

# Ombudsman Manitoba

Ombudsman Manitoba  
750 – 500 Portage Avenue  
Winnipeg, Manitoba R3C 3X1  
Telephone: (204) 982-9130  
Toll Free in Manitoba:  
1-800-665-0531  
Fax: (204) 942-7803  
E-mail: [ombudsma@ombudsman.mb.ca](mailto:ombudsma@ombudsman.mb.ca)

---

500 av. Portage, Pièce 750  
Winnipeg (MB) R3C 3X1  
Téléphone : (204) 982-9130  
Sans frais au Manitoba :  
1 800 665-0531  
Télécopieur : (204) 942-7803  
Courriel : [ombudsma@ombudsman.mb.ca](mailto:ombudsma@ombudsman.mb.ca)

December 2000

The Honourable George Hickes  
Speaker of the Legislative Assembly  
Province of Manitoba  
Room 244 Legislative Building  
Winnipeg MB R3C 0V8

Dear Mr. Speaker:

In accordance with Section 42 of *The Ombudsman Act*, I am pleased to submit the thirtieth Annual Report of the Ombudsman for the calendar year January 1, 1999 to December 31, 1999.

Yours very truly,

Original signed by

Barry E. Tuckett  
Provincial Ombudsman



# Provincial Ombudsman 1999 Annual Report

## Personnel at December 2000

### Ombudsman Division:

Donna M. Drever  
Deputy Ombudsman

Corinne Crawford  
Senior Investigator

Cheryl Ritlbauer  
Senior Investigator

Robert W. Gates  
Investigator

Jane McBee  
Investigator

Kris Ramchandrar  
Investigator

Wanda Slomiany  
Investigator

Jack Mercredi  
Intake Officer/Investigator

### Brandon Office:

Janet Wood  
Senior Investigator

Mel Holley  
Investigator

Sharon Krakowka  
Intake Officer/Office Manager

### Access & Privacy Division:

Peter Bower  
Executive Director

Gail Perry  
Manager, Compliance Investigation

Val Gural  
Compliance Investigator

Nancy Love  
Compliance Investigator

Carol Markusoff  
Compliance Investigator

Darren Osadchuk  
Compliance Investigator

Kim Riddell  
Compliance Investigator

Aurele Teffaine  
Compliance Investigator

### Administration:

Laura Foster  
Office Manager

Helen Hicks  
Administrative Secretary

Jacque Laberge  
Administrative Secretary

Felicia Palmer  
Administrative Secretary

## TABLE OF CONTENTS

Introduction	5
Year in Review	9
Statistics	10
Selected Case Summaries	21
Manitoba Civil Service Commission	22
Manitoba Consumer and Corporate Affairs	26
Manitoba Family Services and Housing	27
Manitoba Health	31
Manitoba Highways and Government Services	34
Manitoba Hydro	37
Manitoba Justice	40
Manitoba Public Insurance	47
Municipalities	49
Child and Adolescent Services	54
Legislation	64



## INTRODUCTION

This is the 30<sup>th</sup> Annual Report of the Ombudsman submitted to the Legislative Assembly through the Speaker. Who would have envisioned in 1970 when *The Ombudsman Act* was first proclaimed, that the legislation would remain virtually unchanged and be as relevant on entering the 21st century as it was 30 years ago?

*The Ombudsman Act* has stood the test of time, mainly because at the outset, it incorporated the essential characteristics needed to successfully fulfill the purpose for which the legislation was established. Time has neither diminished the importance of these characteristics, nor the value of the Office in terms of identifying and resolving valid grievances against provincial government departments and agencies, in an informal, non-adversarial, non-legalistic manner. These characteristics relate to:

- The independence of the Office
- The powers given to investigate complaints
- The powers of recommendation and public reporting

The strength of the legislation however is not enough to ensure the effectiveness of the Office. My 22 years of association with the Manitoba Office of the Ombudsman has shown me that the support of elected officials, government administrators and the public is needed if the Office is to remain effective. This support is built on the understanding of the role of the Ombudsman and the confidence and credibility earned by the Office in fulfilling the role.

From time to time, it is important to revisit the purpose and value of the Office and bring aware-

ness to a role that essentially conducts most of its business informally and privately. While there is a general awareness of the Ombudsman role, many of the current Members of the Legislature were not involved in the establishment of this independent Office of the Legislative Assembly, and I would suggest that many have not had extensive interaction with the Office.

In addition, the actual role of the Ombudsman may be different from the perceived role as more and more organizations and some government departments and agencies establish internal review processes that are confused with the Ombudsman role. Some of these processes, while called Ombudsman, do not have the characteristics relating to the independence, powers of investigation, recommendation and public reporting that are essential to fulfill the purpose and role of the Ombudsman and maximize the value of the Office.

In 1970, a clear purpose was mandated in legislation through the proclamation of *The Ombudsman Act* and the establishment of the Manitoba Office of the Ombudsman. The legislation did not compromise on the essential components needed to fulfill the purpose. A review of the history and purpose of the Office shows the thought that went into the creation of a Legislative Ombudsman in Manitoba in 1970, continues to be as applicable now. I believe the following will serve as a brief refresher on where the Office came from and where it is today.

## History and Purpose

It was recognized in the late 1960s that the size and complexity of government and the perception of an all powerful and overwhelming administration, discouraged individuals who felt they were treated unfairly by government, from pursuing their complaints. Although recourse

## Provincial Ombudsman 1999 Annual Report

was available by seeking redress from the department or agency responsible for the action or decision, or lodging a complaint with the elected official or taking legal action, it was recognized that these were not always the best ways of dealing with concerns. Individuals did not always feel that a department or agency was unbiased and objective when reviewing its own actions or decisions, especially if their complaints or concerns were found to be not supported.

Lodging a complaint with an MLA, while usually bringing positive action, did not always resolve the complaint. Time, resources and the powers needed to conduct a thorough investigation are not always available to an MLA. In addition, there can be a problem of perception as the question of independence and impartiality of the elected official may be called into question if an unsatisfactory response is received by a complainant.

Elected officials from the government side may be seen as simply supporting the position of his or her colleague, whereas an opposition MLA may have difficulty getting to the bottom of a problem as he or she may be seen as only seeking information to criticize the government.

While perception is not necessarily reality, a person complaining must be satisfied that his or her concern has been dealt with in a thorough and impartial manner or the concern usually remains unresolved and the situation tends to escalate into allegations of cover-up, conspiracy etc.

Legal action while at times necessary, in most cases is untimely and costly for all parties. An alternative to legal action was one of the factors motivating the creation of the Ombudsman's Office in 1970. The Office was created to provide a thorough, impartial review of administrative acts, decisions or omissions by departments or agencies of the provincial government. Rarely were the formal powers of the

Ombudsman used. Rather, the power of persuasion through informal, non-adversarial and non-legalistic means was proven to be most effective.

The first Ombudsman, Mr. George Maltby served the Legislature from 1970 to 1982. Mr. Gordon Earle was appointed on the recommendation of an all party committee as Manitoba's second Ombudsman in 1982. To that point, little had changed in terms of the jurisdiction and activities of the Ombudsman. The 1980s and 1990s however brought significant changes to the Ombudsman's mandate.

In the early 1980s a citizen committee called the *Committee for a Children's Ombudsman* wanted a person designated in the Ombudsman Office to handle cases involving children to ensure that children had ready access to the Office and to help ensure that a high quality of service was provided to all children in Manitoba. While Ombudsman services were available to all, regardless of age, it was felt that problems involving children should be given priority and the Legislative Assembly in 1984, approved an additional Investigator position to specialize in complaints relating to children.

On September 30, 1988 *The Freedom of Information Act* was proclaimed, bringing a specialized role to the Office of the Ombudsman. This legislation put into place the right of the public to access records of public bodies while protecting privacy rights of individuals and legitimate confidentiality needs of government. The role of the Ombudsman under the access legislation was compatible with the role played by the Ombudsman under *The Ombudsman Act*. An applicant for access to government records who had not received a reply or who objected to the government's wish to extend the 30-day response time, or who had been refused access to all or part of a public record, or who wanted to complain about the adequacy and availability of the

## Provincial Ombudsman 1999 Annual Report

Access Guide, had a right to complain to the Ombudsman. Again, the role of the Ombudsman was to provide a thorough, impartial investigation of the complaint, followed by a report with recommendations if appropriate.

Municipal jurisdiction was added to the Office effective January 1, 1997, wherein administrative acts, decisions or omissions by municipal governments (with the exception of the City of Winnipeg) were subject to review by the Ombudsman. This expansion of jurisdiction to over 200 municipal corporations was viewed as a positive means to bring informal resolutions to disputes between municipalities and their ratepayers.

With the reorganization of the operations and administration of Manitoba's health care services and the creation of Regional Health Authorities (RHAs) in 1997, the Ombudsman's role was expanded to include responding to complaints relating to hospital administration. RHAs have the legislated responsibility to plan, manage, deliver, monitor and evaluate health services within the regions. There is a direct accountability relationship between the Minister of Health and the RHAs and between the RHAs and the health care facilities.

Direct or indirect responsibility to the Crown for the proper discharge of administrative duties, is the factor that brings agencies under the jurisdiction of the Ombudsman. Accordingly, as a result of new legislation, specifically *The Regional Health Authority Act*, the Ombudsman now has a role to play in providing an independent review process relating to administrative actions and decisions of RHAs and many health care facilities.

The proclamation of *The Personal Health Information Act* (PHIA) in 1997 and *The Freedom of Information and Protection of Privacy Act* (FIPPA) which replaced *The*

*Freedom of Information Act* in May 1998, provided an independent oversight role to review decisions made by public bodies and trustees of personal health information through the Office of the Ombudsman. FIPPA provides a right of access to records in the custody or under the control of public bodies, subject to limited and specific exemptions. It also controls the manner in which the public bodies collect, use, disclose and retain personal information.

PHIA speaks to the sensitivity and confidentiality of personal health information and it sets rules for the collection, use, disclosure and destruction of personal health information. The Act establishes a person's right to access his or her personal health information and the right to request corrections. Trustees under PHIA include private sector trustees such as health professionals, personal care homes, medical clinics, laboratories, etc.

The Ombudsman role under these pieces of legislation includes conducting investigations, auditing and monitoring to ensure compliance with the Act. In addition, there are provisions under the legislation permitting the Ombudsman to inform the public about the legislation and to comment on the implications of legislative programs or schemes that impact on access to information and protection of privacy.

The introduction of the traditional Ombudsman role under access and privacy legislation in the 1990s recognizes the relevancy and effectiveness of the role in bringing independent scrutiny to administrative actions and decisions of public bodies.

### Value

Thirty years ago, the value of the Office was seen through its ability to provide thorough, impartial investigations of complaints against

## Provincial Ombudsman 1999 Annual Report

departments and agencies of the provincial government, by an independent Officer of the Legislative Assembly. While complaint investigation remains the primary activity, there has been a growing recognition that the Ombudsman role promotes broader principles of fairness, equity and administrative accountability. I believe there has been a recognition that addressing broader principles of fairness brings greater commitment in terms of assurance of fair and equitable treatment and Ombudsman Offices are becoming more proactive in encouraging commitment to the broader principles of administrative fairness through reviews of administrative practices and procedures. The value is obvious.

I think we take some comfort if we have assurance that public bodies are committed to high standards of fairness. Public bodies, in subjecting themselves to the rigours of independent scrutiny of an Ombudsman, are showing commitment to principles of openness and accountability, and I believe more and more that the public wants to see commitment to principles.

Over the years I have noticed the shift in the public's expectations. People have always expected public bodies to be fair, open and accountable, but I think 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 doctors or lawyers. I think things have changed. Individuals are now more prepared to question and challenge actions 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 they do not feel support the principles of fairness, equity, openness and accountability. This is where I believe the Ombudsman role has its greatest value. The Ombudsman is part of a process that builds public confidence and trust in government.

Sometimes the value of the Office is not always seen. Ombudsmen, the majority of times, carry out their function in an informal, non-adversarial, non-legalistic manner resolving complaints and concerns out of the limelight, so to speak. That is the preferable way of doing things. However, the traditional Ombudsman role provides formal powers and is a role that can be adversarial and legalistic if necessary. It is actually the recognition of these powers that encourage resolutions informally before the need to exercise the formal powers of the Ombudsman, is necessary.

A review of the history, purpose and value of the Office confirms that the Ombudsman role helps to bring light to the good workings of government, while bringing resolution to thousands of complaints and concerns in an informal non-adversarial, non-legalistic setting.



