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December 2001

The Honourable George Hickey
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 thirty-first Annual Report of the Ombudsman for the calendar year January 1, 2000 to December 31, 2000.

Yours very truly,

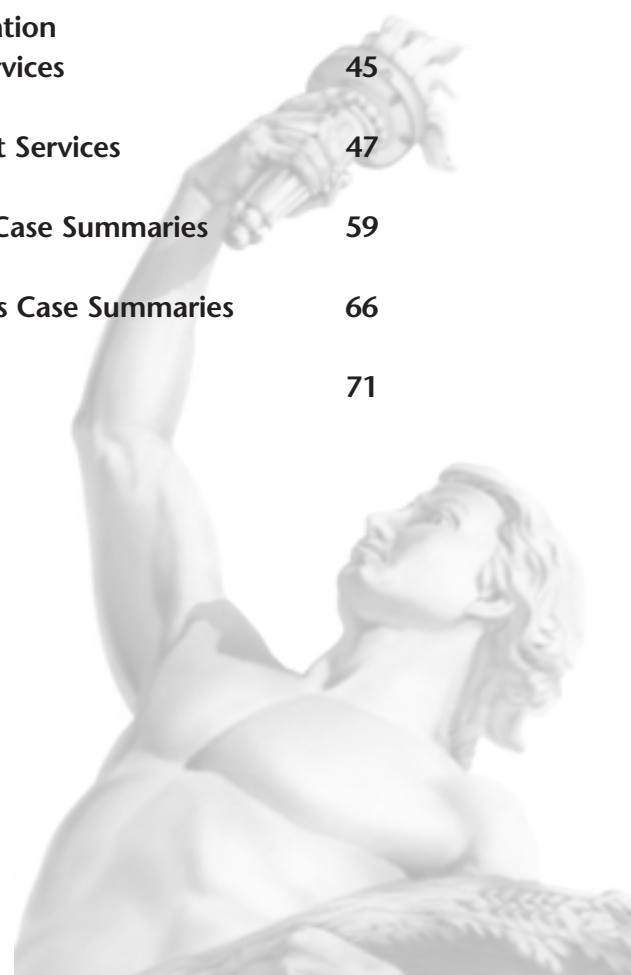


Barry E. Tuckett
Manitoba Ombudsman



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Darren Osadchuk Compliance Investigator	
Kim Riddell Compliance Investigator	
Aurele Teffaine Compliance Investigator	
Administration:	
Laura Foster Office Manager	
Helen Hicks Administrative Secretary	
Jacquie Laberge Administrative Secretary	
Felicia Palmer Administrative Secretary	



A Message From the Manitoba Ombudsman

In 2000, we provided assistance to thousands of Manitobans who were looking for help in dealing with their concerns about government bodies. This year we received 3,529 telephone enquiries from the general public. Ombudsman Investigators also worked on 1,034 complaint files, including 777 new complaints that we received this year. 808 cases were completed in 2000 and 203 of these cases were either resolved or partially resolved.

The case summaries included in this report provide a broad cross-section of the challenges that people face in dealing with government bodies as well as instances where government is challenged to meet some exceedingly high public expectations. In all, I believe they demonstrate the continued relevancy and effectiveness of the Ombudsman's Office in resolving disputes as envisioned by the legislation that created the Office in 1970.



Barry E. Tuckett
Manitoba Ombudsman

The role of the Ombudsman was established to provide an independent, non-partisan review of complaints against public bodies. My goal is to continue a thirty-one year tradition of resolving disputes in an informal, non-adversarial and non-legalistic manner. As always, the Ombudsman's effectiveness and credibility with the general public is greatly enhanced by our independence as well as our power to investigate and report publicly on matters that I feel must be corrected.

For the most part involvement and input from the Office of the Ombudsman is well-received by elected officials, civil servants and the public who herald the principles of open and accountable government. Many welcome the Ombudsman's input as an opportunity to demonstrate that all parties have acted in good faith and with a commitment to fair practices. However, there are a few exceptions that I feel must be brought to the forefront in this year's Annual report.

Many Manitobans are looking for someone to turn to when they dispute the actions or decisions of educational bodies. They want an independent review process.

For some time now, I have raised the issue of the plight of parents and individuals who have complaints about educational bodies. There are frequent instances where individuals seek my assistance because they are not satisfied with the outcome of the assorted grievance procedures that exist within the various public bodies that make up Manitoba's education system. It is not uncommon for these matters to have been under dispute for a number of years before individuals come to us for help.

Schools, however, are the only public bodies that are not subject to *The Ombudsman Act*. Unlike the Ombudsman for the Province of British Columbia, *The Ombudsman Act* does not provide the Manitoba Ombudsman with the jurisdiction to investigate complaints against universities and schools or self policing professional organizations such as; the College of Physicians and Surgeons, the Law Society and other professional associations.

I believe that a review by a credible independent agency such as the Ombudsman is necessary in these cases and would serve both the educational body and the public well. I have raised the lack of jurisdiction over schools, colleges and universities with the department several times over the years and in fact I have raised it in a previous Annual Report. It is up to our elected officials to consider and determine whether jurisdiction should be extended to the Ombudsman so that the people who have issues with educational bodies can enjoy the same rights and services as are afforded to citizens who wish to make enquiries and complaints regarding other government bodies.

Cases involving the Department of Agriculture remain unresolved

In dealing with specific cases involving government bodies, I have found that there is usually a genuine commitment by government representatives and staff at all levels to resolve issues. However, I regret to say that there are two cases with Manitoba Agriculture that suggest a lack of commitment and support for the role of the Ombudsman and all that the Ombudsman's office stands for. These reports by the Ombudsman supported Manitoba citizens who felt they had been unfairly treated by Manitoba Agriculture. In these two instances, recommendations to the department have not been accepted. Nor have we received what I consider to be appropriate responses to our reports.

These long and drawn out cases are discouraging to complainants and put an additional, undue burden on investigators who are already struggling to deal with high volumes of complaints in the most timely and sensitive manner possible.

The Ombudsman's Office needs more resources to keep up with increased demands

Government resources to the Ombudsman's Office have not kept up with the increased demands and additional responsibilities that have been placed upon the Ombudsman's Office in the last few years by new provincial government legislation. As a result, Manitoba's Ombudsman's Office now has one of the broadest jurisdictions in Canada with responsibilities as an independent oversight agency under

- *The Ombudsman Act* that includes municipal jurisdiction with the exception of the City of Winnipeg.
- *The Information and Protection of Privacy Act* where jurisdiction is extended to all public bodies in Manitoba.
- *The Personal Health Information Act* with jurisdiction over public and private sector health trustees, which includes all public bodies, health professionals and health care facilities.

Delays in dealing with complaints are the primary result of the increased demand for services by the Ombudsman and the people bringing forth complaints deserve to have their concerns dealt with in a timely, highly-effective manner.

Commitment to open and accountable government has many undisputed benefits for our society. Commitment to these principles has its costs. However, I believe that a lack of commitment to these principles has an even higher cost for Manitobans. Our Office's effectiveness has been hampered by a lack of resources, a lack of jurisdiction in some areas and, at times, a lack of visible commitment by government decision-makers.

Without a greater commitment from government to resolving these issues, the long and trusted role our office has played in the resolution of disputes and complaints for more than three decades will be compromised.

In summary, I would also like to highlight the fact that while there are disappointments and challenges that impact on our Office's ability to resolve disputes, our experience also suggests that Manitobans are largely well-served by a dedicated fair-minded public service.

Sincerely



Barry E. Tuckett



Year 2000 In Review

2000 continued to be a busy, challenging and productive year for the Ombudsman's Office.

The Ombudsman's jurisdiction is broad. Under *The Ombudsman Act*, it encompasses 200 municipal governments and all provincial government departments and agencies, including Regional Health Authorities, Crown Corporations and all boards, commissions, or agencies that are directly or indirectly responsible to the Crown. This includes, but is not restricted to, entities such as the Securities Commission, the Manitoba Lotteries Corporation, the Manitoba Public Insurance Corporation, the Workers Compensation Board and the Appeal Commission, the Manitoba Labour Board, the Manitoba Health Appeal Board, the License Suspension Appeal Board, and the Manitoba Crop Insurance Tribunal.

Investigations - an overview

Due to the extensive mandate and number of entities under the Ombudsman's jurisdiction, investigators must possess a broad working knowledge of government organization and administration, provincial and municipal legislation, regulations, policies, procedures, principles of natural justice and administrative fairness. Investigators must be able to deal effectively with a number of diverse individuals, issues or public bodies simultaneously.

Investigators are required to work under considerable pressure due to the scope, diversity, complexity, sensitivity and volume of the work. Due to the ever changing nature of the complaints we receive daily, many of which are time sensitive or urgent, investigators are constantly required to prioritize and re-prioritize caseload demands.

Investigations may also entail complex issues and involve more than one department, agency or level of government. For example, flooding or drainage issues often involve actions or decisions of a municipal government, and provincial government departments such as Manitoba Conservation and Manitoba Transportation and Government Services. Many disputes, such as those with municipal or drainage and flooding issues, are complex. They have evolved over a number of years and require a detailed understanding of the history behind the complaint. Recollection and memories can fade with the passage of time. Often there is a lack of documentation on complaints that date back several years. Positions may have become highly entrenched over the years. These factors present unique challenges to an investigation. Such investigations cannot be completed quickly.

As the purpose of the Office is to ensure fairness, equity and administrative accountability through the investigation of complaints by an independent,

non-partisan Officer of the Legislative Assembly, we have never wanted to compromise either the quality or thoroughness of an investigation in the interest of a speedy decision.

At the same time, an effective oversight agency requires adequate resources to provide timely investigations and responses to complaints. This is important both to the complainants and the departments and agencies that are the subject of the complaints. Our staff complement does not allow our office to complete investigations in as timely a manner as we would like, given the complaint backlog in combination with the new complaints received every year. However, we make every effort to keep both complainants and departments apprised of the status of complaints.

All of these factors also impact on our ability to conduct *Ombudsman Own Initiative* investigations, which is an essential component of Ombudsman work. Such investigations can involve major systemic issues and require substantial investigation and resources. The resource issue also affects our ability to provide a more extensive public education program for government officials and the general public about the services and operation of our office.

Despite the challenges however we continued to put our primary focus on helping the people behind every individual complaint and telephone call we received. We also made a concerted effort to reduce the number of complaints carried over at year-end. This backlog had increased over the years. I am pleased to report that, through the dedication and hard work of the staff, we have reduced our backlog by 34% over the past two years.

Investigations and systemic change

As an Independent Officer of the Legislative Assembly, charged with investigating complaints thoroughly, impartially and fairly, suggestions or recommendations for change are not made lightly. We make every effort to obtain all the facts and information available to us and then to make a reasoned and balanced decision on the merits of the complaint. We do not simply substitute our opinion for that of the decision-makers. Opportunity is provided to the parties in a dispute to provide information. Our office makes every effort to explain the rationale and reasons for a decision. For my office to suggest or recommend corrective action, we, very broadly speaking, must be satisfied that the department or agency has acted unfairly or unreasonably or that the action, decision or omission is wrong.

The investigation of an individual complaint may lead to a more systemic review of the application of legislation, procedures or policies by public bodies, impacting on government administration and resulting in systemic change.

The following are some examples of the kinds of systemic changes that resulted from investigation into individual complaints:

- Investigations into complaints from inmates in correctional centres relating to issues such as the improper inspection or interception of mail, the use of the restraint chair and the use of segregation have resulted in procedural changes and/or ensured compliance with legislative requirements. More details can be found in the case summary section on Justice.
- Our office also conducted an extensive systemic review of the medical service provided for women at the Portage Correctional Centre. Our report and response from Manitoba Justice will be reported in the 2001 Annual Report.

- Investigation of complaints related to Manitoba Family Services and Child and Family Services Agencies have lead to procedural changes or reviews on issues such as access rights of parents or grandparents and the involvement of agencies in custody disputes; a review of the rights of, and service to, non-custodial parents.

I am pleased to report that the Departments of Justice and Family Services & Housing have always been very receptive and open to hearing our opinions on issues and generally accept suggestions or recommendations for change on an individual or systemic issue.

However, I am very disappointed to report that, in my opinion, Manitoba Agriculture and Food has not given appropriate regard or consideration to findings and recommendations arising from two cases where I feel financial compensation is warranted. It is also important to note that an Ombudsman's recommendation is seldom not accepted. Considerable time and effort has been spent meeting with departmental officials and reporting the basis for our findings, yet the issues our office identified have not been adequately explained or addressed in order for us to alter our position. One case is reported in this Annual Report, and the second case will be reported in the 2001 Annual Report.

Speaking engagements

As mentioned earlier, while we would like to conduct a broader public education campaign, we were please to have the opportunity to speak to the following groups on our role and function:

- staff from the Brandon, South Westman and Marquette Regional Health Authorities
- correctional officers at the Brandon Correctional Centre
- supervisors at the Winnipeg Remand Centre
- youth corrections staff at training sessions
- participants in the Legislative Internship Program
- special assistants and executive assistants to Members of the Legislative Assembly
- staff from various Employment and Income Assistance offices
- students at both the University of Winnipeg and University of Manitoba
- the Members of the Legislative Assembly
- the Management Internship Program

Tours or inspections were also conducted through several provincial correctional facilities and mental health and psychiatric facilities.

Several informal meetings were also held with representatives of a number of organizations or government departments to discuss our role and working relationships. We also attended a number of annual general meetings, open houses or other special events relating to departments or agencies that come under our jurisdiction.

Conferences attended

Legislated Ombudsman work is very specialized. In the work we do, it is important to maintain links and communication with other legislated Ombudsman

offices at the national and international level. Attending conferences is one opportunity to network with our small community of colleagues. It provides an opportunity to learn, exchange ideas and keep abreast of current issues. It is amazing how remarkably similar the issues and challenges facing Ombudsman offices are nationally and internationally.

It is also important to attend or participate in conferences that are sponsored by organizations or agencies on issues related to the work we do. Conferences attended in the year 2000 were:

- In June 2000, the Deputy Ombudsman, a Senior Investigator and I attended **The Second Ombudsman Leadership Forum Conference - Our Common Work: Trends and Tools for the Millennium**, held in San Francisco. This was a joint conference of Canadian and American Ombudsman Associations held in conjunction with the annual Canadian Ombudsman Conference.
- In September 2000 the Deputy Ombudsman attended a conference in Winnipeg sponsored by the **Canadian Association for Civilian Oversight of Law Enforcement**. The theme of the conference focussed on the factors that affect the conduct of police officers. Municipal police forces now fall under the Ombudsman's mandate (except for the City of Winnipeg). This was an excellent conference to gain insight and perspective on police issues.
- Every four years a conference is held by the International Ombudsman Association. The Manitoba Office of the Ombudsman is a voting member of the Association. The theme of the conference was "**Balancing The Exercise of Governmental Power And Its Accountability – The Role Of The Ombudsman**". This year it was held in Durban, South Africa, from October 30 to November 3, 2000. Many excellent speakers had much to contribute in terms of inspiration, knowledge and growth of the Ombudsman Institution in democratic societies. Dr. Nelson Mandela, Q.C., spoke about the development of democracy as well as the role of the South African Public Protector, who plays a similar, although much broader role in protecting citizen rights.

In referring to the role of the Public Protector, Dr. Mandela stated:

"Even the most benevolent of governments are made up of people with all the propensities of human failings. The rule of law as we understand it, consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order."

When speaking of independent state institutions which support constitutional democracy, Dr. Mandela went on to say:

"It was to me never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my government and Office and judged against it. One of the first judgements of our Constitutional Court, for example, found that I as President administratively acted in a manner they would not condone. From that judgement my government and I drew reassurance that the ordinary citizens of our country would be protected against abuse, no matter from which quarters it would emanate."

One could only gain from Dr. Mandela's perspective and focus on democracy and human rights that he shared with the participants of this conference.

- In December 2000, a Senior Investigator attended a conference in Winnipeg sponsored by the Community Legal Education Association. The 12th Annual Human Rights Conference theme was **On the Edge - Advancing Human Rights Through the Legal System**.

Other initiatives

- I am also pleased to announce that in August 2000 we launched our bilingual web site, which can be found at www.ombudsman.mb.ca. The web site includes information on *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*; on the oversight role and operational practices of the office; and provides copies or excerpts of some reports and publications produced in the past few years. *The Ombudsman Act* is available on the web site. New features will be added as existing sections are expanded.

While we look forward to and invite comment about the web site, I must stress that complaints and investigations are neither received nor conducted electronically for reasons of confidentiality and security.

