in Brandon, Manitoba. She contacted our office as she was unable to obtain an open respite license from the Department because of a concern raised by Child and Family Services of Western Manitoba.

The Agency's concerns were based on a 1994 allegation that our complainant's daughter made against our complainant's husband. Our complainant felt the Agency's objection to her receiving the license was unreasonable as:

- the allegations, investigated by the Police and Agency, were found to be unsubstantiated;
- no criminal charges were laid;
- the alleged offender's name was not placed on the Child Abuse Registry;
- the allegations and findings of the Agency were reviewed by Manitoba Day Care in 1994, and our complainant was allowed to continue her operation of a 24-hour licensed day care home;
- our complainant's daughter returned to live in the family home with our complainant and her husband;
- Child and Family Services of Western Manitoba closed its file and no longer had any involvement with the family.

Our investigation confirmed that the Agency had provided Manitoba Child Day Care with no objection to our complainant's operating a day care home in 1994; however, the Agency later expressed concerns regarding her receiving an open respite license. These concerns were based on the 1994 abuse allegations.

Our review indicated a need for clarification on licensing requirements in such cases where there were unsubstantiated abuse allegations. There appeared to be a need to establish criteria for agencies to use when responding to requests for information pertaining to families involved in these types of situations. Policies and/or

guidelines should be in place to ensure that fair and equitable decisions are made when unsubstantiated abuse allegations are considered. To obtain clarification, I wrote to the Deputy Minister of Family Services.

The Department advised that a series of public forums had taken place prior to drafting amendments to *The Child and Family Services Act*. Many individuals voiced their support for changes in a number of areas, including the way in which Child and Family Services agencies review child abuse cases and receive information from alleged offenders during the investigation process. These consultations culminated in significant amendments to *The Child and Family Services Act*.

The Deputy Minister stated the Child and Family Support Branch was currently engaged in developing regulations and practice standards which will be required for the implementation of the new legislation. The Branch had initiated a comprehensive revision of Program Standards in order that they reflect more of an integrated case management process. Throughout the revisions, improved communication with clients and collaterals are being emphasized.

As a result of these changes and with the implementation of the new legislation, the Department anticipated that similar situations would be significantly reduced in the future. Our Office will continue to monitor this issue and the amendments which will be proclaimed in 1998.

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Where Is My Money?

A complainant called stating a worker from West Region Child and Family Services (CFS) had placed a 15-year-old ward with her. Our complainant agreed to provide care for the youth for five days, as requested by the worker. Our complainant's concern was that, now West Region CFS would not pay her for the care provided, as she was not a licensed foster home.

The situation was discussed with West Region CFS and our office was advised that the worker had provided incorrect information to our complainant. We were informed that our complainant would be paid for the five days of the emergency placement and the cheque would be sent to our complainant immediately. Our complainant received the cheque and was pleased that the situation had so quickly been clarified and resolved.

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MANITOBA PUBLIC INSURANCE

Although most of the complaints we receive relating to Manitoba Public Insurance (MPI) are from adults, this particular situation had the potential to seriously impact the lives of many youth.

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Corporate Handling of Child Abuse Allegations

Our office received a request from a Child and Family Services Agency (Agency) to investigate the follow-up by

MPI on a situation of alleged child abuse involving a Driver Education instructor and several students he had been instructing.

The Agency had received information from a School Division regarding allegations of inappropriate conduct by an instructor with the High School Driver Education Program. The allegations described a range of behavior from jokes of a sexual nature, to questions about students' personal lives, boyfriends, etc., to physical contact.

The matter had been referred for criminal investigation, however no charges had been laid. The Agency felt that overall the children's statements appeared consistent and credible. The Agency was concerned as they were unclear on the steps taken by MPI to ensure the safety of Driver Education students. Accordingly, they requested that our office review this matter.

Inquiries were made with MPI and we were advised that, as soon as the Corporation became aware of the allegations, they suspended the instructor without pay until the investigation was completed. MPI indicated that, if an instructor is charged and convicted of a criminal offence, their contract with MPI would be terminated immediately. We were also informed that, as well as relying on information from the police investigation or criminal court proceedings, MPI attempts to conduct their own enquiries to determine whether sufficient evidence exists to warrant disciplinary action. This would enable MPI to address situations where an instructor may have behaved in a manner contrary to corporate policy.