### YEAR IN REVIEW

It was a very busy year, with our Office receiving 885 formal complaints and 3,518 informal concerns and enquiries. In addition, 342 cases were carried forward from 1998 to 1999.

A review of the cases completed in 1999 show that it was a productive year in terms of bringing satisfactory conclusions to many of the complaints. We completed 691 of the complaints received in 1999 and we finalized 282 of the cases carried forward from 1998. In total, 973 files were closed in 1999 and 236 of these were either resolved or partially resolved as a result of the intervention of our Office.

Throughout the year the Ombudsman's Office receives numerous calls or complaints relating to provincial and federal government departments and agencies, private businesses and other private matters. Our intake function plays a very important role in providing a timely and beneficial service through explaining our jurisdiction and role and providing information and referrals. All enquiries by telephone or by personal contact with the Office remain confidential. Individuals are usually asked if they have tried to resolve the concerns with the public body involved. If not, they are encouraged to clarify the matter with the public body before lodging a complaint with our Office. We assist the individual in determining any avenues of appeal that may be available to them and we suggest that these avenues should be exhausted before our Office becomes involved. Nevertheless, if our Office feels that it is unreasonable to expect the individual to exercise the right of appeal we may open a file and begin our enquiries.

While *The Ombudsman Act* requires that complaints be in writing we recognize this may be very difficult and sometimes not possible for some individuals. In these cases, our Intake Officer will assist a complainant in putting his or her complaint in writing.

If a matter is within our jurisdiction the Intake Officer explains the process followed by our Office. If it is not within jurisdiction, the Intake Officer attempts to focus on the issue and determine the most appropriate avenue which should be followed by our complaint. We have endeavored to maintain a comprehensive referral manual for the use of our intake function. We have found that the intake function assists individuals contacting our Office in identifying issues and determining the appropriate means to have these issues addressed.

As indicated in previous Annual Reports, it is the dedication and hard work of the staff that play a large part in the success we have in delivering a service to the public, the Legislature, and public bodies. As Ombudsman, I have been fortunate in working with a team of dedicated professionals that continue to show energy and enthusiasm in carrying out their duties and responsibilities under *The Ombudsman Act*.

## Statistics

## Complaints and Telephone Enquiries Received by Year

Our office received 885 formal complaints and 3,518 concerns and enquiries by telephone in 1999. 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 2000.

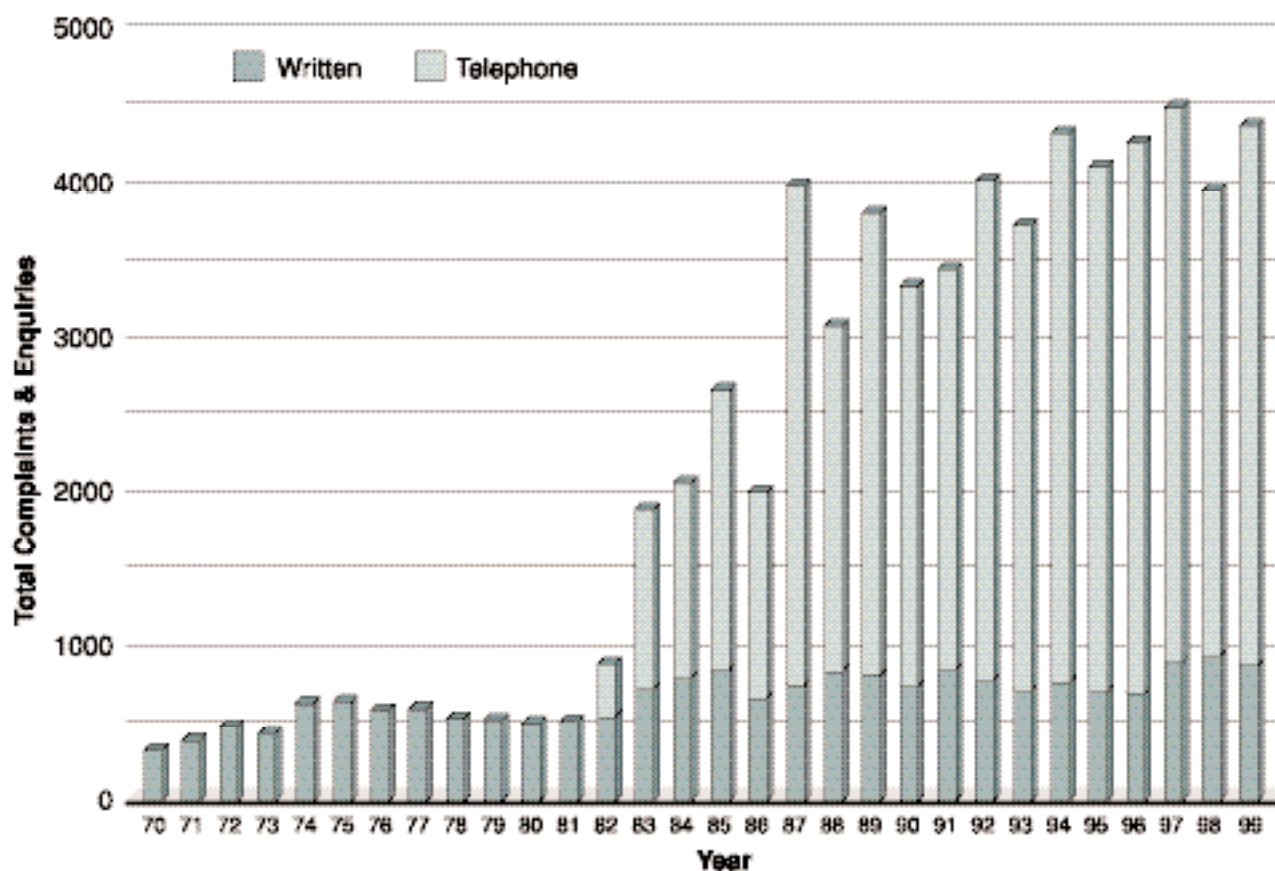
Year	Written	Telephone	Total
1970	333	-	333
1971	396	-	396
1972	487	-	487
1973	441	-	441
1974	641	-	641
1975	651	-	651
1976	596	-	596
1977	606	-	606
1978	543	-	543
1979	531	-	531
1980	510	-	510
1981	526	-	526
1982	551	348	899
1983	728	1179	1907
1984	807	1275	2082
1985	858	1826	2684
1986	674	1347	2021
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
1999	885	3518	4403
<b>Total</b>	<b>20359</b>	<b>46790</b>	<b>67149</b>

## Provincial Ombudsman 1999 Annual Report

### Concerns and Enquiries Received by Telephone in 1999

<b>DEPARTMENTS</b>			112
<b>Agriculture (9)</b>		Headingley Correctional Institution	112
General	5	Milner Ridge Correctional Institution	17
Manitoba Crop Insurance Corporation	4	Portage Correctional Institution	36
<b>Civil Service Commission (9)</b>		The Pas Correctional Institution	10
<b>Consumer and Corporate Affairs (65)</b>		Winnipeg Remand Centre	83
General	16	Maintenance Enforcement	68
Consumers' Bureau	3	Manitoba Human Rights	11
Manitoba Securities Commission	1	Manitoba Legal Aid	23
Residential Tenancies Branch	44	Public Trustee	34
Superintendent of Insurance	1	Manitoba Youth Centre	8
<b>Education and Training (25)</b>		Courts	24
General	12	<b>Natural Resources (32)</b>	
Student Financial Assistance	13	<b>Northern Affairs (1)</b>	
<b>Environment (7)</b>		<b>Rural Development (3)</b>	
<b>Family Services (367)</b>			
General	44	<b>BOARDS</b>	
Child & Family Services	81	<b>Workers Compensation Board (129)</b>	
Employment & Income Assistance	237		
Social Services Advisory Committee	5	<b>CORPORATIONS</b>	
<b>Finance (10)</b>		<b>Corporations and Extra Departmental (389)</b>	
<b>Government Services (5)</b>		General	9
<b>Health (116)</b>		Manitoba Hydro	53
General	33	Manitoba Public Insurance	327
Mental Health	56		
Health Sciences Centre	3	<b>OTHER</b>	
Selkirk Mental Health Centre	8	<b>Federal Departments &amp; Agencies (193)</b>	
Addictions Foundation of Manitoba	3	General	95
Regional Health Authorities	13	Customs	1
<b>Highways and Transportation (40)</b>		Employment Insurance	25
General	17	Health & Welfare Canada	24
Driver & Vehicle Licencing	23	RCMP Public Complaints	16
<b>Housing(46)</b>		Revenue Canada	32
General	34	<b>Municipalities/Cities/Towns (142)</b>	
Manitoba Housing Authority	12	General	111
<b>Industry, Trade &amp; Tourism (1)</b>		City of Winnipeg	31
<b>Legislative Assembly (5)</b>			
<b>Manitoba Labour (14)</b>		<b>Private Matters (1,305)</b>	
General	1	General	1,155
Employment Standards	5	Consumer	63
Manitoba Labour Board	8	Doctors	19
<b>Ministry of Justice (605)</b>		Lawyers	31
General	58	Schools	24
Agassiz Youth Centre	11	Hospitals	13
Dauphin Correctional Institution	2		
Brandon Correctional Institution	108	<b>Total</b>	<b>3,518</b>

## Complaints and Telephone Enquiries Received By Year



## Provincial Ombudsman 1999 Annual Report

### Formal Complaints Received in 1999 by Category and Disposition

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<b>DEPARTMENTS</b>											
<b>Agriculture</b>	<b>5</b>										
General	3	-	1	-	1	-	-	-	-	-	1
Manitoba Crop Insurance Corporation	2	-	-	-	-	-	-	-	-	-	2
<b>Civil Service Commission</b>	<b>5</b>	-	-	-	-	2	2	-	-	1	-
<b>Consumer &amp; Corporate Affairs</b>	<b>39</b>										
General	19	-	-	-	-	2	10	-	-	3	4
Consumers' Bureau	1	-	-	-	-	1	-	-	-	-	-
Manitoba Securities Commission	1	-	-	-	-	-	-	-	-	-	1
Residential Tenancies Branch	18	3	-	-	-	5	6	1	-	1	2
<b>Education &amp; Training</b>	<b>10</b>										
General	7	1	-	1	-	1	1	1	-	1	1
Student Financial Assistance	3	1	-	-	-	-	-	-	-	-	2
<b>Energy &amp; Mines</b>	<b>2</b>	-	-	-	1	-	-	1	-	-	-
<b>Environment</b>	<b>5</b>	-	-	-	-	1	1	-	-	-	3
<b>Family Services</b>	<b>82</b>										
General	16	1	-	2	1	2	2	-	-	4	4
Child & Family Services	17	-	-	2	4	2	2	-	-	2	5
Employment & Income Assistance	48	3	-	2	1	10	12	-	-	16	4
Social Services Advisory Committee	1	1	-	-	-	-	-	-	-	-	-
<b>Finance</b>	<b>2</b>	-	-	-	-	-	-	1	-	1	-
<b>Government Services</b>	<b>5</b>	-	-	1	1	1	-	-	-	-	2
<b>Health</b>	<b>54</b>										
General	24	-	1	1	3	6	4	-	-	1	8
Addictions Foundation of Manitoba	2	-	-	-	1	1	-	-	-	-	-
Health Sciences Centre	4	-	-	1	-	2	1	-	-	-	-
Mental Health	8	-	-	3	1	1	1	-	-	-	2
Selkirk Mental Health Centre	9	-	2	-	-	3	3	-	-	1	-
Regional Health Authority	7	-	-	-	-	5	-	-	-	2	-
<b>Highways and Transportation</b>	<b>21</b>										
General	8	-	-	-	1	1	1	1	-	-	4
Driver & Vehicle Licencing	13	1	-	-	1	2	5	2	-	-	2
<b>Housing</b>	<b>16</b>										
General	5	1	-	-	-	-	2	-	-	2	-
Manitoba Housing Authority	11	-	-	2	1	1	2	2	-	-	3