- Another important project in our communication strategy was producing two new bilingual brochures about the Office. One brochure on Administrative Accountability refers to investigations conducted under *The Ombudsman Act* and the promotion of fairness, equity and accountability. The Access and Privacy brochure refers to rights and investigations under *The Freedom of Information and Protection of Privacy* (FIPPA) and *The Personal Health Information Act* (PHIA).
- We also hired a student through the Master of Public Administration Co-operative Education Program from May - September. We had the pleasure of working with Jeffrey M. Kraynyk who undertook a research project into the duties, mandate, structure, legislated responsibilities, policies and procedures of selected quasi-judicial boards and administrative tribunals in Manitoba. I am pleased to report that we received excellent cooperation from the boards and tribunals involved.

Statistics

Staff within the Office of the Ombudsman worked on 1,034 complaints this year. We closed 808 complaints and fielded 3,529 telephone enquiries. Information on these concerns and complaints follows in this section of the Annual Report.



Barry Tuckett

Manitoba Ombudsman



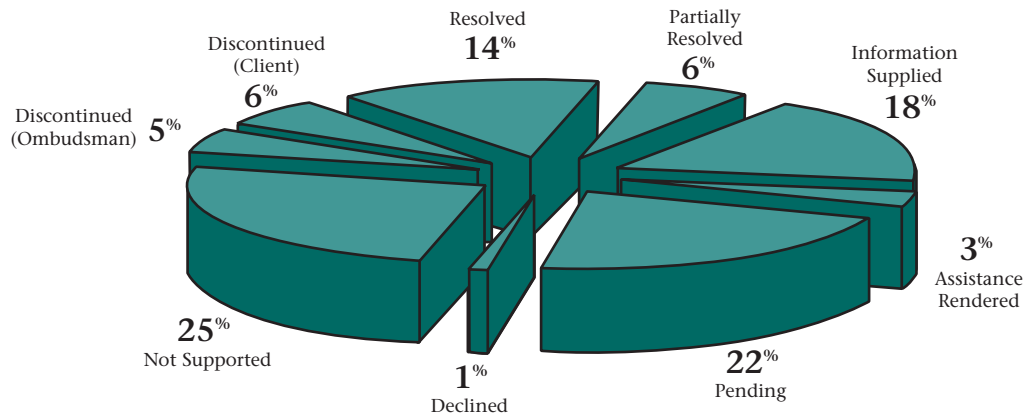
An Overview of Complaints and Enquiries Ombudsman Staff Worked on in 2000

Disposition of Complaint Files

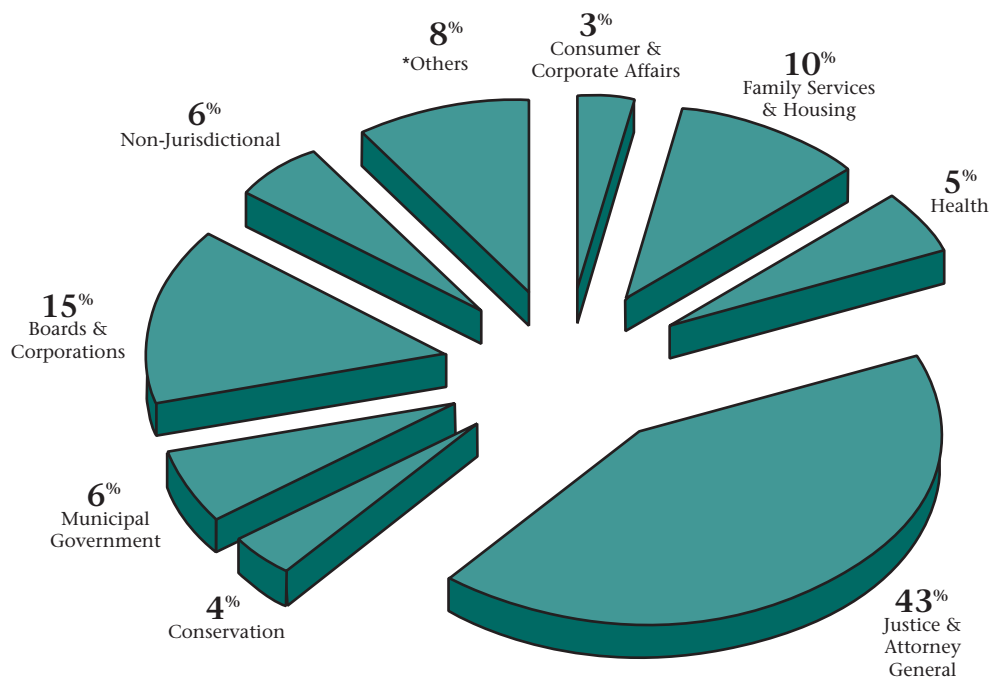
Complaints carried into 2000 from previous years	257
New complaint files opened in 2000	<u>777</u>
Total complaints worked on in 2000	1034
Complaints closed in 2000 from previous years	212
Complaints closed in 2000 that were opened in 2000	<u>596</u>
Total complaints closed in 2000	808
Total complaint files carried over into 2001	226

- Staff within the Office of the Ombudsman worked on 1,034 complaints this year.
- 808 complaint files were closed in 2000.
- 777 new complaint files were opened in 2000. This equates to more than three formal complaints for every day our office was open in 2000.
 - 73% involved provincial departments and agencies
 - 15% involved public corporations and boards
 - 6% involved municipalities
 - 6% were non-jurisdictional
- 77% of the new complaint files received in 2000 were completed by the end of the year.
- 257 complaint cases were brought forward into 2000 from previous years.
- 83% of these complaints were closed by the end of 2000.
- At the close of 2000, the number of complaint cases being carried over into the new year had decreased by 34% over the number of complaints carried over two years ago.
- In addition to complaint files, the Office of the Ombudsman provided service to 3,529 citizens who phoned our office to make enquiries and to tell us their concerns.

Disposition of 1034 Cases



777 New Complaints



*Others consists of any department under 19 complaints



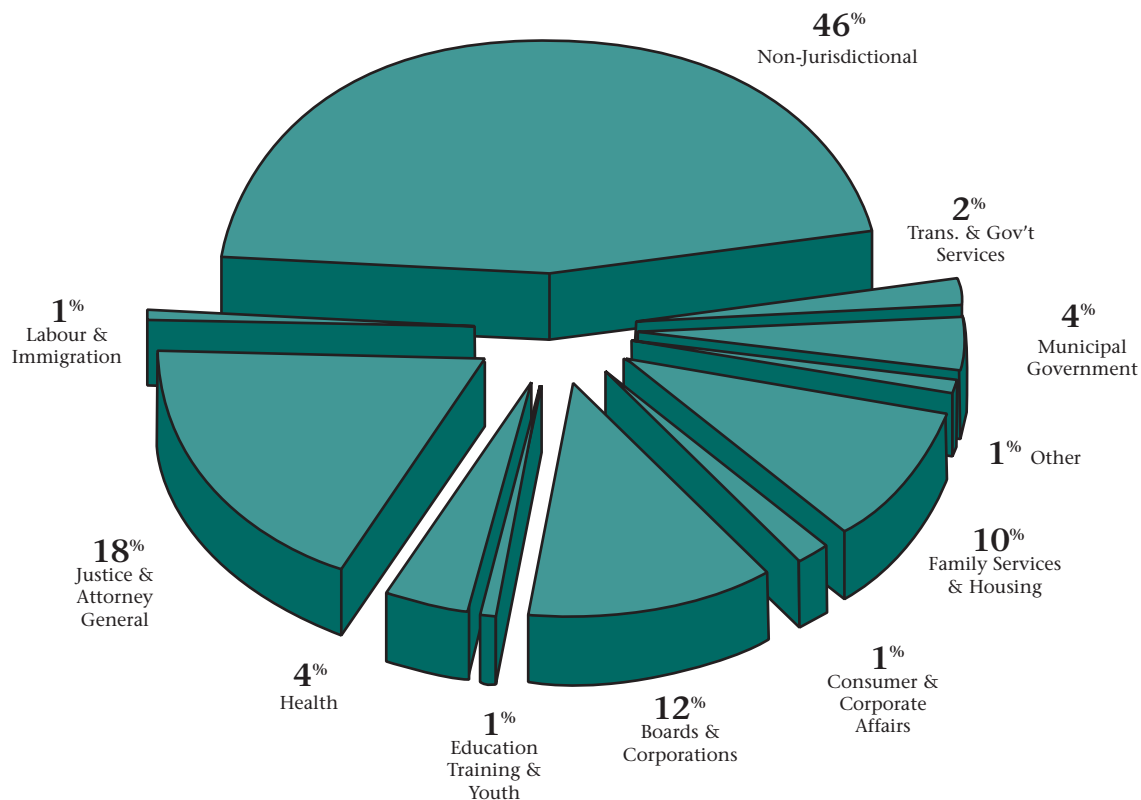
What people PHONED us about in 2000

Many of the calls we receive are from people that are angry and frustrated with the bureaucracy within government. Often the complaints relate to lack of communication.

In many instances, the callers indicate they lack awareness or understanding of why decisions affecting them have been made. They are largely unaware of the internal or external appeal processes available to them. Often, the people who call our office have difficulty navigating government bureaucracy or asserting themselves. Many of the callers also express concern about how they perceive they are being treated.

Often at the intake level, our office provides complainants with the information to help address their questions, explains the process or refers them to the appropriate resource. Informal inquiries may be made at the intake level to obtain clarification directly from departments or agencies. As a result, a quick response can often be provided to callers, alleviating the need for a complaint file to be opened.

The graphic below represents the 3,529 concerns and enquiries received by the Ombudsman in 2000.





PROVINCIAL GOVERNMENT (1,340)

Agriculture & Food (14)	
General	11
Manitoba Crop Insurance Corporation	3
Civil Service Commission (2)	
Conservation(4)	
Consumer & Corporate Affairs (51)	
General	9
Consumers' Bureau	2
Public Utilities Board	1
Residential Tenancies Branch	30
Residential Tenancies Commission	7
Securities Commission	2
Education, Training & Youth (30)	
General	14
Student Financial Assistance	16
Family Services & Housing (351)	
General	3
Child & Family Services	82
Employment & Income Assistance	223
Manitoba Housing Authority	38
Social Services Advisory Committee	5
Finance (4)	
Health (148)	
General	39
Addictions Foundation of Manitoba	2
Health Sciences Centre	2
Mental Health	76
Selkirk Mental Health Centre	5
Regional Health Authorities	24
Intergovernmental Affairs (1)	
Justice & Attorney General (646)	
General	81
Agassiz Youth Centre	11
Dauphin Correctional Institution	4
Brandon Correctional Institution	79
Headingley Correctional Institution	122
Milner Ridge Correctional Institution	20
Portage Correctional Institution	61
The Pas Correctional Institution	42
Winnipeg Remand Centre	57
Maintenance Enforcement	63
Human Rights Commission	17
Legal Aid Manitoba	22
Public Trustee	41
Manitoba Youth Centre	3
Courts	23

Labour & Immigration (25)	
General	16
Employment Standards	5
Manitoba Labour Board	4
Transportation & Government Services (64)	
General	30
Driver & Vehicle Licencing	34

MUNICIPAL GOVERNMENT (141)

BOARDS & CORPORATIONS (434)

Workers Compensation Board (123)	
Corporations and Extra Departmental (311)	
General	1
Manitoba Hydro	42
Manitoba Lotteries Corporation	4
Manitoba Public Insurance	264

NON-JURISDICTIONAL (1,614)

City of Winnipeg	37
Federal Departments & Agencies (157)	
General	73
Customs	3
Employment Insurance	34
RCMP	31
Revenue Canada	16
Private Matters (1,420)	
General	1,279
Centra Gas	10
Consumer	65
Doctors	14
Hospitals	8
Lawyers	13
Schools	31

Total number of telephone calls	3,529
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Complaint Files Carried into 2000 from Previous Years

At the close of 1999, there were 257 complaint cases still pending:

- 198 were carried over from 1999
- 48 originated in 1998
- 9 originated in 1997
- 1 originated in 1996
- 1 originated in 1994

We closed 212 or 83% of these pending cases. Of the 45 complaints still pending:

- 33 originated in 1999
- 10 originated in 1998
- 1 originated in 1997
- 1 originated in 1996

An Overview of the 45 complaint cases pending:

- The file that remains open from 1996 pertains to a case involving Manitoba Agriculture and Food, which I regret to advise has yet to be resolved to my satisfaction. An update on the status of the case is found in the Manitoba Agriculture and Food Case Summaries section of this Annual Report.
- Since 1985 it has been the practice of our office to review inquest notifications that we received from the Office of the Chief Medical Examiner. We determine if the pending inquest involves a government department or agency over which we have jurisdiction. If that is the case, we open a file under the Ombudsman's Own Initiative (OOI) to monitor the results of the inquest. Many of the inquest reports being reviewed are extensive. They can take months or years to be produced and can contain numerous recommendations that we review and monitor.

Five inquest files remain open: 1 from 1997; 2 from 1998; 2 from 1999.

- The balance of the pending files were carried over for a variety of reasons, including:
 - the complexity and longevity of some of the complaints require extensive investigations
 - inability to complete the investigation due to workload and resource issues, and
 - some were being monitored while resolutions were being worked out between the public body and the complainant.



Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Recommendation	Resolved	Pending
Provincial Government	152										
Agriculture	5										
General	3	-	-	-	-	-	-	-	-	-	3
Manitoba Crop Insurance Corp.	2	-	-	-	-	-	1	1	-	-	-
Consumer & Corp. Affairs	12										
General	7	1	-	-	-	2	4	-	-	-	-
Securities Commission	1	-	-	1	-	-	-	-	-	-	-
Residential Tenancies Branch	4	-	-	-	-	-	4	-	-	-	-
Education & Training	6										
General	4	-	-	1	1	-	-	1	-	-	1
Student Financial Assistance	2	-	-	1	-	1	-	-	-	-	-
Environment	3	1									
General	3	1	-	-	-	-	1	-	-	-	1
Family Services	19										
General	7	-	-	1	-	1	4	-	-	1	-
Child & Family Services	8	-	-	-	-	-	2	4	-	1	1
Employment & Income Assistance	4	-	-	-	-	-	2	1	-	-	1
Government Services	3										
General	3	-	-	-	-	-	-	-	-	-	3
Health	11										
General	4	-	-	-	1	-	2	-	-	-	1
Mental Health	3	-	-	-	1	1	-	1	-	-	-
Regional Health Authority	4	-	-	1	-	-	3	-	-	-	-
Highways & Transportation	8										
General	5	-	-	-	1	-	1	-	-	-	3
Driver & Vehicle Licencing	3	-	-	-	-	1	-	-	-	2	-
Housing	3										
Manitoba Housing Authority	3	-	-	-	1	-	1	-	-	1	-
Labour	6										
General	2	-	-	-	-	1	1	-	-	-	-
Employment Standards	2	-	-	-	-	-	-	-	-	1	1
Manitoba Labour Board	2	-	-	-	-	-	1	-	-	-	1
Justice	48										
General	14	-	-	-	3	1	5	2	-	2	1
Agassiz Youth Centre	1	-	-	-	-	-	-	-	-	1	-
Brandon Correctional Institution	13	-	-	-	-	-	7	5	-	1	-
Headingley Correctional Institution	1	-	-	-	-	-	1	-	-	-	-
Portage Correctional Institution	5	-	-	-	-	-	4	-	-	-	1
The Pas Correctional Institution	1	-	-	-	-	-	1	-	-	-	-
Winnipeg Remand Centre	2	-	-	-	-	-	-	1	-	1	-
Maintenance Enforcement	2	-	-	-	-	-	1	-	-	1	-
Human Rights Commission	1	-	-	-	-	-	1	-	-	-	-
Legal Aid Manitoba	3	-	-	-	-	-	3	-	-	-	-
Public Trustee	4	-	-	-	2	1	-	-	-	1	-
Manitoba Youth Centre	1	-	-	-	-	-	-	1	-	-	-
Natural Resources	22										
General	22	-	-	1	1	2	7	2	-	3	6
Northern Affairs	1										
General	1	-	-	-	-	-	1	-	-	-	-
Rural Development	5	2									
General	5	2	-	-	-	-	1	-	-	-	2
Municipal Government	34										
General	34	-	-	1	1	4	9	5	-	5	9
Boards & Corporations	71										
Workers Compensation Board	22	1									
General	22	1	-	-	2	2	6	1	-	3	7
Corp. & Extra Departments	49										
General	1	-	-	-	-	-	-	-	-	1	-
Manitoba Hydro	3	-	-	-	-	1	2	-	-	-	-
Manitoba Public Insurance	45	1	-	1	2	8	22	2	-	6	3
Total	257	6	-	8	16	26	98	27	-	31	45



