

TABLE OF CONTENTS

Introduction	5
Year in Review	7
Staffing and Budget	10
Statistics	13
Selected Case Summaries	24
Manitoba Agriculture	25
Manitoba Government Services	28
Manitoba Health	29
Manitoba Highways & Transportation	33
Manitoba Housing	36
Manitoba Hydro	38
Manitoba Justice	41
Manitoba Lotteries Corporation	47
Manitoba Public Insurance	49
Municipalities	52
Child & Adolescent Services	61
The Ombudsman Act	71

INTRODUCTION

In the late 1960's Canadian provinces began passing Ombudsman legislation. The purpose then, as it is now, was to promote fairness and administrative accountability through the investigation of complaints by an independent objective non-partisan Office with broad powers to investigate, recommend and report publicly. The Manitoba Office of the Ombudsman was established on April 1, 1970, and after almost 30 years the value of the Office remains in terms of promoting these principles.

The primary activity of the Office has been centered on complaint investigation and resolution of disputes in an informal, non-adversarial manner. Elected officials have recognized the value of the Office as a resource dealing with constituency complaints that may need the time, resources and powers which has been given to the Ombudsman by the Legislature to thoroughly and impartially investigate complaints.

Public bodies also look to the Office of the Ombudsman from time to time, when they are unable to satisfy a complainant or the public that their actions and decisions have been fair and objective. Even internal appeal mechanisms, no matter how independent in structure, may be subject to perception of bias.

The public, as evidenced by the number of complaints received annually, continues to have confidence in the independence, impartiality and objectivity of the Office and individual complaint investigation will continue to be our primary activity.

Nevertheless, over the years there has been an increasing recognition of the value of the Ombudsman in promoting broader principles of fairness, equity and administrative accountability. Broader systemic reviews of administrative practices and procedures focus on principles of administrative fairness and accountability and encourage compliance and commitment to these principles.

People have always expected public bodies to be fair, open and accountable, but I believe in the past, people were more accepting of what they were told and less willing to challenge senior officials in government, politicians and professionals such as their doctors or lawyers. I think things have changed. They are now more prepared to question and challenge actions and decision that affect them. This is probably due to the push for self-empowerment, availability of information, better knowledge and education, and better means of communication.

It's great for democracy when people are interested and willing to participate and are prepared to question and challenge actions and decisions, which affect them. This is where I believe Ombudsman legislation has its greatest value; it promotes democratic principles of fairness, openness and accountability. The commitment and application of these principles make it easier for the public to see into the actions of public bodies and participate in the democratic process.

Ombudsman legislation also subjects public bodies to the rigors of independent scrutiny of their administrative practices and procedures, and independent scrutiny has value in building public confidence and trust in the workings of government. Commitment to Ombudsman legislation is a commitment to one's fundamental right to fair and equitable

Provincial Ombudsman 1998 Annual Report

treatment and to an open and accountable government.

While talking that commitment is necessary, talking is not enough. Government and public bodies must be seen to be walking the commitment. Ombudsman legislation must not only incorporate strong provisions relating to independence and powers to investigate, recommend and to report publicly, but the independence and powers of the Office must be seen.

Commitment to openness means that sometimes bad decisions or mistakes by public bodies are visible along with the good decisions and right things that are done. A commitment to accountability means that public bodies will openly accept responsibility for its actions and decisions and be answerable to the public.

It's not always easy to commit to a process that may result in discomfort, sometimes embarrassment, more work or cost. It is the willingness of public bodies to assist the Ombudsman in identifying and resolving legitimate grievances that demonstrates the commitment to the principles of administrative fairness, openness and accountability.

In Manitoba, the Legislature has provided strong provisions in Ombudsman legislation relating to the independence and powers to investigate, recommend and report publicly. In addition, the respect for the independence and powers has been demonstrated as our Office has seldom found it necessary to use the formal powers given to our Office through the legislation.

Manitoba has also passed legislation which put into place a legislated right of the public to access records of public bodies. It was not that the public did not have access prior to

this, but the principles and values are now clearly spelled out in legislation, thereby discouraging arbitrary decision making when it came to accessing records of public bodies and encouraging openness and accountability.

Privacy legislation has recently been passed in Manitoba which recognizes one's fundamental right of privacy and the right to protection of one's personal privacy. The legislation demonstrates a commitment to international principles of fair information practices. These pieces of legislation also include provisions for independent scrutiny through an Ombudsman role.

These initiatives, along with the experiences of our Office suggest to me that support for democratic principles of fairness, openness and accountability are alive and well in Manitoba.

YEAR IN REVIEW

Significant changes to the Office of the Ombudsman took place in 1998. As a result of new Access and Privacy Legislation, an Access Division was established within the Office. The extension of the Ombudsman's jurisdiction to Municipalities (other than the City of Winnipeg) created a need to have a rural presence, and this was accomplished in 1998 by the opening of a Regional Office in Brandon. Eight additional staff were approved by the Legislative Assembly Management Commission and recruited during 1998 and major renovations took place over five months in our existing Office to accommodate the additional staff.

In the meantime, complaints continued to climb from 905 to 940 under The Ombudsman Act and from 70 to 119 under Access and Privacy Legislation. This is in addition to the over 3000 informal concerns and inquiries we received and handled by telephone.

We closed 645 of the 940 complaints received under The Ombudsman Act in 1998, and 189 of the 236 files carried forward from previous years were closed. Nevertheless, we carried forward 295 files into 1999.

Our carried forward files from year-to-year remain high, as our staff complement never seems to be sufficient to reduce the backlog. Why is this the case when our staff are working harder, and through experience are becoming more efficient in performing their duties? A review of what has taken place over the years provides the reasons.

Additional responsibilities have been added to the Office over the last several years as a result of public service demands and public policy decisions relating to access and privacy legislation, and changes in the scope of the Ombudsman's jurisdiction. While the Legislature, through the Legislative Assembly Management Commission has been very supportive of the needs of the Ombudsman in terms of resources, usually the additional work comes first and the resources come after. Add the time it takes to put additional resources into effect through recruitment of staff, which can be a lengthy process, and we have backlogs being added to backlogs.

1998 was a year of change for our Office whereby the issues surrounding new responsibilities and expansion of services had to be addressed. While these added to delays in completing investigations and finalizing reports, I believe efforts by our staff to listen, explain, prioritize and inform, have minimized the negative effects the delays have had on our service delivery. Over the next year, our policies, procedures, standards, priorities and resources will be carefully reviewed to determine the most cost efficient and effective way we can address the backlogs and delays while maintaining a high standard of service.

In the meantime, I am pleased to say that in 1998, over 59% of the complaints received by our Office were concluded by means of providing assistance or supplying information, or through resolution, partly or completely. No formal recommendations were made, although 139 cases were resolved and 17 were partially resolved. At times, we have made interim reports with proposed recommendations to Deputy Ministers, Chief Executive Officers of Crown Corporations or Chief Administrative Officer of Agencies.

Provincial Ombudsman 1998 Annual Report

We have found that these reports receive positive attention and action to resolve the issues, making a formal recommendation to a Minister or Municipal Council unnecessary.

This speaks to the informal, non-adversarial style of the Office which works in a public service that is committed to principles of accountability, openness and administrative fairness. It is also an indication of an accountable public service that is willing to listen, acknowledge mistakes, and seek ways to resolve problems.

Opening of the Brandon Regional Office of the Ombudsman

At a meeting of the Legislative Assembly Management Commission in late 1997, discussion took place concerning additional resources needed as a result of the expansion of the Ombudsman's jurisdiction to all municipal corporations other than the City of Winnipeg. At the same meeting, the value of a rural office was raised. The prospect of this was received very positively by members of the Commission.

The Commission approved the addition of two staff to accommodate municipal jurisdiction, and after a further submission in January 1998, approved funds to establish an Office in Brandon. With the assistance of Manitoba Government Services, we were able to find a suitable location, have the renovations completed and open the Office by June 5, 1998. The Office is located at: Scotia Towers, Room 603 – 1011 Rosser Avenue, Brandon, Manitoba, Telephone: (204) 571-5151.



James McCrae, MLA, Brandon West, Leonard Evans, MLA, Brandon East, Barry Tuckett, Provincial Ombudsman, Susan Archibald, Sr. Investigator, Sharon Krakowka, Intake/Office Manager, Janet Wood, Investigator

Since that time, the majority of concerns received from individuals residing in rural and urban communities outside a 50-mile radius of the City of Winnipeg have been handled out of the Brandon Office. The Office handled 226 complaints and hundreds of enquiries in 1998. The Brandon Office dealt with concerns relating to crop insurance, water rights, drainage, automobile insurance claims, social assistance, maintenance enforcement, environment, concerns from correctional facilities, etc.

Based on the activity, it appears that the Office has been well received.

On a Personal Note

Manitoba's first Ombudsman, Mr. George W. Maltby, passed away on July 27, 1999, at the age of 84.

Mr. Maltby was appointed Ombudsman on April 1, 1970, by the then Premier, The Honourable Edward Schreyer, on the recommendation of a committee of the Manitoba Legislature consisting of seven Members of the Legislative Assembly from the three parties. Mr. Maltby served as Ombudsman for 12 years until his retirement in 1982. Previous to his term as Ombudsman, Mr. Maltby was Chief of the St. James Police Department.

Following his retirement as Ombudsman, Mr. Maltby received Manitoba's highest honour, the Order of the Buffalo Hunt, in 1982. He also received an Honourary Doctorate of Law from the University of Winnipeg on October 17, 1982.

To this Office, Mr. Maltby left a legacy that has continued since his retirement and that will no doubt continue for many years. Mr. Maltby established an Office that speaks to values and principles that are there for all segments of society, that looks for ways to help and not ways to avoid work, to be bold not timid, and to seek real solutions in non-confrontational ways through the use of common sense and compassion.

He will be missed.



STAFFING AND BUDGET

The expansion of services to all municipalities other than the City of Winnipeg and the addition of responsibilities under The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act made restructuring of our Office necessary.

Two divisions within the Ombudsman's Office were established; one headed by the Deputy Ombudsman, Donna Drever and one headed by Peter Bower, who was appointed as Executive Director of the Access and Privacy Division on June 15, 1998.

In addition, four units headed by team leaders were established to deliver our direct public service responsibilities in a team setting. The effectiveness of the Office depends largely on teamwork and we are confident the organization into divisions and team units will assist our dedicated and competent staff in meeting the challenges created by our broadened mandate.

Budget

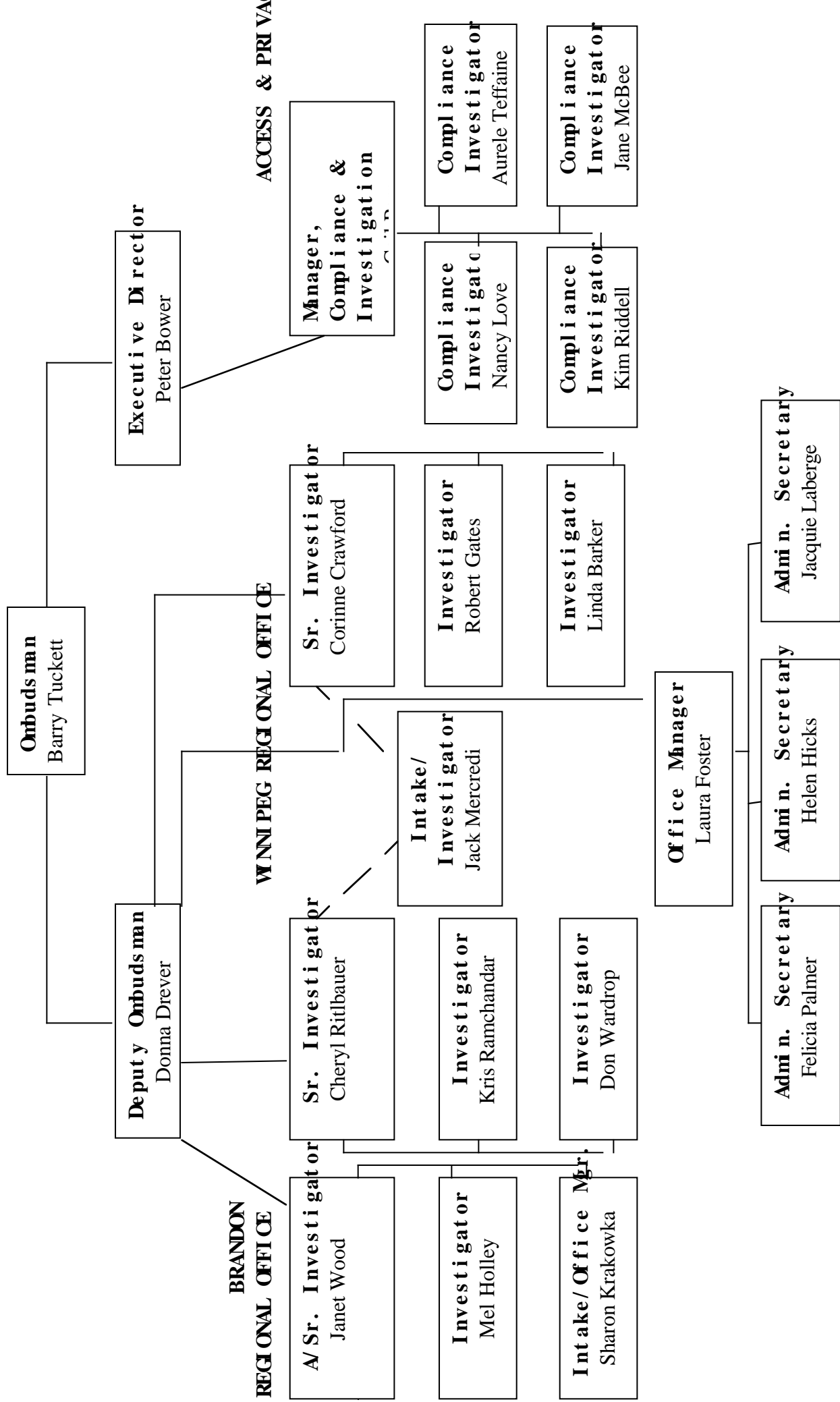
Our budget of \$1,747,300 for salaries and other expenditures is broken down as follows:

22.19 staff years ----- \$1,169,600
Other expenditures ---.\$ 577,700
(amount includes rent)

Organizational Chart

(please see following page)

Organizational Chart



Statistics

Complaints and Telephone Enquiries Received by Year

Our Office received 940 formal complaints and 3,045 concerns and enquiries by telephone in 1998. 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 1999.

Year	W i t t e n	T e l e p h o n e	T o t a l
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	1179	1907
1984	807	1275	2082
1985	858	1826	2684
1986	674	1347	2021
1987	757	3261	4018
1988	843	2262	3105
1989	829	3004	3833
1990	753	2609	3362
1991	857	2614	3471
1992	786	3263	4049
1993	720	3033	3753
1994	777	3581	4358
1995	718	3423	4141
1996	710	3582	4292
1997	905	3620	4525
1998	940	3045	3985
Tot a l	19474	43272	62746

Concerns and Enquiries Received by Telephone in 1998

DEPARTMENTS

Agriculture (5)	
General	4
Manitoba Crop Insurance Corporation	1
Civil Service Commission (4)	
Consumer and Corporate Affairs (60)	
General	8
Consumers' Bureau	4
Public Utilities Board	1
Residential Tenancies Branch	46
Superintendent of Insurance	1
Education and Training (21)	
General	15
Student Financial Assistance	6
Environment (1)	
Executive Council (1)	
Family Services (281)	
General	24
Child & Family Services	94
Income Security	163
Finance (7)	
Government Services (4)	
Health (80)	
General	30
Mental Health	34
Brandon Mental Health	2
Health Sciences Centre	6
Selkirk Mental Health Centre	5
Addictions Foundation of Manitoba	1
Manitoba Adolescent Treatment Centre	2
Highways and Transportation (47)	
General	21
Driver & Vehicle Licencing	24
Housing (26)	
General	17
Manitoba Housing Authority	9
Manitoba Labour (22)	
General	11
Employment Standards	3
Manitoba Labour Board	8
Ministry of Justice (449)	
General	52
Agassiz Youth Centre	1
Brandon Correctional Institution	54
Headingley Correctional Institution	88
Milner Ridge Correctional Institution	14
Portage Correctional Institution	16
Winnipeg Remand Centre	69

Maintenance Enforcement	60
Manitoba Human Rights	3
Manitoba Legal Aid	12
Public Trustee	46
Manitoba Youth Centre	8
Courts	26
Natural Resources (6)	
Northern Affairs (14)	
Rural Development (6)	

BOARDS

Workers Compensation Board (119)	
----------------------------------	--

CORPORATIONS

Corporations and Extra Departmental (338)	
General	3
Manitoba Telephone System	2
Manitoba Lotteries Corporation	2
Manitoba Hydro	38
Manitoba Public Insurance	293