In this situation MPI was unable to carry out their own investigation into the allegations as police were concerned that inquiries made by MPI could prejudice the outcome of their own investigation. None of the girls or their parents had brought forth a complaint to MPI, and MPI was unable to obtain details regarding the alleged incidents because of the legal requirements to protect the privacy of minors. Accordingly, this also impeded an internal investigation.

Impartial Review

As both MPI and the Agency had information they were not at liberty to share with each other, our Office reviewed information in both Child and Family Services and MPI files. We also reviewed the Driver Education Harassment Policy and MPI's letter to students and their parents outlining the steps to be taken in situations of suspected harassment.

The police investigation was completed, confirming that charges were not being considered. In addition, MPI did not have evidence from parents or students drivers to support the allegations. Accordingly, the driving instructor was reinstated. The instructor received a verbal warning that future allegations of improper conduct could result in immediate dismissal from the program. The instructor was transferred to another school division to preclude further contact with the students that had complained about his conduct.

Based on our review of MPI's policy and handling of this situation, it was our feeling that the allegations were treated very seriously. MPI expects instructors to behave in an exemplary manner at all times. Instructors in the Driver Education Program come in contact with approximately 11,000 students yearly. Because these instructors occupy a position of trust, MPI has indicated that violations will be met with disciplinary action to ensure the relationship between other students and instructors is not jeopardized. Our findings were shared with the Agency which was satisfied with the information we provided.

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JUSTICE

In 1997, 48 of the 53 complaints received in this area related to Youth Corrections. The breakdown by institution follows.

Agassiz Youth Centre (AYC) - 6
Intensive Custody Unit at
Brandon Correctional Institution (BCI) - 5
Manitoba Youth Centre (MYC) – 37

The types of complaints we received related to allegations of inadequate footwear, dirty mattresses, unfair identification as a gang member, unfair treatment by staff, missing property and dissatisfaction with medical treatment. The following are complaints investigated at the MYC, AYC and BCI.

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YOUTH CORRECTIONS

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Returned to Sender?

A youth contacted our office expressing concern that staff at the Manitoba Youth Centre (MYC) would not provide him with the name of the person who had recently sent him a letter. He explained the letter had been returned to the sender with a cover letter from MYC explaining that they did not feel the content of the letter was appropriate. Our complainant had been informed by staff that the content of the letter was gang-related.

The situation was discussed with the Superintendent who did not see a problem with releasing the sender's name. When the Cottage Supervisor was told of the Superintendent's view on this issue, the name was released to the youth.

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Where's My Stuff?

After a meeting with residents of Agassiz Youth Centre (AYC), a youth requested our assistance to locate his clothing and other personal belongings. Prior to incarceration, he had lived in a placement through Child and Family Services. Initially, he was held in the Manitoba Youth Centre (MYC) and was informed that his belongings would be sent to him there. After three months at the MYC he was transferred to AYC where he remained for an additional seven months. Since arriving at AYC he had been unable to locate his belongings.

Upon our discussion with staff at AYC, they made a commitment to locate the belongings or make arrangements to have them replaced. Within a month all the belongings were located, sent to AYC and returned to our complainant.

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Restraining Young Offenders

In my 1996 Annual Report, I wrote about the restraining of young offenders. Our Office had investigated an incident where a youth had been restrained by hog-tying, which entails handcuffing a resident's wrists behind the

back, shackling the feet together and attaching the handcuffs and shackles behind the back. Our office had investigated the incident after which the Superintendent had issued a directive against handcuffing a resident behind the back.

The Superintendent also made a request that the Chief Investigator for Corrections review Manitoba Youth Centre's (MYC) security policy and procedures. At the time of writing my 1996 Annual Report, we were awaiting a copy of this review.

In examining the MYC operational review report in 1997, we noted several recommendations on security and safety. Our Investigator met with the Superintendent of MYC to discuss the section on the use of force and restraints. We were advised 24 staff had been trained by Adult Corrections on room extractions and restraints. Intensive training, employing demonstrations and practical work, included de-escalation to avert physical confrontations and altercations. Staff were required to complete training and pass an exam in both theory and practice to become certified.

The Superintendent expected that certified staff would be the first responders to situations that arose requiring intervention. He hoped that certified staff only would be called to apply restraints and to do room extractions.