New Complaint Files Received in 2000 by Category and Disposition

Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Recomen-dation	Resolved	Pending
Provincial Government	565										
Agriculture & Food	18										
General	11	-	1	1	-	-	4	-	-	-	5
Manitoba Crop Insurance Corporation	7	-	1	1	1	-	2	-	-	-	2
Civil Service Commission	3	-	-	-	-	2	-	-	-	-	1
Conservation	28										
General	27	-	2	2	-	1	4	-	-	4	14
Ombudsman's Own Initiative (OOI)	1	-	-	-	1	-	-	-	-	-	-
Consumer & Corporate Affairs	23										
General	4	-	-	1	1	-	1	-	-	-	1
Consumers' Bureau	2	1	-	-	-	-	-	-	-	1	-
Securities Commission	5	-	-	-	-	-	1	-	-	-	4
Residential Tenancies Branch	9	1	-	-	1	2	1	-	-	1	3
Residential Tenancies Commission	3	-	-	1	-	-	-	-	-	-	2
Culture, Heritage & Tourism	1	-	-	-	-	-	-	-	-	-	1
Education, Training & Youth	5										
General	2	-	-	-	-	1	1	-	-	-	-
Student Financial Assistance	3	-	-	-	-	-	-	-	-	1	2
Family Services & Housing	80										
General	6	-	-	-	-	1	3	-	-	1	1
Child & Family Services	18	1	1	4	2	1	3	-	-	1	5
Employment & Income Assistance	42	1	-	3	1	11	14	2	-	10	-
Manitoba Housing Authority	10	1	-	-	-	2	1	1	-	2	3
Social Services Advisory Committee	3	-	-	-	1	-	2	-	-	-	-
Ombudsman's Own Initiative (OOI)	1	-	-	-	-	-	-	-	-	-	1
Finance	3	-	-	-	-	-	1	-	-	2	-
Health	41										
General	15	-	-	2	1	3	2	-	-	2	5
Health Sciences Centre	9	-	-	-	-	4	3	-	-	1	1
Mental Health	7	-	-	2	-	3	1	1	-	-	-
Selkirk Mental Health Centre	2	-	-	-	-	1	1	-	-	-	-
Regional Health Authority	8	-	1	2	-	1	1	-	-	-	3
Intergovernmental Affairs	7	-	-	-	2	1	-	1	-	1	2
Justice & Attorney General	331										
General	31	-	-	3	3	4	5	3	-	1	12
Agassiz Youth Centre	13	-	-	1	1	5	-	2	-	4	-
Brandon Correctional Centre	11	-	-	-	-	8	-	-	-	2	1
Dauphin Correctional Centre	1	-	-	-	-	-	1	-	-	-	-



Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Recomen-dation	Resolved	Pending
Headingley Correctional Centre	89	-	-	6	-	24	13	8	-	22	16
Milner Ridge Correctional Centre	4	-	-	-	-	-	1	-	-	3	-
Portage Correctional Centre	55	-	-	3	-	8	30	3	-	3	8
The Pas Correctional Centre	7	-	-	-	-	-	1	-	-	1	5
Winnipeg Remand Centre	51	-	-	3	1	13	17	2	-	9	6
Maintenance Enforcement	22	1	-	1	1	3	3	2	-	7	4
Human Rights Commission	5	1	-	-	-	-	-	-	-	-	4
Legal Aid Manitoba	9	2	-	1	-	1	1	-	-	1	3
Public Trustee	16	-	-	1	3	1	3	-	-	3	5
Manitoba Youth Centre	10	-	-	2	1	-	3	1	-	3	-
Courts	1	-	-	-	-	1	-	-	-	-	-
Ombudsman's Own Initiative (OOI)	6	-	-	-	1	-	-	-	-	-	5
Labour & Immigration	7										
General	2	-	-	-	-	-	-	-	-	1	1
Employment Standards	1	-	-	-	-	-	1	-	-	-	-
Manitoba Labour Board	4	-	-	-	-	2	1	1	-	-	-
Transportation & Government Services	18										
General	12	-	-	1	1	2	3	-	-	4	1
Driver & Vehicle Licencing	6	-	-	-	-	-	2	-	-	2	2
Municipalities	48	2	1	4	3	7	7	3	-	3	18
Boards & Corporations	114										
Workers Compensation Board	24	3	1	1	4	2	3	-	-	1	9
Corp. & Extra Departmentals	90										
General	2	-	-	-	-	1	1	-	-	-	-
Manitoba Lotteries Corporation	5	-	1	-	1	-	-	1	-	1	1
Manitoba Hydro	11	-	-	1	1	-	3	1	-	4	1
Manitoba Public Insurance	72	5	1	6	6	10	13	2	-	8	21
Non-Jurisdictional	50										
City of Winnipeg	1	-	-	-	-	1	-	-	-	-	-
Federal Departments & Agencies	7										
General	3	-	-	-	-	3	-	-	-	-	-
Employment Insurance	2	-	-	1	-	-	-	-	-	1	-
Revenue Canada	2	-	-	-	-	2	-	-	-	-	-
Private Matters	42										
General	39	3	3	2	-	29	-	-	-	-	2
Courts	1	-	1	-	-	-	-	-	-	-	-
Schools	2	-	-	1	-	1	-	-	-	-	-
Total Complaints	777	22	14	57	38	162	158	34	-	111	181



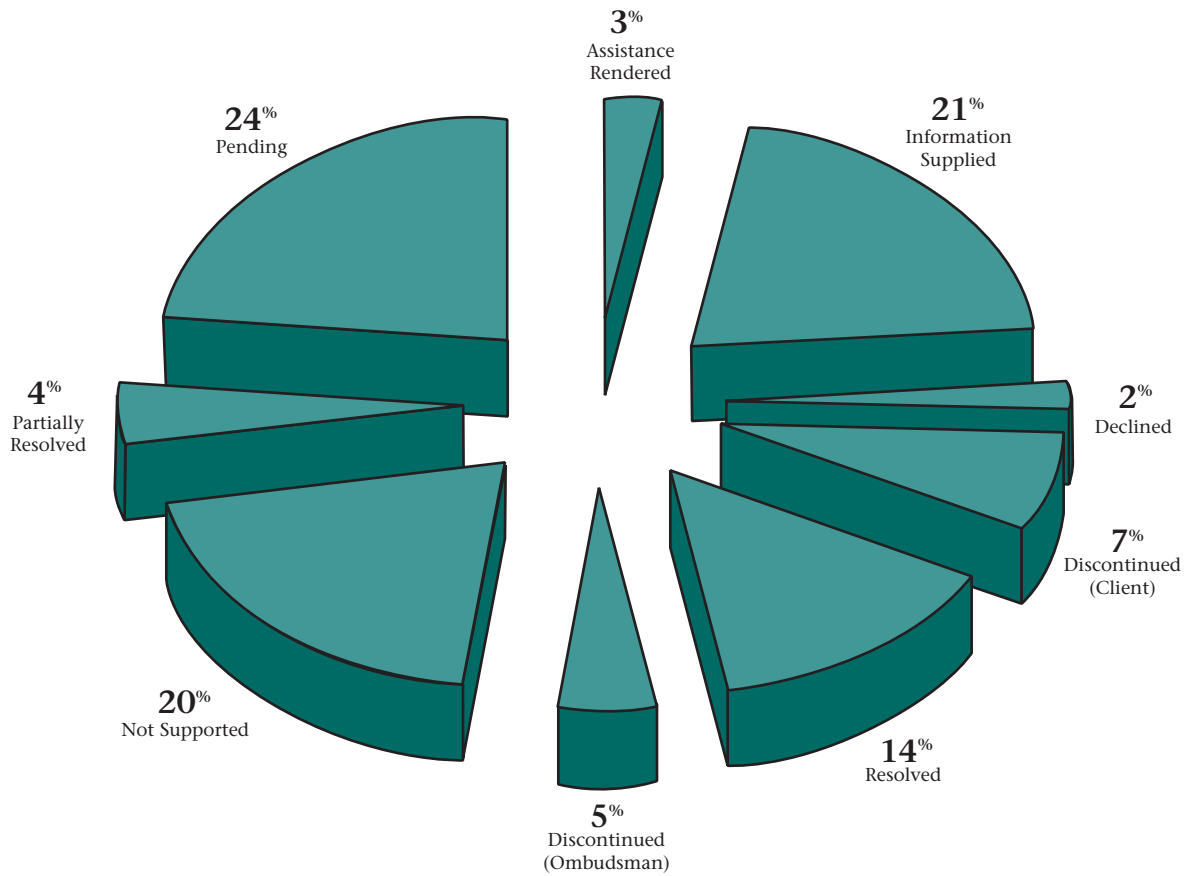
Where do the people making formal complaints in 2000 live?

Amaranth	1	Killarney	4	St. François Xavier	1
Anola	3	Kola	1	St. Jean Baptiste	1
Arborg	4	Leaf Rapids	1	St. Malo	2
Arden	1	Libau	2	St. Norbert	2
Arnes	1	Lorette	6	Ste. Anne	2
Ashern	2	MacGregor	1	Ste. Rose du Lac	2
Beausejour	3	McAuley	2	Steinbach	2
Belair	1	McCreary	1	Stony Mountain	2
Belmont	1	Marquette	1	Swan River	2
Boissevain	2	Matlock	1	Teulon	1
Bowsman	1	Melita	3	The Pas	10
Brandon	42	Miami	1	Thompson	6
Carberry	1	Minitonas	2	Toutes Aides	2
Cardinal	1	Minnedosa	1	Vogar	1
Carlowrie	1	Mitchell	1	Wawanesa	1
Carroll	4	Morden	2	Winkler	1
Churchill	2	Neepawa	2	Winnipeg	393
Coulter	1	Newdale	1	Winnipegosis	1
Crandall	3	Oak Bluff	1	Winnipeg Beach	1
Cross Lake	2	Ochre River	1		
Dauphin	1	Pilot Mound	1	Subtotal	761
Dugald	6	Pine River	1		
East Selkirk	2	Portage la Prairie	63	Alberta	7
East St. Paul	2	Powerview	1	British Columbia	6
Elie	2	Richer	4	Minnesota	1
Eriksdale	2	Riding Mountain	1	Nova Scotia	1
Ethelbert	1	Roblin	4	Ontario	1
Fisher Branch	3	Roland	4		
Flin Flon	1	Rossburn	4	Subtotal	16
Franklin	1	Rossendale	1		
Garland	1	Russell	5	Total	777
Gilbert Plains	2	San Clara	1		
Gimli	1	Selkirk	6		
Gladstone	1	Sherridon	1		
Glenboro	1	Shilo	1		
Grunthal	2	Shoal Lake	2		
Griswold	1	Sifton	1		
Headingley	80	Sprague	1		
Ile des Chênes	3	St. Andrews	1		

Disposition of Files Received in 2000



The graphic below represents the 777 new complaint files received by the Office of the Ombudsman in 2000.



Complaints & Telephone Enquiries Received by Year

Year	Written	Telephone	Total
1970	333	–	333
1971	396	–	396
1972	487	–	487
1973	441	–	441
1974	641	–	641
1975	651	–	651
1976	596	–	596
1977	606	–	606
1978	543	–	543
1979	531	–	531
1980	510	–	510
1981	526	–	526
1982	551	348	899
1983	728	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
2000	777	3529	4306
Total	21136	50319	71455

Selected Overviews of Organizations and Case Summaries

A Note From Manitoba's Ombudsman:

Being included in, or excluded from this section of the Annual Report is not intended to indicate any particular organization's level of commitment to the principles of fairness and equity and administrative accountability.

This section of the Annual Report is intended to profile some of the cases that my staff and I worked on in 2000. These cases are indicative of some of the issues and challenges that people brought forward for our help. They are here to put a human face to the problems that many people face in dealing with government and its agencies as well as some of the challenges that government bodies face in trying to meet the expectations of citizens.

We hope that their inclusion will help to facilitate greater public awareness and discussion about the issues raised by Manitobans in 2000. Furthermore, we hope that it will create more opportunities for positive changes that can help alleviate some of the challenges identified in this section of the report.



Barry E. Tuckett
Manitoba Ombudsman



Provincial Government Case Summaries

152	Complaint Files Carried into 2000
565	New Complaint Files Received in 2000
1,340	Telephone Enquiries Received in 2000
562	Complaint Files Closed in 2000

Complaints against the provincial government account for 59% of the total cases carried over into 2000.

73% of our total number of formal complaints received in 2000 involved the provincial government.

Of the new complaint files we received about the provincial government:

- 59% involved Manitoba Justice and Attorney General
- 14% involved Family Services and Housing
- 7% involved Manitoba Health
- 5% involved Manitoba Conservation
- 4% involved Manitoba Consumer and Corporate Affairs
- 3% involved Manitoba Agriculture and Food
- 3% involved Manitoba Transportation and Government Services
- The remaining 5% of new complaint files were spread amongst the Civil Service Commission; Culture, Heritage and Tourism; Education, Training and Youth; Finance; Intergovernmental Affairs; and Labour and Immigration.

Manitoba Agriculture and Food

- 5 Complaint Files Carried into 2000
- 18 New Complaint Files Received in 2000
- 14 Telephone Enquiries Received in 2000
- 13 Complaint Files Closed in 2000

2000 saw the number of formal complaints about Agriculture and Food more than triple. The complaints received related to various issues, including decisions about the leasing of Crown Land and decisions of the Manitoba Crop Insurance Corporation.

Manitoba Agricultural Credit Corporation

Contradictory Information And Resistance Prevents Farmer From Getting Fair Land Settlement

In 1998, we had completed an investigation that began in 1996 involving a dispute over the assessed value of land between a farmer and the Manitoba Agricultural Credit Corporation. This case could not be resolved informally. As a consequence, a recommendation by the Ombudsman was made to the Minister of Agriculture on January 14, 1999. The recommendation was refused.

A change of government occurred in October 1999. As a result, in December 99, I wrote to the new Minister of Agriculture and informed her that I did not believe that the previous Minister's response adequately and appropriately addressed the recommendation that had been made. I further informed her that, prior to the election, it had been my intention to report the matter to the Lieutenant Governor in Council, as provided for in Section 37(2) of *The Ombudsman Act*. I indicated to the new Minister that this avenue of review had become impractical following the election and requested that further consideration be given to my previous recommendation.

Following discussions of this matter with the Minister, I agreed to once again meet with departmental officials to receive further clarification regarding the Department's position in rejecting my recommendation.

Over the course of 2000 we had meetings and discussions with department officials. The Department provided further information to support its position. This information did not change my position. In my opinion, we have continued to receive contradictory information that has prolonged the resolution of this case. I regret to advise that the case has not been resolved. I do not believe that the Department has shown the proper respect for the opinion and recommendation of the Ombudsman in this matter.

.... TO BE CONTINUED

Manitoba Crop Insurance Corporation

Sowing the Seeds of Discontent

Mr. A contacted our office in October 1999 about a decision by the Manitoba Crop Insurance Corporation to deny coverage under his 1998 contract of insurance and cancel his ongoing coverage.



The Corporation felt that the complainant had falsified information regarding seeding dates on his Seeded Acreage Report, thereby nullifying his agreement for coverage. The complainant had not applied for coverage in 1999 and was denied coverage in 2000, based on the 1998 incident. The complainant felt that the Corporation had made these decisions without raising the allegations directly with him to give him an opportunity to respond.

Mr. A had been provided with an opportunity to raise his concerns at a meeting of the Board of Directors, but felt ill-prepared to argue his case as he had not been given all of the information on which the Corporation had based its decision. As an example, Mr. A was told there were pictures that proved his 1998 crops were not sown by the seeding deadline, however he was never provided an opportunity to review those pictures.

Clarification Obtained

Our office discussed Mr. A's concerns with the Corporation and was provided with factual information in support of the decision to deny his 1998 coverage and cancel his ongoing contract. The Corporation confirmed that, although some of this information was shared with the complainant, other information, including the photographs, was not shared with him.

The Corporation agreed to meet with Mr. A and provide him with access to all of the information used to make the decision, including the photographs. Mr. A attended that meeting and reviewed the materials. He was also invited to submit any further information that he felt relevant to the denial of his 1998 claim and coverage.

Decision Withstands Scrutiny

As the complainant could provide no substantive information or basis to overturn the Corporation's decision, the decision remained unchanged. The complainant does have the right to apply for coverage in future years, but reinstatement will be at the discretion of the Board of Directors.