OTHER

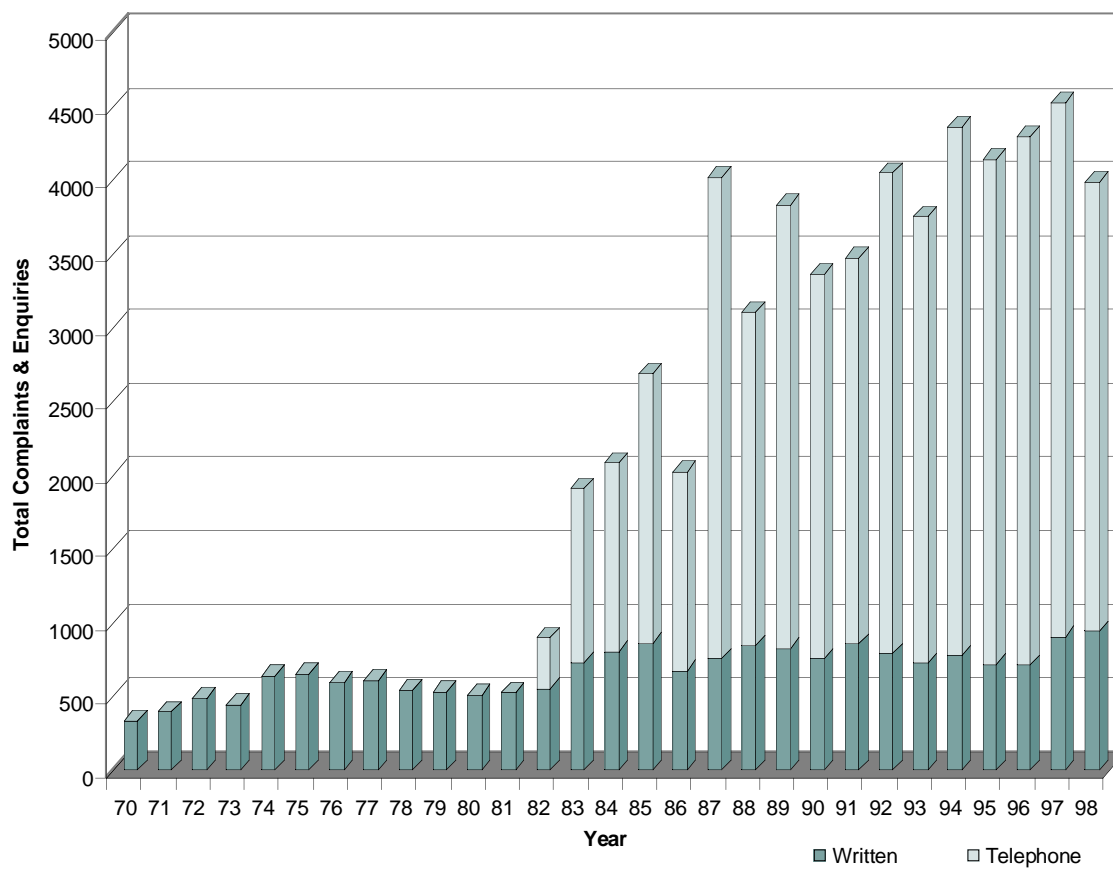
Federal Departments & Agencies (193)	
General	90
Customs	1
Health & Welfare Canada	51
Superintendent of Financial Institutions	17
RCMP Public Complaints	10
Revenue Canada	24
Municipalities/Cities/Towns (173)	
General	211
City of Winnipeg	62

Private Matters (1,188)	
General	1,039
Consumer	87
Doctors	7
Lawyers	22
Schools	21
Hospitals	12

Tot al	3, 045
---------------	---------------

Provincial Ombudsman 1998 Annual Report

Complaints and Telephone Enquiries Received By Year



Source of Complaints by Location

Alexander	1	Inwood	1	Sandy Lake	2
Alonsa	1	Island Lake	1	Selkirk	15
Altona	1	Kenton	1	Seven Sisters	1
Anola	3	Killarney	2	Shilo	4
Arborg	1	La Broquerie	2	Shoal Lake	2
Arnes	1	LaRiviere	1	Shortdale	1
Ashern	2	Lac du Bonnet	2	Skowman	1
Austin	2	Lake Audy	1	Souris	4
Beausejour	9	Lake Francis	1	South Junction	1
Birch River	1	Landmark	1	St. Adolphe	2
Birtle	1	Libau	2	St. Andrews	6
Boissevain	3	Lockport	1	St. Georges	1
Bowsman	2	Lorette	7	St. Germain	2
Brandon	161	Mafeking	1	St. Malo	1
Brookdale	3	Manitou	1	St. Pierre	1
Caliento	1	Marquette	1	St. Theresa Point	1
Camperville	1	McAuley	1	Ste. Agathe	1
Carberry	2	Meadow Portage	1	Ste. Anne	1
Cardinal	1	Melita	3	Steinbach	3
Carmen	1	Middleboro	1	Stevenson Island	1
Clandeboyne	1	Minnedosa	1	Stonewall	5
Clanwilliam	1	Morden	1	Stony Mountain	2
Cochrane	1	Morris	2	Stuartburn	1
Cormorant	1	Neepawa	4	Swan River	3
Courtenay	1	Ninga	1	The Pas	3
Cromer	2	Notre Dame de Lourdes	1	Thompson	5
Dauphin	9	Oakbank	1	Thornhill	1
Dominion City	1	Oakburn	1	Vasser	1
Douglas	2	Oakview	1	Virten	2
Dugald	2	Oak Lake	1	Vita	2
Durban	1	Ochre River	1	Wanipigow	1
East St. Paul	3	Onanole	1	Wanless	1
Elie	2	Oxford House	2	Warren	1
Emerson	2	Peguis	1	Wellwood	1
Eriksdale	1	Petersfield	3	Winkler	1
Fairford	1	Pine Falls	1	Winnipeg	433
Falcon Lake	1	Poplarfield	1	Winnipeg Beach	2
Flin Flon	1	Portage la Prairie	29	Winnipegosis	1
Gimli	2	Plum Coulee	1		
Glenboro	1	Prawda	1	Subtotal	906
Glenella	1	Rennie	1		
Grand Marais	1	Reston	1	Alberta	6
Griswold	1	Richer	2	British Columbia	11
Grunthal	1	Riding Mountain	2	England	1
Hamiota	1	Rimbey	1	Maine	1
Harding	1	Rivers	2	Nova Scotia	1
Hartney	1	Roblin	10	Ontario	10
Hazelridge	1	Rorketon	3	Quebec	2
Headingley	18	Rosburn	2	Saskatchewan	2
Holland	1	Rosendale	1		
Ile Des Chenes	6	Rosser	2	Subtotal	34
Inglis	4	Russell	2		
		San Clara	1	Total	940

Formal Complaints Received in 1998 by Category and Disposition

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<i>Departments</i>											
Agriculture	5										
General	3	-	-	-	-	-	2	-	-	-	1
Manitoba Crop Insurance Corporation	2	-	-	1	1	-	-	-	-	-	-
Civil Service Commission	3	-	-	-	-	1	-	-	-	-	2
Consumer & Corporate Affairs	40										
General	11	-	-	1	1	-	2	-	-	1	6
Consumers' Bureau	3	-	-	1	-	-	2	-	-	-	-
Manitoba Securities Commission	1	-	-	-	-	-	-	-	-	-	1
Residential Tenancies Branch	24	2	-	2	1	5	1	-	-	-	13
Superintendent of Insurance	1	1	-	-	-	-	-	-	-	-	-
Education & Training	17										
General	13	1	-	2	1	2	1	-	-	2	4
Student Financial Assistance	4	2	-	1	-	-	-	-	-	1	-
Environment	5	-	-	-	-	1	-	-	-	1	3
Family Services	73										
General	29	3	1	1	2	3	5	1	-	6	7
Child & Family Services	15	2	-	1	2	-	3	1	-	1	54
Income Security	22	-	-	-	2	6	4	-	-	5	5
Social Services Advisory Committee	7	-	-	-	-	2	4	-	-	-	1
Finance	4	-	-	-	-	-	1	1	-	-	2
Government Services	6	-	-	-	-	1	1	-	-	-	4
Health	49										
General	22	-	1	-	-	9	2	-	-	3	7
Addictions Foundation of Manitoba	1	-	-	1	-	-	-	-	-	-	-
Mental Health	12	1	-	2	1	4	1	-	-	3	-
Brandon Mental Health	6	-	-	1	-	1	1	-	-	2	1
Selkirk Mental Health Centre	6	1	1	-	-	1	2	-	-	-	1
Manitoba Adolescent Treatment Ctr.	2	-	-	-	-	-	-	-	-	-	2
Highways and Transportation	26										
General	13	-	-	2	-	1	1	1	-	3	5
Driver & Vehicle Licencing	13	1	-	-	1	3	4	-	-	2	2
Housing	15										
General	12	-	-	3	1	2	4	-	-	-	2
Manitoba Housing Authority	3	1	-	1	-	-	-	-	-	-	1
Industry, Trade & Tourism	1	-	-	-	-	-	-	-	-	-	1

Provincial Ombudsman 1998 Annual Report

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
Legislative Assembly	1	1	-	-	-	-	-	-	-	-	-
Manitoba Labour	17										
General	4	-	-	-	-	1	1	-	-	-	2
Employment Standards	5	-	-	-	-	1	1	-	-	2	1
Manitoba Labour Board	8	-	-	2	2	-	1	1	-	-	2
Manitoba Justice	269										
General	21	1	-	-	-	8	1	-	-	1	11
Agassiz Youth Centre	10	-	-	-	1	2	2	-	-	2	3
Brandon Correctional Institution	55	-	-	1	-	6	22	1	-	24	1
Dauphin Correctional Institution	3	-	-	-	-	-	2	-	-	-	1
Headingley Correctional Institution	22	1	-	3	-	4	7	1	-	5	1
Milner Ridge Correctional Institution	8	-	-	-	1	2	1	-	-	3	1
Portage Correctional Institution	13	3	1	-	-	1	4	-	-	2	2
The Pas Correctional Institution	2	-	-	-	-	-	2	-	-	-	-
Winnipeg Remand Centre	32	-	-	4	2	11	8	-	-	1	6
Maintenance Enforcement	28	1	-	2	1	1	4	4	-	8	7
Manitoba Human Rights Commission	7	-	-	-	-	-	2	-	-	-	4
Manitoba Legal Aid	8	-	1	1	-	3	2	-	-	-	1
Public Trustee	30	2	-	3	2	7	6	1	-	1	8
Manitoba Youth Centre	26	-	-	3	1	3	5	1	-	6	7
Courts	4	-	-	-	1	2	-	-	-	-	1
Natural Resources	32	-	-	-	1	7	2	-	-	1	21
Northern Affairs	7	-	-	-	-	2	-	1	-	1	3
Rural Development	7	-	-	-	-	-	1	-	-	2	4
Municipalities	89	2	3	6	-	17	11	-	-	10	40
<i>Corporations</i>											
Corp. & Extra Departmentals	208										
Manitoba Lotteries Corporation	1	-	-	-	-	-	-	-	-	-	1
Manitoba Hydro	20	-	-	1	-	2	2	-	-	11	4
Manitoba Public Insurance	139	3	-	5	4	14	24	3	-	24	62
Workers Compensation Board	48	1	2	3	3	13	5	-	-	4	17

Provincial Ombudsman 1998 Annual Report

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<u>Non-Jurisdictional</u>											
Federal Departments & Agencies	11	-	-	-	1	10	-	-	-	-	-
Doctors	1	-	-	-	-	1	-	-	-	-	-
Private Matters	50	2	4	-	5	29	1	-	-	1	8
Lawyers	1	-	-	-	-	1	-	-	-	-	-
Revenue Canada	2	-	-	-	-	2	-	-	-	-	-
Schools	1	-	-	-	-	1	-	-	-	-	-
Total	940	32	14	54	38	193	158	17	-	139	295

In 1998, 645 or 68% of the complaints received were completed during the year.

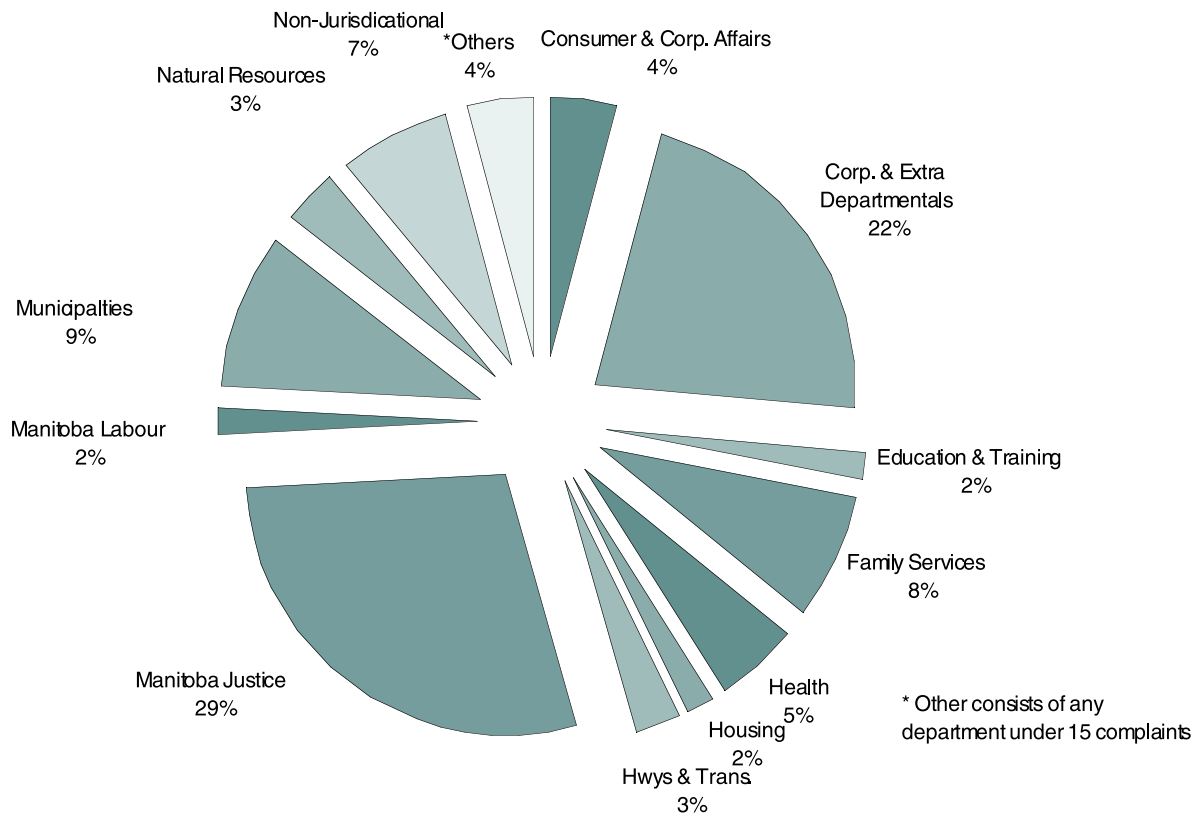
The Ombudsman declined to investigate 14 cases which represents less than 1% of the total number of cases received.

During the year, 92 or 14% were discontinued either by the Ombudsman or the client.

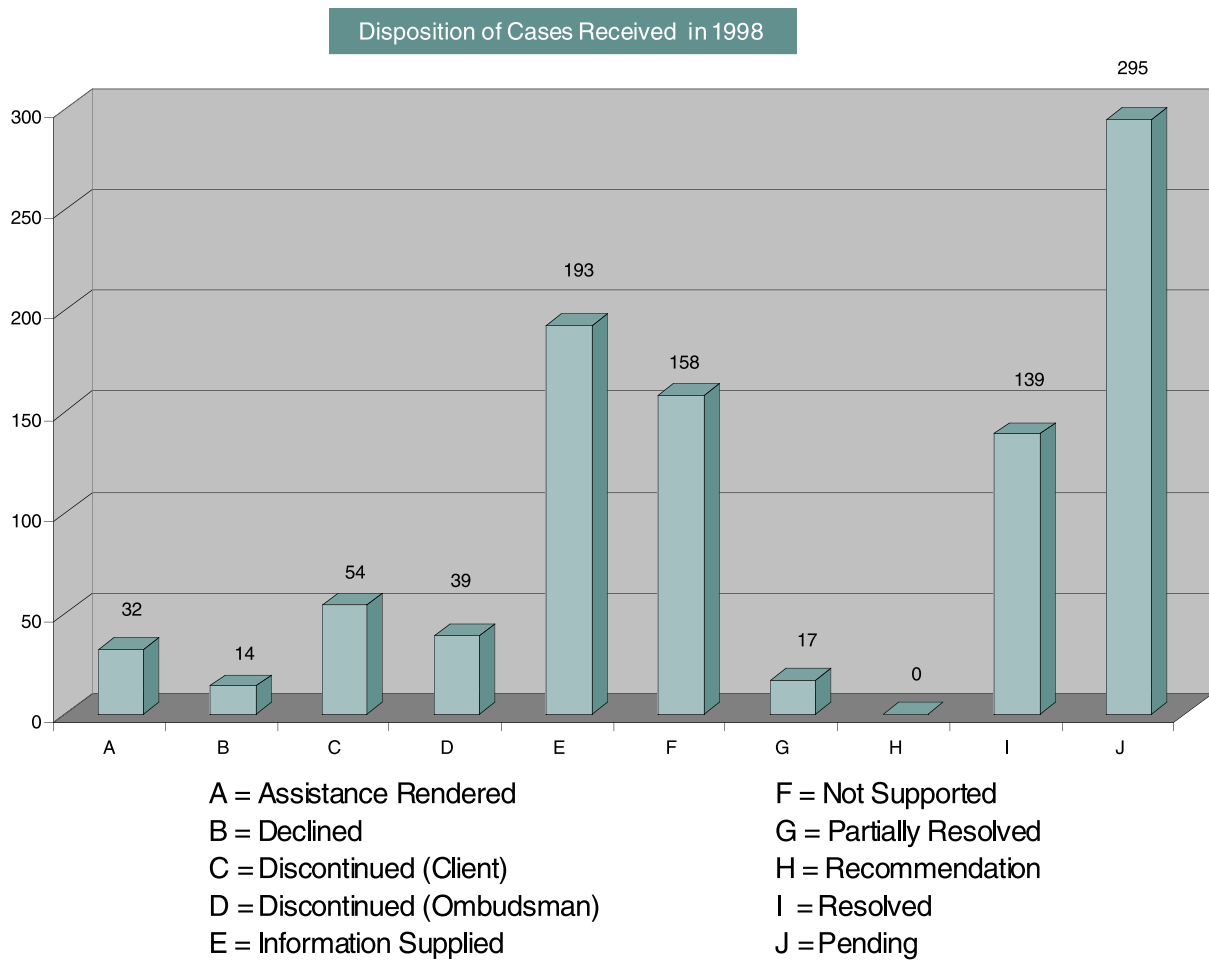
Of the cases completed 381 or 59% were in the categories Assistance Rendered, Information Supplied, Partially Resolved and Resolved and 158 or 24% were not supported.