The Superintendent also advised MYC had purchased a restraint chair which they felt would safely contain more difficult youth. With the new system and procedures in place, it would appear staff will be better trained in the use of restraints and in handling room extractions. Accordingly, we are satisfied that the issues identified a year previously had been addressed.

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Cruel and Unusual Punishment?

Our office received a complaint from a parent regarding the Intensive Custody Unit (ICU) for youth at Brandon Correctional Institution (BCI). The mother raised questions about methods used by the ICU staff to manage her son's behavior during incarceration.

It was our understanding the ICU was established to provide an appropriate custody environment for non-compliant youth sentenced to secure custody, thereby ensuring the safety and protection of staff and residents. Emphasis was initially on confinement, balanced with intervention programming.

It appeared that the ICU had become an isolation unit where youth with problem behaviors were contained. Apparently, due to difficulties with the behavior of the youth placed in the ICU, programs were not being delivered as had been outlined in the program manual. Operational procedures had been changed. Practice now differed from policy and the original intent of the unit.

The situation was discussed with Community and Youth Corrections. We were advised the ICU program manual would be reviewed to ensure consistency between policy and practice. Attempts were being made to obtain the support and expertise of other child-serving agencies to develop long-term plans and strategies for providing appropriate care, custody and intervention for all youth placed in the ICU.

Rights of Youth vs. Adults

We also reviewed the Adult Corrections Branch policy on the treatment of adult offenders which clearly sets out information on offender rules and discipline. Criteria are set for the establishment of a discipline board, legal

representation, discipline board procedures, decision-making guidelines, penalties for serious violations, suspension of penalties, appeal of discipline board results, disciplinary record, review, and staff training.

The penalties for serious violations by adult offenders state that punitive segregation is allowed for only up to fifteen days. The Program Manual for the ICU for young offenders does not contain the same criteria for offender rules, discipline and penalties. It was our understanding youth had been contained in the ICU anywhere from two days to six months.

The Adult Corrections Policy 40-15 on the ***Isolation of Inmates*** outlines the living conditions in isolation. This includes normal meals and services, normal physical plant conditions (temperature, etc.), normal clothing for that area or location, bedding and mattress unless restricted during the day by the Discipline Committee, reasonable reading and writing material, mail, opportunity to shave and shower at least daily, access to a nurse or doctor, medication, and medically related items such as corrective lenses and hearing aids, access to a chaplain or elder and spiritual materials recommended by them, access to counsel and normal grievance channels, and after the first day, a daily minimum of 30 minutes out of cell exercise or fresh air (weather permitting).

In ICU segregation at BCI, it is our understanding that youth were required to wear paper coveralls, and can earn the privilege of wearing regular inmate clothing. They may also earn the privileges of receiving condiments with their meals, having family visits, obtaining reading or educational material, making phone calls and obtaining a piece of paper and a pencil to write with. They did not have mattresses or bedding during the day.

It is clear that punitive segregation for youth was much harsher than for adults. Our office wrote to the Deputy Minister of Justice and outlined the differences in treatment between youth and adults. We conveyed the question that had been raised by parents of youth and the youths themselves at ICU. Do conditions of confinement in ICU constitute cruel and unusual punishment?

Basic Human Rights

Our office recognized the seriousness of the behavior presented by these youth and the efforts of staff to fulfill their responsibilities in providing an appropriate custody environment for non-compliant youth which may require high security protocols. Such protocols, however, should not detract from ensuring that a child's human rights are secure.

The youth identified in the initial complaint to our office is no longer housed in the youth correctional system, and the Investigator for Child and Adolescent Services continues to follow up on individual complaints as they arise. The Department has established a committee that was in the process of reviewing the ICU at BCI. We requested that our Office be kept informed on the progress and outcome of this review. We will continue to monitor this situation in 1998.

MUNICIPALITIES

Formal complaints received - 76
Concerns and enquiries by telephone - 257

Effective January 1997 my Office assumed jurisdiction to investigate administrative acts, decisions, or omissions of all urban and rural municipalities in the province of Manitoba, with the exception of the City of Winnipeg. The 1997 Municipal Officials Manual, produced by Manitoba Rural Development, lists a total of 202 cities, local government districts, towns, villages and rural municipalities.

I viewed this expansion of jurisdiction as a positive means to assist both municipalities and the public in resolving concerns through independent, non-partisan reviews of administrative actions. It has proved to be a very interesting year - one that has been a learning experience for both the municipalities that we have come in contact with and for our office.