## Provincial Ombudsman 1999 Annual Report

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<b>Legislative Assembly</b>	<b>1</b>	1	-	-	-	-	-	-	-	-	-
<b>Manitoba Labour</b>	<b>13</b>										
General	5	-	-	-	-	-	3	-	-	1	1
Employment Standards	4	-	-	-	-	-	1	1	-	-	2
Manitoba Labour Board	4	-	-	-	-	1	-	-	-	1	2
<b>Manitoba Justice</b>	<b>296</b>										
General	25	4	-	-	-	5	3	-	-	4	9
Agassiz Youth Centre	15	1	-	-	1	1	2	1	-	8	1
Brandon Correctional Institution	40	1	-	2	-	6	11	1	-	6	13
Dauphin Correctional Institution	4	1	-	-	-	-	2	-	-	1	-
Headingley Correctional Institution	47	-	-	-	1	7	13	6	-	19	1
Milner Ridge Correctional Institution	7	-	-	1	-	1	4	-	-	1	-
Portage Correctional Institution	22	1	-	-	-	2	12	-	-	3	4
The Pas Correctional Institution	8	-	-	-	-	3	5	-	-	-	-
Winnipeg Remand Centre	50	-	-	3	2	4	23	1	-	15	2
Maintenance Enforcement	23	-	-	-	-	5	8	1	-	7	2
Manitoba Human Rights Commission	6	-	-	1	-	1	3	-	-	-	1
Manitoba Legal Aid	9	-	-	-	1	2	2	1	-	-	3
Public Trustee	22	1	1	4	-	2	7	-	-	3	4
Manitoba Youth Centre	6	-	-	1	-	-	2	2	-	1	-
Courts	12	-	1	1	-	7	1	-	-	2	-
<b>Natural Resources</b>	<b>23</b>	1	-	2	-	3	1	-	-	3	13
<b>Northern Affairs</b>	<b>3</b>	-	-	2	1	-	-	-	-	-	-
<b>Rural Development</b>	<b>9</b>	-	-	-	-	-	5	-	-	1	3
<b>Municipalities</b>	<b>56</b>	-	1	1	2	7	14	1	-	5	25
<b>CORPORATIONS</b>											
<b>Corp. &amp; Extra Departmentals</b>	<b>190</b>										
General	2	-	-	-	-	1	-	-	-	-	1
Manitoba Lotteries Corporation	1	-	-	1	-	-	-	-	-	-	-
Manitoba Hydro	11	1	-	1	-	-	5	-	-	2	2
Manitoba Public Insurance	128	4	2	6	2	17	32	8	-	17	40
Workers Compensation Board	48	5	3	3	2	9	5	-	-	6	15

## Provincial Ombudsman 1999 Annual Report

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<b>NON-JURISDICTIONAL</b>											
<b>Federal Departments &amp; Agencies</b>	<b>7</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Customs	1	-	-	-	-	1	-	-	-	-	-
Health & Welfare	2	-	-	-	-	2	-	-	-	-	-
Private Matters	33	1	7	-	1	23	-	-	-	1	-
Revenue Canada	3	-	-	-	-	3	-	-	-	-	-
Schools	2	-	-	-	-	2	-	-	-	-	-
<b>Total</b>	<b>885</b>	<b>36</b>	<b>19</b>	<b>44</b>	<b>30</b>	<b>169</b>	<b>219</b>	<b>32</b>	<b>-</b>	<b>142</b>	<b>194</b>

In 1999, 691 or 78% of the complaints received were completed during the year.

The Ombudsman declined to investigate 19 cases which represents less than 3% of the total number of cases received.

During the year, 74 or 11% were discontinued either by the Ombudsman or the client.

Of the cases completed 379 or 55% were in the categories Assistance Rendered, Information Supplied, Partially Resolved and Resolved and 219 or 32% were not supported.

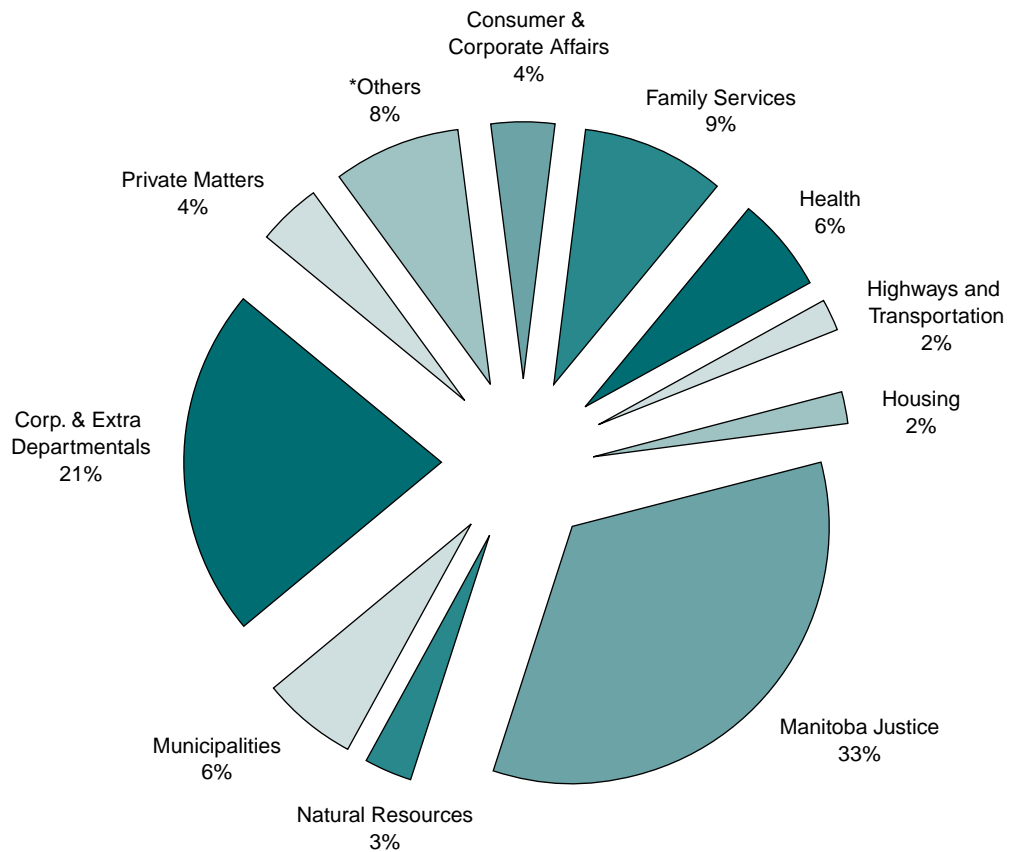


## Provincial Ombudsman 1999 Annual Report

### Source of Complaints by Location

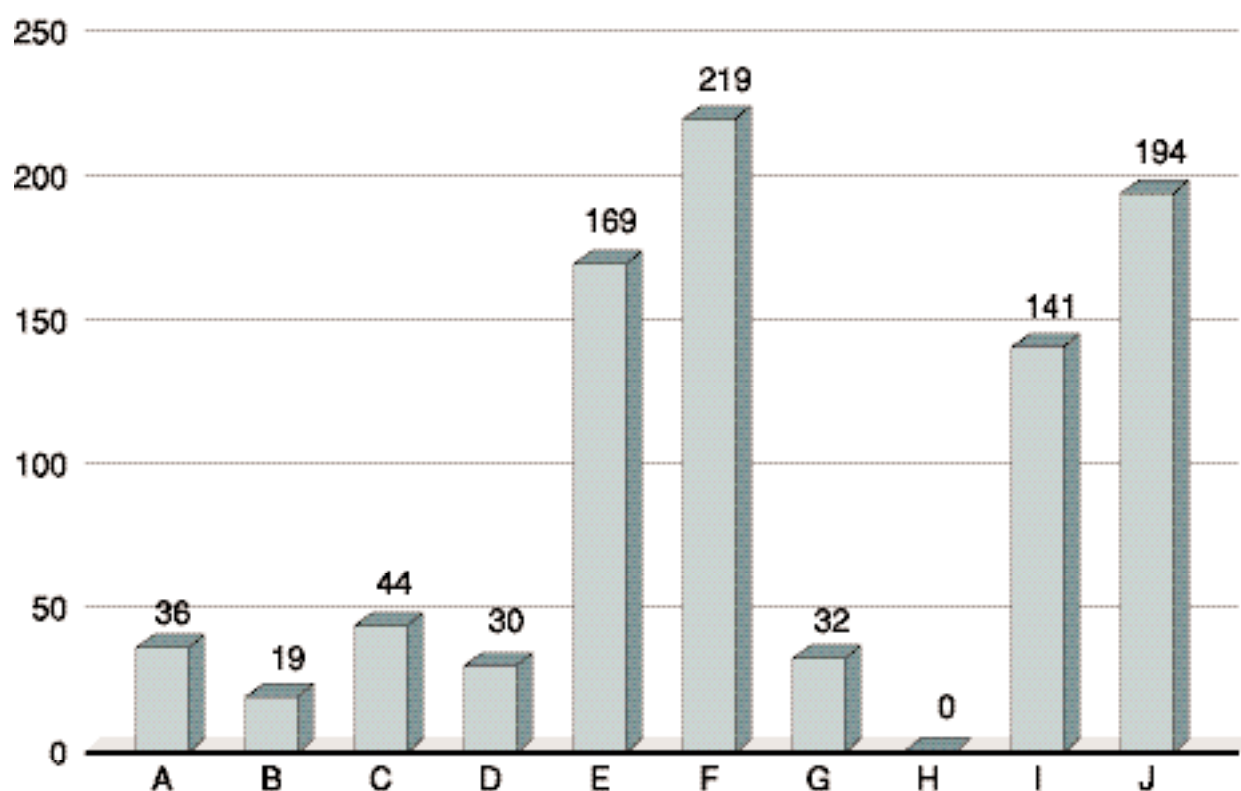
Amaranth	1	Kola	1	Steinbach	5
Anola	3	La Broquerie	1	Stonewall	5
Arborg	1	Lac du Bonnet	2	Stony Mountain	4
Arden	1	LaSalle	2	Stuartburn	1
Argyle	1	Leaf Rapids	2	Swan River	4
Arnes	1	Libau	3	Teulon	2
Austin	1	Lockport	1	The Pas	11
Bagot	1	Lorette	5	Thompson	4
Baldur	3	Lundar	1	Tilston	1
Beausejour	8	Lynn Lake	1	Traverse Bay	1
Belair	1	MacGregor	1	Vogar	2
Belmont	2	Manitou	1	Wabowden	1
Binscarth	1	Minnedosa	1	Warren	3
Boggy Creek	1	Moosehorn	1	Waskada	1
Boissevain	4	Morden	4	West St. Paul	2
Bowsman	1	Morris	1	Whitemouth	1
Brandon	80	Neepawa	4	Winkler	6
Camp Morton	1	Newdale	1	Winnipeg	457
Carberry	2	Ninga	1	Winnipeg Beach	1
Churchill	1	Niverville	1	Winnipegosis	4
Clandeboye	2	Norway House	1	Woodlands	1
Cormorant	3	Notre Dame de Lourdes	1	<b>Subtotal</b>	<b>856</b>
Cranberry Portage	1	Oak Lake	1	Alberta	10
Crandall	1	Pine Falls	1	British Columbia	4
Darlingford	1	Pine River	1	Minnesota	1
Dauphin	6	Plum Coulee	3	New Brunswick	2
Dugald	2	Plumas	1	Northwest Territories	1
East St. Paul	2	Portage la Prairie	37	Ontario	10
Edwin	1	Roland	1	Saskatchewan	1
Elie	1	Rosburn	2	<b>Subtotal</b>	<b>29</b>
Emerson	1	Sandy Lake	2	<b>Total</b>	<b>885</b>
Fisher Branch	3	Sanford	1		
Flin Flon	1	Selkirk	25		
Fork River	1	Seven Sisters	1		
Gilbert Plains	1	Shilo	1		
Gimli	4	Shoal Lake	3		
God Lake Narrows	1	Skownan	1		
Gretna	1	Snowflake	1		
Griswold	2	Souris	2		
Gunton	1	St. Adolphe	1		
Gypsumville	1	St. Claude	1		
Haywood	1	St. Georges	1		
Hazelridge	1	St. Lazare	1		
Headingley	41	St. Martin	1		
Ile Des Chenes	7	St. Norbert	2		
Inwood	1	St. Pierre-Jolys	1		
Kenton	1	Ste. Anne	4		
Kenville	1	Ste. Rose	1		

## Formal Complaints Received in 1999 by Percentage



\* Other consists of any department under 15 complaints.