Legitimate decisions based on accurate and adequate information should be able to withstand the scrutiny of the affected party. Failure to disclose the basis of such decisions can lead to allegations of secrecy. In this case, that allegation was addressed by full disclosure and the legitimacy of the decision was verified. It was a case where justice was first done, and subsequently shown to be done.

Manitoba Conservation

- 22 Complaint Files Carried into 2000**
- 28 New Complaint Files Received in 2000**
 - 4 Telephone Enquiries Received in 2000**
- 30 Complaint Files Closed in 2000**

The number of telephone enquiries concerning Manitoba Conservation dropped this past year. However, the number of formal complaints has remained relatively steady over the past few years.

The case highlighted in this report dealt with the allotment of game hunting areas to licensed outfitters.

Allocating Game Hunting Areas: Balancing Sustainability with Fair Practices



In May 1999, a licenced outfitter who had concerns about a reduction in his allocated game hunting area by Manitoba Conservation contacted our office.

Mr. Z was assigned a designated hunting area in 1987. In April of 1999 the Department advised him that nearly half of his allocated area was going to be reassigned to another outfitter. Mr. Z indicated that if he had been given the opportunity to choose, he would have kept the portion of his region assigned to the new outfitter. As well, he advised that he would have used more tags in his area had he been granted them. Tag allotments had been lowered over previous years and Mr. Z thought this unfair.

The Department's Response

Our office made inquiries of Manitoba Conservation regarding Mr. Z's concerns. The Department provided us with information that seemed to indicate that their dealings with Mr. Z were consistent with their policy governing the allocation of black bear, deer and moose non-resident hunting licences.

The Department had made changes several times to the size of designated hunting areas in the region occupied by Mr. Z. These decisions are discretionary. Adjustments to licence allocation and hunting areas can be made when the Department deems it necessary in order to manage the wildlife resources.

In this case, the Department advised our office that a portion of Mr. Z's Game Hunting Area was reassigned for a number of reasons:

- The other outfitter had purchased an outfitting license that was not previously assigned a Game Hunting Area and had requested that the Department allot an area to him.
- It was reasonable to make efforts to create an area to accommodate this new outfitter.
- Most area allotments are under 10 square miles per licence. Mr. Z's original area allotment was 47 square miles per licence for a total of 235 square miles.
- As Mr. Z's home base was on the west side of his assigned area and the new outfitter lived on the east side, it seemed reasonable to split the area, with Mr. Z retaining the west side and the new outfitter the east side.
- The statistical data showed that the bear populations in the area could support the increase in hunting. Should the population levels drop, the number of licenses allotted will drop to all outfitters in the region, including but not exclusive to Mr. Z and the new outfitter.

Decision Based on Fair Practice

The Department's reasons for reallocating a portion of Mr. Z's hunting area appeared reasonable given the circumstances as presented, and our office could not support Mr. Z's complaint in this regard.

Further, the Department had assigned both Mr. Z and the new outfitter an additional two tags each because the Department's population reviews indicated that their area could sustain an increase in licences. Their previous decision to lower tags at a time when the bear population was found to be decreasing did not

appear to be unreasonable to our office. The complainant was made aware that the allocation policy indicates operators must use at least 90% of their existing tag allocations for the current year before they would qualify for an increase in allocations for the following year. Statistics are kept on a yearly basis to monitor use. In the previous two years, Mr. Z did not use 90% of his tags, therefore, no additional tags were warranted at that time.

In the end, although the decision was upsetting to Mr. Z, our office could find no basis to support the complaint. We found the Department of Conservation's policies and decisions regarding the complaint to be based on fair practices and sustainability.

Manitoba Education, Training and Youth

- 6 Complaint Files Carried into 2000
- 5 New Complaint Files Received in 2000
- 30 Telephone Enquiries Received in 2000
- 8 Complaint Files Closed in 2000

60% of the five formal complaints and more than 50% of the 30 telephone enquiries we received in 2000 related to student financial assistance.

While the concerns and enquiries relating to specific schools and school divisions are outside the jurisdiction of this office, there appeared to be a definite desire from the individuals who contacted our office for an independent and impartial review of their concerns. For example, in addition to the figures noted above, our office also received 31 non-jurisdictional telephone enquiries and 2 written complaints relating to schools.

Parents Frustrated: Schools and School Boards Beyond Ombudsman's Jurisdiction

We often receive calls from parents frustrated in their efforts to try and resolve a situation with a school. They are hopeful that our office can be of assistance. As it stands now, our office cannot get involved in most of these cases as these matters are non-jurisdictional. We can only act as a referral source.

The Ombudsman is authorized to investigate acts, decisions or omissions by departments or agencies of the provincial government concerning matters of administration. The Ombudsman does not have the authority to review the decisions or actions of a school or school division. Trustees are elected to school boards to govern and administer the affairs of a school division within the parameters of *The Public Schools Act* (PSA). The latitude provided to school boards by the PSA recognizes the local decision-making authority of trustees as elected officials. Thus, for the most part, school boards are self-regulating bodies accountable to their electorate. Accordingly, it is our understanding that under Manitoba legislation, the Department of Education has no jurisdiction over administrative matters governed by school boards.

It would appear that when disputes occur between a parent or student and school personnel, initial attempts to resolve the situation are usually made at the school level, usually first with the teacher, then the principal. If concerns persist, the situation may be elevated to the superintendent, and if unresolved at that level, then raised to the Board of Trustees.

Our office would only become involved if there were specific concerns related to the Department of Education and their administrative actions. In most cases this is not the situation. One case in particular involved an individual with concerns about the actions of school division staff. He contacted us after he was unable to resolve those concerns either directly with the school division or with the Department of Education.

The Ombudsman recognizes that schools and school divisions are governed by elected Trustees and that the Department of Education would not become involved in complaints relating to the day to day administrative decisions of these public bodies. We understand that this is similar to the relationship between the Department of Intergovernmental Affairs and Municipal Governments. We believe this was one of the reasons supporting the extension of jurisdiction under *The Ombudsman Act* to municipalities in 1997.

He had requested the department investigate his complaint. The department made enquiries and determined that the complainant had been given an opportunity to raise those complaints. Beyond that, the department was not prepared to intercede on behalf of the complainant. The complainant was not satisfied with the outcome, feeling that his complaints had not been addressed by the division nor investigated by the department.

We had to advise the complainant that the Manitoba Ombudsman had no jurisdiction to investigate his concerns with the division nor did we feel an investigation against the department was warranted. Given the position of the Department of Education in this case, and the absence of jurisdiction in my office, the complainant has no recourse when seeking a non legal review of the administrative actions of the school division.

The lack of jurisdiction is problematic. In this past year, members of the Manitoba Association of Parent Councils Advocacy Project (MAPCAP) requested a meeting with my office. They were very interested in the role and responsibility that the Ombudsman plays within the public school system. Their purpose is to help parent leaders deal more successfully with problems they are facing with the public school system. They were hoping that our office could be of assistance in this regard. MAPCAP is modeled after the British Columbia Confederation of Parent Advisory Councils (BCCPAC). The Ombudsman in British Columbia has jurisdiction over schools and was helpful to the BCCPAC. However, in Manitoba the Ombudsman's role and jurisdiction is different. While we tried to be helpful, we were unable to provide the assistance and level of involvement they were looking for.

Student Financial Assistance Branch

Branch's Lack of Clarity Causes Funding Denial: Ombudsman Helps New Student Win Support

Complaint

Mr. P felt that the Student Social Assistance Branch did not provide adequate information to him. As a result he did not receive the financial assistance he needed to continue his academic career.

Here's The Story

Mr. P moved to Manitoba from British Columbia. He enrolled for university courses on a part-time basis from January until April because he arrived in the province too late to enroll full time. Mr. P did not work during this time period although he was job hunting. He obtained employment and began working in May.

WHO DO SCHOOLS & SCHOOL BOARDS ANSWER TO?



Should the Ombudsman's jurisdiction be expanded to include the authority to review decisions and actions of schools and school divisions?



The Branch's policy stipulates that the period prior to full-time studies is considered a pre-study period. The Branch expects that a student will work in order to supplement the cost of the next full-time study period. Accordingly, Mr. P was expected to make a contribution for the time period from December until he began his full time studies. Mr. P was not provided with this information when he enrolled for courses on a part-time basis, nor was there a clear statement of this requirement in any of the documentation provided to him. (Mr. P noted that this requirement had been clarified in the new information that is now being provided to applicants.)

Given his financial circumstances, he was unable to make the pre-study financial contribution towards his expenses that the Branch expected. His student financial assistance award was less than he had anticipated. He was not able to pay his fees for tuition and books and was facing academic penalty for not paying these fees.

Mr. P appealed to the Branch but his appeal was denied. He then appealed a second time, asking that attention be given to his efforts to find employment when he arrived in the province. He was quite anxious for a response from the Branch, as he was running out of time to register for his courses. Mr. P contacted our office for help in sorting this matter out.

Action Taken

This office contacted the Branch to advise them of Mr. P's concerns and a meeting was arranged. The Appeal Committee decided to grant the tuition amount that was still owed to the university along with the financial assistance award for the next term. They contacted the university to inform them of the revised situation. This allowed Mr. P to meet his registration deadline.

Manitoba Family Services and Housing

- 22 Complaint Files Carried into 2000**
- 80 New Complaint Files Received in 2000**
- 351 Telephone Enquiries Received in 2000**
- 90 Complaint Files Closed in 2000**

Complaints in this area of the Ombudsman's Annual Report relate to the Social Services Advisory Committee (SSAC), Child and Family Services (CFS), Employment and Income Assistance (EIA), Housing and the Manitoba Housing Authority (MHA).

More than 50% of the complaints in this area related to EIA. We find that these complaints tend to need quick responses as people feel their concerns are urgent. Complaints range from delays and denials in receiving assistance to staff conduct issues.

If appropriate, complainants are urged to appeal issues relating to EIA to the SSAC. However, many of the concerns raised with our office get addressed when our office obtains information to clarify the situation or when the situation is brought to the attention of EIA by our office.

In order to address these types of concerns immediately, it is important for our

office to have a good working relationship with the various EIA offices. Therefore, during the past year investigators from our office conducted presentations at various EIA offices to explain our role and function to EIA staff.

Additional Manitoba Family Services and Housing summaries involving youths are contained in the Child and Adolescent Services section of this Annual Report.

Manitoba Housing Authority

MHA Admits Error in Calculating Woman's Rent Fees, Issues Refund After Ombudsman Seeks Clarification

Ms. Q had her own business and was a resident in Manitoba Housing Authority (MHA) accommodations. She was initially paying rent based on her income. When her business income decreased, she requested a rent reduction. Ms. Q thought she was overcharged for rent.

Background Information

Ms. Q was confused when she vacated her accommodations in June 2000 and was given a refund cheque in the amount of \$434.00. She had been provided correspondence in February 2000 that her account had a credit balance of \$1,239.00. She thought that the MHA owed her a larger refund than she had received. Ms. Q attempted to obtain an explanation as to how her monthly rent fees were calculated after she requested a reduction in her rent, but had not been provided an explanation.

What Happened Next

Our office contacted the MHA to find out how Ms. Q's monthly rent fees had been calculated. MHA admitted that there had been several errors in the calculation of Ms. Q's rent fees. As such, Ms. Q's account was recalculated and the appropriate adjustments were made.

While we were reviewing Ms. Q's account records, it was discovered that based on the income reported by Ms. Q in May 2000, she should have paid considerably less rent than she had paid. We were advised that, if Ms. Q could provide MHA income documentation for May 2000 and June 2000, she could possibly be entitled to an additional refund.

Additional Refund

Ms. Q provided MHA with income documentation to support rent fee adjustments. It was found that based on her income, she had overpaid MHA \$427.00, and that amount was refunded to her.

Employment & Income Assistance

Sorting out Funding Shortfall for EIA Client: Time-Consuming, Frustrating due to Lack of Communication Among Jurisdictions

The Complaint

Ms. D, a former social assistance recipient, had not received child support payments when she commenced employment. She advised that when she was on assistance the support payments that were paid by her ex-spouse to the Maintenance Enforcement Program (MEP) were transferred to Employment and Income Assistance (EIA). She explained that it is a common practice for a social assistance recipient to have support payments transferred from the MEP to EIA in order to receive regular assistance from EIA. Ms. D was concerned because when



she became employed and her file was closed with EIA, her support payments from the MEP should have been sent directly to her. Instead they continued to be transferred to EIA. She stated that according to her records she was missing the support payments that would have been made in the month following her termination of EIA benefits. Ms. D had attempted to sort this matter out but had been unsuccessful.

The Details

When our office initially contacted the MEP, we were told that the reason for the delay in discontinuing the transfer of funds to EIA was that EIA did not send termination documentation to them in time. The MEP was advised that Ms. D was adamant that her former spouse made support payments to the MEP and that the money was transferred to EIA for more than four weeks, even though she was no longer on social assistance.

The Excuses Continue

The MEP, upon looking into the matter further, then explained that the reason Ms. D may not have received the four weeks' support payments was that EIA had paid for benefits that had to be deducted from the support payments received. Our office made more inquiries with both Departments. The MEP confirmed that they had received support payments during the period of time in question. We were informed that the situation was complicated because the social assistance office in Ontario had collected the support payments and indicated that Ms. D had received maintenance payments directly from her ex-spouse during this time period.

When EIA was contacted, they indicated that Ms. D had not reported these payments to EIA. EIA reported that they would deduct the unreported amount from the payments received from her former partner and would give her the remaining amount of money.

Not the End of this Saga

Ms. D denied having received any unreported money from her ex-spouse.

Our office continued our discussions with the MEP. The MEP conducted another review of their records. Ms. D's former spouse resided in Ontario and the support payments were sent to the MEP from Ontario. Upon review, the MEP discovered that when Ontario sent their record of the maintenance payments made by Ms. D's ex-spouse, the record had not been reviewed. Once our office made inquiries, the record was reviewed. It was revealed that the cheques that were recorded by the Ontario department as having been sent to Ms. D while she was on social assistance, had actually been sent without sufficient funds. They had been returned to the Ontario department. Therefore, Ms. D had not received the funds.

A Happy Ending

As a result of our inquiries, discussions and persistence, Ms. D received almost \$600.00 in support benefits that she was entitled to receive.

We cannot support all the complaints we receive.

For example:

- A gentleman complained that he was denied a security deposit, money for food and work clothes. It turned out that he had been provided money for those needs. Therefore, the Department decided that he was not entitled to further benefits at this time.



Our office persisted with inquiries to get the facts.



- Another person claimed he was denied money for medication and income assistance for the needs of his wife and six children. Our review revealed that assistance was cut off because he did not report that he had been employed and was presently in an overpayment situation.
- Another individual contacted our office stating that he had not been provided adequate money for rent. When his situation was discussed with EIA, we were informed that he was initially provided adequate funds to support him and his daughter who was living with him. However, at the time he contacted our office, his daughter was no longer living with him. As a result, his benefits were reduced and he was unable to remain in the accommodations he had shared with his child.

Manitoba Health

11	Complaint Files Carried into 2000
41	New Complaint Files Received in 2000
148	Telephone Enquiries Received in 2000
42	Complaint Files Closed in 2000

In 2000, there was a slight decrease in formal complaints. Telephone enquiries increased by more than 20%. A large portion of the complaints our office received related to patient admissions and confinements in mental health facilities. Some of the other issues raised related to home care workers, protocol for hospital discharges and changes in health care coverage.

In addition to responding to specific complaints and inquiries, investigators made presentations on the role and function of our office to staff of a number of Regional Health Authorities. Staff from our office met with the Mental Health Advocate and the Executive Director for the Canadian Mental Health Association to review our jurisdiction and discuss our role relating to patients in mental health centres. Investigators also visited various mental health facilities in the province and attended the annual meeting of the Manitoba Adolescent Treatment Centre.

Improper Confinement Alleged Again

In last year's annual report we profiled a case in which a patient's rights had been violated when she was improperly confined in a hospital psychiatric facility.

This year another patient, Ms. L, contacted our office expressing concern about being improperly admitted and confined at a different mental health facility.

Review conducted

Our office contacted the facility to request copies of *The Mental Health Act* forms relating to her admission and confinement. The documents were sent to us and a review was conducted.