Provincial Ombudsman 1998 Annual Report

Formal Complaints Received in 1998 by Percentage



Provincial Ombudsman 1998 Annual Report



Provincial Ombudsman 1998 Annual Report

Cases Brought Forward from the Previous Year

At the close of 1997, there were 236 cases still pending (1 of which from 1991, 1 from 1994, 3 from 1995 and the remainder, 30 from 1996). The disposition of these cases are as follows:

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supported	Part. Resolved	Recomm.	Resolved	Pending
Agriculture	7										
General	5	-	-	-	-	1	2	-	-	1	1
Manitoba Crop Insurance Corporation	2	-	-	-	-	-	1	-	-	1	-
Civil Service Commission	1	-	-	-	-	-	1	-	-	-	-
Consumer & Corporate Affairs	7										
General	5	-	-	-	-	2	1	-	-	-	2
Manitoba Securities Commission	2	-	-	-	-	-	-	-	-	-	2
Environment	3	-	-	-	-	1	1	-	-	-	1
Family Services	17										
General	7	-	-	-	-	1	3	-	-	2	1
Child & Family Services	10	-	-	-	-	-	1	2	-	1	6
Finance	2	-	-	-	-	1	-	-	-	-	1
Government Services	4	-	-	-	-	1	-	-	-	2	1
Health	12										
General	7	1	-	1	-	-	1	3	-	-	1
Mental Health	3	-	-	-	-	1	-	-	-	-	2
Health Sciences Centre	2	-	-	-	-	1	1	-	-	-	-
Highways and Transportation	12										
General	8	-	-	-	-	1	4	-	1	1	1
Driver & Vehicle Licencing	4	-	-	-	-	2	-	-	-	2	-
Manitoba Labour	4										
General	2	1	-	-	-	-	1	-	-	-	-
Manitoba Labour Board	2	-	-	-	-	1	1	-	-	-	-
Manitoba Justice	52										
General	6	-	-	-	-	1	1	-	-	1	3
Agassiz Youth Centre	1	-	-	-	-	-	-	1	-	-	-
Brandon Correctional Institution	4	-	-	-	-	-	2	1	-	-	1
Headingley Correctional Institution	2	-	-	-	-	-	1	-	-	-	1
Miner Ridge Correctional Institution	1	-	-	-	-	1	-	-	-	-	-
Portage Correctional Institution	1	-	-	1	-	-	-	-	-	-	-
Winnipeg Remand Centre	7	-	-	1	-	3	-	1	-	1	1
Maintenance Enforcement	8	2	-	-	-	-	1	2	-	2	1
Manitoba Legal Aid	2	-	-	1	-	1	-	-	-	-	-
Manitoba Human Rights Commission	2	1	-	-	-	-	1	-	-	-	-
Public Trustee	9	-	-	2	-	-	3	-	-	3	1
Manitoba Youth Centre	9	2	-	2	-	-	3	-	-	-	2
Natural Resources	15	-	-	-	1	5	2	1	-	1	5
Northern Affairs	1	-	-	-	-	-	-	1	-	-	-
Rural Development	2	-	-	-	-	-	-	-	-	2	-
Municipalities	20	-	-	1	-	5	5	1	-	2	6
Corporations											
Corp. & Extra Departmentals	75										
Manitoba Lotteries Corporation	1	-	-	-	-	-	1	-	-	-	-
Manitoba Hydro	1	-	-	-	-	-	1	-	-	-	-
Manitoba Public Insurance	64	-	-	2	-	11	33	2	-	13	3
Workers Compensation Board	9	-	-	1	-	1	2	-	-	1	4
Non-Jurisdictional											
Doctors	1	-	-	-	-	-	-	-	-	1	-
City of Winnipeg	1	-	-	-	-	1	-	-	-	-	-
Total	236	7	-	12	1	42	74	15	1	37	47

Selected Case Summaries

MANITOBA AGRICULTURE

Formal complaints received - 5

Enquiries by telephone - 5

Over the last year the number of formal complaints against Manitoba Agriculture decreased by 6.

The complaints we received related to issues such as the leasing of land and decisions of the Manitoba Crop Insurance Corporation (MCIC).

However, 2 of the 3 complaints against MCIC related to cases that our Office had previously reviewed and not supported. With the opening of our Brandon Office the complainants requested another review of their file. We found no basis to re-open or pursue these complaints.

In 1998, we completed an investigation that began in 1996 involving the dispute over the assessed value of land between a farmer and the Manitoba Agricultural Credit Corporation. This case could not be resolved informally and as a consequence, a

formal recommendation was made to the Minister of Agriculture.

The Minister has since rejected the recommendation and at the time of writing this report, further steps available to the

Ombudsman, in accordance with the following provisions of The Ombudsman Act, are being contemplated.

Further report on recommendations 37(2)

If within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department, agency of the government or municipality affected, may report the matter, including a copy of the report containing the recommendations, (a) in the case of a report under clause 36(1)(d), to the Lieutenant Governor in Council;

**Recommendation
denied...**

Recommendations are almost always accepted by Ministers. This is an exception.

and may mention the report in the Ombudsman's next annual report to the Assembly.

Publication of reports 43

In the public interest, or in the interest of a person, department, agency of the government or municipality, the Ombudsman may publish reports relating generally to the exercise and performance of his functions and duties under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of the report made to the assembly under this Act.

Seldom is it necessary to make formal recommendations as during the course of an investigation, a process incorporating discussions and meetings takes place where facts are brought forward and positions clarified. The majority of resolutions occur at this stage.

It is not uncommon, however, to send an interim report following our investigation to the Deputy Minister indicating our findings, conclusions and proposed recommendations

where we feel a valid grievance has not been resolved.

At times, a department may disagree with our findings and conclusions and may refuse to act on our proposed recommendations. The department will normally respond to our interim report, giving reasons for its position, and the response usually will include additional information and clarification that the department feels will support its position. If, after carefully considering the department's response, we are satisfied that the department has given appropriate attention to the interim report and its position is not unreasonable, we may conclude the case with a comprehensive and thorough report to our complainant.

If we continue to feel that our recommendation is appropriate, a formal recommendation is made to the Minister. I am pleased to say that formal recommendations made to Ministers have been received positively and, in almost all cases, accepted. This case is an

exception, and therefore, the avenues available to the Ombudsman to bring about further review and accountability are being considered. Hopefully, this case will be concluded and reported on in the next annual report of the Ombudsman.

The sting of a lengthy ordeal...

MANITOBA GOVERNMENT SERVICES

Formal complaints received - 6
Enquiries by telephone - 4

Over the last year the number of formal complaints against Manitoba Government Services decreased by 5.

Some of the complaints received in 1998 related to claims for compensation as a result of The Flood of the Century.

One of the cases that was finally resolved with Government Services in 1998 related to a compensation claim that dated back to 1995.

frustrated because she had applied for compensation in 1995.

The details:

Our Office pursued Manitoba Government Services (MGS) to find out what had caused such a delay. In February, 1997, MGS told us the matter was under review. We were persistent and continued to make follow-up inquiries. It wasn't until March 1998 that we finally received a letter from the Department. The Department, apologized for taking so long and told us that the delay was a result of an attempt to obtain Federal Cost Sharing for these losses. Although not successful, in the interest of fairness and equity, the Department decided to compensate leafcutter bee producers on a one-time only basis. After years of delay, the matter was finally resolved.

The buzz about the bees...

The issue:

Mrs. Z contacted us in January 1997. Due to flooding in July 1993, she had lost her leafcutter bees and had not yet received disaster assistance. She was extremely

...the
Ombudsman's
role in dealing
with complaints
relating to
hospitals is
expanding

MANITOBA HEALTH

Formal complaints received - 49

Enquiries by telephone - 80

The number of complaints against Manitoba Health decreased by 15 over the last year.

The complaints dealt with a variety of issues and approximately half were from individuals confined in mental health facilities.

With the regionalization of the operation and administration of Manitoba's Health Care services and the creation of the Regional Health Authorities (RHAs), the Ombudsman's role in dealing with complaints relating to hospitals is expanding. Previously we had only exercised our jurisdiction over the mental health facilities in the general hospitals.

The Regional Health Authorities Act came into force on April 1, 1997. It was amended in June of 1997 by The Regional Health Authorities Amendment Act. The Act defines

the duties and responsibilities of the RHAs and the Minister of Health.

Regional Health Authorities have been given the legislated responsibility and authority to plan, manage, deliver, monitor, and evaluate health services within their regions. The Minister of Health has the final accountability and overall responsibility for the health care system.

There is a direct accountability relationship between the Minister of Health and the Regional Health Authorities. As such the Ombudsman has jurisdiction over the administrative decisions of the Regional Health Authorities.

I very much appreciated the opportunity in December 1998, to meet with the Chief Executive Officers and Chairs of the Boards of the Regional Health Authorities to discuss our role. We have always had a positive working relationship with Manitoba Health and look forward to the same relationship with the RHAs.

Following is an example of a case that involved Manitoba Health. It related to a complaint from an employee in the health care field. Generally we don't get involved in labour issues but this case had a slightly different twist which made our involvement necessary and appropriate.

Justice delayed is justice denied...

The complaint:

Ms. H, a home support worker, lost several months wages because Manitoba Health took so long investigating its case against her.

The details:

Ms. H was suspended from work without pay on January 10, 1997. She had been accused of theft and improper conduct. She denied any wrong doing on both counts. It was April 25th, 1997, before Ms. H heard from Manitoba Health. The Department agreed to reinstate her position and asked her to accept a

two-week suspension without pay and that the balance of time off, be an unpaid leave of absence. She signed the settlement offer on May 2, and on May 23, went back to work. Though she did sign, she felt that if she hadn't, her employment would have been terminated.

Let's take a look at the allegations:

On January 8th, 1997, a coworker complained to her supervisor about Ms. H's conduct. In her letter of complaint, the coworker said that large amounts of food were missing from the home of a client who was serviced by both workers. The coworker couldn't say that Ms. H was the only one in the home, or that she actually saw Ms. H take any food. The coworker also accused Ms. H of yelling and upsetting a client. Ms. H said all of this was untrue. The coworker had been working with Manitoba Health for six months, while Ms. H had been a home support worker with five years of service. During this time, no negative performance appraisal

...justice delayed
is justice denied...

was made. In fact, Ms. H was described by her supervisor as having a very good rapport with her clients and that “she displayed a deep commitment to her job.” Although some notations were found indicating some minor grievances against Ms. H, they were not related to these allegations. Manitoba Health could not substantiate the allegations that led to Ms. H’s suspension from work. In fairness to Manitoba Health, the care and safety of vulnerable clients must come first. However, we concluded the time taken by Manitoba Health to conduct the investigation was unreasonably long and resulted in four months of lost income to Ms. H. I was of the opinion that Ms. H should be compensated for the period of time following the second week of suspension until her reinstatement. After this review the matter was referred to Manitoba Health and the Department paid Ms. H’s wages for her leave of absence. The Department agreed its investigation could have been better handled.

“It just takes listening!”

The Complaint:

A claim with the Manitoba Health Insured Benefits Branch didn’t add up.

The Story:

In 1995, Mrs. X retired and received a compensation package that dramatically increased her regular annual salary on a one-time-only basis. In 1997, she submitted a claim to the Pharmacare Program (Manitoba Health Insured Benefits Branch) for her medication. The Branch asked for her tax return to provide it with proof of her income. By mistake, she submitted her 1995 tax return. The Insured Benefits Branch said that since her 1995 tax return showed an income of \$38,719.02 she owed approximately \$1,100. When she discussed this with the Branch on the telephone it was explained that the reimbursement is determined according to one’s annual income.

...it just takes
listening...

Later, while reviewing her claim she realized she should have given her '96 tax return and that she had paid too much. Since her 1996 income was only \$14,560.94, she should have paid \$290 instead of \$1,161. She then attempted to have the claim corrected. She was told by Insured Benefits Branch that nothing could be done, it was too late. Frustrated, she called the Office of the Ombudsman.

The Solution:

After hearing Mrs. X's story, our Investigator understood the problem. Our Investigator called the Supervisor at Insured Benefits Branch and explained the facts. The Supervisor replied promptly. In light of the additional information presented by our Investigator, the Insured Benefits Branch, were able to make the necessary adjustments. Insured Benefits Branch paid Mrs. X the total amount she felt was her due.

MANITOBA HIGHWAYS & TRANSPORTATION

Formal complaints received - 26

Enquiries by telephone - 47

The number of complaints against Manitoba Highways and Transportation decreased by 4 over the past year. The complaints were varied and dealt with a range of issues from suspension of drivers' licences to the vehicle safety inspection process.

Following is a case summary relating to the suspension of a driver's licence for medical reasons.

...seizure = forfeiture...

The complaint:

Mrs. D was told that her driver's licence would be cancelled by the medical unit of the Division of Driver and Vehicle Licensing (DDVL) of Manitoba Highways and Transportation.

The story:

Mrs. D received a certified letter informing her that the Branch had received information which indicated that her medical condition could impair her ability to operate a motor vehicle. Consequently, her driver's licence was suspended, and she was requested to "furnish medical records with a medical report" (enclosed and to be completed by a neurologist).

Here's what happened:

While visiting a friend, Mrs. D suffered a seizure. At the hospital she was examined by the general practitioner on duty who ordered a chest x-ray and an EKG. She was also told that she should make an appointment to see an internal medicine specialist.

A month later, after an examination by a general internal specialist, it was confirmed that she had suffered a seizure and it would be reported to the DDVL as a one-time seizure. He also made arrangements for her to have a EEG and a CT Scan.

Our question: is any consideration given to allow the driver to maintain a licence while awaiting medical examination results?

While Mrs. D was waiting to make her scheduled appointments, the doctor sent a report to the DDVL, which resulted in the suspension of her driver's licence.

Mrs. D felt that the actions of the DDVL to suspend her licence was premature since they hadn't received the various medical test results. She called our Office for help.

The solution:

We reviewed the matter with representatives of the DDVL and were told that a medical report provided to the Branch indicated that Mrs. D had suffered a seizure and also, loss of consciousness. Based on this information, the Branch told us that it had no alternative but to suspend the driver's licence in accordance with the provisions of *The Highway Traffic Act*. It was then up to Mrs. D to provide the relevant information to the Branch confirming that the condition she experienced is not likely to interfere with her ability to drive. We advised the Branch that Mrs. D felt that the information provided by the

doctor was inaccurate and she questioned the Branch's method of forming conclusions prior to receiving medical test results.

The Branch said that the information given by the doctor is taken at face value unless the doctor states in the report that the diagnosis is not certain.

According to the information available to the Branch, it was felt that there was no uncertainty about the diagnosis.

Following review of the various medical test results, Mrs. D's driver's licence was reinstated.

We then explored whether any consideration is given to allow the driver to maintain a licence while awaiting medical examination results. The Branch told us that with the initial letter or report from the doctor, it is difficult to ascertain the potential risk of the driver and, as a result, it is a practice to suspend the licence. If relevant information confirms there is no risk, the licence is reinstated. The Branch told us in cases where the initial report provided sufficient information to

allow the Registrar to determine the risk, they would consider that in the determination.

In conclusion:

We believed the policy exercised by the Branch provides for consideration of individual cases based on their merits while respecting the duties and obligations of the Registrar under The Highway Traffic Act and Regulations.

In Mrs. D's case, we recognize that consideration was given to the initial medical information received and, according to the legislation, a further medical report was required. The actions and decision of the Registrar, in this case, were not wrong or unreasonable.

Accordingly, no recommendation was made on this matter.

MANITOBA HOUSING

Formal complaints received - 15

Enquiries by telephone - 26

The complaints against Manitoba Housing just increased by 1 over the past year.

Typically the complaints dealt with eviction notices, rent calculations and entitlement to benefits under financial programs such as the Shelter Allowance for Family Renters.

One case reviewed by our Office in Brandon was raised by a senior citizen and involved the Manitoba Housing Authority and the Shelter Allowance for Elderly Renters.

Keep it user friendly...

The complaint:

Mr. E felt that the language Manitoba Housing Authority's Shelter Allowances for Elderly Renters' (SAFER) used in its

correspondence for application was harsh. He also felt that gathering up all the various documents to meet the requirements for application were much too onerous for elderly residents. Mr. E called our Office for help.

The story:

Our Office contacted the Director of Client Services at Manitoba Housing. We were told that the Housing Authority had already changed the wording it used in its covering letter to elderly residents because it too had received several complaints. The concern about the documentation requirements was also discussed with the Director of Client Services. The Director told us Client Services makes every effort to accommodate and assist individuals who have difficulties gathering the appropriate materials and meeting the application requirements. Each person is treated on a case-by-case basis and the Director is flexible with what documents it will accept for providing the Office

The complainant felt satisfied just knowing that someone was there to address his concerns and help him understand what was going on.

with confirmation of annual income. For example, individuals could choose to send one of the following: a) their filed income statement (original or a photo copy); b) a current bank statement; or c) their Canada Pension Plan, or OAS/GIS notices as accepted proof of income documentation.