## Disposition of Cases Received in 1999



A = Assistance Rendered  
B = Declined  
C = Discontinued (Client)  
D = Discontinued (Ombudsman)  
E = Information Supplied

F = Not Supported  
G = Partially Resolved  
H = Recommendation  
I = Resolved  
J = Pending

## Provincial Ombudsman 1999 Annual Report

### Cases Brought Forward from the Previous Year

At the close of 1998, there were 342 cases still pending (1 of which from 1994, 5 from 1996, 41 from 1997 and the remainder, 295 from 1998). The disposition of these cases are as follows:

Department or Category	Total	Assist. Rendered	Declined	Discon. (Client)	Discon. (Omb.)	Info. Supplied	Not Supp.	Part. Res.	Recomm.	Res.	Pending
<b>Agriculture</b>	2	-	-	-	-	-	1	-	-	-	1
<b>Civil Service Commission</b>	2	-	-	-	-	-	2	-	-	-	-
<b>Consumer &amp; Corp. Affairs</b>	22										
General	8	1	-	-	-	-	4	-	-	-	3
Manitoba Securities Commission	1	-	-	-	1	-	-	-	-	-	-
Residential Tenancies Branch	13	1	-	1	-	5	2	-	-	2	2
<b>Education &amp; Training</b>	5	-	-	-	2	-	-	-	-	-	3
<b>Environment</b>	3	-	-	-	1	-	1	1	-	-	-
<b>Family Services</b>	23										
General	13	2	-	-	-	2	4	-	-	3	2
Child & Family Services	6	-	-	-	1	-	2	-	-	-	3
Employment & Income Assistance	4	-	-	-	-	3	1	-	-	-	-
<b>Finance</b>	2	-	-	-	-	1	-	-	-	1	-
<b>Government Services</b>	4	1	-	-	1	-	-	-	-	1	1
<b>Health</b>	13										
General	7	1	-	2	-	2	1	1	-	-	-
Manitoba Adolescent Treatment Ctr.	2	-	-	-	-	-	2	-	-	-	-
Mental Health	4	1	-	-	-	-	2	-	-	-	1
<b>Highways and Transportation</b>	9										
General	7	-	-	1	-	-	4	-	1	-	1
Driver & Vehicle Licencing	2	-	-	-	-	-	-	-	-	1	1
<b>Housing</b>	3										
General	2	-	-	-	-	1	-	-	-	1	-
Manitoba Housing Authority	1	-	-	-	1	-	-	-	-	-	-
<b>Industry, Trade &amp; Tourism</b>	1	1	-	-	-	-	-	-	-	-	-
<b>Manitoba Labour</b>	6										
General	4	-	-	-	2	1	-	-	-	-	1
Manitoba Labour Board	2	-	-	-	-	1	1	-	-	-	-
<b>Manitoba Justice</b>	66										
General	15	-	-	-	1	2	3	2	-	2	5
Agassiz Youth Centre	2	-	-	-	-	-	-	2	-	-	-
Brandon Correctional Institution	2	-	-	-	-	-	1	1	-	-	-
Headingley Correctional Institution	3	-	-	-	-	-	2	1	-	-	-
Milner Ridge Correctional Institution	1	-	-	-	-	-	1	-	-	-	-
Portage Correctional Institution	2	-	-	-	-	-	2	-	-	-	-
Winnipeg Remand Centre	9	-	-	-	-	5	1	1	-	1	1
Maintenance Enforcement	7	-	-	2	-	1	2	2	-	-	-
Manitoba Human Rights Commission	4	-	-	3	-	-	1	-	-	-	-
Manitoba Legal Aid	2	-	-	-	-	1	-	-	-	1	-
Public Trustee	10	-	-	4	-	3	2	-	-	1	-
Manitoba Youth Centre	8	-	-	1	-	-	3	2	-	1	1
Courts	1	-	-	-	-	-	1	-	-	-	-
<b>Natural Resources</b>	26	-	-	1	-	2	13	-	-	1	9
<b>Northern Affairs</b>	3	-	-	1	-	1	-	-	-	-	1
<b>Rural Development</b>	4	-	-	-	-	1	-	-	-	2	1
<b>MUNICIPALITIES</b>	44	1	-	5	1	9	8	1	-	9	10
<i>Corporations</i>											
<b>Corp. &amp; Extra Departmentals</b>	94										
Manitoba Lotteries Corporation	1	-	-	-	-	-	-	-	-	1	-
Manitoba Hydro	4	-	-	-	-	1	-	2	-	-	1
Manitoba Public Insurance	72	1	-	5	2	12	31	3	-	12	6
Workers Compensation Board	17	1	-	2	2	3	-	-	-	2	7
<i>Non-Jurisdictional</i>											
<b>Doctors</b>	1	-	-	-	-	-	-	-	-	1	-
<b>Private Matters</b>	9	1	1	1	-	6	-	-	-	-	-
<b>Total</b>	342	12	1	29	15	63	98	19	1	43	61

## Selected Case Summaries

### **MANITOBA CIVIL SERVICE COMMISSION**

**Formal complaints received - 5**

**Enquiries by telephone - 9**

As the Civil Service Commission has a well established appeal process in place, we receive very few complaints directed against the Commission.

The following is an example of a case where our Office assisted in the resolution of a concern.

#### **A review brings a resolution**

##### **The facts:**

In 1999 the Civil Service Commission distributed a surplus from the Public Service Group Insurance Fund. The surplus arose from excess employee contributions and was identified in an actuarial evaluation as of December 31, 1997.

A formula for distribution was agreed

upon by Committees representing government departments and agencies on the one hand, and employees and pensioners on the other hand.

In order to qualify for refund, individuals had to meet a number of criteria. For the purpose of this complaint the relevant criteria were that the potential recipient must have been an active, disabled, or retired employee who was a member of the Employee's Group Life Insurance Plan as of December 31, 1997 and, someone who on January 2, 1999 was an active or disabled employee or someone who had retired in accordance with the applicable pension plan as defined in the agreement with the Canada Life Assurance Company.

##### **The problem:**

Our Office received a complaint from Ms. D who met the first criteria as she was employed and a member of the fund on December 31, 1997.

However she was told she did not meet the second criteria as she had been laid off in the spring of 1998.

She felt that because she had lost her job through no fault of her own, due to restructuring, she should be entitled

## Provincial Ombudsman 1999 Annual Report

to a refund. She also felt that because she was on a “re-employment” list for a year after her lay-off, and in fact had been called to work briefly on a couple of occasions during that year, she could still have been considered an employee in January 1999.

### **The action:**

We contacted a representative of the Civil Service Commission who agreed to review the complainant’s case, to verify the facts she had presented and to address the question of her status, if any, as of January 2, 1999.

We were subsequently advised that an analysis of the complainant’s situation had concluded she should have been included in the group of people who were entitled to a refund.

The complainant received her refund and was very happy with the outcome.

---

### **It seemed like a good idea at the time**

### **The complaint:**

In 1982 Mr. R, a civil servant, was suffering from ill health and decided

to attend a Civil Service Pre-Retirement Planning Seminar to look into his options for an early retirement. Mr. R chose to integrate his Civil Service pension with his Old Age Security after attending the seminar and retired shortly thereafter at the age of 58.

Mr. R was under the impression that, as he collected the additional monies equivalent to his Old Age Security for 7 years, his pension would be reduced for 7 years by that same amount after he turned 65 years of age in order to repay the amount he was advanced.

This was not the case. Mr. R contacted the Civil Service Superannuation Board and was told that his remaining pension would be subject to the reduction from the date he turned 65 until *death*, not until the amount advanced was repaid.

Mr. R disagreed with this and decided to write to our Office for assistance. Specifically, he was asking why the monies were collected for his lifetime as opposed to when the amount advanced was repaid. He also felt that this was not made clear to him in 1982 and he never would have agreed

## Provincial Ombudsman 1999 Annual Report

to this arrangement had he known that the reduction would be for the remainder of his life.

### **The answer:**

We wrote to the Civil Service Superannuation Board requesting clarification on Mr. R's concerns.

We were provided with a copy of an agreement signed by Mr. R in 1982 that clearly sets out that at age 65 his pension would be reduced "by \$150 a month for *life*."

As well, correspondence to Mr. R from that year outlined the repayment requirements. The Board also advised us that they had individuals call from time to time asking for clarification as to the terms of their agreement, but they had not experienced complaints from individuals indicating that they did not understand the terms to which they were agreeing. As it would be impossible to verify the conversation Mr. R had with the representative at the seminar in 1982 (no notes are kept of these conversations), we were satisfied that the terms of the agreement were clearly set out to Mr. R by way of correspondence and the written contract.

The General Manager of the Board also explained to our Office that the seminar sessions are held to allow pension plan members the opportunity to look at their various pension options. The Board does not recommend one pension choice over another to individuals because it is such a personal choice. They do, however, provide examples and scenarios of various payment methods if an individual asks.

When someone asks about the early retirement package, they are informed that they will receive a "top up" equivalent to the amount they would receive in Old Age Security until they reach the age of 65 years. At 65 years, when their Old Age Security payments commence, their Civil Service pension is reduced by this amount to repay the monies that were advanced. Individuals are made aware that this repayment is for the lifetime of the pensioner. They are advised what their "break even" date would be (that is, the date that the advance is repaid in full) so that they can weigh the benefits of taking advantage of this option.



### **The risk:**

Taking advantage of this early retirement option is a gamble in the sense that individuals may be paying back the debt longer than they collected the benefit. For example, someone who collected the benefit for 5 years before they reached 65 years of age will repay the debt for 10 years if they live to be 75 years of age.

As our investigation disclosed no act, error or omission by the Board on this matter, we reported to Mr. R that we could not support his complaint.

uncovering  
error results  
in refund ...

## MANITOBA CONSUMER AND CORPORATE AFFAIRS

**Formal complaints received - 39**

**Enquiries by telephone - 65**

Most of the complaints and enquiries received against the Department relate to landlord and tenant disputes and the role of the Residential Tenancies Branch and the Residential Tenancies Commission. Landlord and tenant disputes can be quite contentious. Resolving disputes to the satisfaction of the parties involved is no doubt difficult and challenging. Not surprisingly, our Office is contacted frequently to provide an independent review when the appeal processes leave one of the parties dissatisfied. The following case was resolved after a review by our Office assisted in identifying and resolving an error.

### Order amended

Mr. Y contacted our Office concerned that the Residential Tenancies Branch and the Residential Tenancies Commission erred in decisions relating to a security deposit dispute. Mr. Y claimed that both the Branch and the Commission had included in their decisions an incorrect amount for the security deposit he had paid to the landlord. In discussing the matter with our Office, it was evident there were a number of issues in dispute and it seemed that an error in the security deposit amount had been overlooked. The tenant produced a copy of a receipt from the landlord for the security deposit, following which we contacted the Branch and the Commission and the situation was reviewed. As a result, the error was uncovered and the Commission's Order was amended. The tenant received a credit of approximately \$64.00.



### **MANITOBA FAMILY SERVICES AND HOUSING**

#### **Formal complaints received – 98**

**(82 Family Services)**

**(16 Housing)**

#### **Enquiries by telephone – 413**

**(367 Family Services)**

**(46 Housing)**

In 1999, the Departments of Family Services and Housing were amalgamated. The statistics for the formal complaint and phone enquiries have been combined.

The majority of concerns, enquiries and formal complaints received by our Office relate to the Employment and Income Assistance Division (48 formal complaints, 237 informal enquiries and concerns) and the Child and Family Services Division (17 formal complaints and 81 informal enquiries and concerns).

This is not unexpected, as these Divisions are very active in dealing with issues that are personal and

sensitive.

Some case summaries follow. In addition, a Child and Adolescent Services section of this Report provides case summaries involving Manitoba Family Services.



### **Seen through new eyes**

#### **The issue:**

Mr. B was the victim of an assault. As a result, his eyeglasses were broken. He was on income assistance and was advised to contact the program called Compensation for Victims of Crime (CVC) under Manitoba Justice.

After contacting the CVC, he was referred back to Income Assistance, as CVC did not make payments for less than \$150.00. While Mr. B's eyeglasses cost approximately \$150.00, when purchased by Income Assistance the cost was \$84.00. According to our client, Income Assistance had advised that he was not entitled to new eyeglasses for another year. In addition, he was a former City of

...clear  
vision  
resolves  
complaint...

Winnipeg client and there was a temporary short-term policy in effect for former City of Winnipeg clients that would make him ineligible for new glasses. Mr. B was advised however that a request for new glasses would be processed and the cost would be deducted from his future cheques.