In 1997 we received 76 formal complaints and handled 257 telephone inquiries about municipalities. Of the latter, 118 related to the City of Winnipeg - over which we have no jurisdiction and have since made appropriate referrals.

Our responsibilities for municipal jurisdiction was undertaken with no increase in staff. Unfortunately, the municipal responsibilities added to increasing numbers of complaints handled by my Office resulting in an inability to complete our investigations as quickly as we would have liked to. I am aware that this stretching of our available human resources to meet increased demands for complaint review and resolution has added frustration for our complainants, for government officials being investigated and for my staff. I appreciated the co-operation and understanding received from all when matters were not concluded as expeditiously as we all would have preferred.

The complaints we received were as varied as the areas they were from. They included everything from a complaint about the location of the town offices to concerns over municipal services, subdivisions, water bills, location of garbage dumps, road access, flooding and drainage, by-laws, council procedures, and property tax assessments, among others.

Generally, the cooperation received was good. However, from time to time we encountered questions about our jurisdiction to investigate and our right to access information.

Our process requires us by law to notify the chief administrative officer of the municipality affected of our intention to investigate a complaint we have received. In some instances, sufficient verbal information allows us to respond to the complainant. In other cases a more formal approach is taken with a letter sent to the Chief Administrative Officer (CAO) of the municipality. Once a response is received, we determine if further information is needed. This may be obtained through interviews, on-site inspections, file reviews or requests for additional documentation.

There has been the occasional request for us to attend council meetings, meet individually with council members, or have a council member present when we are interviewing the CAO. While at times this may be appropriate, my office must determine when and if this is required. Clear and specific legislation empowers the Ombudsman to require any person, if he is able to give information relating to a matter under investigation, to furnish that information or to produce any document, paper or thing that relates to the investigation. Our investigations are conducted in private. If necessary, the Ombudsman may hold hearings and obtain information from any person as he thinks fit to aid the investigation.

There are times, particularly during the initial stages of information gathering during an investigation, that it would be premature or even detrimental to attend a meeting of council members to discuss it. Likewise, investigating prematurely through a public forum can be damaging to the integrity of an investigation. Once it is complete, we allow representations, particularly if there is disagreement with our findings.

The question has also been asked as to whether our office has any legal basis to enquire into any complaint about an action or decision of any rural municipality prior to January 1, 1997, the date on which I was given municipal jurisdiction.

My position is that our office can review acts, decisions or omissions prior to January 1, 1997, and that there is nothing in *The Ombudsman Act* limiting or precluding this right. I may refuse to investigate a complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before it is received it. However, it is at my discretion as to whether we will pursue enquiries or not.

In 1997 I made two formal recommendations to municipalities, which I report on here. One recommendation was accepted and the second was not. I have also included other case examples, selected to indicate the variety of issues raised, and action taken to bring redress or clarify the concerns raised.

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No Access to Council Minutes

Our office received a complaint that draft minutes of the R.M. of Morton's Council meetings were no longer available to the public until they were adopted at the next regular Council meeting. The resulting two-week delay in access to decisions made by Council conflicted with the assumption that this information should be available within a reasonable time to ratepayers and media.

As background, Council had, for many years, routinely released minutes of its regular meetings as soon as the minutes were produced. Draft minutes were available for viewing at the Municipal Office shortly after the meeting. This procedure provided ratepayers with timely access to information relevant to them, as well as the opportunity to request amendments at the next Council meeting.

This practice changed following the Council meeting of January 2, 1997, wherein a resolution was passed that *"the notes of a regular meeting not be given to the press until the notes are adopted as minutes at the following meeting."*

After investigating, I sent a letter to Council noting that the change in practice seemed to be a deterrent to the positive administrative practice to allow ratepayers timely access to information. It was requested that Council reconsider the matter. In response, the Chief Administrative Officer communicated to us that after reconsidering the matter, Council had decided *"not to change the policy of preparing minutes to hand over to the media or anyone else before they are adopted."*

As the matter could not be informally resolved, I made a formal recommendation that the Council for the Municipality return to its previous positive administration practice of releasing minutes of Council meetings to the public when the Minutes are prepared.

Shortly thereafter, Council requested a meeting with our Office to discuss the issues in more detail. The investigator handling the file and I met with Council and a very open and frank discussion took place. Council presented its rationale for changing the practice relating to access to Council minutes.