The solution:

As the language in the covering letter had already been changed and our Office was satisfied that the documentation requirements were reasonable, there was no recommendation that the Ombudsman could make. Mr. E felt, however, that we were able to play a large role in clarifying the process of meeting the requirements of the application. He felt satisfied, just knowing that someone was there to address his concerns and help him understand what was going on.

...generally our Office does not get directly involved in negotiating settlements, however there are special circumstances...

MANITOBA HYDRO

Formal complaints received - 20

Enquiries by telephone - 38

The number of complaints received against Manitoba Hydro more than doubled over the past year. The majority of the cases related to billing disputes. Some related to service complaints and problems with the location of hydro poles. One case that our Office assisted in resolving related to compensation for trees which had been trimmed by Manitoba Hydro in January 1998, as a result of a snow storm. Hydro had trimmed the trees to clear the distribution line of interfering tree branches to ensure uninterrupted electrical power service to its customers.

Our complainant, Mrs. J, a senior citizen, had lived on the property in rural Manitoba for several years. She held an *Offer of Easement* signed in October 1965, by Manitoba Hydro stating that the small spruce trees already planted

along the property line were not to be trimmed. Mrs. J was very upset by the actions of Hydro and felt entitled to compensation.

When she first contacted our Office in May 1998, she said she had been trying to deal with Hydro on her own but because of health concerns no longer felt up to defending herself. She was concerned about the delay in resolving the matter and felt it was deliberate on the part of Hydro.

We were in contact with Hydro regarding the situation. Hydro subsequently had a Forestry consultant inspect the affected trees in June. The loss of aesthetic value was appraised as \$1,500. Mrs. J did not feel this was a fair offer since she felt that some of the trees now needed to be removed.

Hydro's position was, rather than removing the trees, they would re-route the lines to prevent the trees from contacting the lines again.

Mrs. J then requested an additional \$500 to help defray the cost of tree removal she felt

necessary. She requested that our Office convey this message to Hydro, because, she perceived her previous attempts in dealing with Hydro directly, to be futile. Generally, our Office does not get directly involved in negotiating settlements, however, due to the circumstances of the case we contacted Hydro and advised them of her position. In order to finalize the matter Hydro agreed to the additional compensation and both parties were happy to have reached a final resolution.

Hydro account into the son's name without his knowledge or consent. Later, Mrs. A and her husband told his parents they had decided against purchasing the home. The Hydro account, however, remained in the son's name.

In March 1992, Mrs. A and her husband did decide to purchase his parents' home and, on moving in, were faced with a Hydro bill of approximately \$800. However, they realized that they had not used the service they were paying for. They made several attempts to get Hydro to see the problem, but it was not resolved. Mrs. A and her husband made arrangements to repay the arrears in monthly payments of \$170. In 1998 they called our Office as they were unable to pay the arrears. They now owed Hydro approximately \$1,100.

The solution:

We discussed the problem with personnel from Manitoba Hydro. They said they had discussed the account with Mr. A over the years and he had agreed to pay the

...a family
struggles with
power...

...who has the power?

The problem:

Mrs. A felt that Manitoba Hydro's demand for payment of arrears for services was unreasonable.

The story:

Between 1990 and 1991, Mrs. A and her husband made an Offer to Purchase the home of her in-laws. They gave her husband's parents a \$600 deposit. Based on the Offer to Purchase, the owners transferred the

account. However, Hydro advised they had not established an effective date when finalizing the in-laws account. Only a change in name was processed, which resulted in the outstanding balance being transferred into Mr. A's name. Hydro acknowledged this was unusual and agreed to cancel a portion of the debt and late payment charges. The adjustment made to the account of Mr. and Mrs. A was in the amount of \$733.08. Mr. & Mrs. A were pleased.

MANITOBA JUSTICE

Formal complaints received-269

Enquiries by telephone - 449

In 1998 we received exactly the same number of complaints against Manitoba Justice as we did in 1997. Corrections continues to generate the majority of complaints. Issues relating to youth in the correctional system are reported on in the section of the report on Child and Adolescent services.

Other complaints involved the Civil Justice Division (Legal Aid Services Society, Public Trustee, and Human Rights Commission) Courts Division (Maintenance Enforcement, Courts Administration, and Sheriffs) Criminal Justice Division (Law Enforcement Review Agency).

Corrections

We continue to receive numerous complaints from inmates in

provincial correctional facilities relating to medical treatment. We may make inquiries with either administrative or medical staff to ensure they are aware of the concerns, obtain clarification on the access to medical services, whether medical attention has or will be provided, and whether there appears to be any undue delay or lack of attention to medical needs.

We are not qualified to investigate the treatment decisions made by doctors. In such cases inmates are advised of the role of the College of Physicians and Surgeons of Manitoba.

In 1998 we received several complaints from inmates in the Brandon Correctional Institution (BCI) about access to fresh air and the lack of exercise time. Staff from our Brandon Office contacted BCI on each of the individual complaints. We also discussed whether these complaints might be reflective of a systemic problem which needed to be addressed.

...while looking into visitor rules and regulations, we found one contrary to policy...

The Institution decided to bring in an additional Correctional Officer each day to facilitate fresh air time and bring the Institution into compliance with the fresh air requirements. This case illustrates how our Office interacts with Corrections to bring about positive resolution to problems.

Following is an example of a specific complaint raised by an inmate at Milner Ridge, which also resulted in some institutional policy changes.

Stripped of visiting rights

An inmate complained that his wife's visiting privileges were abruptly cancelled after a change in policy.

Here's what happened:

The wife, when completing a visitor's application form, had given incorrect information. She answered, no, to a question asking her if she had been convicted of a criminal offence. She had however, been convicted. Under a new

policy, giving false or misleading information could result in the denial or suspension of visiting privileges. Without notice, her visiting privileges were denied. The inmate asked our Office for help. He said that his wife had been visiting him regularly prior to the change in policy and that during this time there had never been any incident or suspicion of any wrong doing. After discussing the matter with the Correctional Centre they agreed to reinstate the visiting privileges.

But, the story doesn't end there.

While we were looking into visitor rules and regulations, we found one contrary to departmental policy. The institution told visitors that they had to agree to a possible strip search before visiting an inmate. Strip searching visitors was no longer allowed under the new Department of Justice/Corrections guidelines. When we pointed this out to the institution Supervisor, we were told they had not known about this change in policy. The

Supervisor agreed to present this issue at the next superintendent's meeting. During our follow-up with the Centre, we were told the Institution had removed the clause that visitors may be strip searched. They also introduced a new visitor application form. We were able to close our file.

Maintenance Enforcement

The complaints against Maintenance Enforcement were varied and ranged from concerns about actions and decisions of staff to questions about the Program's handling of Garnishment Orders. Often, central to the complaints reviewed was the issue of communication. Complainants feel frustration if they cannot easily access information on their file, or if phone calls are not returned so they can get answers to their questions. Our Office has discussed this issue with Maintenance Enforcement over the years and reported on it in

previous Annual Reports. We realize that the Program deals with a high volume of cases and has been taking steps to address these issues. We are aware that a policy has been implemented whereby Officers will return phone calls within three working days of receipt of a telephone message. Nevertheless, it is still a concern raised by many of our complainants. There is also a service, MEPLine, that operates 24 hours a day, 7 days a week. This service provides information to clients whose concerns are of a general nature which may not require the file material to be researched in order to respond to these inquiries. It is our understanding that this line handles approximately 14,000 to 15,000 calls per month. Each client on the program has a PIN number and is able to access information relative to his or her specific case. The payer does not have the same PIN number as the payee and, as a result, would not have access to information other than his or her own file.

Many individuals seem to have difficulties with inter-provincial maintenance issues. This is a example of how our Office can assist in bringing about results.

Apparently, on the average approximately 70% of the calls to the Branch for information would be serviced through MEPLine. Following is an example of an inter-provincial maintenance issue that came to our attention and was satisfactorily resolved.

...Reconciling differences...

The problem:

Ms. A was told that her child support payment was overpaid in 1997 and therefore she would receive one payment less in 1998.

The particulars:

Ms. A disagreed. She felt that she was owed \$150 for a payment that was missed several years earlier and asked Maintenance Enforcement to check the records. Part of the difficulty was that the husband lived in another province and therefore his maintenance payments went into that jurisdiction's Maintenance Enforcement Program. The two jurisdictions were having trouble reconciling the payment

discrepancies. Ms. A tried several times to have this issue resolved but was unsuccessful. Finally, she called our Office for help.

The solution:

We wrote to Manitoba Maintenance Enforcement on her behalf and asked it to review the records to find out who owed what amount. Manitoba Maintenance Enforcement wrote back to tell us that it had looked into the matter and found Ms. A was owed \$150 from a NSF payment in 1990. Two days later, payment was issued to Ms. A. Many individuals seem to have difficulties with inter-provincial maintenance issues. This is a example of how our Office can assist in bringing about immediate results.

Dealing properly
with people
includes dealing
with them fairly...

Public Trustee

...Be fair to the heir...

The Complaint:

That the fees charged by the Public Trustee to administer an estate was unfair.

Here's the story, part I:

Mr. Y, the heir to an estate, asked the Public Trustee to translate all the relevant correspondence directed to him. Since Mr. Y is a unilingual francophone, he wanted the documents translated to French. The bill to translate for Mr. Y was eight hundred dollars (\$800). Mr. Y believed this amount unfair and sent a letter of complaint to both the Public Trustee and our Office.

After reading Mr. Y's letter of complaint, the Public Trustee acknowledged the error. The Public Trustee contacted Mr. Y directly and canceled the translation fee.

Part II:

In a second letter to our Office, Mr. Y, complained that the Public Trustee's Office had charged a fee for searching for heirs to the estate

that was unfair. The estate had taken 20 years to settle and during that time the Office's policies applicable to estate administration had changed. Mr. Y argued that the Public Trustee's Office took a prolonged time handling his file. He felt that had the Office completed the file in a more reasonable length of time, the heirship fee would not have been in effect.

The Public Trustee agreed and eliminated the heirship fee of \$150, plus GST. The Public Trustee's resolved both issues easily, quickly and appropriately, to the satisfaction of Mr. Y.

...Check before Cheque...

The concern:

A former client of the Public Trustee felt renovations on her house, authorized by the Public Trustee, were unsatisfactory.

Here's what happened:

She (the client) was under the care of the Public Trustee, which contracted workers to install linoleum in the kitchen and front hall of her home. Without inspecting the floors, the Public Trustee's Office paid the workers from her account when the job was completed. The flooring, as it turned out, was improperly installed and she wanted her money back from the Public Trustee. She tried to deal with the Public Trustee's Office on her own but was unsuccessful. She called us for help. We talked to the Public Trustee and arrangements were made for an Inspector to see the flooring. The Inspector agreed that the work had to be redone. The Public Trustee contacted the installer for a refund. At the same time, the Public Trustee sent a cheque to 'the client' for the amount she had paid. The Public Trustee said she will make sure that all future inspections will be conducted prior to authorization.

MANITOBA LOTTERIES CORPORATION

Formal complaints received - 1
Enquiries by telephone - 2

As the statistics reflect, few complaints or phone inquiries are received concerning the Manitoba Lotteries Corporation (MLC).

Games people play...

The complaint:

A man contacted our Office after he received an Exclusion Order from Manitoba Lotteries Corporation (MLC). The Order, received in 1994, meant he couldn't enter any gaming facilities owned or operated by MLC for an indefinite period of time.

The charge:

The man, while spending time in a casino, had left his children ages 8, 10 and 16, alone in the car.

The appeal:

In 1997, the man asked to have the Order reversed. The request was denied. He appealed again in May 1998 and again was told by MLC that it would not amend the Exclusion Order. The man called our Office. Though he did agree MLC was right to enforce the ban, he argued that an indefinite period of time was unduly harsh. His children were now older and the child who was 16 at the time of the offence was now adult.

Our Office review uncovered these facts:

The MLC ruling states that in all cases where children are left alone and potentially at risk on MLC property, the person responsible would be issued with an involuntary exclusion notice. Though the policy did not actually use the term "indefinite" it had become MLC's practice to bar, for life, any customer who left children unattended regardless of the ages of the children or the circumstances. However, MLC was willing to ask the Manitoba

We felt MLC's new policy successfully balanced fairness to the charged individual while not compromising the safety of minors.

Gaming Control Commission to look into its policy on exclusions.

Changing the code:

The MLC's active review included consulting with other agencies that had a vested interest. As a result, in early 1999 MLC adopted a new policy. The new exclusion would now be effective for a stipulated period of time—in most cases, two years. Consequently, the man's exclusion was lifted. The Corporation did caution him as to the serious nature of his action. They told him, if he should ever repeat this type of behaviour, a further exclusion would be imposed. We felt MLC's new policy successfully balanced fairness to the charged individuals while not compromising the safety of minors.

MANITOBA PUBLIC INSURANCE

Formal complaints received - 139

Enquiries by telephone - 293

The number of formal complaints received against Manitoba Public Insurance (MPI) decreased by 12 in 1998.

Complaints against MPI generally dealt with disputes over claim settlements such as the actual cash value of the car, liability assessments - who was at fault for an accident, payment of deductibles, disputes over the amount of repair required, allegations of unfair denial of claims and delay by MPI in finalizing decisions on claims.

Two issues that came to our attention last year involved the procedures for obtaining financial information on claimants from Revenue Canada. One related to obtaining information by way of a blanket authorization and one concerned the collection of more information by MPI than was required. After our review the

Corporation agreed to amend its practices to ensure compliance with The Freedom of Information and Protection of Personal Privacy Act.

Following are some examples of cases investigated over the last year.

Information taxing...

The complaint:

Manitoba Public Insurance (MPI) obtained income tax information from Revenue Canada without direct consent from the complainant.

Here's an account of what happened:

MPI required the tax information in order to process the complainant's bodily injury claim after an auto accident on December 28, 1995. MPI requested Revenue Canada provide certified income tax returns and all T4 information for the five calendar years preceding the automobile accident. The

**In our pinion...
requesting
personal income
tax information
from Revenue
Canada on the
basis of a broad
non-specific
authorization is
wrong...**

...a lawyer, claiming a situation was unreasonable and created hardship for his client... called our Office for help.

Revenue Canada Authorization form referred to an attached authorization dated January 9, 1995. The authorization, signed by the complainant and his witness stated: "I authorize the Manitoba Public Insurance Corporation to undertake whatever investigations it deems necessary with respect to my claim for compensation, including examination of any medical and employment information that The Manitoba Public Insurance Corporation deems to be relevant."

Our opinion:

Requesting personal income tax information from Revenue Canada on the basis of a broad non-specific authorization was wrong. Fair information practices require that the collection of personal data should be obtained directly from the individual or if not, it should be obtained with the knowledge and informed consent of the individual. There are some exceptions for legal, medical, or security reasons which make it unreasonable or inappropriate to obtain consent prior to collection. This was not the case. We did not believe there were any

exceptional circumstances in this case to justify MPI's actions.

It agreed, and put a new practice in place that should prevent this from happening again. In future, MPI said it will either receive Revenue Canada information directly from the individual, or use the proper Revenue Canada Authorization form.

Cash crunch...

A lawyer, on behalf of his client, complained that Manitoba Public Insurance (MPI) refused to make an advance payment on an MPI claim.

The lawyer's story:

His client had suffered two major accidents. One in 1993, which fell under the old tort system and a second, in 1995 that fell under MPI's Personal Injury Protection Plan (PIPP). As there were indications of a lengthy litigation process, the lawyer felt it fair to ask for a cash advance so his client would be able to cover

basic living expenses. While MPI made some advance cash payments, according to the lawyer the Corporation reneged on the agreed upon amount.

The lawyer, claiming this was unreasonable and created hardship for his client, called our Office for help.

When we talked to MPI we clarified we were not there to review the merits of the case. That was for the courts to decide.

However, based on our information, we wanted to know why MPI had a problem paying the cash advance when it had already made a full settlement offer to the client in an amount far greater than the cash advance amount. To us, the client's request did not appear unreasonable.

MPI's response: There was no requirement, nor policy that said it had to make advance payments on injury claims.

Nevertheless, MPI promised to look into the matter. When it came back to us again, it said there never was an agreement to pay a cash advance to the client.

A happy conclusion:

MPI reconsidered its position and decided to pay the advance cash amount. We were pleased with their decision, resolving the dispute.

...many cases are resolved following discussions with Councils ...without the need to make any formal recommendations

MUNICIPALITIES

Formal complaints received - 89

Enquiries by telephone - 1

Since January 1997 my Office has had jurisdiction to investigate the administrative acts, decisions or omissions against municipalities. My 1997 Annual Report provided information on the expansion of jurisdiction and our process of investigation.

In 1998 the number of complaints involving municipalities increased by 13. Our Office in Brandon, which opened in May 1998, handled more than half (47) of the complaints.

As I mentioned in last year's Annual Report—it has been a learning experience for both our Office and the municipalities. I am pleased to report that, on the whole, we have developed positive working relationships with the municipalities and have received good cooperation once our role, process, and impartiality is explained and understood.

I have personally enjoyed the experience and have appreciated the opportunity of attending meetings with municipal councils to discuss cases whenever the need arose. I might point out—there is an important distinction: we do not attend Council meetings to discuss cases under review. We do not investigate in a public forum, we instead ask to meet Council in private. There have been occasions where I have attended a municipality and met with Council, either in-camera, or outside the regular Council meeting to discuss complaints that we felt were supported, to discuss our respective viewpoints and to provide the Council with an opportunity to further present its case.

Many cases were resolved following discussions with Councils without the need to make any formal recommendations in 1998.

Following are some examples of the cases investigated and resolutions reached.

...although no formal recommendations were made, it was clear that our interest in the issue inspired the City to take a closer look at the situation...