### **The action:**

Our Office intervened and his worker double checked the file and found that he was entitled to new eyeglasses under their program, but because of the transition policy for former City of Winnipeg clients, he was not entitled.

Further enquiries were made with Income Assistance Central Directorate and we were advised that the policy was misinterpreted and our complainant did fall within the program guidelines. Accordingly, he was entitled to new glasses at no charge to him. Our complainant subsequently called our Office to advise that he had picked up his new glasses and there had been no deductions off his income assistance cheque. Mr. B was satisfied with this result.

### **Licensing process reviewed**

In 1997 our Office received a complaint from a care-provider for the Community Living Program. The care-provider had been hired by a private agency to care for an adult from the Community Living Program. The adult lived with the care-provider in his home which had been approved by the Winnipeg Region, Manitoba Family Services. The arrangement was to provide a “family type” environment, similar to the foster home arrangements for children.

### **The problem:**

A license was issued by Manitoba Family Services to the private agency, at the care provider’s home address. The care-provider had signed a lease for an apartment but the placement in the home was later discontinued by the agency.

The care-provider raised questions regarding the appeal process available to him and the role of the Region in this matter. The care-provider was particularly concerned as, following

the termination of the placement, he was unable to divest himself from the lease for the apartment. Generally, when a care-provider license is terminated there is an avenue of appeal available to the Social Services Advisory Committee. In this case, as the license was issued to the Agency, the individual could not appeal to the Social Services Advisory Committee.

### **The result:**

Our Office pursued this matter with the Region. Our questions resulted in a systemic review of Winnipeg Region's licensing process. The Region decided to implement a new process for newly approved homes and the process would be applied when homes were relicensed.

Essentially care-provider's homes will be licensed in the name of the care-provider, thus if a license is revoked the care-provider would have an avenue of appeal through the Social Services Advisory Committee.

### **Through the ears of the beholder**

Our Office received a complaint from Mr. D who expressed concerns regarding the way in which his appeal hearing was conducted before the Social Services Advisory Committee.

### **The complaint:**

Mr. D advised that he appeared before the Committee to appeal a decision of the Employment and Income Assistance Office. His appeal was based on the denial of his claim for income assistance and his concern that his claim was not dealt with in a reasonable period of time. Our Office was advised that false information was presented at the hearing and that the Chairperson was biased, confrontational and was defending the Employment and Income Assistance Office.

It is customary during these hearings that the proceedings are recorded on audiotape and kept for a short period of time. Mr. D had obtained a copy of the audiotape and this was provid-

**an individual  
case....  
a systemic  
review**

ed to our Investigator. In addition, the Investigator met with representatives of the Committee to review the concerns.

### **The explanation:**

Following our preliminary enquiries, the Director of the Committee wrote to our Office advising of the process followed by the Committee during hearings. We were informed that the individual chairing the appeal hearing allows for an initial introduction then offers a preamble to the hearing. It was noted that every effort is made to facilitate courteous and objective communication with the appellants and the representatives from the Income Assistance Office. The Director felt that the Chair of the appeal was attempting to assist the appellant in understanding how the system operated, and was trying to be helpful. However, it was acknowledged that this may have been misinterpreted and that it may have been more appropriate for the Income Assistance Office to clarify its own procedures.

### **The apology:**

We were further advised that the Chair of the appeal had acknowledged that if her tone of voice at the hearing sounded angry, it most certainly was not her intention to impart that perception. The Chair's apologies were extended to our complainant, "if that was how he perceived the situation." In conclusion, the Director advised that after carefully reviewing the concerns of Mr. D, it appeared that the Committee may not have properly addressed the concern relating to the time it took the Income Assistance Office to decide on the claim, and the Committee was prepared to rehear the matter with a new Board. We advised Mr. D accordingly, noting that we felt that the Committee had taken reasonable steps to address his concerns and that it was up to him to decide if he wished to pursue the matter through another hearing. We later contacted the Committee and enquired if our complainant had considered another appeal, and we were advised that no further action was taken by our complainant.

clear  
communication  
avoids  
misunder-  
standings...

### MANITOBA HEALTH

**Formal complaints received - 54**

**Enquiries by telephone - 116**

There was a slight increase in the number of informal enquiries and concerns and formal complaints received by our Office relating to Manitoba Health. As usual, the complaints were quite varied with many coming from individuals confined in mental health facilities. Following is one such case that resulted in positive changes but unfortunately did not resolve the situation for our complainant.

#### **Improper confinement violates patient's rights**

##### **Her story:**

A patient complained that she had been improperly admitted and confined in the psychiatric facility at a general hospital. In reviewing *The Mental Health Act* forms relating to

her status, we understood that she was examined and an *Application by Physician for Involuntary Psychiatric Assessment* was completed. However, a *Certificate of Involuntary Admission* was not completed within the 72 hours required by *The Mental Health Act*. Accordingly, our complainant filled out a *Request for Discharge by a Voluntary Patient*. The patient was not released, but rather she was examined again 2 days later and a *Certificate of Involuntary Admission* was completed, followed by an *Application by Attending Physician for Change of Status from Voluntary to Involuntary*.

##### **Our findings:**

In reviewing the situation, it was our understanding that the Application for Involuntary Psychiatric Assessment expired after 72 hours and the patient was not made an involuntary or voluntary patient. It was clear that the patient had not voluntarily agreed to stay at the hospital at any time, nor had she been advised that she could leave. In reviewing *The Mental Health Act*, it did not appear that the hospital was authorized to confine the

...proper documentation when admitting and confining patients is paramount...

patient for an additional 24 hours to complete the proper forms after she had filled out the Request for Discharge. Accordingly, it did not appear that the patient had been confined in accordance with *The Mental Health Act*.

### **The outcome:**

We reviewed this situation and the process followed with the Chief Provincial Psychiatrist who confirmed our Office's understanding of the related provisions of the Act. We were advised that this matter would be brought to the attention of the Heads of the psychiatric facilities.

Subsequently, we were advised that the Heads of psychiatric facilities agreed to inform their staff of the following procedures:

*A person in a psychiatric facility under an Application by Physician for Involuntary Psychiatric Assessment (Form 4) is to be "detained, restrained and observed...for not more than 72 hours". During the 72-hour period the person is neither a Voluntary nor an Involuntary patient under The Mental Health Act, but undergoing psychiatric assessment. After examin-*

*ing and assessing the person's mental condition, the psychiatrist shall admit the person as a voluntary patient or as an involuntary patient, or release the person.*

*Each facility has a mechanism in place to ensure that a psychiatric assessment is completed and appropriate action taken according to The Mental Health Act prior to the expiry of the 72-hour assessment period. If in the rare event the 72-hour period inadvertently expires prior to appropriate action being taken, it was agreed the following procedure shall be adopted:*

- 1. The person shall be informed that the 72-hour assessment period has expired which will be so noted in the person's clinical record.*
- 2. The person shall be examined immediately to do one of the following:*
  - a) If the person does not meet criteria for admission to a psychiatric facility, the person shall be released;*
  - b) If the person meets the criteria for voluntary admission, the person shall be admitted as a voluntary patient;*



## Provincial Ombudsman 1999 Annual Report

*c) If the person meets the criteria for an involuntary admission, a new Application by Physician for Involuntary Psychiatric Assessment (Form 4) shall be completed. Promptly thereafter, the person shall be examined by a psychiatrist who must not be the same physician who completed the new Application by Physician for Involuntary Psychiatric Assessment. If the psychiatrist is of the opinion that the person meets the criteria for involuntary admission, he or she shall complete an involuntary Admission Certificate (Form 6).*

This complaint served to confirm the importance of the proper documentation in the admittance and confinement process which should prevent a similar situation from occurring.

## MANITOBA HIGHWAYS AND GOVERNMENT SERVICES

**Formal complaints received – 26**

**(21 Highways and  
Transportation)**

**(5 Government Services)**

**Enquiries by telephone – 45**

**(40 Highways and  
Transportation)**

**(5 Government Services)**

As these two Departments were amalgamated, the formal and informal complaints as shown above have been combined. The following are two case summaries involving Driver and Vehicle Licensing wherein both complaints were resolved. In one case the department reconsidered its decision to permanently cancel driving privileges and in the other, further information and clarification of a decision regarding a licence suspension was sufficient to resolve the complaint. Our Office received good cooperation from the department during the course of our enquiries.

### No more chances

#### The problem:

Mr. X suffered a stroke in 1995. The Driver and Vehicle Licencing Division cancelled his driving privileges after being notified of his medical condition. Mr. X made numerous unsuccessful attempts to have his driver's licence reinstated. In 1998, he was given permission to take one final road test. However, he failed the test with a very high demerit mark. His licence was cancelled and he was refused another chance to test for his driver's licence.

In 1999, he wrote to our Office saying this was unfair treatment by the Department.

#### The action:

Our Office contacted the Registrar who reviewed the matter. She expressed concerns about the man's ability to improve his test results. He had failed to show improvement after being given six opportunities to show he could pass a road test. As well, he had committed two driving-while-dis-

Registrar exercises fair & reasonable discretion...

qualified offences in 1999.

Nevertheless, the Registrar understood the concern about having driving privileges cancelled permanently. The Registrar acknowledged that once our complainant's medical condition is treated and stabilized, performance on a road test might improve.

### **The resolution:**

Mr. X was advised that he would be allowed to proceed with another road test subject to conditions set out by the Registrar, which included resolving his driving while disqualified convictions under *The Highway Traffic Act*.

Our Office was pleased that the Department showed a willingness to exercise its discretion fairly and reasonably in giving our complainant another chance to demonstrate improvement in his driving skills, despite his past history.

### **A simple explanation goes a long way**

In the fall of 1998, we were contacted by Mr. T who raised several issues regarding the suspension of his driver's licence.

### **What happened:**

In his correspondence, he explained that he was an epileptic who had been seizure-free in the three years prior to a seizure he had in July 1996.

Following a suspension of his driving privileges, he regained his licence in August 1997. Unfortunately, he had another seizure December 10, 1997. Recognizing that his licence would be suspended, he voluntarily surrendered his licence. His driving privileges were withdrawn as a result of a medical suspension, effective December 10, 1997.

### **The appeal:**

He unsuccessfully appealed this suspension at a medical review hearing that was held in May 1998. It was this hearing that led to his concern that he was treated unfairly. He pro-

vided our Office with detailed information regarding many issues that led him to this conclusion. His concern was referred to the Registrar of Motor Vehicles, who provided information regarding the suspension of his driver's licence. His concern was also reviewed by the Medical Review Committee, who provided clarification of the process followed by the Committee.

### **The explanation:**

The information provided by the Department was discussed with our complainant. His reaction to the information was interesting. He was grateful for the information and felt that it clarified the various issues he had presented. He explained that originally he felt that the Department did not give serious consideration to his situation. However, based on the information/clarification that our Office obtained, he was satisfied that was not the case.

This case is a good example of a service that our Office provides. In this situation, none of the circumstances changed, that is, the suspension remained in force. However, the

complainant, once he received an explanation to his various issues, was satisfied not only with the decision made by the Department, but also with the process followed.

clearly communicating reasons for decisions avoids confusion...

### MANITOBA HYDRO

**Formal complaints received - 11**

**Enquiries by telephone - 53**

Although formal complaints were lower than in 1998, enquiries by telephone rose substantially. As in past years, the majority of concerns related to residential billings. The following case, however, illustrates a situation wherein Hydro provided assistance in the interest of good customer service and ended up with a dispute on their hands.

#### **Pay double for the trouble**

##### **The problem:**

The complainants wrote to our Office because they were disputing the amount Manitoba Hydro was charging for their assistance to move hydro lines so they could relocate a house from one town in rural Manitoba to another. Manitoba Hydro provided a

written estimate of \$3,000 to \$3,500 for the costs associated with the move. The complainants wrote a cheque to Manitoba Hydro before the move commenced.

When the move was complete, the complainants received another billing from Manitoba Hydro for an additional \$3,150.05, bringing the total charged to over \$6,000.

The complainants argued that this seemed like a ridiculous cost. Had they known what the actual costs were going to be, they probably would not have purchased the house.

As well, prior to the move, Hydro had visited the building site and told them where they felt the best location and direction on the lot would be for service hook-up. They set their house on the lot and installed the mass site according to Hydro's recommendation. Manitoba Hydro came to hook-up the service and at that time decided that hook-up should come off a different pole. This meant moving the mass site and installing a different kind of mass at a different location, all at the complainant's expense.