Our review of the documents revealed that a justice of the court issued an *Order for Involuntary Medical Examination* requiring that our complainant be taken to the facility. A physician conducted a medical examination within 24 hours after the *Application for an Order for Involuntary Medical Examination* was completed, as required by *The Mental Health Act*. Following the examination, the physician filled out an *Application by Physician for Involuntary Psychiatric Assessment*. Ms. L



was assessed and it was found that treatment was required. Accordingly, an *Involuntary Admission Certificate* should have been completed unless Ms. L agreed to stay at the facility voluntarily. If Ms. L agreed to stay as a voluntary patient, she should be aware of her status. If she then decided that she did not wish to remain at the facility she could complete a *Request for Discharge*.

In this case, our review of the documentation revealed that Ms. L's documents relating to the application for an involuntary status had lapsed. There was no documentation indicating that she was aware that she had become a voluntary patient. When questioned, the facility indicated that our complainant had agreed to stay. However, they acknowledged there was no documentation to verify this.

Following Ms. L's admission, and prior to her contacting our office, additional forms were completed and Ms. L had been made an involuntary patient.

The situation relating to her initial confinement at the facility was discussed with staff. The facility assured our office that a review had been conducted of the circumstances that caused this oversight to ensure it would not reoccur.

There is no form under *The Mental Health Act* that must be completed in this type of situation. The facility advised that they had developed a voluntary status document that they require patients and staff to sign. The document will ensure that a clear record exists in a patient's file about the status of the patient, and that both the patient and facility are aware of the status. Many facilities have adopted a similar practice.

Obligations under *The Mental Health Act* regarding procedures on admission, confinement and discharge must be adhered to at all times. Mental health patients are vulnerable. Safeguards are in place in *The Mental Health Act* to ensure that their rights are preserved. When confined against their wishes, checks and balances are in place to ensure the appropriateness of the confinement. Appeal routes are available should a patient not agree with the decision of the doctor. People working in the mental health area are aware of this and recognize the importance of patients' rights. We receive calls from mental health patients questioning their admittance and confinement on a regular basis. By reviewing the documents requiring completion under *The Mental Health Act* as well as other documentation that clearly indicates what has transpired, our office can ensure that the appropriate administrative actions have been taken and the rights of mental health patients are being respected.

No one would wish to be improperly confined in a mental health centre.



Checks and balances must always be in place to protect the rights of vulnerable people.

Manitoba Justice and Attorney General

- 48 Complaint Files Carried into 2000
- 331 New Complaint Files Received in 2000
- 646 Telephone Enquiries Received in 2000
- 308 Complaint Files Closed in 2000

In 2000, formal complaints increased by 35 over the previous year. Telephone enquiries increased by 41.

Complaints and enquiries during the past year concerned the Law Enforcement Review Agency, the Legal Aid Services Society, the Maintenance Enforcement Program, Probation Services, Court Services, and the Prosecutions Division.

As in the past, individuals incarcerated in provincial correctional facilities generated most complaints and enquiries related to Manitoba Justice. The complaints from inmates in correctional facilities related mainly to medical treatment, placement in segregation, property issues and staff conduct.

In 2000 Ombudsman staff visited the Brandon Correctional Centre, The Pas Correctional Centre, Portage Correctional Centre, Dauphin Correctional Centre, Milner Ridge Correctional Centre and the Winnipeg Remand Centre. A tour of the new Maximum-Security Unit at Headingley Correctional Centre was conducted shortly after it became operational. Throughout the year my staff attended the institutions to review inmate files and would often do a walk-through of the facility.

Ombudsman staff provided four information sessions for correctional officers at the Brandon Correctional Centre, covering different shifts so that as many staff as possible could attend. They also met with the entire inmate population of the Portage Correctional Centre, in two groups, to discuss the role and function of our office. As well, our office completed the investigative phase of a review of medical services at the Portage Correctional Centre. A presentation on the role and jurisdiction of the Ombudsman was given to Winnipeg Remand Centre supervisors and some of our staff attended an open house at the Centre.

In an effort to clarify our role and jurisdiction, staff from our office also met with staff from the Law Enforcement Review Agency.

During this past year, the Ombudsman received an enquiry from a fellow provincial Ombudsman who was reviewing how the maintenance enforcement program in his province dealt with out-of-province creditors. Their office wanted to know if we had addressed this issue in our province. Such communication between Ombudsmen is important, particularly as it relates to programs which may be subject to interprovincial agreements. This often gives us a broader perspective on an administrative process.

Manitoba Justice and Attorney General case summaries relating to youth are contained in the Child and Adolescent Services section of this Annual Report.



Law Enforcement Review Agency

Complaint Clouded by Jurisdictional Blur but Seeking Justice Does Have a Time Limit

In 1999, Ms. T complained to our office that the Commissioner of the Law Enforcement Review Agency had dismissed a complaint about the conduct of municipal police officers. Ms. T's complaint to the Agency had identified ten concerns. All had been dismissed. Our review of the complaint supported the Commissioner's decision for the most part, but we did have two questions about the statutory basis for the Commissioner's decision.

The First Question

One of the complaints from Ms. T was that a municipal police officer had breached her confidentiality by making comments about her to a third party.

Pursuant to *The Law Enforcement Review Act*, a complaint may be made by a "person who feels aggrieved by a disciplinary default allegedly committed by any member of a police department." With Ms. T's complaint, the Commissioner took the position that he lacked the jurisdiction to investigate such a complaint. He reported to Ms. T that "Comments made to third parties by police officers do not fall within our jurisdiction unless these third parties file a complaint with our office."

We wrote to the Commissioner, telling him that we did not understand why the Agency lacked jurisdiction to investigate the complaint when the alleged comments, although made to a third party, were about Ms. T and she felt aggrieved by them.

The Commissioner subsequently advised us that, upon reflection, he accepted the fact that Ms. T would be the aggrieved party and that third parties would therefore be witnesses. Although the investigation did not change the result for the complainant, as the complaint was dismissed on other grounds, the Commissioner expressed his thanks to us for bringing this matter to his attention as it would allow him to better administer that aspect of the Act.

The Second Question

A second issue raised was the time limit for filing complaints and the Commissioner's authority to extend the limit in certain circumstances.

Under the Act, a person must file a complaint "not later than 30 days after the date of the alleged disciplinary default." However, the Commissioner does have the power to extend the time for filing a complaint for up to six months after the date of the alleged disciplinary default "...where the complainant has no reasonable opportunity to file a complaint within the time period set out...".

In Ms. T's August, 1998 complaint to the Agency, she stated that she learned of an alleged disciplinary default in early August. Her complaint did not disclose the date on which the alleged infraction is supposed to have occurred but she did make reference to some interaction on June 6, 1998 with the police officer who was the subject of her complaint. The Agency had not determined the date on which the alleged infraction had occurred prior to dismissing Ms. T's complaint.

We asked the Commissioner to consider whether or not Ms. T might be in the position of a person having "no reasonable opportunity to file a complaint..." within the 30-day limit because she wasn't aware of the alleged infraction until after that.

In response to our query, the Commissioner acknowledged that if the alleged infraction occurred in the period between 30 days and six months prior to the

complaint, he would have to make a decision on whether or not to exercise discretion and accept the complaint. He undertook to investigate the matter further to determine the date on which the alleged infraction had occurred.

Subsequently, an Agency investigator interviewed the individual who had informed Ms. T in early August of the incident which prompted her complaint. The purpose of the interview was to determine the date of the incident. However, as a result of the interview the Commissioner concluded that it would not be necessary to make a decision on extending the time limit because the information obtained indicated that no disciplinary default had been committed. Ms. T was informed of the Commissioner's decision and her right to have that decision reviewed by the Provincial Court.

Conclusion

In this case the complainant did not achieve the result she desired from the investigation by our office. However, she did raise both a question of statutory interpretation and an issue relating to the Agency's investigative process, both leading to a better understanding of the administration of the statute.

Legal Aid Manitoba

Testing the Boundaries of Doing Business Fairly

The Problem

The complainant was the owner of a business that carried out a specific type of work. Legal Aid had a contract with a business in another province to do the very same kind of work.

The complainant's business had approached Legal Aid on several occasions to contract with them and believed that Legal Aid should be using the services of a Manitoba business. Legal Aid explained that they were happy with their current arrangement and felt that they did not need to disrupt their business arrangement.

We reviewed Legal Aid's ability to enter into contracts of such a nature. Legal Aid questioned our jurisdiction to inquire about their business decisions. We pointed out that a Supreme Court ruling determined that business transactions or decisions can be characterized as matters of administration of government agencies. They are therefore open to review by the provincial Ombudsman.

While Legal Aid receives funds from the provincial consolidated fund, it is a corporate body governed by *The Legal Aid Society Services Act*, and not subject to government policies regarding tendering or expenditures for services contracts.

Nevertheless, we still wanted to ensure that Legal Aid had been fair and reasonable in its decision. Legal Aid explained that at the time they began looking for a service provider to do this very specialized work, their options were limited. The complainant's business first approached Legal Aid with a proposal a few years after Legal Aid had contracted with the competing business. Legal Aid provided the opportunity for our complainant to present their case, and considered their proposal. However, Legal Aid felt they were receiving outstanding service from the current provider. They were satisfied with the relationship in terms of service, quality and cost. They saw no advantage to disrupting this arrangement.

Our Finding

It was our opinion that Legal Aid provided a reasonable basis for its decision to maintain its current arrangement. While the final explanation did not change the situation for the complainant, there has been the benefit of an independent review into the administrative practices of a government agency.





Maintenance Enforcement Program

Oops! MEP Won't Garnish Wages After All

The Story

Mr. X contacted our office expressing concerns regarding the actions of the Manitoba Maintenance Enforcement Program (MEP). He said that he had two children from a former marriage. Following a divorce, his ex-wife was granted custody of the children. By virtue of a Court Order in 1990, he was required to pay child support in the amount of \$50 per child per month while he was unemployed. This amount was increased to \$150 per month per child on obtaining employment.

According to Mr. X, he was unemployed from April 1998 to the middle of April 1999. During that time, he received employment and income assistance benefits but the benefits were terminated around the first week of January 1999. He stated that he did not obtain employment until April 1999. He explained that he received a letter from the MEP advising that he was in arrears.

Mr. X felt that the amount to be paid in child support should be \$50 per month per child for the period that he was unemployed between April 1998 and April 1999. The MEP had informed him that the reduced amount was a one-time benefit, which expired when he obtained employment, and MEP interpreted the Order to mean that he was to continue paying \$150 per month per child and calculated his arrears accordingly. He felt that the MEP had misinterpreted the Court Order. Mr. X was also concerned that MEP had obtained a garnishment order against him in light of the arrears, and notices had been sent to him advising that his driver's licence would also be suspended.

What Happened

In reviewing this matter we wrote to the MEP and advised them of the concerns raised by Mr. X. The MEP decided to obtain a legal opinion on this matter. Their legal opinion stated that Mr. X was expected to pay \$50 per month per child for any period or month that he is unemployed. As a result, the MEP agreed to reassess Mr. X's account. They agreed to provide Mr. X with an adjustment to his account for periods where he was unemployed, and asked him to provide the appropriate documentation to substantiate this claim.

Account Credited

Mr. X provided the relevant information. His account was subsequently adjusted, resulting in a credit.



Public Trustee

Gentleman's Agreement Honoured

The Story

Mr. E advised that he had a gentleman's agreement with Mr. H to maintain a house and an adjacent vacant lot. He explained that Mr. H's sister owned the properties and was under the care of the Public Trustee. He indicated that he had helped Mr. H's sister out over the years, and advised that he had agreed with Mr. H to provide the services requested for \$50 per week. Mr. H had informed him that he would receive his money when his sister's properties were sold.

Mr. H passed away while his sister was still under the jurisdiction of the Public Trustee and the properties had not been sold. Mr. E contacted the Public Trustee's office and asked for reimbursement for the work completed. According to Mr. E, the Public Trustee would not reimburse him.

Settlement Negotiated

Our office contacted the Public Trustee and asked for clarification on this matter. We were advised that the situation had been reviewed and it was felt that Mr. E should be compensated for providing services to Ms. H's properties. They felt that Mr. E's claim was somewhat high and negotiated a settlement with him directly. Mr. E advised that he was appreciative of our office's assistance in this matter. He felt that he would not have received any money from the Public Trustee had our office not become involved.

Adult Corrections

The Mail Must Go Through...

In the 1999 Annual Report, the Ombudsman commented on the fact that the Brandon Correctional Centre had discontinued its practice of requiring inmates to open privileged mail in front of corrections staff, a practice contrary to the provisions of the Correctional Services Regulation. At the time of the last report, staff of the Centre had been advised of the change by way of memorandum and the change had been reflected in the Inmate Handbook. As well, the Centre was in the process of revamping the Standing Orders to reflect the requirements of the Regulation. In 2000, the Centre confirmed that the Standing Orders had been changed.

In 2000, we worked on two more complaints involving this issue.

Portage Correctional Centre

Centre Feels They Can Set Their Own Mail Rules Contrary to Regulation

An inmate alleged that correctional staff at the Portage Correctional Centre had opened a letter from a lawyer. Under the Correctional Services Regulation, mail to and from a number of sources is considered privileged. These include Members of the Legislative Assembly, Members of Parliament, the Manitoba Human Rights Commission, the Ombudsman, and legal counsel.

The Superintendent of the Portage Correctional Centre advised that their practice was to open mail to or from legal counsel in the presence of the inmate, to inspect for contraband such as money from families sent to inmates through counsel; mail addressed to lawyers but intended for third parties; incoming mail in "legal envelopes" but actually from third parties; and witness statements mailed in by lawyers.

The matter was raised with the Director of Operations for Adult Corrections. The Director concurred with the Superintendent's view that the practice was based on legitimate concerns and, moreover, felt provisions in the Correctional Services Regulation permitting the search and seizure of inmate property in certain circumstances justified the practice. We noted, however, that such searches were permitted only "...in accordance with the Regulation."

It was also suggested that opening mail to or from legal counsel to search for contraband did not violate privilege, as the privilege related to the content of the correspondence and, as long as the correspondence was not read, the privilege was not violated. We noted that the Regulation clearly stated that privileged communication could not be "...inspected or read..." by correctional staff. The Director conceded that under the practice followed at the Portage Correctional Centre, privileged mail, while not being read, was being inspected.



The exchange of disclosure material being used to intimidate witnesses had already been addressed through a protocol worked out with the Bar Association. The other concerns had not been raised with either the Bar Association or the Law Society. I could not conclude that the Department had exhausted all efforts to address their concerns.

The Department was unable to provide us with any documentation that could be used to ascertain the magnitude of the problem they felt justified their position.

Moreover, the Correctional Services Regulation itself contains provisions sufficient to address some of the concerns. It permits the withholding of incoming privileged mail, if it is suspect, until verifying authenticity. Similarly, outgoing mail purportedly addressed to a privileged source but incorrectly addressed may be held until the address is corrected.

Despite the many concerns raised and factors considered, the conclusion to this issue was based on the simple fact that the practice of inspecting inmate mail to or from legal counsel is contrary to the Regulation.

Upon being advised of our finding, the Acting Director of Adult Corrections notified all provincial correctional facilities that privileged material, including legal correspondence, was not to be read or inspected. In his notice he points out that the Regulations have the force of law and supersede any divisional policy or institutional Standing Orders.

Finally, success ... or maybe not!

The directive regarding privileged mail was sent to all correctional facilities in October 2000. However, approximately 10 days after this directive was sent out, we received another complaint on the same issue from an inmate at the Headingley Correctional Centre. This specific complaint follows below.

Headingley Correctional Centre

Staff Member Apologizes for Opening Privileged Mail

The Complaint


Mr. D, an inmate at Headingley Correctional Centre (HCC), contacted our office in October 2000 and advised that a letter our office had sent to him was opened in his presence by a correctional officer (CO). He said that prior to opening the letter he informed the CO that correspondence from the Ombudsman's Office was not to be opened. Despite this advice, the CO went ahead and opened the letter. Mr. D understood from earlier discussions with our staff that correspondence from us is privileged and should not be opened by anyone from the institution. He contacted us to file a complaint.

The Law

As noted in the previous case, *The Correctional Services Act* clearly states that written material sent between an inmate and the Ombudsman for the province may not be inspected or read by a correctional officer.

The Outcome

Following a review by the superintendent, he advised that the CO had acknowledged opening the correspondence from our office in the presence of the inmate. The unit manager discussed the situation with the CO and the CO was advised of the inappropriateness of the action. We were informed that the CO apologized and indicated that it would not happen again. We were also informed that at the next team meeting, the unit manager would be reviewing the handling of privileged and confidential information to be sure that all staff were aware of the legal requirements in this regard.