“.....get the lead out....”

The problem:

The owner of a three-plex apartment believed the City of Brandon should share the cost of repairing the corroded lead pipes that ran along her, and the corresponding City properties.

The situation:

The owner said if someone ran water in one of the units, no one else could in the rest of the building. She contacted the City of Brandon and the Engineering Department reported back that the line that ran from the edge of her property to the water main on the other side of the street had corroded and diminished. The City told her that the replacement of the pipe under the street was her responsibility and that it would not pay. The owner felt that if her pipes had corroded and needed replacing, so did the City pipes that adjoined her line. The City stated that since this would be an improvement to her property,

she was responsible for all costs, including the cost of running the new pipe under the street. The lowest estimate the owner received on replacing all of the pipes was \$10,000.

The City wrote to her with some suggestions for alternative solutions to the water flow problem. They included the following City By-Laws:

5957/114/91. Section 15: The City does not guarantee a constant supply of water or constant pressure or volume of water.

5957/114/91. Section 29: The City shall maintain the water connection in a satisfactory structural condition at the expense of the City. The building water service shall be maintained by the property owner at his expense. Any leakage controlled by a curb stop shall be deemed to be the responsibility of the property owner to repair. Such repairs shall be undertaken within five (5) days of receiving notice from the City Engineer, unless an extension of time is granted by the

...finding new
ways to
hear...

City Engineer, after which time the water service shall be shut off until the repairs have been completed. The City also said in its letter, “as the City portion of this line is not leaking and the flow is not guaranteed, the City Administration cannot provide financial assistance to replace the water connection.”

The owner called our Office

We wrote to the City and asked for some clarification on its position. The City Manager wrote back and told us that the City had decided to review this issue. They had received complaints from other folks who had been experiencing similar problems with lead pipes and constricted water flow. A month later, the City of Brandon announced that it would provide a cost-sharing plan to assist homeowners who had lead pipes leading to their homes. Shortly after the announcement, the City Manager let us know that the owner’s three-plex qualified for the cost-sharing program.

The conclusion:

Although no formal recommendations were made, it was

clear that our interest in the issue inspired the City to take a closer look at the situation. As a result, our owner, as well as all other homeowners experiencing the same problem, were able to benefit.

...clay now, pay later...

The complaint:

Ms. C felt that the Rural Municipality of Arthur had inadequately reimbursed her for clay it had removed from her property to construct a rural road. Essentially, Ms. C felt that the Municipality had underestimated the amount of clay taken and that it had established a value (per cubic yard) that was too low.

The story:

The Rural Municipality of Arthur removed clay from Ms. C’s land. The job was done without making any prior arrangements for compensation. Ms. C was simply told to estimate the amount of clay taken and bill the

Municipality accordingly. Her bill was made out for 9,778 cubic yards of clay. The Municipality did not agree with the amount of her bill and sent payment for 2,000 cubic yards. This was not acceptable to Ms. C. She called the Chief Administrative Officer of the Municipality several times to ask for a better settlement agreement. The CAO told her that before this road construction project the Municipality had never paid anyone for their clay. Normally, the landowners had been satisfied that their property was left in better shape after the construction and did not ask for reimbursement. Ms. C felt that her land was not in better shape after construction. In fact, she felt that there were several areas left in worse condition. She hired a lawyer but his negotiations too, did not resolve the problem. She called our Office for help.

The solution:

We held meetings with the municipal officials and studied all relevant materials, including correspondence and council resolutions. After discussions with

the Ombudsman, the Municipal Council agreed to increase the settlement amount. Ms. C was satisfied and we were able to close our file.

...getting to the root of the problem...

The complaint:

Mr. B felt that the City of Brandon should cover 100 per cent of the cost of a new sewer line to his home, not just the 50 per cent it had agreed to pay.

The story:

Mr. B felt that the boulevard trees belonging to the City were responsible for ruining the old sewer line and that it should pay the entire cost of replacing the line. He said, since 1981 he had to have his sewer line de-rooted twice a year to keep it clear. It was during a recent excavation of his land that Mr. B first noticed the tree roots that were growing into his line were from City trees, not the trees on his personal

...having an impartial role means avoiding bias

property. Mr. B felt that the City should pay him for the cost: a) of clearing his sewer line since 1981; b) the entire cost of sewer line replacement; and c) the costs associated with landscaping his yard once the line replacement job was completed.

The City reviewed past records of previous sewer line clearing for that property and photographed the problem area. It believed the entire sewer connection did not need replacing and that the boulevard trees were not the only cause for roots in Mr. B's sewer system. The City concluded that the 50-50 split was fair. Mr. B called our Office for help.

We reviewed Mr. B's case with the City Solicitor and the Public Works Supervisor. The photographs in the inspection report and other relevant information we reviewed, showed that the City was correct in its assessment that the roots responsible for the damage came equally from trees belonging to the City and from the trees on Mr. B's personal property. Also, a hole in the pipe on Mr. B's property was

found and it was believed to be a contributing factor to his sewer problem. The Supervisor of Public Works told us that the City was quite generous in agreeing to split the cost of replacing the pipes, since repairs (not replacement) were all that was necessary.

The conclusion:

After an extensive review of all the facts, our Office felt that in this instance, the City had applied its by-law with respect to cost sharing correctly. The Ombudsman, therefore could not make any recommendations with respect to this complaint.

The Provincial Ombudsman is required to provide a thorough impartial investigation of complaints against municipalities. In this case, while the complainant felt he had been treated unfairly, an objective review did not support that the actions or decisions of the Public Works Department of the City of Brandon were wrong or unreasonable and the complainant was advised accordingly.

...Access detour...

The problem:

In July, 1998, Mr. L complained to our Office that the Rural Municipality of Cornwallis denied his access to legal bills and indemnity claims. Mr. L felt that the denial was contrary to both The Municipal Act, and to a resolution that was passed by Council in June, 1998, granting him access to this information.

The story:

Mr. L had written to the Municipality asking for access to three years worth of legal bills (the period since the last election), as well as indemnity sheets for all members of Council since the last election. After considering his request, Council passed a resolution allowing him access to legal bills and indemnity claims with the exception of legal bills containing confidential material. Mr. L went to the Municipal office and was provided with all files containing indemnity claims, legal billings and

minutes of meetings since September of 1995. He was told to mark the documents that he wished to have copied. Several days later, Mr. L dropped off a letter to the Municipality requesting the copies. He enclosed a cheque payable to the Municipality. The Chief Administrative Officer (CAO) felt that Mr. L's request would entail a huge effort by the staff and would create a mountain of paper. The CAO decided that further clarification was needed to determine how to handle this type of demand. Initially, Council and the CAO believed that Mr. L would be doing the file research and that municipal staff would not be consumed with the task. Council discussed this issue at its July, 1998, meeting and decided to terminate access and deny Mr. L's request for copies of legal billings and indemnity claims. Council returned Mr. L's \$100 cheque by mail. Mr. L asked our Office to review this matter.

The solution:

In reviewing the information obtained through our investigation, it appeared that Council's June, 1998 authorization to allow Mr. L access (subject to appropriate severing of confidential information) to the information was fair. Unfortunately, the resolution did not deal specifically with how the confidential information would be severed. As the CAO had some concerns about the intent of Council's resolution, our Office did not feel he acted unreasonably by referring the matter to the Council again for further clarification. However, the Ombudsman did feel that the July 21, 1998 Council resolution denying further access to Mr. L was wrong and not in keeping with the widely accepted principles relating to access to government records to promote accountability. Our review established that once Mr. L was provided with access to all of the records, his request for copies of the records was in keeping with subsections 263(2) and 263(3) of The Municipal Act.

The Ombudsman wrote to the Municipality advising it of his opinion that the decision to deny access was wrong and a recommendation was made that access be provided with appropriate severing and the payment of reasonable fees. Upon the receipt of the Ombudsman's recommendations, the Council adopted the following guidelines:

1. Access is granted under the authority of Section 263(2) of The Municipal Act
2. Access is granted subject to appropriate confidentiality considerations
3. The Municipality prepares and forwards to the applicant an estimate of costs for preparing the requested information
4. The estimate of costs is prepared in accordance with the provisions of the Freedom of Information and Protection of Privacy Act Regulations
5. The applicant is requested to remit the estimated fees within

...It's all or nothing
at all...

30 days of receipt of the estimate

6. In the event the applicant fails to remit the estimated fee within the 30 days, the Municipality considers the request to have been abandoned
7. Upon receipt of the required fee, the Municipality prepares and forwards the documentation requested by the applicant

Mr. L was told that he could request his information once again and that he would be allowed access according to the Municipality's newly adopted access to information guidelines.

...It's all or nothing...

The complaint:

A farmer wanted to sell part of his farmland. The agreement was subject to the purchaser being able to obtain a transfer of the farmer's Municipal Land Leases. A request for transfer of the leases was denied by the Council of the Rural Municipality because ".....policy

has been to transfer leases, upon receiving written request from purchasers indicating their need, on a complete land sale." The Council felt that in this regard a partial sale did not qualify for a total lease transfer. The vendor complained to our Office and we contacted the Municipality to inquire into this matter.

The story:

The Municipality told us that the issue of transferring Municipal Leases had been dealt with in an existing by-law. However, in our review, we could not find anything in the by-law that required there be a sale of all of the vendor's land in order to have the Municipal Leases transferred to a purchaser. The Municipality then told us that there was "an unwritten policy" of only transferring Municipal Leases with the sale of all the land. We also learned that this was the first time Council received a request for a transfer of leases when there was a partial sale.

We wrote to the Municipality and told them that the information it

had provided to date did not appear to support its decision to refuse the farmer's request for transfer. The Ombudsman offered to meet with the Council of the R.M. to discuss the issue further. At the subsequent meeting, Council acknowledged it had a problem with the by-law and that it did not appear that the by-law supported Council's position taken with the farmer. Council did point out, however, that it did have the absolute discretion to refuse or grant the request for transfer. The decision, made by Council, was guided by a number of factors. Council wished to encourage farming in the area by leasing municipal land to individuals wishing to farm it. They questioned whether the complainant had been using the leased land for farming and felt they had the right to recover the land from him. They pointed out that the complainant had the right, under his lease, to purchase the land from the Municipality and then offer it for sale with his private land. They distinguished the complainant's situation from a person selling off the family farm

and wanting to keep the homestead, which they felt would be entirely reasonable. Council told us that it had considered the request carefully, weighed all the factors, and believed it had reached a decision that was reasonable. The Ombudsman agreed with Council and advised the farmer accordingly. The farmer subsequently told us that he had decided to sell all of his land and anticipated the Municipal Leases would be transferred to the purchaser.

We feel this process provides the Department with the opportunity to account for their administrative responsibility

CHILD AND ADOLESCENT SERVICES

Formal complaints received...73
Enquiries by telephone110

The specialized role of our Office regarding issues relating to child and adolescent services continued in 1998. The number of formal complaints investigated was 73. The breakdown of complaints is as follows:

- Education/Schools.....5
- Family Services.....20
- Health.....3
- Highways.....1
- Justice.....41
- Private.....3

Our Office received 110 telephone inquiries in 1998. The break down is as follows:

- Education.....2
- Family Services.....97
- Health.....2
- Justice.....9

Three of the Education files opened in 1998 related to inquests where children had died in a school

setting. It is our practice, following an inquest, to monitor the recommendations made by a Judge and direct it to a department or agency of the provincial government. Our Office makes follow-up enquiries to determine what consideration has been given to any recommendations made. If it is our opinion that adequate and appropriate consideration has been given to the recommendations, we advise the Chief Judge accordingly. We feel this process provides the Department with the opportunity to account for their administrative responsibility in giving adequate and appropriate consideration to inquest recommendations. We continued to do outreach to youth through visitations and meetings. This year, staff met with residents at Agassiz Youth Centre (AYC) and Ridge Point Work Camp. We explained our role and function and gave the youth the opportunity to ask questions. Our Office continues to be involved in the staff-training

...it's our
intention to see
that fair and
equal treatment
is top priority...

program at AYC. We attended training sessions and discussed our jurisdiction and the process of investigations. We also met with the Children's Advocate and some of his staff to discuss our respective roles and experiences with regard to the issues facing Manitoba youth.

Family Services

In 1998 our Office formally opened 20 files relating to children and youth within the Department of Family Services.

The types of complaints we received related to access and visitation, apprehensions, conduct of staff, release of confidential information, availability of service, and payments for a child in care. We continued to monitor some broader systemic issues relating to the handling of service complaints by clients; the long term handling of unsubstantiated abuse allegations; and the handling of custody disputes when child abuse allegations are involved.

Our Office responded to 97 telephone inquiries pertaining to youth. The following summaries are examples of the types of complaints that involved children.

Guilty until proven innocent

The complaint:

Mrs. D, a Brandon, Manitoba 24-hour home day care provider was unable to receive an open respite licence from the Department of Family Services because of a concern from Child and Family Services of Western Manitoba.

Part I. In review:

In our 1997 Annual Report Summary, we were able to clarify the following:

- The Child and Family Services Agency did not want to give Mrs. D a licence because of an earlier abuse allegation made by her daughter against her husband. Mrs. D countered with these objections: the allegations, investigated by the Police and

Dealing fairly
with people
means using
compassion as
a link...

Child & Family Services, were found to be unsubstantiated; no criminal charges were laid; the alleged offender's name was not placed on the Child Abuse Registry; she was allowed to continue her 24-hour licensed home day care service; her daughter returned to live with both she and her husband; Child and Family Services of Western Manitoba closed its file and no longer had any involvement with the family.

- Based on our review of the situation, we suggested Family Services clarify its licensing requirements in such abuse cases where allegations were unsubstantiated. We believed that policies and guidelines were necessary to fairly deal with decisions made when unsubstantiated abuse allegations occurred.
- The Department advised that a series of public forums had taken place and significant amendments would be made to The Child and Family Services Act.

Part II. The update:

In September 1998, the draft of the Case Management Standards for Child and Family Services was printed. The Department told us that they were looking at implementing the Standards in April 1999. With these standards in place, hopefully future cases involving unsubstantiated abuse allegations will be treated more fairly and equitably.

...client pinball...

The concern:

The uncle of a 15-year-old was denied services for his niece from Winnipeg Child and Family Services.

The story:

The uncle told us his niece had been bounced around between her mother (who was on social assistance and had just been hospitalized), her father, her aunt and various other relatives. The uncle also told us that the mother

...A case of
mistaken
identity...

was not competent to manage her affairs and the Public Trustee was the Committee. At the time, his niece was living with him. The uncle had called Winnipeg Child and Family Services a number of times and each contact seemed to result in the case being transferred to a new social worker. He felt he was being given the run-around. Feeling ignored and frustrated, he called us for help.

We contacted the Public Trustee and Winnipeg Child and Family Services and an assessment of the situation began immediately. The niece was contacted and the uncle's home was reviewed. The Agency agreed to assume guardianship of the child and she was told she could remain (subject to a home study) with her uncle. The Public Trustee supported this plan.

In the end, both uncle and niece were happy with the outcome. They thanked our Office for help in sorting out their problem.

A case of mistaken identity

The problem:

A landlord said Winnipeg Child and Family Services mistakenly paid a security deposit and first month's rent to a tenant instead of him.

The story:

A suite had been rented for a ward of Winnipeg Child and Family Services and the deposit and first month's rent had been paid to a tenant who was mistaken for the landlord. The tenant said he would straighten this out with the landlord, but nothing happened. The landlord called the Agency and asked for payment. He was told he should deal directly with the tenant. The landlord felt this was unfair. He felt the Agency had a responsibility to pay him and that he shouldn't have to be the one to chase after the tenant.

Our solution:

The Agency told us it believed it had paid the right person. But, it admitted it had made a mistake,

and agreed to pay the landlord directly.

The landlord told us he was pleased with the results.

examples of complaints investigated.

Out of control with nowhere to go...

A file update.

First, the background:

In our 1997 Annual Report we brought attention to the Intensive Custody Unit (ICU) at Brandon Correctional Institution (BCI).

The methods used to manage youths behavior during incarceration was being questioned. The ICU was initially established with the emphasis on confinement, balanced with intervention programming for non-compliant youths. Instead, the ICU had become an isolation unit for youths with problem behaviors. The programs designed to help these youths and decrease their negative behaviors were not being delivered as planned. After our review the situation was discussed with Community and Youth Corrections. They told us it

...this case will continue to be monitored...

Justice

In 1998 our Office received 41 complaints relating to Youth Corrections. The breakdown by institution is as follows:

Agassiz Youth Centre.....	10
Manitoba Youth Centre.....	27
Portage Correctional Institution..	1
Ridge Point Work Camp.....	1
General.....	2

The types of complaints we received related to allegations of unfair treatment by staff; inadequate footwear; unfair identification and treatment of gang members; inappropriate reading of resident's mail; dissatisfaction with the quality and quantity of food; and denial of an adequate amount of hygiene products. The following are some

was their intention to modify their practice in order to be more consistent with the policy originally outlined.

The update.

We now report: In 1998, the ICU at BCI was shut down. It was decided to develop an intensive custody residence at Agassiz Youth Centre. The 20-cell building will be called Lakewood Unit. The plan is to have an intensive intervention program in a secure, controlled and safe environment. The Individualized Intervention Program is to last for a minimum of 15 days and it will accommodate both male and female residents. It is to consist of a Five Phase Progressive Program. The goal of this Program is to offer the residents the necessary intervention to help them overcome their anti-social (offensive, acting out, victimizing) behavior. Our Office was told that Youth Corrections is looking to do this through a Multi-System Case Management framework. The Unit is scheduled to be operational in 1999.

Our Office will continue to monitor this situation.