The complainants tried to resolve this

## Provincial Ombudsman 1999 Annual Report

dispute directly with Hydro and had no success. They came to our Office feeling they were getting nowhere with Hydro.

### **The history:**

The complainants advised our Office that they had initially wanted their house facing another direction but changed to the direction recommended initially by Hydro to accommodate the hook-up. They were quite upset when Hydro came back and said that the set-up they had originally recommended was not feasible. As well, they said when they asked Hydro for the building move estimate, they asked them to provide them with the highest possible amount, as they were going to be financing the move through their mortgage. When the billing came back at almost twice the amount financed, they went back to their bank and were told they would face great expense to discharge the mortgage already in place and refinance because of the estimate error that Hydro had made. The complainants indicated that Hydro offered to reduce their billing amount by \$75 but that was as far as they would

move on the issue. The complainants said that this was simply not acceptable.

### **The explanation:**

We contacted Manitoba Hydro and were advised that while the actual bill of over \$6,000 for the move was indeed a true reflection of their costs, the significant discrepancy from the quoted costs brought to their attention a process problem that they needed to address.

They explained that in the interest of good customer relations Manitoba Hydro will give moving estimates to customers. The problems arise when the Hydro representatives measure the height of the structure on the ground, but guess at what the height will be once the structure is loaded on to a flatbed to be moved. As they do not know what height of bed the building will be placed on, it had sometimes led to miscalculations on Hydro's part regarding the amount of work required.

In this particular situation, the measurements taken led Hydro to believe that they would only have to lift lines to allow the structure to pass under.

When they realized that the height estimate was inaccurate by almost 4 feet, the Hydro workers had to physically disconnect lines and took considerably longer than was expected.

### **The reconsideration:**

Manitoba Hydro felt that, even though the amount of the bill was valid, it was unfair to charge someone almost 100% more than their written estimate. To this end, Manitoba Hydro was prepared to drop the bill to the high end of the original estimate of \$3,500. We were also advised that the relocation of the mass site would also be an expense that would be covered by Hydro.

The complainants were happy to have this matter resolved through our intervention. They advised that it took a great burden off them, as new homeowners, to have this bill revised to the original estimate. Also, as a result of this complaint, it became clear to Manitoba Hydro that they would have to become much more diligent in providing accurate estimates to customers requesting their assistance in the future.

We were pleased that Manitoba Hydro gave fair and reasonable consideration to the situation and took steps to resolve the matter to the satisfaction of its customer.

fair reconsideration of decisions is good administration

### MANITOBA JUSTICE

**Formal Complaints Received - 296**

**Enquiries by Telephone - 605**

This year, the number of formal complaints received by our Office against Manitoba Justice increased by 27, while telephone enquiries were up by over 150. As in years past, the majority of complaints and enquiries were generated by residents of the province's correctional centres. There were a total of 99 formal complaints from the adult and youth correctional facilities, dealing with a variety of issues. Specific examples of cases relating to Justice and Youth can be found in the section of this Report dealing with Child and Adolescent Services.

Our Office reviewed a number of concerns relating to decisions made by the Justice Department's Civil Justice Division (Legal Aid Services Society, Public Trustee and Human Rights Commission), the Courts Division (Maintenance Enforcement and Courts

Administration) and the Criminal Justice Division (Law Enforcement Review Agency.)

Our Office had the opportunity to contact, monitor and inspect many institutions throughout the year. As part of this process, we visited the Milner Ridge Correctional Centre, the Headingley Correctional Centre and the Winnipeg Remand Centre. Our Brandon Office has been active in developing contact with officials at the Brandon Correctional Centre, to facilitate an understanding of the work of this Office.

As part of our Office's ongoing attempts to keep Manitobans informed of the role of the Provincial Ombudsman, we participated in several public meetings and workshops. Of interest in the field of justice issues was our attendance at the John Howard Society Annual Meeting, and at the Manitoba Bar Association's Family Law Section meeting and panel discussion.

Case summaries of some of our files follow to give an idea of the type of issues we reviewed in 1999 relating to Justice.



### Corrections

#### Inmate stripped of dignity

##### The complaint:

In an October 1998 letter to the Ombudsman a female inmate at the Winnipeg Remand Centre complained that she had been inappropriately strip-searched by a team of Correctional Officers, which included males.

In reply to our enquiries we were told that the strip search involved male Officers who were required as back-up to help restrain the inmate in the interests of her safety and the safety of the other Correctional Officers involved.

##### Our review:

Subsequently, we reviewed the institutional policy on strip searches, as well as the documentation existing in the inmate's file relating to the incident. We also met with the Deputy Superintendent to discuss this matter. On the basis of the information obtained we concluded there had been

sufficient grounds to conduct a strip search. When the inmate resisted, male Officers assisted in restraining her and remained present during the strip search. This raised the question of why female Officers were unable to restrain the inmate, and why it was necessary for male Officers to be present for a strip search once the inmate had been restrained.

##### The outcome:

After reviewing the matter further the Deputy Superintendent of the Remand Centre advised us there had been a change in Standing Orders to reflect an approach that would see an inmate (female) who was involved in a confrontation restrained by staff, possibly including male staff, but then searched by female staff after the situation had de-escalated. We were also advised that as a result of this incident the Remand Centre had initiated a refresher training program on security and restraint.

When we reported the change to the inmate, she had already been released. She felt that although the change in policy was after the fact in terms of her complaint, it might benefit other

...there must be a balance between maintaining security and reserving dignity...

## Provincial Ombudsman 1999 Annual Report

female inmates. I agree.

Unfortunately, strip searching is a necessary fact of life in correctional facilities. Policy and Standing Orders must strive to achieve a balance between safety and security and an inmate concern for dignity and privacy. We were pleased with the Remand Centre's willingness to review and revise policy in this area.

qualified to question medical decision of doctors or nurses. We informed him however that we felt this matter should be brought to his attention since he was in charge of the administration of the Institution.

Following the presentation of our concerns, the Superintendent decided that all future medical concerns were to be directed to him for monitoring.

---

### Headingley Correctional Institution

In 1999, our Office received an increase in the number of complaints from inmates at the Headingley Correctional Institution, now called Headingley Correctional Centre, regarding medical treatment. The complaints ranged from providing medication for headaches, medical emergencies and dental concerns. A meeting was arranged with the Superintendent to discuss the administration of medical treatment to inmates. We advised him that the Ombudsman is neither authorized nor

---

### Brandon Correctional Centre

#### Privacy of Communication protected

In November of 1999 we received a complaint from an inmate at the Brandon Correctional Centre with respect to various issues including the lack of gym time, cold meals and no access to a daily newspaper.

#### One complaint leads to another:

While discussing the complainant's issues with him, he mentioned that he felt that the Centre had opened his letter and read it prior to sending it to our Office. The complainant

letters from inmates are to be forwarded immediately, unopened to my office

described the envelope - the writing that he used, the intentional misspelling of the word “Ombudsman” and several squiggles and lines he had placed across the glued sealing flap. We inspected the envelope in which the correspondence was received and it contained none of these markings and in fact, had the word “Ombudsman” written in pen (pens are not given to inmates in segregation).

### **Envelope switched:**

When meeting with the Centre to discuss the complainant’s specific concerns, we addressed the issue of the opening and re-enveloping of this inmate’s letter. We went over the complainant’s version of the events that led to his allegation that the letter had been opened and read, and that the envelope did not appear to be the one that the complainant had described as his. The Acting Deputy Superintendent undertook to investigate this allegation and found that the envelope was indeed opened in error and re-enveloped without any notice to our Office or the inmate. An apology went to the inmate regarding this incident and staff were advised that

they had erred.

### **Furthermore:**

Through this individual’s complaint, however, it came to our attention that the Inmate Handbook did not appear to reflect the intention of *The Correctional Services Act* respecting correspondence from the Ombudsman or several other exempt individuals. The Inmate Handbook and the Standing Orders required that an inmate open this privileged mail in front of Corrections staff, even though the Act provides that this mail is not required to be opened in front of or inspected by anyone except the addressed party. We felt that this practice was wrong and advised the Centre that they should review their mail practices in light of the requirements of *The Correctional Services Act*.

### **Practice reviewed:**

Shortly after this review, the Centre acknowledged that their practice was wrong and that it should be changed immediately, allowing inmates to have correspondence from our Office and any of the other exempt individuals and agencies without a staff member

present to monitor. The Inmate Handbook was changed and staff were advised by memorandum of this change in practice. At the time of the writing of this report, the Centre was in the process of revamping its Standing Orders to reflect the requirements of *The Correctional Services Act* with respect to inmate mail. It is interesting to note that this serious systemic issue was brought to our attention by chance through an inmate complaint about entirely different issues. Although the mail issue was not of the greatest concern to this individual at the time of his call to our Office, his complaint indirectly assured that inmate mail is being handled appropriately throughout the entire Centre.

---

### **Maintenance Enforcement**

#### **Reciprocity requires accuracy**

##### **The situation:**

Mr. T moved to Manitoba in 1997. He complained to our Office that the Maintenance Enforcement Program (MEP) had requested payment of arrears in an amount which was incorrect. He advised that before contacting our Office he had attempted to resolve the issue of outstanding arrears through correspondence and had even gone to the MEP Office to seek clarification, to no avail. A review of the material Mr. T sent to our Office disclosed a long-standing dispute involving periods of time when maintenance was paid directly, and other periods when payment was made through an enforcement program in another province; amounts for periods both before and after a Court ordered variation; and amounts seized from both income tax and employment income. A confusing situation,

to say the least.

### **The agreement:**

Through a reciprocal agreement, Manitoba MEP collects the arrears from a Manitoba payor on behalf of a payee enrolled with an enforcement program in another province. They rely upon information provided by the program in that province, and information provided directly by the payor in Manitoba. When there is a dispute they rely upon the other provincial program to verify the accuracy of information with the payee.

### **The problem:**

In this case the Manitoba Program requested clarification or confirmation of disputed facts on at least three occasions. We were advised that the Program had written to the other provincial program stating that if sufficient information was not received the Manitoba Program would not be able to continue with collection. Sufficient information was not received and the Manitoba Program terminated its enforcement activities.

### **Our view:**

I felt the action of the Manitoba Program was appropriate. Reciprocal

agreements between provinces are essential to the orderly implementation of public policy on family maintenance. At the same time, when a government program demands payment from an individual it is equally essential that they understand and have confidence in the accuracy of the information on which the demand is based. To proceed otherwise might well undermine confidence in such an essential program.

**disputed  
facts not  
clarified ...  
enforcement  
agreement  
terminated**

---

## **Public Trustee**

### **Arrears of rent**

#### **The issue:**

Our Office received a complaint that the Public Trustee would not pay rent arrears for a tenant whose affairs were being managed by the Public Trustee. The Public Trustee had become involved after the tenant was admitted to hospital and the rent was already in arrears. When the complainant contacted our Office she advised that the rent was seven months in arrears.

## Provincial Ombudsman 1999 Annual Report

Upon inquiry we were advised by the Public Trustee that there were several outstanding issues, including verification of the leasing arrangements to determine the monthly rent and the amount outstanding.

### **The review:**

Through an exchange of information between the complainant and the Public Trustee the necessary factual questions were answered. We were advised by the Public Trustee that the tenancy was month to month and therefore, because of the tenant's illness, either the tenant or the Public Trustee on his behalf was entitled under landlord and tenant law to give one month's notice of termination to the landlord.

We noted that, while the law permits such notice, it had not been given in this case until several months after the tenant had gone into hospital and a number of months after the Public Trustee had taken over the tenant's affairs. The Public Trustee indicated she would review the matter with her staff and get back to us.

### **The outcome:**

Subsequently, the Public Trustee paid the outstanding rent in full to the date of termination. The complainant advised our Office that she had received the rent and expressed her appreciation for our assistance in resolving the issue.

### MANITOBA PUBLIC INSURANCE

**Formal complaints received - 128**  
**Enquiries by telephone - 327**

While the number of telephone enquiries increased by 30 over last year, the number of formal complaints received in 1999 by our Office against Manitoba Public Insurance (MPI) decreased by 11. One may infer that these telephone enquiries are being resolved at the first instance, both through the work of our Intake Officer, as well as on the part of MPI. As such, fewer people have had to resort to making formal complaints against MPI. This is a positive indicator of the co-operation our Office receives from MPI.