Council felt that the minutes should not be released until finally adopted to allow for errors to be corrected before they are released to the public. Council also felt that it should not be preparing notes for the media and if the media wanted timely access to what occurred at the Council meeting, the media could send a representative to the meeting.

In response, I advised that from our review, that the change of practice seemed to be based on a desire not to provide the media timely access to information. I noted that the change in practice was directed specifically at the media where Council decided "the notes of a regular meeting not be given to the press until the notes are adopted as minutes at the following meeting."

It seemed to me that the reason for producing minutes was to have a record of Council proceedings for the reference of Council and all ratepayers. The change in practice clearly restricted all ratepayers of the rural municipality from gaining timely access to decisions of Council made at a public meeting, unless they attended the Council meeting.

Following our meeting with Council I was pleased to be advised that Council agreed with our recommendation and would henceforth provide minutes in a reasonable time after the meeting. The resolution restricting the minutes until after they were approved was rescinded.

This proved to be a lengthy case and resulted in the first recommendation made by the Ombudsman to a Municipality. I was satisfied that Council gave full consideration to our assessment of stakeholders' views, Council's objectives and the appropriate steps needed to balance the two. Ultimately, this case was a positive example of commitment to fair information practices.

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Dispute Over Restaurant Seating

In April 1997, our complainants wrote to us raising concerns about a decision of the Variation Board of the Town of Gimli to limit seating in their commercial establishment.

Our complainants were in the process of constructing a retail building which would house two restaurants, one of which would be operated by our complainants. We were advised that this project was being built on the same site as a previous restaurant which had been owned and operated by our complainants. We were further informed that the previous restaurant had an interior seating capacity of one hundred and twenty-eight, bench seating of fifteen for an indoor arcade and seating for twenty-four individuals to accommodate a takeout ice-cream parlor. Total interior and exterior seating was one hundred sixty-seven.

Essentially, the concerns expressed by our complainants related to a Variation Order passed October 8, 1996 wherein certain variations were approved subject to nine conditions, four of which were relevant to the complaint. These were:

> *3. one parking stall for delivery vehicle.*
>
> *4. owner be required to construct and maintain a washroom for public use. Washroom must be built to suitable commercial standards, as approved by the Town and be open for use 365 days per year and maintained to met (sic) all Manitoba Health standards and further, that this requirement be for a duration of 25 years.*

7. parking requirements be reduced from 40 spots to one spot due to condition # 4.

8. total seating not to exceed 128 seats.

Our complainants indicated that this Variation Order was generally acceptable including the seating stipulation of one-hundred and twenty-eight. However, they believed that the one hundred and twenty-eight seats referred to interior seating only, as this was the same number of seats as had existed in their previous restaurant. It appears that there was some misunderstanding or miscommunication regarding the total seating as our complainants required an outdoor patio area of forty-eight seats. They were of the opinion that, given what existed in their previous restaurant, they could have this exterior patio seating in addition to the one hundred and twenty-eight seats approved by the Board. They were later advised by the Town that the one hundred and twenty-eight seats were to include both interior and exterior seating.
They raised this concern with the Variation Board, and the Board in March of 1997, increased the seating capacity by twenty. This, however, did not satisfy the complainants as to the seating requirements for the two restaurants. A further twenty-eight seats were required.

Not Empowered to Limit Seats

After reviewing this matter, we wrote to the Town, advising that we felt that the Variation Board, albeit in good faith, had acted outside its jurisdiction by placing a condition on seating. I indicated I was of the opinion our complainants had raised legitimate concerns regarding the Board's jurisdiction to limit seating and that the condition imposed by the Board appeared to adversely affect them. It was also noted that we were not aware of any section of *The Planning Act* which provided the Board with the authority to limit or regulate seating. In addition, we understood that the Development Officer for the district, had recommended that the Board not restrict seating in the project. A request was made that the condition pertaining to seating imposed by the Variation Board, be reconsidered.

A meeting was arranged with the Mayor and Town Council where we were informed that some Council members were concerned that increased seating would result in significant parking problems. At the meeting we noted that parking spaces were normally regulated through Zoning By-laws. It was noted that the Zoning By-law required one space for each one hundred square foot of floor area but that in our complainant's case the Board had reduced the requirement for forty parking spaces to one with the condition that the owners construct and maintain washroom facilities for public use. Our concern was that while the Zoning By-law regulated parking, there was no regulation for seating capacity in restaurants. Council advised our office that it would consider our views on the matter.