...Gang members...NOT

The Ombudsman's own motion file:

Ombudsman's Own Motion files allows our office to monitor or investigate issues without the required letter of complaint. In some cases files are opened as a result of media reports which raise concerns that in the public interest appear to require review. Some files are opened because we receive a large number of similar complaints regarding a particular practice or policy . This was the case, in our recent Ombudsman Own Motion file for young offenders detained at youth correctional facilities .

Here's the history:

Over the past few years our Office has received increasing complaints from youths identified as gang members in correctional institutions. Most were about the

Ombudsman's Own Motion files allows our Office to monitor or investigate issues without the required letter of complaint

...we wanted to review the process of identification to make sure that the concerns of the offenders were being addressed

process of identification, which they felt was often unfair or incorrect.

Gang members are not able to enjoy freedom of movement within the institution, these youths were particularly anxious when they felt they were incorrectly identified.

While gang management strategy is necessary, we believed a review of the process for identification was warranted.

Here's what we found out:

- An offender is identified as a gang member if three of the following six criteria are met:
 1. Involvement in a gang motivated crime
 2. Identified as a gang member by a reliable source
 3. Observed association with known gang members
 4. Acknowledgment by the offender of gang membership
 5. Court ruling that the subject is or was a gang member
 6. Common or symbolic gang identification or paraphernalia
- An offender can also be identified as an associate of a gang if they: freely associate with a gang; show signs of wanting to be a gang member; cooperate with the gang or gang associates; meet one or more of

the criteria for identifying a gang member.

The consequences of being identified as a gang member or a gang associate, mean you are denied employment in positions of trust or any position with access to the general population; refused participation in open assemblies, programming events that are outside your cottage, or events supervised by volunteers.

- These restrictions are particularly enforced at the Manitoba Youth Centre, which is where we received the majority of complaints.

Here's what we did:

Our Office handled complaints on a case-by-case basis. However, we wanted to review the process of identification to make sure that the concerns of the offenders were being addressed by the Department.

The results:

In 1998 Corrections developed an appeal procedure for offenders who disagree with their identification as a gang member

...a systemic problem causing overcrowding and creating safety issues...

or a gang associate. If identified, the offender can initiate a review by the Department. The offender must appeal in writing to the institution's Gang Coordinator. From there, the appeal is brought to the Divisional Gang Coordinating Committee for further review. If the Committee finds the appeal has merit, the offender's name will be removed from all gang lists. If the Committee does not agree with the appeal, the offender's name will remain on the gang list. In either case, the offender will be notified accordingly. We are hopeful that this policy will make a difference.

...Crime or punishment?

The complaint:

A youth was seriously upset after a stay at Manitoba Youth Centre (MYC).

The conflict: She was treated at a hospital for drug use. After she was medically discharged, she was taken to the MYC by the Winnipeg Police Services. She was detained under

The Intoxicated Persons Detention Act (IPDA). She arrived at the Youth Centre late Sunday night and was not released until Monday evening. She did not understand why this had happened. *She called on the* advice of her guidance counselor. We looked at the IPDA, and it stated: when a peace officer takes a person into custody, the person may be taken to a "detoxification centre" in the community. Under the Act, detoxification centre means premises, or those parts of the premises of an institution that have been designated by the minister as a detoxification centre for the purposes of this Act. The Detoxification Centres Regulation 331/87 designates 170 Doncaster, which is the address for MYC, as a detoxification centre. We were told that the practice of sending youth to MYC had been going on since the early '70s. Over the years, correctional officials had expressed their concern, that MYC was designed to hold kids who were there because of their criminal activity, not kids who

were being detained under the non-criminal nature of the IPDA. They believed this to be a systemic problem causing overcrowding and creating safety issues. The fact that in Winnipeg intoxicated adults are not held at correctional facilities made this practice even more questionable. Adults are taken to the Main Street Project where they stay for up to 24 hours. In 1996/97 Manitoba Corrections tabled its concerns about this with the Winnipeg Police Services—and it appeared nothing was resolved. Now that we were also looking into this situation, Corrections again decided to initiate discussion with the City of Winnipeg and the Winnipeg Police Services. There seems to be consensus that an alternative solution is necessary. The situation, nevertheless, is still under review. In view of the current practice, there is no doubt in my mind that the MYC is not the right place for youth detoxication and we will continue to push for a resolution.

“Who’s been reading my mail?”

... is what a youth at Manitoba Youth Centre (MYC) asked us to find out. The youth complained that staff at MYC were reading all his incoming and outgoing mail. Even letters from his mother were being read on a regular basis. He felt this was unfair. He argued that he was not a gang member and did not have any security problem.

The review:

We looked at the policy for Resident Mail. The section under Procedures for Inspecting Mail To or From a Resident says:

The Cottage Supervisor or designated employee of the institution may in the presence of at least one other employee of the institution, read a letter sent to or by a resident where, the Supervisor or designated employee has reasonable grounds to believe that the content of the letter is prejudicial to public

safety, the security of the institution, or the best interests of the intended recipient.

In another section the policy states:

The Cottage Supervisor or designate will open all resident mail and scan the mail for inappropriate content.

We talked this over with the Superintendent. He told us he felt that letters should only be opened if and when there are security issues. He agreed that the policy was somewhat ambiguous and needed clarification.

After a review, the Superintendent came back to us and said that the mail should not have been read. He met with his staff and gave them his new directive: *examine mail for security purposes*. Happily, the matter was resolved. The policy was revised and made crystal clear for the staff.

The Ombudsman Act

CHAPTER O45
THE OMBUDSMAN ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act,

"agency of the government" means any board, commission, association, or other body of persons, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which,

(a) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or

(b) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown; (organisme gouvernemental)

"chief administrative officer" has the same meaning as in *The Municipal Act*; (directeur général)

"council" has the same meaning as in *The Municipal Act*; (conseil)

"department" means a department or branch of the executive government of the province; (

CHAPITRE O45
LOI SUR L'OMBUDSMAN

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

conseil S'entend au sens de la *Loi sur les municipalités*. ("council")

directeur général S'entend au sens de la *Loi sur les municipalités*. ("chief administrative officer")

ministère Ministère ou direction du gouvernement du Manitoba. ("department")

ministre Membre du Conseil exécutif. ("minister")

municipalité S'entend au sens de la *Loi sur les municipalités*. ("municipality")

organisme gouvernemental Régie, commission, association ou autre groupe de personnes, constitué ou non en corporation, dont les membres ou les membres du conseil d'administration ou du conseil de direction :

ministère)

"head of council" has the same meaning as in *The Municipal Act*; (président du conseil)

"minister" means a member of the Executive Council; (ministre)

"municipality" has the same meaning as in *The Municipal Act*. (municipalité)

S.M. 1996, c. 58, s. 465.

a) sont nommés en vertu d'une loi de la Législature ou par décret du lieutenant-gouverneur en conseil;

b) sont, s'ils ne sont pas ainsi nommés, dans l'accomplissement de leurs fonctions des officiers publics ou des employés du gouvernement ou, pour l'accomplissement efficace de leurs fonctions, directement ou indirectement responsables devant la Couronne. ("agency of the government")

président du conseil S'entend au sens de la *Loi sur les municipalités*. ("head of council")

L.M. 1996, c. 58, art. 465.

Appointment of Ombudsman

2(1) The Lieutenant Governor in Council shall, on the recommendation of the Standing Committee of the Assembly on Privileges and Elections, appoint a Canadian citizen as Ombudsman for the Province of Manitoba.

Nomination de l'ombudsman

2(1) Sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée, le lieutenant-gouverneur en conseil nomme un ombudsman pour la province du Manitoba. Il doit être citoyen canadien.

Recommendations of committee on privileges and elections**2(2)** Where

- (a) the office of Ombudsman is vacant; or
- (b) the term of the Ombudsman in office will expire within 12 months; or
- (c) the Ombudsman has tendered his resignation to take effect within 12 months;

the President of the Executive Council shall convene a meeting of the Standing Committee of the Assembly on Privileges and Elections which shall consider persons suitable and available to be appointed as Ombudsman and shall make recommendations in respect thereto to the President of the Executive Council.

Meetings of Standing Committee

2(3) The Standing Committee of the Assembly on Privileges and Elections may, for the purposes of performing its functions under this section, meet during session of the Legislature or during recess after prorogation.

Officer of Legislature

3(1) The Ombudsman is an officer of the Legislature and is not eligible to be nominated for, elected as, or sit as, a member of the assembly.

Restrictions on employment

3(2) The Ombudsman shall not hold any other public office or carry on any trade, business, or profession.

Term of office

4(1) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for six years from the date of his appointment, and a person may be re-appointed for a second term of six years, but not for more than two terms of six years.

Resignation

4(2) The Ombudsman may resign his office in writing addressed to the Speaker of the assembly, or, if there is no Speaker or the Speaker is absent, to the clerk of the assembly.

Removal or suspension

5 The Lieutenant Governor in Council, on a resolution of the assembly carried by a vote of 2/3 of the members of the assembly voting thereon, may remove the Ombudsman from office or suspend him.

Recommandations

2(2) Le président du Conseil exécutif doit convoquer une réunion du Comité permanent des privilèges et élections de l'Assemblée lorsque se présente l'un des cas suivants :

- a) la charge de l'ombudsman est vacante;
- b) le mandat de l'ombudsman expire dans les 12 mois;
- c) l'ombudsman a donné un préavis de 12 mois de sa démission.

Le Comité doit alors établir une liste des personnes qu'il estime convenables et disponibles pour le poste d'ombudsman; il fait ensuite ses recommandations au président du Conseil exécutif.

Réunions

2(3) Le Comité permanent des privilèges et élections de l'Assemblée peut, pour l'accomplissement des fonctions prévues au présent article, se réunir au cours d'une session de la Législature ou lorsque cette session a été prorogée.

Haut fonctionnaire de la Législature

3(1) L'ombudsman est un haut fonctionnaire de la Législature; il ne peut être nommé ni élu membre de l'Assemblée ni y siéger à ce titre.

Incompatibilité d'emploi

3(2) L'ombudsman ne peut être titulaire d'une autre charge publique, exercer un métier ou une profession ni faire du commerce.

Mandat

4(1) À moins qu'il ne démissionne, ne décède ou qu'il ne soit destitué, l'ombudsman occupe son poste pendant six ans à compter de la date de sa nomination. Son mandat est renouvelable pour six ans mais l'ombudsman ne peut rester en poste plus de 12 années.

Démission

4(2) L'ombudsman peut présenter sa démission en le faisant par écrit auprès de l'orateur de l'Assemblée ou, s'il n'y a pas d'orateur ou en cas d'absence de celui-ci, en la présentant au greffier de l'Assemblée.

Destitution ou suspension

5 Le lieutenant-gouverneur en conseil, à la suite d'une résolution votée par l'Assemblée aux 2/3 des suffrages exprimés, peut destituer ou suspendre l'ombudsman de ses fonctions.

Suspension when Legislature not sitting

6(1) At any time the Legislature is not in session, the Lieutenant Governor in Council may suspend the Ombudsman for disability, neglect of duty, misconduct or bankruptcy proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

Acting Ombudsman

6(2) Where the office of the Ombudsman is vacant, or the Ombudsman is suspended under subsection (1), the Lieutenant Governor in Council shall appoint an acting Ombudsman to hold office until another Ombudsman is appointed under section 2 or the suspension has been dealt with in the assembly.

Salary

7(1) The Ombudsman shall be paid a salary fixed by the Lieutenant Governor in Council, which shall be charged to and paid out of the Consolidated Fund.

Reduction of salary

7(2) The salary of the Ombudsman shall not be reduced except on resolution of the assembly carried by a vote of 2/3 of the members of the assembly voting thereon.

Expenses

8 The Ombudsman shall be paid such travelling and out of pocket expenses incurred by him in the performance of his duties as may be approved by the Provincial Auditor.

Application of Civil Service Superannuation Act

9(1) The Ombudsman, and all persons employed under him, are employees within the meaning of *The Civil Service Superannuation Act*.

Application of The Civil Service Act

9(2) The Ombudsman is not subject to *The Civil Service Act* except section 44 thereof which applies to him but he is entitled to the privileges and perquisites of office, including holidays, vacations, sick leave and severance pay, of a member of the civil service who is not covered by a collective agreement.

Suspension en dehors des sessions

6(1) En dehors des sessions de la Législature, le lieutenant-gouverneur en conseil peut suspendre l'ombudsman pour incapacité, pour manquement aux devoirs de sa charge, pour inconduite ou faillite personnelle. Ces faits doivent avoir été prouvés à la satisfaction du lieutenant-gouverneur en conseil. Toutefois, la suspension ne se perpétue pas au delà de la fin de la session suivante.

Intérim

6(2) Lorsque la charge d'ombudsman est vacante ou lorsque l'ombudsman est suspendu en vertu du paragraphe (1), le lieutenant-gouverneur en conseil nomme un ombudsman intérimaire jusqu'à ce que son successeur soit nommé en vertu de l'article 2 ou jusqu'à ce que l'Assemblée ait pris une décision au sujet de la suspension.

Rémunération

7(1) Le lieutenant-gouverneur en conseil fixe la rémunération de l'ombudsman, laquelle est payée sur le Trésor.

Réduction de rémunération

7(2) Seule l'Assemblée peut, par un vote des 2/3 des suffrages exprimés, réduire la rémunération de l'ombudsman.

Frais

8 L'ombudsman a droit au remboursement des frais qu'il fait dans l'exercice de ses fonctions, qu'il s'agisse de frais de déplacement ou de frais divers. Ces frais doivent être approuvés par le vérificateur provincial.

Loi sur la pension de la fonction publique

9(1) L'ombudsman ainsi que les personnes qui travaillent pour lui sont des employés au sens de la *Loi sur la pension de la fonction publique*.

Application de la Loi sur la fonction publique

9(2) L'ombudsman n'est pas soumis à la *Loi sur la fonction publique* à l'exception de l'article 44 de cette loi. Par contre, il a droit aux privilèges et aux avantages sociaux, y compris les jours fériés, les vacances, les congés de maladie et les indemnités de licenciement, qui sont applicables aux employés de la fonction publique non régis par une convention collective.

Employees under Ombudsman

9(3) *The Civil Service Act* applies to persons employed under the Ombudsman.

Oath of office

10 Before beginning to perform his duties, the Ombudsman shall take an oath before the Speaker of the Assembly or the Clerk of the Assembly that he will faithfully and impartially perform the duties of his office and that he will not, except as herein provided, divulge any information received by him under this Act.

Oath of staff

11 Every person employed under the Ombudsman shall, before he begins to perform the duties, take an oath before the Ombudsman that he will not, except as herein provided, divulge any information received by him under this Act.

Secrecy

12(1) The Ombudsman and every person employed under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties or functions under this Act.

Disclosure in reports

12(2) Notwithstanding subsection (1) or any oath taken under this Act, the Ombudsman may disclose in a report made by him under this Act any matters which he considers necessary to disclose in order to establish grounds for his conclusions and recommendations.

Powers under Part V of The Evidence Act

13 The Ombudsman has the protection and powers of a commissioner appointed under Part V of *The Manitoba Evidence Act*, but section 85 of *The Manitoba Evidence Act* does not apply to the Ombudsman and no notice of appointment, of the purpose and scope of inquiries to be made by the Ombudsman, or of the time and place of the holding of any hearing or inquiry by the Ombudsman, need be published as required under section 86 of *The Manitoba Evidence Act*.

Employés de l'ombudsman

9(3) La *Loi sur la fonction publique* s'applique aux employés de l'ombudsman.

Serment professionnel

10 Avant d'entrer en fonction l'ombudsman doit prêter serment devant l'orateur ou le greffier de l'Assemblée. Il s'engage par ce serment à remplir de bonne foi et en toute impartialité les devoirs de sa charge et à ne pas divulguer les renseignements auxquels il a accès dans le cadre de la présente loi sauf dans les cas qu'elle prévoit.

Assermentation du personnel

11 Les employés de l'ombudsman doivent, avant d'entrer en fonction, prêter serment devant l'ombudsman. Ils s'engagent par ce serment à ne divulguer aucun des renseignements auxquels ils ont accès dans le cadre de la présente loi sauf dans les cas qu'elle prévoit.

Confidentialité

12(1) L'ombudsman et ses employés doivent respecter la nature confidentielle de tout renseignement porté à leur connaissance dans l'exercice des pouvoirs et fonctions que leur assigne la présente loi.

Divulgation dans les rapports

12(2) Malgré le paragraphe (1) et malgré les serments prêtés en vertu de la présente loi, l'ombudsman peut révéler dans un rapport établi en vertu de la présente loi les faits qu'il considère nécessaire de révéler pour fonder ses conclusions et recommandations.

Pouvoirs et protection

13 L'ombudsman jouit de la protection et des pouvoirs accordés à un commissaire nommé en vertu de la partie V de la *Loi sur la preuve au Manitoba*. Toutefois, l'article 85 de cette loi ne s'applique pas à l'ombudsman. Les avis relatifs à la convocation, à l'objet et à la portée des enquêtes de l'ombudsman ainsi que les avis relatifs aux moments et lieux des audiences et des enquêtes de l'ombudsman n'ont pas à être publiés comme l'exige l'article 86 de la *Loi sur la preuve au Manitoba*.

Delegation

14(1) The Ombudsman may in writing delegate to any person any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

Evidence of delegation

14(2) A person purporting to exercise the power of the Ombudsman by virtue of the delegation under subsection (1) shall produce evidence of his authority to exercise that power when required to do so.

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; or

(b) any decision or recommendation made, including any recommendation made to a council, or any act done or omitted, relating to a matter of administration in or by any municipality or by any officer or employee of a municipality, whereby any person is or may be aggrieved.

S.M. 1996, c. 58, s. 465.