*Regulations supercede
Divisional policy or insti-
tutional Standing Orders.*



An Apology

Following our review of the situation, we discussed the matter with Mr. D, who confirmed that the CO had apologized to him.

A Final Postscript About Privileged Correspondence

We followed up as to why this last complaint would have happened again, especially after a directive had been issued to all provincial correctional facilities. We were advised that there can be a delay while new directives or orders filter their way through the system to the unit managers and correctional staff. The timing between the directive being issued and receipt of the new complaint was about ten days. We felt it did not indicate a disregard for the directive. Nevertheless, maintaining privacy of privileged communication is a right that must be respected and protected.

We have not received any further complaints on this issue and hope that this recurring problem is now signed, sealed and delivered ...with a directive.



Privacy of privileged communication is a right to be respected.

Headingley Correctional Centre

Requests for Dental Services Ignored How Much Pain is Acceptable for Inmate to Endure?

His Story

Mr. M contacted our office on a Friday indicating that about a month and a half ago, he had seen the dentist who repaired one tooth and advised that he planned to see him again. Mr. M did not see the dentist again despite numerous requests regarding problems with his teeth. At the time Mr. M contacted our office, he had been taking pain medication but it was not alleviating the pain. He was concerned that his tooth had become infected.

What Happened

In discussing the matter with a nurse from the medical unit, we were informed that no additional medication could be provided until the dentist saw Mr. M. We were advised that this would possibly be in four days, if the dentist had time available. The nurse explained that the reason some inmates are not seen by the dentist immediately is that the dentist works on a contract basis and is only at Headingley Correctional Centre (HCC) for a limited time. Situations are prioritized and the dentist will see those requiring immediate attention first, and others as time allows.

We contacted the superintendent and advised him of the concern raised by Mr. M. The superintendent instructed the nurses to increase the inmate's medication over the weekend and arrange an appointment for Mr. M to see the dentist as soon as possible. Mr. M saw the dentist on Monday and was given antibiotics to clear up the infection. He was also given a different painkiller and was told by the dentist that once the infection cleared, his tooth would be pulled.





Headingley Correctional Centre

Where are the Nurses?

The Complaint

Our office received a letter signed by 29 inmates from Headingley Correctional Centre (HCC) complaining of neglect by the nursing staff. They wrote that nurses from the medical unit were not doing rounds to their location. They were concerned that they were unable to discuss their medical issues with the nurses, and if medication was requested, there seemed to be delays in delivering the pills, causing unnecessary suffering. The inmates informed our office that this had been occurring for the past six weeks. They requested assistance from our office to address their concerns.

The Outcome

Following our inquiries, management from HCC met and decided that the nurses should make rounds at least once a day. There appeared to be confusion between the nurses and correctional staff as to who would pick up empty medication packs and deliver them to the medical unit. The process at HCC was that, once the medical unit received the empty packs, they would reissue medication to the inmates as necessary. The superintendent issued a directive clarifying that correctional staff would pick up empty medication packs and deliver them to the medical unit. The nurses would reissue medication as necessary. With the process clearer, it was hoped that inmates would receive medication more quickly. These actions appeared to resolve the inmates' concerns.



Winnipeg Remand Centre

Inmate Does Overtime in a Restraint Chair

The Situation

Mr. L, an inmate at the Winnipeg Remand Centre (WRC), contacted our office as he felt that he had been unfairly confined to an Emergency Restraint Chair for over nine hours. Mr. L advised that he was not allowed to go to the washroom and felt that staff deliberately kept him confined in the Chair, even after he had calmed down.

Our Initial Action

We reviewed the file documentation relating to Mr. L's situation as well as the WRC's Post Orders on the *Use of Restraint Chair* and the Adult Corrections policy on *Restraint and Riot Control Equipment*. The Post Orders state that staff will check an inmate in the Chair every 20 minutes at a minimum and those inmates will only be in the Chair for a maximum of two hours. The Orders also indicated that use of the Chair would be in compliance with the manufacturer's instructions.

Mr. L's story was confirmed by the WRC. However, there did not appear to be any documentation regarding the checks that were to take place every 20 minutes or the rationale for keeping him in the chair that long.

The WRC's Position

The WRC advised that Mr. L was a continual management problem and his behavior had not changed for some hours after his placement in the chair. They advised that after our office contacted them, they amended their Post Order. The expectation now was that inmates would be checked every 30 minutes to coincide with their punch clock rounds (instead of the original 20-minute checks). They also added a provision whereby a shift operations manager may authorize

an inmate to remain in the chair for longer than two hours. The authorization would also require a medical assessment and documentation. They acknowledged that the situation with Mr. L had not complied with their Post Order but indicated that it was a practice that staff had adopted. They felt that the situation had been addressed with the change in policy.

Further Action by our Office

The situation was reviewed with Adult Correctional Services staff to clarify the provincial policy which would be in effect for all provincial correctional facilities.

Adult Correctional Services Position

Upon review of the matter, the Executive Director of Adult Correctional Services was satisfied that the amended order of the WRC clearly spells out the guidelines for the exceptional circumstances where the Chair may be used for an extended period. They also felt that the documentation requirements were clearly outlined. They indicated that the need for continued use of the Chair was based on persisting threats of violence and self-harm activity and that the 30-minute checks were to ensure release at the earliest opportunity after the inmate showed de-escalation.



Inmate left in restraint chair seven hours longer than manufacturer's instructions dictate.

Upon Further Review

My office had concerns regarding this policy. The manufacturer's instructions for the Chair were reviewed. We noted that the instructions included a caution that detainees should not be left in the Chair for more than two hours at a time and that detainees must be monitored and provided with medical treatment if needed. The instructions also issued a warning that use of the Chair without first reading and understanding the instructions could cause injury or death.

The situation was discussed further with Adult Correctional Services staff. They were also concerned about the manufacturer's instructions and the apparent deviation in their policy. They indicated that the policy for use of the Chair should be consistent in all the institutions in the province. Given the manufacturer's instructions, they felt that the matter should be discussed at a superintendent's meeting. It was decided that contact would be made with the manufacturer as well as other jurisdictions to determine the best course of action.

At the time of writing this report we are awaiting the outcome of their further review of this matter.

Important Note

A similar problem was identified in 2000 within Youth Corrections wherein a youth had been confined in a restraint chair for more than two hours. That particular incident was immediately addressed with Youth Corrections. However, we expect the policy review mentioned in this Adult Corrections section of our Annual Report will address the problem right across the entire Justice Correctional System.

Winnipeg Remand Centre

Making Its Own Rules on Segregation

An inmate at the Winnipeg Remand Centre (WRC) felt he had been unfairly placed in segregation without a discipline board hearing. He advised that he was in 24-hour lockup and his mattress and blanket were removed every morning at 7:00 AM and returned in the evening at 11:00 PM.

The WRC said that Mr. K had a very high security risk rating. He was considered hostile, with very negative and unpredictable behavior, and thus was placed in administrative segregation.



Our Review

Our office reviewed the file documentation relating to Mr. K as well as the WRC Standing Orders on the Segregation of Inmates. It was clear from our review of the Standing Orders that the unit manager or designated unit staff may request the Inmate Management Committee to consider placing an inmate in administrative segregation. This request must be accompanied by an Internal Transfer Form, which clearly outlines a specific rationale for an administrative segregation placement. There did not appear to be any documentation in this regard.

It was also our understanding from reviewing the Adult Correctional Services policy on the *Isolation of Inmates* that inmates placed in administrative segregation retain the same rights and privileges as the general population except under special conditions. Accordingly, it would appear that Mr. K should have been allowed 30 minutes out-of-cell exercise or fresh air, normal bedding and a mattress, as well as various other conditions provided for in administrative segregation.

It appeared to our office that Mr. K was, in fact, in segregation with punitive conditions, without the benefit of a discipline board hearing.

The Outcome

The situation was discussed with the superintendent of the WRC. Upon review, we were advised that the WRC was not following their policy. They advised that certain inmates that they housed were characterized as requiring special handling. These inmates were considered on 'red flag status' and would be treated similarly to what Mr. K had described. The superintendent felt that given the practice at the WRC, they should develop a policy which would clearly identify 'red flag status' inmates and the special handling procedures and conditions that would apply to them. He also indicated that specific documentation would be required in these circumstances.

The Policy

The policy was developed and forwarded to our office. Upon review, our office had questions as to whether the new Standing Orders followed the guidelines set out in *The Correctional Services Act*, the new Regulation and the Adult Corrections Policy on the Isolation of Inmates.

The Outcome

Our questions were discussed with the superintendent and we were advised that the Standing Orders would be reviewed and changed to ensure consistency with the legislated requirements. At the time of writing this report, we are awaiting a copy of the revision of the new Standing Orders.

Winnipeg Remand Centre

Persuasive Isolation

The Situation

Mr. G, an inmate at the Winnipeg Remand Centre (WRC), contacted our office expressing concern regarding his placement at the WRC. Mr. G advised that he had refused a transfer to Headingley Correctional Centre (HCC) and was then placed in segregation. He also informed our office that canteen and visiting privileges had been suspended. He felt that the actions of staff in this regard had been unfair.

The WRC advised us that if an inmate refuses a transfer, they are routinely placed in segregation to convince the inmate it would be in his best interest to accept



Standing Orders ignored.



the move. We understood that inmates were not allowed visitors or canteen privileges as subtle pressure for them to cooperate and accept the transfer. The WRC indicated that Mr. G would remain in that location for 30 days.

Our Investigation

Upon review of the policies that would govern this type of situation, it was our understanding that as long as staff of Adult Corrections had a good reason, they could place an individual anywhere in the system. Inmates were either transferred against their will or institutionally charged for not obeying an order and then subject to discipline board sanctions. In this case, it would appear Mr. G had been placed in administrative segregation at the WRC with punitive sanctions without the benefit of a discipline board. As such, this did not appear to be done according to policy. The situation was discussed with the Superintendent.

Outcome

Upon further review the superintendent advised that this situation should not have occurred. He confirmed that the process was to charge inmates or transfer them. He stated that he would advise all staff of the appropriate way to handle these situations and it should not happen again.

Manitoba Transportation and Government Services

- 11 **Complaint Files Carried into 2000**
- 18 **New Complaint Files Received in 2000**
- 64 **Telephone Enquiries Received in 2000**
- 20 **Complaint Files Closed in 2000**

Our office responded to a range of concerns involving Manitoba Transportation and Government Services that reflected the array of responsibilities under this one Department. Some of the concerns involved the Driver and Vehicle Licencing Division. We also reviewed concerns about the effect of highway construction on a business and damage from highway equipment to private property. We investigated concerns related to procedures followed by the Emergency Measures Organization.

Our office also received complaints regarding decisions made in areas such as driver's licences and government purchasing. Medical holds on licences and their effects were the subjects of several complaints to the Ombudsman's office in 2000. Our office received good cooperation from the Department in obtaining information to assist our complainants.

Driver and Vehicle Licencing Division

Medical Reports Required for Drivers with Depression: Invasion of Privacy or Ensuring Safety on the Road?

The Issue

In March 2000, Mr. S wrote to our office and advised that in 1993 he was accepted into a driving course and a medical report was required. At the time, he was taking psychiatric medication and this was reported to Medical Records, Driver



and Vehicle Licencing Division (DVLD). Mr. S held a class 1.0 licence to operate all classes of vehicles up to semi-trailer trucks, excluding motorcycles and mopeds.

Since 1993, he had been required to submit an annual psychiatric report to DVLD. He acknowledged the need for a medical report but felt that the psychiatric report which he had recently submitted was an invasion of his privacy and not justified. He stated that he was no longer on medication.

A few days after writing to us, and before we made any inquiries on the matter, he received a letter from Medical Records. He was advised that the latest psychiatric report had been reviewed and no further psychiatric report was required. Although this resolved his concern from a practical perspective, he contacted us again, requesting that we proceed with an investigation. He believed he had been unjustly required to submit psychiatric reports over the years.

The Rationale

We proceeded to make inquiries with DVLD to obtain information to assist in responding to the concern raised. DVLD advised that for several years prior to 1993, Mr. S had submitted periodic general medical reports in support of his class 1.0 licence. When the medical report was filed in 1993 indicating Mr. S had depression controlled with medication, the policy for holders of class 1.0 driver's licences diagnosed with depression indicated these drivers must also file periodic psychiatric reports. These reports could be completed by a family physician.

Mr. S had been required to submit periodic psychiatric reports between August 1994 and March 2000. On receipt of the March 2000 psychiatric report, which indicated that Mr. S continued to be stable and no longer required medication, it was determined that no further psychiatric report was required.

We were also advised that in 1999, the DVLD had reviewed its medical report policy. The current policy indicates that psychiatric reports are no longer required for class 1.0 drivers diagnosed with depression, providing physicians indicate on the general medical report that they are supportive of driving and no driving restrictions are recommended. It was noted that class 1.0 drivers with major depression are assessed individually.

In consideration of all the information received, we could not conclude that DVLD's previous actions and requests of Mr. S were unreasonable. However, we also felt that the revised policy demonstrated sensitivity to the condition of depression and its degree of severity. It should also help ensure consistency in processing files of drivers diagnosed with depression and eliminate additional costs to drivers by not requesting second opinions of psychiatrists when the information provided by the family physician will suffice.

Child and Adolescent Services

Provincial Government Cases Involving Children and Youth

“Children and youth do not always have a strong voice in a world of adults. This section of the Ombudsman’s Annual Report brings together a cross-section of some of the complaints, concerns and enquiries we received that involved children and youth. The goal is to ensure that the needs and concerns of children and youth are addressed by the people that have the power to bring about positive changes to their lives.”

Barry Tuckett
Manitoba Ombudsman

What is the Ombudsman’s Child and Adolescent Services?

In recognition that children and youth are among the most vulnerable members of our society, the Office of the Ombudsman has maintained an enhanced role in issues affecting young Manitobans since 1985.

Not to be confused with the very important role played by Manitoba’s Children’s Advocate, the Office has an activity defined as Child and Adolescent Services. We investigate complaints involving children, monitor provincial agencies and institutions that deal with children, and work to make the general public and children in particular aware that we are here to assist them.

An Overview of Our Activities Involving Children and Youth in 2000

While our office investigates hundreds of complaints every year from the citizens of Manitoba, we continue to have a special interest in the issues that affect the children and youth in the province.

We continued to be participants in the staff-training program at the Agassiz Youth Centre (AYC) and the Manitoba Youth Centre (MYC). Staff routinely attend these training sessions to provide information on our role and jurisdiction and how our office handles complaints.

We toured the Milner Ridge Correctional Centre (MRCC). It houses Ridge Point, the youth facility. We met with youth at this facility as well as youth at the MYC and the AYC. We try to meet with the youth in correctional facilities on at least an annual basis to explain our role and jurisdiction and discuss any concerns the residents have. We also toured the Lakewood Unit at AYC and attended the AYC open house.

This year an Advocate from the Saskatchewan Children’s Advocate Office spent two days with staff from my office that deal with youth in correctional facilities. Issues of common interest were discussed as well as the different approaches our respective offices take to address concerns that are raised with us. In Saskatchewan, the Children’s Advocate has jurisdiction to investigate the complaints of youth in correctional facilities. In Manitoba, the Ombudsman has the mandate to investigate these complaints.

Staff from our office attended the Open House of the Manitoba Children’s Advocate, the Manitoba Adolescent Treatment Centre’s Annual Meeting and the Ian Logan Memorial Award Presentation. Staff also attended the Community Legal Education Association’s (CLEA) 12th Annual Human Rights Conference

entitled "On the Edge - Advancing Human Rights Through the Legal System", including a workshop entitled "Youth Rights: A Time to Listen". A spokesperson from Save the Children Canada and local youth advocates addressed current issues and legal concerns.

A meeting was held with the Acting Executive Director of Child Protection and Support Services, Family Services and Housing. We discussed our respective roles as well as the cases that our office was investigating involving Child and Family Services with a view to expediting and facilitating responses.

In addition, we met with staff from the Manitoba Association of Parent Councils Advocacy Project to discuss the Ombudsman's role and jurisdiction in education. More information on this can be found under the Education and Training section of this Annual Report.

Complaints and Enquiries Involving Children and Youth in 2000

In 2000, we received a total of 57 formal complaints that involved a child or youth relating to the following departments or agencies:

- Justice and Attorney General - 28
- Family Services and Housing - 22
- MPI - 2
- Schools - 2
- Conservation - 1
- Health - 1
- Private - 1

Our office also received 160 telephone inquiries involving departments and agencies:

- Family Services and Housing - 91
- Schools - 31
- Justice and Attorney General - 21
- Health - 5
- Private Matters - 5
- MPI - 3
- Education, Training and Youth - 1
- Federal Departments and Agencies - 1
- Finance - 1
- Municipal Government - 1

Complaints and Enquiries Involving Justice/Youth Corrections

In 2000, our office responded to 21 telephone inquiries related to youth and Manitoba Justice and Attorney General. We investigated 28 complaints involving youth and the justice system.