Subsequently, our office was informed that Council had met to decide on a tabled motion to allow more seating in the commercial complex. We were advised that the motion was defeated with the Mayor having to cast the deciding vote. It was noted that many factors had been considered in defeating the motion, one of which was the fact that the scope of the project had changed significantly from the first application. The Mayor expressed his opinion that it was a reasonable assumption that if all the changes had been known during the first debate, the variation request would have been refused.

Contrary to Law

After considering this information, I wrote to the Mayor and made a formal recommendation as provided for under *The Ombudsman Act* that the Council of the Town of Gimli withdraw the condition limiting seating in the commercial complex. This was based on concerns that *The Planning Act* did not allow the Board to limit or regulate seating. It was noted in our report to Council that no evidence had been presented to support its conclusion that an additional twenty-eight seats would negatively impact upon the environment and convenience of the community. It seemed to me that in view of the adverse affect a limitation of seating would

have on our complainant, the Board's decision to refuse the additional seating was unreasonable. It also appeared to me that the decision was contrary to law.

Shortly thereafter, a response to the recommendation was received from the Town Administrator on behalf of Council advising that Council felt *The Planning Act* gave the Board authority to limit or regulate seating. We were advised that the Board's intent was not to add to existing parking problems. Council advised that the Board was of the opinion that they were accommodating our complainants by allowing the building with only one parking spot. Accordingly, Council did not intend to implement my recommendation.

I again wrote to the Mayor informing him that the information provided had not caused me to alter my recommendation. I commented that we had not received any information which would lead us to conclude that it was the intent of the Zoning By-law to regulate seating in restaurants. In addition, I advised that I had not been provided with any information which would support how an additional twenty-eight seats would negatively affect or have significant impact on the general environment and convenience of the community. As I had gone as far as I could go, I advised I would be concluding my review on this matter, reporting to the complainant and reporting the matter in my next annual report. While the Mayor, Council, and Town administrator were very cooperative in providing information and responding to our comments and enquiries, I was disappointed that the recommendation was not accepted.

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Was That by Law?

In early January 1998, our office received similar complaints from two residents of the Rural Municipality of Springfield. The concerns expressed related to Council proceeding with amendments to a by-law which promoted a development plan allowing subdivisions in the R.M., despite our complainants' belief that a majority of the residents of the R.M. opposed such a development plan.

Of concern also was the timely notification of public meetings relative to this by-law. One of the meetings had been scheduled after the first reading of the by-law, and, the notice local carried by two newspapers was not published in the City of Winnipeg.

Our office explained grievances undertaken for investigation by us must relate to an administrative matter and not a policy decision made by elected representatives. A Council decision to vote contrary to wishes of residents of the Municipality to approve development plans for subdivisions is a policy decision and is not within our mandate.

With respect to other concerns, we learned that the R.M. had complied with the requirements of *The Planning Act* in passing the by-law. We reviewed the Act and were provided with a copy of a statutory declaration which the R.M. had filed with the appropriate provincial Minister. Our complainants were provided with copies of the sections of *The Planning Act* which regulate the steps to be taken by an R.M. in order to pass such by-laws.

The Municipality had published a public notice of a meeting to hear representations from any person relative to the proposed development plan, after first reading of the by-law but before second reading, as required by the Act. Legislation did not require an R.M. to hold public meetings prior to first reading of proposed amendments to a development plan.

R.M. Exceeded Requirements

We informed our complainants that the Act states the notice of meeting is to be published "in a newspaper having general circulation in the district or municipality". The legislation requires that the advertisement run for two consecutive weeks, at least once per week, and is to be published at least twenty-one days before the date of the public meeting. The R.M. had exceeded requirements of the Act by advertising in two newspapers circulated within the R.M. According to the Chief Administrative Officer for the R.M., this notice was advertised in both local newspapers because the R.M. was aware of the importance of the by-law to the residents. Publishing in Winnipeg, however, was cost-prohibitive, and not required by the Act.

Based on the information provided, there did not appear to be any administrative matter on which I could make a recommendation. Our complainants were advised that I was unable to conclude that the actions and/or decisions taken were clearly wrong or unreasonable, or contrary to legislation. We appreciated the cooperation from the R.M. in responding to our enquiries.