15.1 Expired.

S.M. 1990-91, c. 10, s. 2; S.M. 1991-92, c. 41, s. 20.

Five year sunset clause

15.2(1) Subject to subsection (3), section 15 expires and is no longer in force and effect on the fifth anniversary date of the coming into force of the section.

Délégation de pouvoir

14(1) L'ombudsman peut par écrit déléguer les pouvoirs que lui confère la présente loi à l'exception du pouvoir de délégation que lui confère le présent article et du pouvoir de faire rapport en application de la présente loi.

Preuve de la délégation de pouvoir

14(2) La personne investie d'un pouvoir délégué de l'ombudsman en vertu du paragraphe (1) doit, lorsqu'on le lui demande, faire la preuve de sa délégation.

Enquêtes

15 L'ombudsman peut, sur plainte écrite ou de sa propre initiative, enquêter :

a) sur une décision prise ou une recommandation faite, y compris une recommandation faite à un ministre, ou sur un acte accompli ou une omission commise, relativement à une question administrative, dans ou par un ministère ou un organisme du gouvernement ou par un de ses cadres, employés ou membres, lorsqu'une personne est ou peut être lésée du fait de la décision, de la recommandation, de l'acte ou de l'omission;

b) sur une décision prise ou une recommandation faite, y compris une recommandation faite à un conseil, ou sur un acte accompli ou une omission commise, relativement à une question administrative, dans ou par une municipalité ou par un de ses cadres ou employés, lorsqu'une personne est ou peut être lésée du fait de la décision, de la recommandation, de l'acte ou de l'omission.

L.M. 1996, c. 58, art. 465.

15.1 A cessé d'avoir effet.

L.M. 1990-91, c. 10, art. 2; L.M. 1991-92, c. 41, art. 20.

Disposition de temporarisation

15.2(1) Sous réserve du paragraphe (3), l'article 15.1 cesse d'avoir effet le cinquième jour anniversaire de son entrée en vigueur.

Review by Assembly

15.2(2) Upon expiry of section 15.1, the Standing Committee of the Assembly on Privileges and Elections, or such other committee of the Assembly or other committee or person as the Assembly may specify by resolution, shall review the services provided by the Ombudsman to the City of Winnipeg under section 15.1 and shall, no later than 6 months after expiry of section 15.1, table a report, with or without recommendations, in the Assembly.

Services continue during review

15.2(3) Notwithstanding subsection (1), an agreement under section 15.1, entered into before expiry of the section, shall, at the election of either party, remain in force and effect until such time as the Legislature otherwise provides.

S.M. 1990-91, c. 10, s. 2; S.M. 1991-92, c. 41, s. 20.

Reference by committees of assembly

16(1) A committee of the assembly may at any time refer to the Ombudsman, for investigation and report by him, any petition or matter that is before that committee for consideration; and the Ombudsman shall

(a) subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and

(b) make such report to the committee as he thinks fit.

Examen par l'Assemblée

15.2(2) À la cessation d'effet de l'article 15.1, le Comité permanent des privilèges et élections ou tout autre comité de l'Assemblée ou encore le comité ou la personne que l'Assemblée indique par résolution se penche sur les services fournis par l'ombudsman à la Ville de Winnipeg en application de l'article 15.1 et, au plus tard six mois après la cessation d'effet de cet article, dépose un rapport, accompagné ou non de recommandations, à l'Assemblée.

Maintien des services

15.2(3) Malgré le paragraphe (1), l'entente visée à l'article 15.1 demeure, au choix de l'une ou l'autre des parties, en vigueur jusqu'à décision contraire de la Législature, si elle est conclue avant la cessation d'effet de cet article.

L.M. 1990-91, c. 10, art. 2.

Renvoi par les comités de l'Assemblée

16(1) Un comité de l'Assemblée peut à tout moment saisir l'ombudsman d'une question qu'il examine et au sujet de laquelle il demande à l'ombudsman de faire enquête et de lui faire rapport. L'ombudsman doit alors :

a) faire enquête, sous réserve de toute directive spéciale du comité, sur la question qui lui est soumise pour autant qu'elle relève de sa compétence;

b) adresser au comité le rapport qui lui semble approprié.

Reference by Lieutenant Governor in Council

16(2) The Lieutenant Governor in Council may at any time refer to the Ombudsman, for investigation and report by him, any matter relating to administration in or by any department, agency of the government or municipality, or by any officer, employee or member thereof; and the Ombudsman shall,

(a) subject to any special direction of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and

(b) make such report to the Lieutenant Governor in Council as he thinks fit.

S.M. 1996, c. 58, s. 465.

Exercise of powers

17 The Ombudsman may exercise and perform the powers, duties and functions conferred or imposed on him under this Act notwithstanding any provision of any other Act of the Legislature

(a) that any decision, recommendation, act or omission that he is investigating is final; or

(b) that no appeal lies in respect thereof; or

(c) that no proceeding or decision of the department, agency of the government, municipality, officer, employee, or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

S.M. 1996, c. 58, s. 465.

Renvoi par le lieutenant-gouverneur en conseil

16(2) Le lieutenant-gouverneur en conseil peut en tout temps saisir l'ombudsman de toute question relative à l'administration gouvernementale, qu'il s'agisse d'un ministère, d'un organisme gouvernemental ou d'une municipalité ou d'un de leurs cadres, employés ou membres et peut lui demander de faire enquête et de lui faire rapport. L'ombudsman doit alors :

a) faire enquête, sous réserve de toute directive spéciale du lieutenant-gouverneur en conseil, sur la question qui lui est soumise pour autant qu'elle relève de sa compétence;

b) adresser au lieutenant-gouverneur en conseil le rapport qui lui semble approprié.

L.M. 1996, c. 58, art. 465.

Exercice des pouvoirs

17 L'ombudsman peut exercer les pouvoirs et fonctions que lui confère ou que lui impose la présente loi malgré toute disposition d'une autre loi provinciale qui prévoit que :

a) toute décision, recommandation, action ou omission concernée est définitive;

b) il ne peut y avoir appel dans le cas concerné;

c) il ne peut y avoir opposition, révision, annulation ou remise en question d'une procédure ou d'une décision du ministère, de l'organisme gouvernemental, de la municipalité, du cadre, de l'employé ou de la personne dont la décision, la recommandation, l'action ou l'omission est en cause.

L.M. 1996, c. 58, art. 465.

Restriction on jurisdiction

18 Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act, order or omission of the Legislature, the assembly, the Lieutenant Governor, a committee of the assembly, the Lieutenant Governor in Council, the Executive Council, or a committee of the Executive Council; or

(a.1) any resolution or by-law of a council of a policy nature;

(b) any order, decision or omission of a court, a judge of a court, a referee or master of a court, a magistrate or a justice of the peace made or given in any action or proceeding in the court, or before the judge, referee, master, magistrate or justice of the peace; or

(c) any award, decision, recommendation or omission of an arbitrator or board of arbitrators in an arbitration to which *The Arbitration Act* applies; or

(d) any decision, recommendation, act or omission in respect of which there is, under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or tribunal constituted by or under an Act of the Legislature, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the tribunal or court, but in that case investigation shall not commence until after the time prescribed for the exercise of that right to appeal, object or apply, has expired.

S.M. 1996, c. 58, s. 465.

Restriction on investigation by minister

19(1) Where the Minister of Justice certifies in writing to the Ombudsman that the investigation of a matter would be contrary to the public interest under the circumstances, the Ombudsman shall not investigate that matter, or, if he has commenced an investigation of that matter, he shall discontinue the investigation.

Domaine de compétence

18 La présente loi n'autorise pas l'ombudsman à faire enquête sur l'un ou l'autre des actes suivants :

a) les décisions, recommandations, actes, ordres ou omissions de la Législature, de l'Assemblée, du lieutenant-gouverneur, d'un comité de l'Assemblée, du lieutenant-gouverneur en conseil, du Conseil exécutif ou d'un comité du Conseil exécutif;

a.1) les résolutions ou les règlements du conseil de la nature d'une politique générale;

b) les ordonnances, décisions ou omissions d'un tribunal, d'un juge d'un tribunal, d'un juge des renvois, d'un conseiller maître du tribunal, d'un magistrat ou d'un juge de paix, lors d'une action ou d'une procédure devant le tribunal ou devant le juge, le juge des renvois, le conseiller maître, le magistrat ou le juge de paix;

c) les sentences arbitrales, décisions, recommandations ou omissions d'un arbitre ou d'un conseil arbitral lors d'un arbitrage soumis à la *Loi sur l'arbitrage*;

d) les décisions, recommandations, actions ou omissions qui, en vertu d'une disposition législative, sont assorties d'un droit d'appel, d'opposition ou du droit d'exiger une révision au mérite devant un tribunal établi en vertu d'une loi de la Législature, peu importe que ce droit d'appel, d'opposition ou de demande de révision ait été exercé en l'espèce ou qu'il soit prescrit; toutefois, l'ombudsman peut faire enquête s'il estime en l'espèce qu'il n'aurait pas été raisonnable de s'attendre que le plaignant recoure aux tribunaux, auquel cas il ne peut commencer son enquête qu'après l'expiration du délai d'appel, d'opposition ou de demande de révision.

L.M. 1996, c. 58, art. 465.

Pouvoir du ministre de limiter les enquêtes

19(1) Lorsque le ministre de la Justice atteste par écrit à l'ombudsman qu'une enquête pourrait, dans les circonstances, nuire à l'intérêt public, l'ombudsman doit renoncer à enquêter ou, s'il a commencé de le faire, doit cesser.

Report of certificate

19(2) Where a certificate is given under subsection (1), the Ombudsman shall include that fact and a brief description of the circumstances of the matter in his next annual report to the assembly.

S.M. 1993, c. 48, s. 83.

Questions relating to jurisdiction

20 Where a question arises as to the jurisdiction of the Ombudsman to investigate any case or class of cases under this Act, he may apply to the Court of Queen's Bench for a declaratory order determining the question.

Publicité de l'attestation

19(2) Lorsque le procureur général fait une attestation en vertu du paragraphe (1), l'ombudsman doit mentionner le fait et décrire brièvement les circonstances de l'espèce dans le premier rapport annuel qu'il adresse par la suite à l'Assemblée.

L.M. 1993, c. 48, art. 83.

Détermination de la compétence

20 Lorsqu'il y a doute sur la compétence qu'a l'ombudsman de faire enquête sur une affaire ou dans une catégorie d'affaires en vertu de la présente loi, il peut demander à la Cour du Banc de la Reine une ordonnance déclaratoire à cet égard.

Complaints in writing

21 Every complaint to the Ombudsman shall be made in writing.

Privacy of communication to Ombudsman

22 Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction for an offence, or by an inmate in any hospital, mental hospital, home or institution operated by or under the direction of the government, or by any person in custody of another person for any other reason, is addressed to the Ombudsman, it shall be forwarded immediately, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or in which he is an inmate, or by the person having custody of the writer.

Refusal to investigate

23(1) The Ombudsman, in his discretion, may refuse to investigate or may cease to investigate a complaint if

- (a) it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before the complaint is received by the Ombudsman; or
- (b) in his opinion it is frivolous or vexatious or not made in good faith or concerns a trivial matter; or
- (c) in his opinion, upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued; or
- (d) in his opinion the circumstances of the case do not require investigation.

Caractère écrit des plaintes

21 Les plaintes doivent être adressées par écrit à l'ombudsman.

Caractère confidentiel de la correspondance

22 Malgré toute disposition législative, la correspondance écrite adressée à l'ombudsman par une personne incarcérée, qu'elle ait été ou non déjà condamnée, par le patient d'un hôpital, d'un hôpital psychiatrique, d'un foyer ou d'une institution gérée par le gouvernement ou selon ses directives ou encore la correspondance écrite adressée à l'ombudsman par une personne sous la garde d'une autre personne pour toute autre raison doit être acheminée immédiatement à son destinataire, sans être ouverte, par la personne responsable de l'établissement où l'expéditeur de la lettre est détenu ou dans lequel il est interné, ou enfin par la personne qui a la garde de l'expéditeur.

Refus d'enquête

23(1) L'ombudsman peut, à sa discrétion, refuser d'enquêter ou mettre fin à une enquête relative à une plainte dans les cas suivants :

- a) la plainte a trait à une décision, une recommandation, un acte ou une omission dont le plaignant a pris connaissance plus d'un an avant que la plainte ait été reçue par l'ombudsman;
- b) l'ombudsman est d'avis que la plainte est frivole, vexatoire, qu'elle n'a pas été faite de bonne foi, ou encore que son objet n'est pas sérieux;
- c) l'ombudsman est d'avis que malgré le préjudice causé à la personne, l'intérêt public commande que l'enquête n'ait pas lieu ou encore qu'elle cesse;
- d) l'ombudsman est d'avis que les circonstances de l'affaire qui lui est soumise font que l'enquête n'est pas nécessaire.

**Limitation on review of discretionary powers
23(2)**

Where, in the course of or after an investigation of any decision, act or omission, done or omitted by a department, agency of the government or municipality, or any officer or employee thereof in the exercise of a discretion vested in that department, agency, municipality, officer, or employee, the Ombudsman is satisfied that the decision, act or omission is not clearly wrong or unreasonable, the Ombudsman shall make no further investigation of the matter and shall report to the complainant that he is so satisfied.

S.M. 1996, c. 58, s. 465.

Report of refusal to investigate

24 Where the Ombudsman decides not to investigate or to cease investigating a complaint he shall inform the complainant, and any other interested person, of his decision.

Notice of investigation

25 Before investigating a complaint, the Ombudsman shall inform the deputy minister or the administrative head of the department or agency of the government affected, or the chief administrative officer of the municipality affected, of his intention to make the investigation.

S.M. 1996, c. 58, s. 465.

Private investigations

26 Every investigation by the Ombudsman under this Act shall be conducted in private.

Hearings

27 The Ombudsman may hold hearings and hear or obtain information from any person and make inquiries as he thinks fit.

Right to be heard

28 The Ombudsman is not required to hold a hearing and no person is entitled, as of right, to be heard by the Ombudsman; but, if at any time it appears to the Ombudsman that there is sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government, municipality or person, he shall give to that department, agency, municipality or person, an opportunity to make representations in respect of the matter, and the department, agency, municipality or person may make representations in respect of the matter by counsel.

S.M. 1996, c. 58, s. 465.

Limite du pouvoir d'enquêter sur l'exercice du pouvoir discrétionnaire

23(2) Lorsqu'au cours ou au terme d'une enquête sur une décision, sur un acte ou sur une omission d'un ministère, d'un organisme gouvernemental ou d'une municipalité ou d'un de leurs cadres ou employés, survenus dans l'exercice d'un pouvoir discrétionnaire conféré à ces entités ou personnes, l'ombudsman doit renoncer à l'enquête s'il est convaincu que la décision, l'acte ou l'omission n'est pas manifestement erroné ou déraisonnable. Il doit faire part au plaignant de sa décision.

L.M. 1996, c. 58, art. 465.

Communication du refus d'enquêter

24 Lorsque l'ombudsman décide de ne pas enquêter ou d'interrompre une enquête sur une plainte, il doit faire part de sa décision au plaignant et à toute personne concernée par l'affaire.

Avis d'enquête

25 Avant de faire enquête pour donner suite à une plainte, l'ombudsman doit faire part de son intention d'enquêter au sous-ministre ou au responsable administratif du ministère ou de l'organisme gouvernemental concerné ou au directeur général de la municipalité concernée.

L.M. 1996, c. 58, art. 465.

Huis clos

26 Les enquêtes effectuées par l'ombudsman en vertu de la présente loi sont tenues à huis clos.

Audiences

27 L'ombudsman peut, selon ce qu'il estime opportun, tenir des audiences, recevoir ou obtenir des renseignements de toute personne et faire enquête.

Droit d'être entendu

28 L'ombudsman n'est pas obligé de tenir des audiences et personne ne peut exiger d'être reçu en audience par l'ombudsman. Toutefois, si l'ombudsman estime qu'il dispose d'assez d'éléments pour faire un rapport ou une recommandation sur une question qui pourrait nuire à un ministère, à un organisme gouvernemental, à une municipalité ou à une personne, il doit donner à ces derniers l'occasion de lui faire des représentations sur l'affaire concernée. Le ministère, l'organisme gouvernemental, la municipalité ou la personne peut alors faire ses représentations par l'intermédiaire d'un avocat.

L.M. 1996, c. 58, art. 465.

Consultation with minister

29(1) The Ombudsman may, at any time during or after an investigation, consult any minister or head of council who is concerned in the matter of the investigation.

Reference to deputy minister

29(2) Where, during or after an investigation, the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department, agency of the government or municipality or any officer or employee thereof, he shall refer the matter to the deputy minister or administrative head of the department or agency of the government or the chief administrative officer of the municipality.

S.M. 1996, c. 58, s. 465.

Evidence

30(1) Subject to section 31, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him; and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person;

whether or not that person is an officer, employee or member of the department, agency of the government or municipality and whether or not the document, paper or thing is in the custody or under the control of a department, agency of the government or municipality.

Consultation du ministre

29(1) L'ombudsman peut, pendant ou après l'enquête, consulter tout ministre ou président de conseil qui est concerné par l'objet de l'enquête.

Transmission au sous-ministre

29(2) Lorsque pendant ou après une enquête l'ombudsman estime qu'il a la preuve d'un manquement au devoir ou d'une mauvaise conduite d'un ministère, d'un organisme gouvernemental ou d'une municipalité ou encore d'un de leurs cadres ou employés, il doit porter l'affaire à la connaissance du sous-ministre ou du responsable administratif du ministère ou de l'organisme gouvernemental ou du directeur général de la municipalité.

L.M. 1996, c. 58, art. 465.