We continued to review a wide range of issues in the complaints received against MPI. Generally though, these complaints tend to be over decisions made by MPI on issues such as liability assessment, settlement amounts, and claims processing. The following

are cases that describe our interaction with MPI.

#### **Where the rubber meets the road**

Mr. P contacted our Office regarding the denial of a claim for a tire that was damaged while driving on the main road in Autopac's storage compound. Apparently MPI had just unloaded a tractor-trailer and some debris had been left on the road. On entering the compound, Mr. P advised that his five-week-old tow truck received a flat tire, which could not be repaired, but rather had to be replaced at a cost of over \$300.00. Initially, MPI was not prepared to provide compensation and Mr. P was referred to our Office.

In discussing this matter with MPI, we noted what we felt to be some extenuating circumstances. The damage was caused by debris that had fallen from a tractor-trailer that had recently been unloaded on the Corporation's compound. The debris

was subsequently cleaned up by Corporation staff, after our complainant had suffered the loss. As a result of our discussions, the Corporation agreed to compensate our complainant.

---

### **Understanding leads to resolution**

#### **Unhappy customer:**

Mr. Y approached our Office concerned over the fairness of an offer he received from MPI for his vehicle, following an accident where it was considered a total loss.

Essentially he was not satisfied with the offer the Corporation had made for the vehicle as he considered it was worth a considerable amount more.

To support his contention he referred to repairs done to the vehicle before the accident.

#### **Lets talk:**

In discussions with our Office, our Investigator explained in detail to Mr. Y factors that the Corporation is required to take into consideration in

determining the value of the vehicle. It appeared at that point that there had been a break down in communication between Mr. Y and his adjuster. Our Investigator talked to a Customer Relations Representative at MPI, suggesting that claims staff meet with Mr. Y to clarify the basis for the offer and to consider whatever further information he could provide that might add to the value of the vehicle.

#### **Meeting clarified points in dispute:**

We were subsequently advised that our complainant had a meeting with Corporation staff wherein both parties had a better understanding of their respective positions and the claim was settled to the satisfaction of both parties.

Sometimes it just takes the involvement of an independent third party to bring about an understanding.

**intervention  
by an  
independent  
body  
can bring  
parties  
together**



## MUNICIPALITIES

**Formal complaints received - 56**

**Enquiries by telephone - 111**

We have now been investigating municipal complaints for three years. This year, municipal complaints are down from the 89 we received in 1998.

My Office continues to receive good cooperation from the various municipalities, and positive working relationships have been and are still being developed.

Where possible, we have tried to make personal contact with the municipalities to discuss not only case specific issues, but to review and clarify our role and process. I am very pleased with the progress that has been made to date regarding our interaction with municipalities.

## Town of Winnipeg Beach

### **You can't get something for nothing:**

In September 1998, we received a letter from Mr. M who had been ordered by the Town to do repairs to two buildings that he owned in Winnipeg Beach. Mr. M did not dispute the fact that the work needed to be done, but he explained that he had reached an agreement with the Town's Building Inspector that gave him until July 15, 1998 to complete the work. However, prior to this date, the Town had the work done and charged him \$1,701.30. It was our complainant's view that he should not be responsible for work that the Town had done prematurely. Once again, he did not dispute that the work was necessary, but explained that he had every intention of completing the work before the agreed-upon July 15 deadline.

### **The Town's explanation:**

Enquiries were made with the Town and it was explained that this problem started in the fall of 1997. At various times, Mr. M had agreed to do the work, but did not follow through. The

## Provincial Ombudsman 1999 Annual Report

Town referred to various letters that were sent to Mr. M requesting that the necessary repairs be done. They confirmed that the Building Inspector did agree to a July 15 deadline, but that this deadline extension was conditional to Mr. M providing written confirmation of his intent to complete the work. As he failed to comply with previous requests made and did not provide the Building Inspector with a written commitment, Council instructed the Inspector to take action to enforce compliance. Information received indicated that work was done to one property on or about June 29, and work to the other property was done on or about July 10.

### **The rebuttal:**

Mr. M indicated to our Office that he could not recall any request for a written commitment. Apparently, in conversations he had with the Building Inspector, he was asked to start the work as a show of good faith. It was our understanding that some work was started prior to the July 15 deadline, and it was his intention to take time off work around the deadline to complete the job. He indicated

to our Office that, in addition to taking time off work, he had purchased supplies to complete the repairs. Mr. M objected to the amount he was charged by the Town and indicated that it would have cost him considerably less had he been allowed to do the work. He was not only disputing the decision to have the work done, but he also felt the costs were excessive.

### **The independent review:**

Notwithstanding the failure to act upon the requests by the Town and the fact that Mr. M did not, at any time, file an appeal or deny that the work was necessary, the Ombudsman met with the Town to discuss the procedural issues surrounding this case. As a result of the meeting, the Mayor indicated Council would revisit the matter with a view to considering an allowance for the dispute regarding the labour costs. We were subsequently notified that the Town had decided to cost-share the labour portion of the invoices. Our Office was provided with a copy of a resolution of Council agreeing to cancel \$350 in labour costs. However, this was con-

complainants  
don't always  
agree  
with our  
decision ...

ditional upon our complainant agreeing to take no further action against the Town.

When we discussed this offer with Mr. M, he indicated he was not prepared to accept it. We advised him that we felt that the Town's position was reasonable and that, based on our review of his concern, we were without grounds to make any recommendation on his behalf. As such, we would not be pursuing this matter further, and the outstanding invoices were a matter for our complainant and the Town to resolve.

While no resolution was reached in this particular case, I was satisfied that the Town had made a reasonable effort to resolve this matter. Our complainant had certainly received a benefit from the work that was done, and in spite of any procedural problems, our Office could not support that he receive the benefit of the work and not be financially responsible. Mr. M disagreed and indicated that he would be suing the Town and would include his lost wages in his lawsuit.

### **Dereliction of Duty?**

Sometimes resolving a complaint appears to take much longer than it should.

#### **The saga:**

In July of 1997 a resident of the R.M. of Swan River complained to our Office about what was described as an ongoing problem with a neighbour apparently operating a business and keeping derelict equipment on property which is zoned residential.

When we contacted the municipality we were advised that the neighbour was in breach of zoning and that the Reeve had arranged to discuss this matter with the lawyer representing the municipality. Shortly thereafter the R.M. provided our Office with a copy of a letter from its solicitor to the offending neighbour advising him that he was required to "... cease and desist from all use of the property except as permitted under the zoning by-law on or before..." We thought this would end the matter. It didn't. In November of 1997 we were

## Provincial Ombudsman 1999 Annual Report

advised that the neighbour had not complied with the Cease and Desist letter from the lawyer and that charges would have to be laid against him.

In April of 1998 we were advised that because area residents were not prepared to give evidence to the municipality or in Court, Council would not be proceeding with this matter at that time.

Subsequently, our Office was informed that this matter had been discussed with legal counsel who advised that the municipality would need to have inspections conducted of the site, reports prepared, dated pictures taken, and further warnings given to the offending neighbour before the matter could proceed.

In August of 1998 our Office was advised by the complainant that the matter had not been resolved more than a year after he complained to our Office and several years after the problem arose.

In the fall of 1998 we were advised that a by-law had been passed to appoint an Enforcement Officer. We were then provided with a copy of a December 1998 letter to the offending

neighbor from the Enforcement Officer requiring that the neighbor achieve compliance before the end of January 1999.

### **... continues:**

We were subsequently advised that, as a result of negotiations between counsel, the deadline for compliance had been extended to June 30, 1999.

In July of 1999, two years after our Office received the complaint, we were advised that the matter had still not been resolved, that the neighbour had not moved the machinery off the property and the Council would therefore be considering another extension. At the same time we were advised that Council had decided to ask their lawyer to discuss the matter with the neighbor's lawyer, and to provide an opinion in respect of the viability of other enforcement options.

### **Action required:**

In August of 1999 we wrote to the Municipality advising that while we were appreciative of the need to observe due process in matters of this nature, and that it is often necessary to obtain the advice of counsel in such matters, we had some concern about

justice  
delayed is  
not always  
justice  
denied

the length of time it was taking to enforce compliance in what appeared to be an obvious zoning infraction. We were by then into year three and were unable to provide the complainant with any satisfactory explanation as to why the matter had not been resolved.

In response to this letter the Reeve contacted our Investigator and suggested he attend a meeting of Council. Our Investigator attended an in-camera session of Council and was given a frank picture of the difficulty the Municipality faced in dealing with this situation. We learned that the Municipality had in fact gone to extraordinary lengths to resolve this issue. There had been complaints and counter complaints, discussions aimed at amicable resolutions, negotiations, demands, threats of legal action, and delays occasioned by events beyond Council's control.

Ultimately, the matter was resolved late in 1999 when compliance with the zoning requirements was achieved. Notwithstanding the delay, the complainant was satisfied with the outcome.

This was a case where a resolution appeared to be taking too long. We were unable to conclude that any action taken, or any decision made, was unreasonable in the circumstances. Governments large and small rely upon voluntary compliance with the rules they make in our collective interest. There is a balance between collective rights and the rights of the individual, rights which are often protected with procedural safeguards. When a government follows the rules, exercises restraint and takes a reasonable approach to a problem, it would be unreasonable to find fault with the time it takes for the system to work. And in the end, it did work.

...we have a special interest in issues affecting children and youth...

### CHILD AND ADOLESCENT SERVICES

**Formal complaints received - 49**

**Enquiries by telephone - 121**

Our Office continued to be involved in issues that affect children and youth in the province of Manitoba. We received a total of 49 formal complaints affecting children and youth involving the following departments and agencies:

Family Services - 22

Health - 1

Highways - 1

Justice - 23

Manitoba Public Insurance - 1

Private Matters - 1

Our Office also received 121 telephone enquiries in 1999. The breakdown is as follows:

Education - 2

Family Services - 81

Justice - 19

Private Matters - 11

Schools - 8

Our Office continues to have a special interest in the issues that children and youth face. With the proclamation of Chapter 47, *The Adoption Act* and Chapter 48, *The Child and Family Services Amendment Act*, an

Investigator from my Office attended Legislative Overview Sessions conducted by staff from the Child and Family Support Branch to ensure our familiarity with the changes in legislation. The Investigator also attended a conference sponsored by the Winnipeg Partnership for the Family and the Minuchin Center for the Family on *Honouring Diversity*.

We also continued our outreach into the community. A staff person from my Office attended the Winnipeg Child and Family Service General Meeting. An Investigator who deals with issues relating to services to children and youth and myself spoke to students at R. B. Russell School on the Ombudsman's role and function. My staff also continued to be involved in the staff-training program at Agassiz Youth Centre (AYC) and the Manitoba Youth Centre (MYC). Our Office regularly attends these training

sessions to discuss our jurisdiction and how our Office handles complaints. We also participated in the training session for the staff of the new Intensive Custody Unit at AYC called Lakewood. Staff from my Office also toured the new Child and Adolescent Treatment Centre in Brandon and met with the new Children's Advocate.

The following are some case summaries by Department which describe the activities undertaken involving children and adolescents.

---

### Family Services

In 1999 we responded to 81 telephone inquiries pertaining to youth and formally investigated 22 files relating to issues affecting children and youth within the Department of Family Services. Most of these concerns related to Child and Family Services. The types of complaints we received related to services provided and decisions made by Child and Family Services Agencies; conduct of staff;

handling of abuse investigations; and the administrative process for entering a name on the Child Abuse Registry. We also followed up on a systemic review of Winnipeg Region's licensing process for their care providers and opened a file to monitor an Inquest where a foster child died while in care.

---

### A foster family affair

A ward of Child and Family Services contacted our Office expressing concerns regarding the services she was receiving from the Agency. As well, she claimed that her social worker and her foster parent were having an affair which she felt had a negative effect on the service she was receiving from the Agency. The concerns were referred to the Child Welfare and Family Support Branch (Branch) for review. The role of the Children's Advocate was discussed with our complainant and that Office became involved as a support to our complainant. The Branch interviewed the parties

personal relationship between foster parent and worker creates boundary issues...

involved and studied the case file and a new worker was assigned to our complainant. The Branch's opinion was that a personal relationship existed between the social worker and the foster parent and this created boundary issues from a case management perspective. It felt that this compromised the Agency's ability to properly serve this child and at the very minimum, gave the appearance of improper behavior.