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Copy Fees Refunded

Three residents of the R.M. of Hillsburg contacted our Office about charges for copies of minutes and accounts of a Council meeting of December 1996. Two of the complainants had been charged a fee of $5.00 each, and one complainant had been charged a fee of $1.

Their request for copies of these minutes was made in January 1997. The new *Municipal Act* had come into effect on January 1, 1997 and it regulated fees for copies. Prior to the new Act, they were required to pay for copies of Council meeting minutes. The new legislation stipulates that fees cannot exceed comparable fees payable under *The Freedom of Information Act* which entitles individuals to obtain copies of the first 20 pages of documentation free of charge. Also, with the coming into force of the new Act, the old Act was repealed. Our complainants did not feel they should have been charged any fees as their requests were made after the new Act came into force.

The Chief Administrative Officer for the Municipality explained to us that the minutes requested related to a meeting held in December 1996. As such, the Municipality relied on the old by-law rate for photocopy charges. The R.M.'s legal counsel supported this decision.

We advised the Municipality that, as the request for and the supplying of copies was made after January 1, 1997, and as the previous Act had been repealed, it was our opinion that the provisions of the new legislation would be applicable. Further, as the number of copies provided to our complainants were fewer than 20 pages, the Municipality should refund the fees charged.

Legal counsel for the Municipality responded to our position and provided us with a copy of Council's resolution which stated that the Municipality would adhere to their former decision, that the Municipality would not be refunding any fees.

Decision Discriminatory

On contacting the Municipality's solicitor, I made him aware of my opinion that the Municipality was acting contrary to law when it charged our complainants for copies of documents that had been requested in 1997. I was empowered to make a formal report in which I would be required to state that I felt the decision appeared to be contrary to law, vindictive and discriminatory. The solicitor requested that I confirm this in writing

through him, to the Municipality, for reconsideration prior to my issuing a formal report, which I did.

We were subsequently advised that refund cheques were mailed to our complainants. A copy of Council's new resolution relating to this matter was provided to us and I noted that the refunding of the fees was done "IN PROTEST". From the resolution, it was clear that Council had not changed its opinion with regard to reimbursing our complainants and remained of the opinion that "year-end transactions and other "municipal transactions for 1996 done in January 1997 must adhere to the former Municipal Act".

I found this case to be an unnecessary waste of time, effort and money to resolve an issue that seemed clear and resulted in a total refund of $11!

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Property Taxes Refunded

Our complainants informed us they had built an addition to their home at a cost of approximately $8,000. A building inspector had valued the addition at $44,000.

A provincial assessor subsequently visited their residence and had agreed with them that the addition was not worth the assessed amount. Their taxes were then adjusted for the year 1997, but not for 1996. On our complainants'' behalf, we contacted the Chief Administrative Officer for the Municipality and the Provincial Municipal Assessment Branch.
The Municipal Assessment Branch confirmed that an error was made concerning the effective date of the tax assessment change, and that it should have read January 1996 rather than January 1997.

The Municipality subsequently informed us that Council had exercised its discretion and authorized a cancellation of taxes in the amount of $833.30 over and above the September 1997 amount. This action satisfactorily resolved the matter for our complainants.

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Move that Dump

A resident of the City of Winnipeg who owned land in the R.M. of Piney used it weekends and during vacation time as a way of retreating from city life and enjoying the peace and quiet of country living. In the future, he planned to relocate and spend his retirement years there.

Our complainant learned that the R.M. planned to move the existing garbage dump to a location next to his property. He felt that this would negatively affect present and future quality of life on the property.

The Chief Administrative Officer of the R.M. advised that the R.M. was still in the process of determining where the garbage dump would be located. A public meeting had been set to discuss the closure of the present garbage dump and its proposed relocation.

Environmental Impact

We were provided with information about the requirements which had to be met before the garbage dump could be relocated. Among these requirements was the necessity of submitting a professional engineering study that would demonstrate to the Department of Environment that proposed sites were suitable.

We discussed these requirements with our complainant and encouraged him to attend the public meetings and express his concerns at these forums. In this way, the Municipality would become aware of his objections before moving the garbage dump.

Our Office was pleased to pass on this information about the municipal process to our complainant to ensure his concerns would be heard.