Agassiz Youth Centre - 13
Manitoba Youth Centre - 10
Portage Correctional Centre - 1
Probation Services - 1
Sheriff's Office - 1
Ombudsman's Own Initiative - 2

The types of complaints we received in 2000 alleged that a youth was placed in a restraint chair for more hours than policy allows (information relevant to this complaint can be found under the Manitoba Justice and Attorney General section); inappropriate behaviour of a staff person; unfair treatment by staff; unfair detention; being locked in isolation without fresh air; denial of eyeglasses; not being allowed hair cuts; a lack of heat; and a poor quality and quantity of food was being served.

The files on Ombudsman's Own Initiative related to the holding of youth in correctional facilities under *The Intoxicated Persons Detention Act*, and the use of the maximum-security facility at Agassiz Youth Centre.

Justice - Ombudsman's Own Initiative

Youth Safety Issues - Will Change Come Fast Enough?

This is the third consecutive year that we have reported on the safety issues surrounding the placement of intoxicated youths in the Manitoba Youth Centre.

The issue arose from a complaint to the Ombudsman from a youth who was upset following a stay at the Manitoba Youth Centre (MYC). She had been treated at a hospital for drug use. Following her discharge, she 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 Service, however, nothing was resolved. There seemed to be consensus that an alternative solution was necessary. The Ombudsman felt that MYC was not the right place for youth detoxification. Following our inquiries, Corrections again decided to initiate discussions with the City of Winnipeg and Winnipeg Police Service.

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 expressing our concerns. 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 is our understanding that the continued placement at MYC of youth that have been detained under the IPDA often places 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. At the time of writing the 1999 Annual Report, we had been advised that representatives from the Departments of Justice, Health and Family



*How many years before a
needed change is made?*

Services had met and were working together to locate an alternate placement for youths being held under the IPDA.

The update

In 2000 representatives from the Departments of Justice, Health and Family Services and Housing requested proposals from organizations that would be willing to take on the responsibility for holding youth detained under the IPDA.



Manitoba Youth Centre

12 Residents Unite in Asking Ombudsman's Help Regarding a Staff Member

A Group Complaint

Our office received a letter signed by 12 residents of a cottage at the Manitoba Youth Centre (MYC). The concerns raised by the residents related to the conduct of a particular staff person who, in their opinion, was not responding to their requests for assistance and displayed what they considered inappropriate behavior when dealing with residents.

What Happened

We made the concerns known to the superintendent of the MYC without identifying the residents who brought the matter to our attention. The superintendent was advised that the concerns came from a number of residents from a specific cottage.

In reviewing this matter, the supervisor of the cottage conducted personal interviews with each resident of the cottage in question. There were 17 residents at the time that the review was conducted. Twelve indicated that they were very comfortable with the unit and had no major complaints or concerns with any of the staff. A few residents voiced some concerns with a part-time staff person, and these concerns were addressed by the MYC. Several residents raised similar concerns regarding the particular staff person that had been identified in the correspondence to our office. An example of one of the issues was that this particular staff person was spending too much time on the phone and on the computer. As a result, the residents felt they were not receiving appropriate assistance when requested.

The superintendent and supervisor met with the staff person and discussed the issues that had been raised. The staff person acknowledged that a fair amount of time was spent on the phone, but the calls were predominantly work-related. It was decided to try to limit or balance time on the computer and phone while the staff person was on duty. With respect to comments that residents found inappropriate and offensive, the staff person advised that it was an attempt to use humour to handle the situation; however, given the feelings of the residents, it would stop.

What Happened Next

In order to determine that the conduct issues had indeed been addressed, we met individually with a number of the residents from the cottage. None of the residents who had originally sent the letter to our office were residing in that cottage at the time of our interviews. Most had been released. Others had been sent to different institutions.

During our interviews with the residents, we took the opportunity to review our role and function to see if they had any issues or concerns they wished to discuss. We noted that there appeared to be a similar theme from some of the residents regarding the conduct of this same staff person. We advised the deputy

superintendent of the concerns raised by these residents. The MYC was surprised as they had thought that the situation had been addressed. They agreed to monitor the situation and address any further concerns that the residents raised.

At the time of writing this Annual Report, no further concerns have been raised with our office or the management at the MYC with respect to this particular staff person.

Agassiz Youth Centre

Staff Member's Behavior Goes Too Far

The Complaint

Nine residents of Agassiz Youth Centre (AYC) sent a letter of complaint to our office about the behavior of a staff member.

The residents complained that a staff member told them that if they did not change, they would end up in an adult institution getting raped. They found this comment offensive. In addition, the youth complained that this staff member was eating food that was to be distributed to the residents.

What Happened

Our office made inquiries with AYC. The residents' concerns were discussed with the staff person. With respect to the comment, the staff person advised such comments would cease. It was also acknowledged that some food had been taken and that this would also stop. AYC changed the procedure for food distribution and was monitoring the situation.

We spoke with one of the residents who was the spokesperson for our group of complainants. He confirmed that the staff member had changed and the improper behavior had ceased. It appeared that the situation had been addressed.

Agassiz Youth Centre

Who's Listening?

The Complaint

Several residents at Agassiz Youth Centre (AYC) had complained to staff that their rooms were cold and the shower water was either too cold or too hot. They felt their concerns had been ignored, because two weeks after raising their concern, the situation had not improved. One of the residents called our office for assistance in getting the situation addressed.

What Happened

Our office contacted the deputy superintendent. We were told that he had not heard about these problems but he would check out the situation.

We were later advised that residents who felt cold in the mornings were provided with sweatshirts to wear. Government Services took temperature samples and they were found to be within an acceptable temperature range. Staff had also suggested to residents that they should run the water prior to entering the shower because the pipes tend to cool down.



Young people confined in institutions often have no control over big or small issues.

Without someone to intervene, some issues might not be resolved.



The Situation Continues

Our office contacted our complainant to find out if the situation had improved at all. He indicated that it was warmer in their rooms but the water temperature for bathing was still either too hot or too cold.

Resolution

We contacted the deputy once again. It was confirmed that water temperatures were still very inconsistent. AYC called a plumber who rectified the situation by replacing the mixing valve in the water pipes. This action seemed to resolve the problem as our complainants advised that the temperature of the water had improved.



Agassiz Youth Centre

Centre Doesn't See the Problem Clearly: No Eye Exam Until Ombudsman Intervenes

A youth at Agassiz Youth Centre (AYC) complained that he was having trouble reading because he needed eyeglasses.

This is the Story

A resident of AYC contacted our office stating that he had informed the staff that he could not see well, particularly to read and needed eyeglasses. He felt that staff were ignoring his concern. The resident indicated that he was expected to attend classes at AYC, but he had difficulty doing schoolwork because of his eye-sight problem. He asked for our assistance to obtain eyeglasses.

Here's What Happened

Our office contacted AYC and advised of the concerns raised. The AYC's policies state that each new resident is to receive an eye examination. If the vision assessment is worse than 20/30 in both eyes, AYC will procure glasses for the youth. In this case, the resident's eyes had not been examined. Once this was discovered the resident's eyes were examined and it was determined that he required eyeglasses. The resident was sent to an optometrist and eyeglasses were obtained.



Sheriff's Office

A Degrading Entrance at Courthouse

We received a letter from Ms. B on behalf of her son. One of her concerns dealt directly with the manner in which her juvenile son was escorted from Agassiz Youth Centre (AYC) to court.

Background Information

Ms. B advised that her son was incarcerated at AYC in Portage la Prairie. He was scheduled to appear in court in Selkirk, Manitoba. When transporting the youth to the court facility, Sheriff's Officers placed the youth in handcuffs and leg irons. On arrival at the courthouse in Selkirk, the youth was escorted through the main entrance of the building, down the corridor and into the courtroom. Ms. B advised that a side entrance was usually used to gain admittance to the building. She felt that her son had been treated with disrespect and questioned if the treatment he received was because he is native.

The Department's Response

We wrote to the Executive Director of Regional Courts and advised of the concerns raised by Ms. B. We were informed that it is the policy of the Department

to escort all youth and adult offenders in handcuffs and leg irons. We were also advised that the officers who escorted the young offender had not made the trip to Selkirk previously. When they arrived at the courthouse they found that the designated sheriff/police parking stalls at the side of the building were occupied. These parking stalls are located next to the holding cell door for easy access to a secure, non-public, area. The sheriff's officers then drove to the opposite side of the building and used the main entrance of the facility in order to gain access to the courtroom.

The Executive Director further advised that the officers involved were informed that they should park behind the occupied stalls should the designated stalls be occupied in future. The Executive Director also stated that in reviewing this situation, he felt that Ms. B's concern that the decision to use the main entrance to the building had no relation to the fact that her son is native.

An Apology

In reviewing this matter with Ms. B, she advised that she was still upset and felt an apology was in order. Her feelings were discussed with the Executive Director. The executive director felt that while there was no evidence to suggest wrongdoing or mistreatment in this case, he was prepared to offer an apology for the inconvenience it might have caused to the family. The Department provided a letter extending apologies while advising that the situation had been reviewed with staff and in the future all escorts would be made at the side entrance of the building.

Complaints and Enquiries Involving Family Services and Housing

In 2000 my office responded to 91 telephone enquiries pertaining to youth and formally investigated 22 files. Most of these concerns related to Child and Family Services. The types of complaints we received related to concerns regarding either the intervention or lack of intervention by child and family services agencies, concerns related to the entering of a name on the Child Abuse Registry and belongings not being returned to a youth when she was released from care. As well, we opened three files to monitor inquests where a foster child died in care. One Ombudsman Own Initiative file was opened to review access and parental rights when children are in care under a voluntary placement agreement and the services that are available from agencies to non-custodial parents.

Winnipeg Child and Family Services

Should a Family Member Have to Go to Court Before Receiving Fair Treatment by Child and Family Services?

The Initial Complaint

Ms. L, a Family Advocate for Mr. B contacted our office in 1998 expressing concerns relating to the conduct of Ms. C, a former social worker of Winnipeg Child and Family Services Agency. Essentially, both Ms. L and Mr. B felt the social worker's actions in Mr. B's case had been inappropriate. They felt the social worker had taken it upon herself to champion Ms. B's case without objectively looking at the facts.

They had detailed their concerns and questions to our office. They felt that the situation should be addressed by the Agency. They raised their concerns with both the Agency and the Child and Family Support Branch. This led to an independent review of the case. They felt that all the issues were not addressed in the



report on the independent review, and asked our office's assistance to obtain further clarification prior to a court hearing on this matter.

Our Action

Our office was able to obtain clarification from the Agency and respond to some of their questions and issues. However, their concern involving Ms. C's conduct remained unresolved. The Agency advised that they were comfortable with how Ms. C had conducted herself in this matter. The Agency felt that because a lawyer represented Mr. B, his concerns regarding Ms. C could be addressed through the court hearing. Our review in this regard was limited as the matter was before the court.

Court Decision

In May 1999 the Judge addressed the concerns relating to Ms. C in the judgement, stating:

(106) In her role as Director of Abuse, Ms. [C] was to give objective opinions and advice. As a counsellor to Ms. [B] she saw her role to be on her "side", as an advocate. These roles became so blurred that I find Ms. [C] lost her objectivity. She wrote public reports on behalf of the Agency about Ms. [B]'s parenting ability which were submitted to the court in the domestic proceedings which were at variance with her own concerns as to Ms. [B]'s mental stability. Privately, in the Progress Report, she noted the possibility that the child was at risk of being parentified, exactly the child's state at the time of apprehension. However, Ms.[C] said she did not mention these concerns in her reports to the parties' counsel because she did not feel that Ms. [B]'s mental health was an issue in custody/access proceedings, a statement I find incredible. Ms. [C]'s actions appear to me as if she wanted to be judge, jury and executioner of the relationship between Mr. [B] and his daughter. Her actions exacerbated an equivocal situation. Her analysis of the facts of this case demonstrates a form of tunnel vision which does not reflect well on the Agency and its reputation. I place no reliance on any of her evidence.

(107) In domestic proceedings, courts frequently receive information from Child and Family Services and it is normally presumed to be objective and reliable. I am most concerned that the information placed before the court in the various motions where Ms.[C], as Director of Abuse Services, swore affidavits was not objective and was at variance with material facts.

A Follow-up Complaint

Following the Justice's judgement, Ms. L and Mr. B contacted our office. They felt there had been a lack of internal accountability in this matter and wanted to ensure that allegations relating to conduct, misrepresentation and untruthfulness were dealt with prior to a family enduring a court proceeding. They advised that internal accountability could perhaps resolve issues that become costly financially and emotionally when addressed through the court process. They did not want anyone else to have to experience this type of situation.

We again contacted the Agency and the Branch. We inquired as to what action had been taken, or was being contemplated, in light of the recent judgement.

The Outcome

Following our further inquiries, a second independent review was commissioned by the Agency regarding the case.

The review was completed in March 2000. In principle, both the Agency and the Branch were in agreement with the report and supported the findings and recommendations with respect to staffing, policy and procedures. The following is a list of the recommendations from the Independent Review and the Branch's response.

Organizational lines need to be clear, distinct and without confusion. Everyone needs to know precisely who they are responsible to and what they are accountable for.

In January 1998, the Agency initiated a strategic planning process leading to the reorganization of staff to reflect a functional management structure for the delivery of key services. In September 1999, the Agency moved staff into their new positions and began implementation of a program-based service delivery model. The process to transfer cases was completed by the end of the calendar year. Program functions, service configuration, staffing allocations and function locations were defined as part of the Agency's Program Management Reorganization Plan. This has resulted in greater accountability and communication between Agency supervisory staff and senior management.

Job descriptions need to be clear and well defined, regardless of what role is played within the organization and the workload must be realistically manageable. With specific reference to the Director of Abuse Services position, that position needs to stand alone in aspects of coordination, consulting, training and supervision of appropriately designated staff.

The Agency has reviewed its job descriptions and has designated an Assistant Program Manager who oversees Abuse Intake Services, including two Abuse Unit Supervisors. As well, an Abuse Coordinator has been designated to oversee abuse investigations within open cases. Managers and supervisors are to manage and supervise and do not provide direct service.

A Human Resources component has been developed to oversee personnel issues and to ensure that performance evaluations are conducted on an annual basis.

The reviewers strongly recommend a more balanced approach in the assessment of all parts of the family. Support and treatment opportunities should be made available for all parts of the family, where allegations are made, with or without custody access issues being raised. The alleged offender and his/her network need to be involved in this process. The Winnipeg Child and Family Services Southwest Area, Procedures for Abuse Investigations, appears to be well on the road towards this balanced approach. The Acting Abuse Coordinator for Winnipeg Child and Family Services, indicates that this is now the case for Winnipeg Child and Family Services and the Agency is to be highly commended for moving ahead with this practice.

As indicated in the report, the Agency is striving towards a more balanced approach in supporting and treating all parts of the family. The Branch remains cognizant of the fact that there often remains a conflict of interest when Agency staff are expected to be supportive while assuming an investigative role during abuse investigations.

In an ideal world, a block of training will be provided to all social workers doing this difficult work prior to the assumption of their duties. If there are no standards regarding guidelines around interviewing children, it should be given immediate attention. Good practice should dictate the process of an investigation, not the legal system. The Competency-Based Training modules for social workers in Child and Family Services is to be highly commended and efforts should be made to bolster and enhance those modules and to move them to the very front end of the service system.

Competency-Based Training is available and mandatory for all Agency staff. Currently there are no provincial standards regarding interviewing of children in



It appeared to the Judge that the worker wanted to be "judge, jury and executioner..."



Clear organizational lines and job descriptions imperative

abuse investigations. However, through the reorganization of the Branch into agency relations teams, we are better able to assist agencies in identifying gaps in service and in developing appropriate training and agency standards in relation to abuse investigations.

The Agency has two specialized abuse units that either conduct the abuse investigation or work in cooperation with the family social worker to complete the investigation.

Current training needs could change as a result of the decision by the government of Manitoba to sign Memorandums of Understanding with the Manitoba Metis Federation and First Nations to create a Metis Agency and expand the jurisdiction of First Nation Agencies. These changes will result in concurrent jurisdiction in all areas of the provinces with the exception of First Nations communities. This new direction will result in a review of current hiring practices and training needs of social workers.