The Agency agreed to review the findings and advised that they would examine options with respect to potential disciplinary and/or corrective action that may be indicated. We monitored the situation and were advised of the Agency's actions with respect to this matter. As the situation had been addressed, there was no further action required by our Office. Our complainant was advised of the outcome and was pleased that her concerns had been taken seriously.

### A second chance

#### The complaint:

A couple complained to our Office that they had been denied the opportunity to make an application to become foster parents. In a 1999 letter from the Agency the would-be foster parents were advised that because they had had a Foster Home Letter of Approval revoked in 1995, a decision upheld twice upon appeal, the Agency "...would not be in a position to offer you an application to foster."

#### The dilemma:

Upon enquiry our Investigator was advised that the Agency faced a dilemma; on the one hand the essential belief that people have the capacity to change, and on the other hand the need to avoid putting children in situations of potential risk. We pointed out that the issue here was the refusal to provide an application which would determine the couple's current suitability as foster parents. The Agency Director indicated that if there was no technical bar to the cou-



ple becoming foster parents, such as registration on the Child Abuse Registry, he would be willing to take a second look.

### **The compromise:**

Subsequently, the Agency wrote to the couple offering a process where they would meet with an Agency worker who would explain current rules and regulations on foster parenting and, if they wished to proceed, provide them with an application. The couple was advised that as a part of that application process they would be required to demonstrate to the Agency's satisfaction that "the issues and concerns that resulted in the earlier cancellation of your letter of approval no longer exist and we will be able to be comfortable having children in your care."

Given the prior concerns, the Agency's decision was not unreasonable. It allows the couple to apply and demonstrate their suitability as foster parents now, while at the same time clearly raising the concerns which resulted in the prior cancellation.

The Agency decision was discussed with the complainants, who were satisfied with the outcome.

## **Judge and jury**

### **The history:**

Our Office received a complaint from a grandfather that he and his common-law wife (referred to as the grandparents) were not being allowed to visit with his grandchildren, who were in the care of Winnipeg Child and Family Services.

The grandfather went to Court in 1994 and was awarded supervised access to his grandchildren. In December 1995 the Agency terminated these visits.

The grandfather had raised concerns regarding the situation with the Child Welfare and Family Support Branch (the Branch).

In November 1996 the Branch made two recommendations to the Agency regarding the situation. The first recommendation related to a plan of action to proceed with visits. The second recommendation was that, if the Agency decided not to proceed with visits, it should **"bring this matter back before the courts to make application for a variance to**

**our involvement often results in a new perspective**

### Court ordered visits denied

#### **the existing order which allowed for the grandparents to visit.”**

Neither of these recommendations was implemented.

Throughout the years the grandfather was led to believe that the Agency would make arrangements for some sort of visitation to occur. Despite the involvement of the Branch, the Office of the Children’s Advocate, and the indication from the Agency that they had no objections to the grandparents visiting the children, visits never resumed. We understand the reasons related to issues such as the readiness of the children for visits and the need to settle them in their foster placement.

#### **Our involvement:**

In 1997 our Office began seeking clarification relating to the Agency’s position regarding the grandfather’s complaint. We continued to monitor the case throughout 1998 and into 1999. Despite assurances the situation would be addressed, the grandfather’s concerns remained outstanding.

In May 1999, the Agency arranged to meet with our Office and a representative from the Branch to discuss the

case. At the meeting we were provided with the rationale for not allowing visits as directed by the Court. The Agency cited impediments to facilitating visits, which included alleged reluctance of the children, instability of the children in their foster home and the Agency’s poor relationship with the grandparents.

In reviewing this information, it was difficult to reconcile the Agency’s concern about the reluctance of the children to visit the grandparents when in fact it appeared some of the children had been seeking contact with the grandparents on their own volition. It was also our understanding that they had expressed their desire for contact to the Office of the Children’s Advocate.

In 1997 we had been advised that the Agency would be applying to Court for a variance in the access conditions. We understood that there was a hearing in November 1998, which dealt with the birth father’s access to the children, but the Agency advised that the grandparents’ access had not been addressed. At the meeting we enquired why this had not occurred.

We were advised that the Agency had lost track of the issue respecting the grandparents' access and had not proceeded to Court.

### **Our findings:**

Based on our review of information received from the Agency, the Branch, the Children's Advocate and the grandfather, we believed that this case had been subject to unreasonable delays, which ultimately resulted in unjust and unfair treatment to the grandparents. Our Office did not feel there was adequate justification to support the actions, or lack of action, by the Agency.

We did not feel that there had been sufficient effort by the Agency to meet its duties and provide guidance, support, counselling, supervision or other services to the grandparents in an effort to preserve the family unit. I believe that in this case there were grounds to question whether the best interests of the children had been served by the Agency. I could also appreciate why the grandparents felt that the Agency had abused its power in this matter.

Given the situation and in view of the

history between the Agency and the family, we felt that the Department should give consideration to appointing a neutral, independent third party to review and assess the current situation to determine what was now in the children's best interest. This matter was referred to the Deputy Minister for consideration and whatever steps she felt could be taken to ensure that situations such as this do not recur.

### **The action taken:**

The Deputy advised that staff of the Department's Child, Family, and Community Development Branch would be conducting an independent review of this matter and would advise of the outcome of this review following the completion of the Branch's investigation.

The review identified many of the same issues raised in 1997, which remained unresolved. In discussing the situation with the Department and the Agency everyone recognized that it was impossible to undo the past and there were aspects of the case that could have been handled differently. The Chief Executive Officer of the Agency wrote to the grandparents and

**Agencies have a duty to provide guidance, support and counselling services to preserve the family unit...**

## Provincial Ombudsman 1999 Annual Report

apologized for the apparent inconsistencies between the Agency's actions and the representations made to them by senior management of the Agency. As well he apologized for the lack of promptness in the Agency's dealings with them and visits were arranged. The CEO and Agency staff also met personally with the grandparents to discuss the situation.

The Agency also reviewed their system and made changes with the hopes that this type of situation would not recur.

---

### Justice

In 1999 our Office received 23 youth complaints involving the Department of Justice. The breakdown is:

Agassiz Youth Centre - 15

Manitoba Youth Centre - 6

Portage Correctional Centre – 2

The types of complaints we received related to transfers, unfair treatment by staff, dissatisfaction with the quality and quantity of food, violation of

rights and conduct of staff. We also continued to monitor the systemic concern we had raised with the Department on their handling of youth held under The Intoxicated Persons Detention Act.

---

### Crime or Punishment?

In my 1998 Annual Report I wrote about a youth that had been upset following a stay at the Manitoba Youth Centre (MYC). She had been treated at a hospital for drug use and following her discharge had been detained under The Intoxicated Persons Detention Act (IPDA) at the MYC. Upon review, our Office discovered that youth detained under the non-criminal nature of the IPDA were routinely held at the MYC. This was creating overcrowding and safety issues. In 1996/1997 Manitoba Corrections had discussed this situation with Winnipeg Police Services. However, nothing was resolved. There seemed to be consensus that an alternative solution was necessary. I felt

## Provincial Ombudsman 1999 Annual Report

that MYC was not the right place for youth detoxification and following our inquiries Corrections again decided to initiate discussions with the City of Winnipeg and Winnipeg Police Services.

### **The sequel:**

Our Office monitored the Department's progress in addressing this issue throughout 1999. In May we wrote to the Assistant Deputy Minister of Corrections indicating that our Office did not feel that the MYC was an appropriate detoxification centre for youth. We indicated that while we could appreciate that correctional officials were attempting to address the issue, we felt that an alternative solution should be found soon. It was our understanding that the continued placement of youth at MYC who had been detained under the IPDA often placed the staff and residents at significant risk. This issue was brought to the attention of the Deputy Minister of Justice as well as the Deputy Ministers of Health and Family Services.

### **The update:**

At the time of writing this Report we have been advised that representatives from the Departments of Justice, Health and Family Services have met and are working together to locate an alternate placement for youths being held under the IPDA.

---

### **Quiet please....no contact allowed**

A youth from Agassiz Youth Centre (AYC) contacted our Office complaining that despite repeated requests, he had been denied access to our Office for approximately 3 days. The youth explained that he had been placed in the Quiet Room and was told that he did not have any privileges and therefore could not contact our Office.

Generally, correctional facilities in the Province of Manitoba allow inmates to contact our Office immediately once security issues have been addressed.

the opportunity for inmates of correctional facilities to contact the Ombudsman is a right not a privilege...

Our Office contacted the Superintendent to discuss the issue. We were advised that residents who are placed in the Quiet Room are not allowed phone calls or a pen and paper until they have given a verbal and written commitment to work with staff and their group. We discussed the Ombudsman's expectations in this regard and the practice in the other correctional facilities. The Superintendent agreed to review their policy and discuss it at their management meeting. AYC decided that residents who are permitted the use of pencil and paper while in the Quiet Room will be permitted written communication with their lawyer and/or the Ombudsman. Accordingly they revised their policy and direction was given to staff.

---

### **Please sir, may I have some more?**

Several residents in provincial youth centres made complaints relating to the quality and quantity of food served.

### **What we did:**

Rather than deal with the complaints on an individual basis, the Ombudsman opened one file on his own initiative. Our Office completed a comprehensive investigation with the assistance of the Food Services Manager - Coordinator of Food Services, Adult Corrections Service. A consultant had been hired by the Department to transcribe their information for a complete nutritional analysis. All menu data is now on-line and available. It was noted and agreed that it is extremely difficult to come up with a perfect menu for growing teenagers.

The Department's '28 Day Menu' system was reviewed in detail. It was found to be a technically balanced menu in that it met the standard of Canada's 'Food Guide To Healthy Eating'. The Centres food service managers and staff seem to be sensitive to the nutritional needs of young people and strive to improve the menu.

### **Surprise inspection:**

As part of our investigation an unannounced inspection of a youth centre kitchen was made. It was found to be

youth  
require  
balanced,  
nutritional,  
filling meals

clean, orderly and in excellent repair.

The serving line, where youths pick up their meals cafeteria style, was observed. Our Investigator, dining on the same meal, found it to be tasty, nutritional and filling.

The youths quickly figured out the Investigator was from the Ombudsman's Office. They passed on many positive comments about the food and the staff. In private a youth expressed the same sentiments but was very pleased our Office was taking their concerns about the food seriously.

---

### Is there a psychiatrist in the house?

#### The background:

Youth Forensic Services (YFS) is a Manitoba Adolescent Treatment Centre (MATC) program which has a dual mandate to provide Forensic Assessments to the court system in Manitoba and to provide limited clinical services to Manitoba Youth Centre (MYC), Agassiz Youth Centre (AYC)

and Community Corrections. It is our understanding it provides some treatment services as resource availability permits and as the situation warrants.

#### The concern:

A mother contacted our Office regarding the psychiatric treatment that her son received while at the MYC. She expressed concern that requests had been made for her son to see the psychiatrist. However, nothing had happened for a number of months. At the time of the complaint her son had recently seen the psychiatrist. Nevertheless, she was concerned about the lack of response to the previous requests.

#### The outcome:

Our Office spoke with staff from the MYC as well as YFS. The files at both MYC and YFS were also reviewed. Our Office noted that there was documentation for 3 occasions where there had been a request for psychiatric consultation with no response. The situation was discussed with the Clinical Director of the MATC. The Director reviewed the file material and advised that he felt our complainant's son had received competent and

## Provincial Ombudsman 1999 Annual Report

timely attention when considering the overall input of clinical services in this situation. The youth had seen the clinical psychologist when he was admitted and thus they were aware of the presenting complaints. It appeared the requests that followed the initial consultation had been either informally considered not to be urgent or, on one occasion, inadvertently not considered. While the Director felt that

checks and balances were in place to ensure that mistakes don't occur, he felt that there should be a traceable process indicating that the request had been reviewed and what the YFS decision was. He also felt that whoever had made the referral should be advised of their decision. As such he indicated that he would discuss these issues with his staff and an appropriate system would be developed.

## Legislation

The purpose of the Ombudsman's Office is to promote fairness, equity and administrative accountability through independent and impartial investigation of complaints and legislative compliance reviews. The basic structure reflects the two operational divisions of the Office:

- Ombudsman's Division, which investigates complaints under *The Ombudsman Act* concerning any act, decision, recommendation or omission related to a matter of administration, by any department or agency of the provincial government or a municipal government.
- Access and Privacy Division, which investigates complaints and reviews compliance under *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*.

A copy of the Acts mentioned above can be found on our web site at [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)