Communication de la preuve

30(1) Sous réserve de l'article 3 l'ombudsman peut exiger de toute personne qui, à son avis, est en mesure de fournir un renseignement relatif à une affaire sous enquête :

a) qu'elle lui fournisse le renseignement;

b) qu'elle produise les documents qui, de l'avis de l'ombudsman, sont pertinents à l'objet de l'enquête et qui peuvent se trouver en possession ou sous la maîtrise de cette personne.

L'ombudsman peut utiliser ce pouvoir à l'égard de toute personne, qu'elle soit ou non cadre, employée ou membre du ministère, de l'organisme gouvernemental ou de la municipalité et que le document soit ou non en la possession ou sous la maîtrise d'un ministère, d'un organisme gouvernemental ou d'une municipalité.

Examination on oath

30(2) The Ombudsman may summon before him and examine on oath

(a) any person who is an officer or employee or member of any department, agency of the government or municipality and who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

(b) any complainant; and

(c) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him.

S.M. 1996, c. 58, s. 465.

Restrictions on disclosures

31 Where the Minister of Justice certifies that the giving of any information or the answering of any question or the production of any document, paper or thing might involve the disclosure of

(a) the deliberations of the Lieutenant Governor in Council, the Executive Council, or any committee thereof; or

(b) proceedings of the Lieutenant Governor in Council, the Executive Council, or any committee thereof; or

(c) matters of a secret or confidential nature, or the disclosure of which would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document, paper or thing to be produced, but shall report the giving of the certificate and the matter in respect of which it was given in his next annual report to the assembly.

S.M. 1993, c. 48, s. 83.

Application of certain rules

32(1) Subject to section 31, a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure or answering would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman.

Interrogatoire sous serment

30(2) L'ombudsman peut assigner à comparaître et interroger sous serment les personnes suivantes :

a) le cadre, employé ou membre d'un ministère, d'un organisme gouvernemental ou d'une municipalité qu'il estime en mesure de donner un renseignement pertinent à l'affaire sous enquête;

b) le plaignant;

c) toute autre personne qu'il estime en mesure de donner un renseignement relatif à l'affaire sous enquête.

L.M. 1996, c. 58, art. 465.

Restrictions à la communication de renseignements

31 L'ombudsman ne peut exiger d'obtenir des renseignements, des réponses ou des documents lorsque le ministre de la Justice certifie que le fait de les fournir pourrait entraîner la divulgation :

a) des délibérations du lieutenant-gouverneur en conseil, du Conseil exécutif ou d'un de ses comités;

b) des travaux du lieutenant-gouverneur en conseil, du Conseil exécutif ou d'un de ses comités;

c) de questions de nature secrète, confidentielle ou dont la divulgation pourrait porter atteinte à l'intérêt public.

Toutefois, il doit faire mention du certificat et de l'affaire à laquelle il se rapporte dans le premier rapport qu'il adresse par la suite à l'Assemblée.

L.M. 1993, c. 48, art. 83.

Application de certaines règles

32(1) Sous réserve de l'article 31, une règle de droit autorisant ou exigeant qu'on retienne un document ou qu'on refuse de répondre à une question au motif que la divulgation des renseignements concernés porterait préjudice à l'intérêt public, ne s'applique pas aux procédures se déroulant devant l'ombudsman ni aux enquêtes qu'il effectue.

Provisions relating to secrecy

32(2) Subject to section 31, no provision of any Act of the Legislature requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall apply in respect of an investigation by the Ombudsman; and no person required by the Ombudsman to furnish information or to produce any document, paper or thing or summoned by the Ombudsman to give evidence, shall refuse to furnish the information, produce the document, paper or thing, or to answer questions on the ground of any such provision.

Admissibility of evidence

33 Except on the trial of a person for perjury, no statement made, or answer or evidence given by that or any other person in the course of an investigation by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence respecting proceedings before the Ombudsman shall be given against any person.

Defence for certain offences

34 No person is guilty of an offence against any other Act of the Legislature by reason of his compliance with any request or requirement of the Ombudsman to furnish information or produce any document, paper or thing, or by reason of answering any question in any investigation of the Ombudsman.

Right of entry

35(1) For the purposes of this Act, the Ombudsman may at any time enter upon the premises occupied by any department, agency of the government or municipality and, subject to section 31, carry out therein any investigation within his jurisdiction.

Dispositions relatives au secret

32(2) Sous réserve de l'article 31, les dispositions des lois de la Législature qui exigent le maintien du secret ou la rétention de renseignements ne s'appliquent pas aux enquêtes effectuées par l'ombudsman. Aucune personne ne peut invoquer ces dispositions pour refuser de fournir à l'ombudsman les renseignements ou les documents que celui-ci exige, ou encore pour refuser de répondre ou de fournir des éléments de preuve lorsqu'elle est assignée à témoigner par l'ombudsman.

Inadmissibilité de la preuve

33 Sauf dans les procès pour parjure, les déclarations, les réponses ou la preuve fournies par une personne au cours d'une enquête effectuée par l'ombudsman ou au cours d'une procédure devant ce dernier sont inadmissibles en preuve devant un tribunal ou au cours d'une enquête ou de toute autre procédure, et la preuve relative aux procédures devant l'ombudsman ne peut servir contre quiconque.

Défense pour certaines infractions

34 Nul n'est coupable d'une infraction à une autre loi de la Législature du fait d'avoir obtempéré à une demande de communication de renseignements ou de production de documents faite par l'ombudsman ou du fait d'avoir répondu à une question au cours d'une enquête de l'ombudsman.

Droit d'accès

35(1) Aux fins de la présente loi, l'ombudsman peut à tout moment accéder aux lieux qu'occupe un ministère, un organisme gouvernemental ou une municipalité pour y mener, sous réserve de l'article 31, une enquête relevant de sa compétence.

Notice of entry

35(2) Upon entering any premises under subsection (1), the Ombudsman shall notify the deputy minister or administrative head of the department or agency of the government or the chief administrative officer of the municipality that occupies the premises.

S.M. 1996, c. 58, s. 465.

Report on investigation

36(1) Where, after making an investigation under this Act, the Ombudsman is of opinion

(a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been

(i) contrary to law, or

(ii) unreasonable, or

(iii) unjust, or

(iv) oppressive, or

(v) improperly discriminatory, or

(vi) in accordance with a practice or procedure that is or may be unreasonable, unjust, oppressive, or improperly discriminatory, or

(vii) based wholly or partly on a mistake of law or fact, or

(viii) wrong; or

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised

(i) for an improper purpose, or

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations; or

(c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons and may make such recommendations as he thinks fit

(d) to the appropriate minister and to the department or agency of the government concerned; or

(e) to the appropriate head of council.

Avis de visite

35(2) En accédant aux lieux visés au paragraphe (1), l'ombudsman doit aviser de sa visite le sous-ministre ou le responsable administratif du ministère ou de l'organisme gouvernemental ou le directeur général de la municipalité qui occupe ces lieux.

L.M. 1996, c. 58, art. 465.

Rapport d'enquête

36(1) Au terme d'une enquête menée en vertu de la présente loi, l'ombudsman doit faire rapport de ses conclusions et de ses motifs et peut faire les recommandations qu'il juge appropriées au ministre compétent et au ministère ou à l'organisme gouvernemental concerné ou au président de conseil compétent, si au cours de son enquête il constate l'un ou l'autre des faits suivants :

a) la décision, la recommandation, l'acte ou l'omission qui fait l'objet de l'enquête semble, selon le cas :

(i) être contraire à la loi,

(ii) être déraisonnable,

(iii) être injuste,

(iv) être de nature oppressive,

(v) être indûment discriminatoire,

(vi) résulter d'un usage ou d'un procédé qui est ou pourrait être déraisonnable, injuste, de nature oppressive ou indûment discriminatoire,

(vii) être fondé en tout ou partie sur une erreur de droit ou de fait,

(viii) être erroné;

b) lors de la prise de décision, de la formulation d'une recommandation ou lors de l'accomplissement ou de l'omission d'un acte, un pouvoir ou un droit a été exercé dans l'une ou l'autre des circonstances suivantes :

(i) le but poursuivi était inapproprié,

(ii) l'exercice du pouvoir ou du droit n'avait pas de fondement pertinent,

(iii) l'exercice du pouvoir ou du droit s'est fait compte tenu de considérations non pertinentes;

c) la décision, la recommandation, l'acte ou l'omission qui fait objet de l'enquête aurait dû être motivé.

Nature of recommendations

36(2) Without limiting the generality of subsection (1), in making a report under subsection (1), the Ombudsman may recommend

- (a) that a matter should be referred to the appropriate authority for further consideration; or
- (b) that an omission should be rectified; or
- (c) that a decision should be cancelled or varied; or
- (d) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed; or
- (e) that any law on which a decision, recommendation, act or omission was based should be reconsidered; or
- (f) that reasons should be given for any decision, recommendation, act or omission; or
- (g) that any other steps should be taken.

Report considered at closed meeting

36(3) Where the Ombudsman reports to a head of council under clause (1)(e), the head of council shall at the next meeting of council close the meeting to the public in accordance with *The Municipal Act*, and council shall meet as a committee to discuss the report.

S.M. 1996, c. 58, s. 465.

Nature des recommandations

36(2) Sans préjudice de la généralité du paragraphe (1), dans le rapport prévu au même paragraphe, l'ombudsman peut faire des recommandations ayant les objets suivants :

- a) une question devrait être transmise à l'autorité compétente pour qu'elle effectue un examen plus approfondi de cette question;
- b) une omission devrait être réparée;
- c) une décision devrait être annulée ou modifiée;
- d) l'usage qui aboutit à une décision, une recommandation, un acte ou une omission devrait être modifié ou réformé;
- e) une loi sur laquelle se fonde une décision, une recommandation, un acte ou une omission devrait être réexaminée;
- f) une décision, une recommandation, un acte ou une omission devrait être motivé;
- g) toute autre mesure devrait être prise.

Étude du rapport à huis clos

36(3) Saisi du rapport de l'ombudsman en application de l'alinéa (1)e), le président du conseil exclut le public, en conformité avec la *Loi sur les municipalités*, au cours de la réunion suivante du conseil. Celui-ci se forme en comité afin de discuter du rapport.

L.M. 1996, c. 58, art. 465.

Notice of proposed steps

37(1) Where the Ombudsman makes a recommendation under section 36, he may request the department, agency of the government or municipality to notify him within a specified time of the steps that it has taken or proposes to take to give effect to his recommendations.

Further report on recommendations

37(2) If within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department, agency of the government or municipality affected, may report the matter, including a copy of the report containing the recommendations,

(a) in the case of a report under clause 36(1)(d), to the Lieutenant Governor in Council; and

(b) in the case of a report under clause 36(1)(e), to the head of council;

and may mention the report in the Ombudsman's next annual report to the Assembly.

Comments included in report

37(3) Any report made under subsection (2) shall include any comments made by or on behalf of the department, agency of the government or municipality upon the opinion or recommendation of the Ombudsman.

Report tabled at council meeting

37(4) Where the Ombudsman reports to the head of council under clause (2)(b), the head of council shall table the report at the next meeting of council.

S.M. 1996, c. 58, s. 465.

Report to complainant

38 Where the Ombudsman makes an investigation on the basis of a complaint received by him, he shall report to the complainant, in such manner and at such time as he thinks proper, the result of the investigation.

Rapport relatif aux mesures prises

37(1) Lorsqu'il a fait une recommandation en vertu de l'article 36, l'ombudsman peut exiger du ministère, de l'organisme gouvernemental ou de la municipalité concerné qu'il lui fasse rapport dans un délai donné des mesures qu'il a prises ou qu'il se propose de prendre pour donner suite à la recommandation.

Rapport à une instance supérieure

37(2) Si dans un délai raisonnable après la demande formulée en vertu du paragraphe (1) par l'ombudsman, ce dernier estime qu'aucune mesure adéquate n'a été prise, il peut, à sa discrétion et après avoir pris en considération les éventuels commentaires présentés par ou pour le ministère, l'organisme gouvernemental ou la municipalité concerné, faire rapport de l'affaire au lieutenant-gouverneur en conseil, si le rapport visé au paragraphe 36(1) est adressé au ministre compétent et au ministère ou à l'organisme gouvernemental concerné, ou au président du conseil, si le rapport est adressé à celui-ci, en lui remettant également une copie du rapport contenant les recommandations. De plus, l'ombudsman peut faire mention du rapport dans le rapport annuel suivant qu'il présente à l'Assemblée.

Commentaires apparaissant au rapport

37(3) Le rapport établi en vertu du paragraphe (2) doit contenir les commentaires faits par le ministère, l'organisme gouvernemental ou la municipalité, ou faits en leur nom sur l'opinion ou les recommandations de l'ombudsman.

Dépôt du rapport à la réunion du conseil

37(4) Le président du conseil dépose le rapport dont il est saisi en vertu du paragraphe (2) à la réunion suivante du conseil.

L.M. 1996, c. 58, art. 465.

Rapport au plaignant

38 Lorsque l'ombudsman fait enquête à partir d'une plainte qui lui a été adressée, il doit faire rapport au plaignant des résultats de l'enquête, de la manière et dans les délais qu'il juge appropriés.

Review of Ombudsman's decision

39 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman shall be challenged, reviewed, quashed or called in question in any court.

Proceedings against Ombudsman prohibited

40 No proceedings lie against the Ombudsman or against any person employed under him for anything he may do or report or say in the course of the exercise or performance, or intended exercise or performance of his functions and duties under this Act, unless it is shown he acted in bad faith.

Ombudsman not to be called as witness

41 The Ombudsman and any person employed under him shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise or performance of his functions and duties under this Act.

Annual report to Legislature

42 The Ombudsman shall report annually to the assembly through the Speaker on the exercise and performance of his functions and duties under this Act.

Publication of reports

43 In the public interest, or in the interest of a person, department, agency of the government or municipality, the Ombudsman may publish reports relating generally to the exercise and performance of his functions and duties under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of the report made to the assembly under this Act.

S.M. 1996, c. 58, s. 465.

Rules

44(1) The assembly may make general rules for the guidance of the Ombudsman in the exercise and performance of his functions and duties under this Act.

Appel des décisions de l'ombudsman

39 Aucune procédure de l'ombudsman n'est nulle pour vice de forme et, sauf dans les cas d'absence de compétence, les procédures ou décisions de l'ombudsman ne peuvent être contestées, révisées, annulées ou remises en question devant un tribunal.

Immunité de l'ombudsman

40 Ni l'ombudsman ni ses employés ne peuvent être poursuivis en raison des actes accomplis, rapports établis ou paroles prononcées dans l'exercice effectif ou censé tel des fonctions qui leur sont conférées en vertu de la présente loi, à moins qu'on ne prouve qu'ils ont agi de mauvaise foi.

Contraignabilité de l'ombudsman

41 Ni l'ombudsman ni ses employés ne peuvent être appelés à témoigner devant un tribunal ou lors d'une procédure de nature judiciaire relativement à des faits portés à leur connaissance dans le cadre de l'exercice des fonctions qui leur sont conférées en vertu de la présente loi.

Rapport annuel à la Législature

42 L'ombudsman doit faire rapport chaque année à l'Assemblée, par l'intermédiaire de l'orateur, de l'exercice des fonctions qui lui sont conférées en vertu de la présente loi.

Publication des rapports

43 Lorsqu'il s'agit de l'intérêt public ou de l'intérêt d'une personne, d'un ministère, d'un organisme gouvernemental ou d'une municipalité, l'ombudsman peut publier des rapports concernant, en général, l'exercice des fonctions qui lui sont conférées en vertu de la présente loi ou relatifs à un cas particulier sur lequel il a fait enquête, que les affaires en question aient été ou non mentionnées dans le rapport fait à l'Assemblée en vertu de la présente loi.

L.M. 1996, c. 58, art. 465.

Règles

44(1) L'Assemblée peut établir des règles générales de nature à guider l'ombudsman dans l'exercice des fonctions qui lui sont conférées en vertu de la présente loi.

Procedure of Ombudsman

44(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure.

Offence and penalty

45 Every person who

(a) without lawful justification or excuse wilfully obstructs, hinders, or resists the Ombudsman or any other person in the exercise or performance of his functions and duties under this Act; or

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of his functions and duties under this Act;

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$500. or to imprisonment for a term not exceeding three months, or to both.

Additional remedies

46 The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

Procédure devant l'ombudsman

44(2) Sous réserve des autres dispositions de la présente loi et des règles établies en vertu du paragraphe (1), l'ombudsman peut établir les procédures relatives à l'exercice de ses fonctions.

Infractions et peines

45 Commet une infraction et se rend passible, sur déclaration sommaire de culpabilité, d'une amende maximale de 500 \$ et d'un emprisonnement maximal de trois mois, ou de l'une de ces peines, quiconque :

a) volontairement et sans justification ni excuse légitime gêne, oppose une résistance ou fait obstruction à l'exercice des fonctions que la présente loi confère à l'ombudsman ou à toute autre personne;

b) sans justification ni excuse légitime refuse ou omet volontairement d'obéir à une exigence licite de l'ombudsman ou d'une autre personne dans le cadre de la présente loi;

c) fait volontairement de fausses déclarations pour induire en erreur ou tenter d'induire en erreur l'ombudsman ou toute autre personne dans l'exercice des fonctions que la présente loi lui confère.

Recours supplémentaires

46 Les dispositions de la présente loi complètent les dispositions de toute autre loi ou règle de droit qui prévoit un recours, un droit d'appel ou d'objection ou encore une procédure de recherche ou d'enquête sur quelque sujet que ce soit. La présente loi n'a pas pour effet de limiter ou de porter atteinte à ces recours, droits d'appel ou d'objection et autres procédures.