Supervision/consultation needs to be given priority and provided at least bi-weekly in situations that again are manageable. By this we mean there are not too many workers to supervise (preferably 7 at the most) and where caseload size for each individual worker is manageable. Supervision must be of content and quality that allows for true case discussion and room for challenges, as well as support. The concept of supervision needs to be applied at every level within the organization.

Agencies are currently funded according to a formula based on days care which allows for a supervisor to staff ratio of one to six. However, there is no requirement that agencies adhere to these ratios. The Branch is currently reviewing this method of funding. Case management standards more clearly define the role and expectations of supervisors in child and family services delivery.

There are competency-based training modules available for supervisors.

Monetary resources need to be available to provide parent aides where it applies, and to assist parents struggling to support themselves when they are required to have supervised visits with their children.

The Agency receives grant funding for family support services. The Agency is required to prioritize the funds for in-home support services.

The MOUs will also have an impact on how agencies are currently being funded.

The dynamic tension between the central role of the Agency needs to continually be explored - - that is, the emphasis placed on family centered practice versus a child protection function. The best interests of the child is served by timely resolution and having the most natural interactions with family members.

In recent years, there has been a greater emphasis to move towards family-centered practice with the introduction of a number of family-based programs (e.g., family group conferencing, family preservation and reunification, family mediation).

The case at hand is a good illustration of a world that is much larger and beyond the control of a Child and Family Services agency. It appeared that the Child and Family Services agency was insular in their management of this case. Consideration should be given to encourage outside consultation and supervision in regard to cases that are polarized to the point that this one was.



A more balanced approach in the assessment of all parts of the family recommended.

In this specific case, we are aware that the former management staff of the Agency refused the assistance of those who attempted to influence the decision making of its staff. Child Protection and Support Services staff recognize that they could have been involved in providing direction to Agency staff.

In January 1998, current management personnel at the Agency requested the Director of Child Welfare to conduct a review into the Agency's management of this case in accordance with Section 4(2) of The Child and Family Services Act. The review was completed by Dr. [Q] in May 1998.

The Agency should develop some policy and guidelines regarding abuse allegations that arise in the midst of a custody/access dispute. It is an extremely difficult area that challenges not only the Child Welfare system, but also others, including law enforcement, health and the judiciary. Consultation with the other disciplines might provide further insight and support in managing these difficult cases. We hope that this case is unique in the length of time that the child was in limbo. The Child and Family Services agency should consider assuming a leadership role in cases that are dragging in the Court system.

*In June 1998, the Branch forwarded **Protocols Between Child and Family Service Agencies and Family Conciliation** to all Child and Family Service and Family Conciliation staff. These protocols were designed to assist in protection cases where there are custody disputes. As the implementation of case management standards proceed, the status and utility of existing protocols will be reviewed.*

That the Agency explores the veracity of the polygraph test for use in these situations. Consultation with the Winnipeg Police Services or an organization such as the Association for the Treatment of Sexual Abuses would provide useful information.

While the Branch is aware that polygraph tests are not admissible in court, we are of the opinion that consideration should be given to the results in abuse investigations.

The father's advocate was seen as relentless in her demands on his behalf. From the interviews conducted, this contact made life very difficult for Agency staff associated with the case. At the same time, this advocate raised some very real issues that needed to be addressed, and the reviewers share the opinion that such a person needs to be heard and listened to, albeit within respectful limits and parameters. Not to do so, only worsens the conflict.

We agree that a client has a right to advocacy. However, the role of an advocate must be respectful and function within the bounds of confidentiality as legislated in The Child and Family Services Act.

That senior administration at Winnipeg Child and Family Services meet with Ms. [C].

We were advised that senior administration of the Agency did meet with Ms. C to discuss her role in this specific case.

We were also informed that with the Agency's reorganization from four separate entities to a more unified structure, there is a greater commitment by management to ensure that supervisors are held accountable for their decisions and that the role of the supervisor is more clearly defined.

The Agency advised that as a result of both the Agency's reorganization and the Court Judgement regarding the conduct of Ms. C. In the case, the Agency has implemented changes to its internal accountability structure.



The Agency should develop some policy and guidelines regarding abuse allegations that arise in the midst of a custody/access dispute.

Those changes include:

1. *Each staff person has a job description that should mitigate against confusion or blurring of roles.*
2. *Supervisors and Managers do not provide direct service.*
3. *Every staff person has a supervisor and every staff person is actively supervised. Annual performance appraisals have been implemented.*
4. *Abuse investigations on new cases are conducted by Abuse Unit social workers. The Abuse Coordinators provide consultation to Case Managers on open cases. It is now the Agency's practice to interview the alleged abuser as part of the abuse investigation.*
5. *Every permanent order recommendation is reviewed at the Assistant Program Manager level. The specifics of the care plan are considered by an inter-program Permanency Planning Committee.*
6. *The Agency has a clearly articulated complaint process inclusive of an appeal process. The Agency has also established a review process through the Quality Assurance, Research and Planning Program to review complaints followed up by Agency staff, the Children's Advocate, the Ombudsman, the Province, etc. This review determines the need for policy and/or practice revisions to our complaint process and the need for further staff training. The results of these reviews are reported to the Program and Planning sub-committee of the Board.*

In reviewing the action taken by the Agency and the Branch since the Court Judgement, our office was satisfied that action had been taken to address the concerns relating to Ms. C. It appeared that there had been reasonable steps taken to address the concerns that had been raised in this matter. Accordingly, Ms. L and Mr. B were advised of the action taken and our file was closed.

At the time of writing this report, we were advised that Mr. B received a financial settlement from the Agency.

Municipal Government Case Summaries



34	Complaint Files Carried into 2000
48	New Complaint Files Received in 2000
141	Telephone Enquiries Received in 2000
55	Complaint Files Closed in 2000

Although complaints received about municipal issues represented just over 6% of the total formal complaints our office received in 2000, the types of complaints were often complex and difficult to resolve. In many cases, our investigation of complaints involving municipalities made it necessary for us to contact provincial government departments such as Transportation & Government Services, Conservation and Intergovernmental Affairs. The reason for this is because complaints tend to cross jurisdictions.

We have found that some municipalities are still apprehensive about our office's involvement in municipal administration. The response and degree of cooperation from municipalities have varied widely.



Drainage - Municipal and Provincial Cooperation is the Key to Success

The Problem

Mrs. A contacted our office in early 1999 complaining that the Cooks Creek Conservation District was responsible for flooding of the residential property she had shared with her husband for two decades. She provided photographs of their garden, which she explained sat underwater for several days during periods of heavy rainfall.

Mrs. A explained that the flooding problems had begun over the last few years with an increase in residential development in the R.M. of Springfield. She provided our office with a copy of an engineering firm's report to the R.M. that recommended increasing the capacity of an existing ditch and replacing a culvert with a larger one in order to reduce the probability of flooding to Ms A's and adjacent properties. However, our complainant advised that the engineer's recommendations had not been acted upon and she had been unable to get a satisfactory explanation.

The Story

The Conservation District was formed in 1979 as a partnership between the Province and the municipalities to carry out prudent land and water management. Our office made enquiries with Manitoba Intergovernmental Affairs (formerly Rural Development) regarding the engineering report and recommendations provided by Mrs. A.

In a letter from Manitoba Intergovernmental Affairs, we were advised:

- improving drainage for Mrs. A would create problems for downstream residents
- the Conservation District agreed to maintain the drains and to clear obstructions such as beaver dams, vegetation, etc.
- downstream residents have already indicated that they do not want additional water to be drained onto their properties
- the Conservation District has an obligation to balance the impact and the cost of works being proposed to the downstream residents.

Unfortunately, this information was not sufficient to address Mrs. A's concerns or to explain why the engineer's recommendations were not accepted. We went to the area to view the property and the ditches. It was apparent that the ditch in front of Mrs. A's property was not as deep and was much more overgrown with vegetation than the ditch north of her property.

Based on our review of legislation in effect at that time, our office was aware that Manitoba Conservation held the authority to issue drainage licenses. As part of our investigation of this complaint, we made enquiries with Manitoba Conservation regarding any possible involvement the Department might have with this issue. We provided background information to the Department and were advised that they would be looking into the matter.

In the fall of 1999, the Department advised that a site inspection had taken place and discussions were being held between the RM of Springfield and Manitoba Conservation staff.

In December 1999, the Department advised our office that it had made certain recommendations to the R.M. to address the flooding of personal property. The Department emphasized that implementation of the recommendations would

greatly reduce the potential for future flooding but not eliminate the problem completely. In a letter to the Reeve of the R.M. of Springfield, the Regional Water Manager, Manitoba Conservation wrote: "... *The investigation revealed that numerous residences have been constructed in the area, however the drainage system is designed for agricultural standards, not residential standards....*"

The Department made specific recommendations to the RM outlining the need for new culvert placements and drain/dyke construction. In his letter, the Regional Water Manager also stated: "... *It is also recommended that a study be initiated between representatives from the municipality, Cook's Creek Conservation District and myself to address future housing development in the area and develop a water management plan for the study area....*"

The Department further clarified that certain drains fall under the jurisdiction of the Province and others under municipalities. However, responsibility for issuing drainage licences lies with the province. We were advised that conservation districts were established to deal with drainage, as well as other issues, in municipalities. Occasionally, there had been disputes over who had responsibility for certain drains. A provincial drain is the responsibility of the Province. However, if a drain is not a provincial drain, Manitoba Conservation can make recommendations about ways to deal with an associated problem. That is what happened in this situation.

The Solution

In January 2000, when we contacted Manitoba Intergovernmental Affairs, we were advised that the Conservation District still had concerns about the impact of upgrading drainage on downstream residents. However, meetings with the RM and Manitoba Conservation resulted in agreement that the Conservation District would apply for a Water Rights licence, discuss the changes with downstream residents and undertake drainage works as recommended by Manitoba Conservation.

We also contacted the RM of Springfield to clarify whether it had accepted the recommendations made by Manitoba Conservation. We were provided with a copy of a letter from the Manager of Cooks Creek Conservation District to Manitoba Conservation in which they made application for a licence to construct drainage works as recommended by the department. The R.M. also provided a copy of the Resolution of Council confirming its concurrence with the drainage works.

Mrs. A was advised by Manitoba Conservation in February 2000 that the conservation district had agreed to undertake specific drainage works in the summer of 2000.

Finally, Resolution

In September 2000, Mrs. A contacted our office and advised that the drainage work had been done and the ditches had been cleaned out. She indicated the work had made a significant difference to the amount of water and the length of time it stayed on their property following a period of heavy rainfall in the area. She was pleased with the result and called to express her appreciation for our involvement in the eventual resolution of her flooding problem.

We were pleased that the various levels of government were able to reach agreement on the action required to address the flooding concern raised by our complainant and other neighboring property owners. We credit Manitoba Conservation staff for responding to Mrs. A's concerns and working with the R.M. of Springfield and the Cook's Creek Conservation District in finding a mutually acceptable way of addressing the problem.



When Nothing Less Than Perfection Will Do

Many drainage complaints our office dealt with involved farmland. This complaint involved a drainage situation in the middle of a small town.

A citizen contacted us advising that his garden was being flooded as a result of water draining onto it from a recently constructed complex. He provided pictures showing his garden completely under water after a summer rainfall. As gardening was a significant part of this individual's life, he was quite unhappy about the situation. He felt that the water should be redirected away from his property and that the owners of the complex should be made to relandscape to accommodate this.

We went to the site and looked at the property. The complex appeared to be causing runoff into his garden, drowning out his plants.

A Proposed Solution

We reviewed the matter with the Chief Administrative Officer for the town, who confirmed that the town was aware of the concerns the complainant had about the drainage problem. The town surveyed the area. Results indicated that there was a six-inch discrepancy in the elevations that, if rectified, would probably allow the water to run away more quickly from the property.

The town noted that there was a building on the other side of the complainant's property which was also draining water onto his garden as their eaves faced in his direction. The town offered to approach the complex about changing the eave direction. They offered to haul in more dirt to raise the level of the complainant's garden to rectify the six-inch elevation discrepancy so that the water would not pool but run away.

Proposal Rejected

The complainant refused all of these offers. The complainant argued that by building up his garden, the lot on the other side of his property would flood. He acknowledged that the adjacent lot was vacant, but felt that it might be problematic in the future for whoever purchased the property.

This concern was raised with the town. They undertook to deal with whatever further drainage issues might arise as a result of their works to rectify the complainant's problem. They also advised that should elevating the garden level not resolve the complainant's concerns, they would continue to work on solutions until the drainage issue was resolved, including cleaning out a trench behind the complainant's property and putting in additional culverts, if necessary.

We felt that there was no real reason why the complainant should not cooperate with the attempts to resolve the drainage issue by elevating the level of his garden with more topsoil. They had undertaken to perform more works if this action did not rectify the problem.

We advised the complainant that we could no longer support his complaint. Our office felt that the proposals made by the town to rectify this problem were immidentally reasonable and fair. Unfortunately, in some circumstances no matter what solution is offered, individuals may not be satisfied.

A Citizen's Request for Documents Yields Surprise Fee: Municipality Adds it to Her Property Tax Bill When She Won't Pay

The Story

In 1999, Ms. X contacted our office. She had requested and received documents from the Rural Municipality of Tache. She explained that in the past, when she



had requested copies of documents, Council either passed a resolution authorizing charges or she was notified in advance of any costs associated with her request. In this case, no resolution respecting charges had been passed and no prior notification was given. Our complainant refused to pay the costs. She advised that her refusal to pay had resulted in the R.M. of Tache adding the outstanding amount to her property tax bill. Ms. X felt this was unfair treatment and asked our office to review the matter.

We contacted the Chief Administrative Officer (CAO) for the R.M. of Tache for clarification on its practice regarding charges for providing requested information. We were advised that a municipal bylaw in effect since March 1997 set out the R.M.'s policy for access to information and fees assessed. Based on our review of the Municipality's bylaw, it appeared that a cost estimate for finding documents must be provided to Council upon receipt of a request for information. We found this did not appear to have been done in this case. Furthermore, we pointed out to the R.M. that fees outlined in its bylaw would not be in accordance with the provisions of *The Freedom of Information and Protection of Privacy Act (FIPPA)* that would be officially applying to all municipalities effective April 3, 2000.

The R.M. acknowledged that it was time to review the existing bylaw dealing with access requests. The CAO indicated that the matter would be presented to Council for review.

The Solution

Council subsequently passed two resolutions. One resolution authorized the deletion of charges from Ms. X's account. The other resolution authorized amendments to its bylaw, setting out new rates in line with legislative requirements under FIPPA. The action taken by Council addressed the requirements respecting information requests and resolved Ms. X's concern.

Municipalities Not Obligated to Build Every Road Requested

Mr. D, a citizen with property in west central Manitoba contacted our office to complain that the Rural Municipality of Rossburn (R.M.) was being unreasonable in its refusal to either construct a road to his property or close and sell him a road allowance to facilitate the construction of a private road.

The Complainants View

He felt the R.M. was obligated to construct a road to his property for a number of reasons: a promise reportedly given by a municipal councillor at the time he purchased the land; the fact that the R.M. had issued a building permit for construction on the land; and the fact the R.M. had done some road work at various locations to assist him in gaining access to his land.

The Council's Response

Our investigation disclosed that the Council of the R.M. had considered various requests from Mr. D in respect of road access to his property dating back to 1985. By resolution in December 1985 Council decided that it was not prepared to undertake such road construction. In January 1995 the chief administrative officer of the R.M. advised in writing that Council had again discussed a request to sell the road allowance and was "not prepared to close the road allowance and assign this property to you for a private road". In January 2000 after another request, Mr. D was advised that the Council of the R.M. had decided they "would not be constructing an access road to your above noted property. Such a road would be cost prohibitive and an unnecessary tax burden on our tax payers."

In a meeting we had with the Reeve and Chief Administrative Officer of the Municipality, they again cited the issue of cost to the taxpayers. There was also a



concern that agreeing to the request to build an access road to private property or selling the road allowance for private use would set a precedent, resulting in similar requests from other landowners. These requests would be beyond the budgetary capacity of the municipality. As well, Council took the position that they preferred not to close road allowances but to maintain them for future use and for the use of the public generally. It was noted that Mr. D had indicated that, should he acquire the road allowance, he would construct a private road, thus denying the public access and creating the potential for further conflicts.



Municipalities are not obligated to build roads for access to private property.

With respect to the assertion that a former councillor had promised to construct a road subsequent to the purchase of the land, Mr. D. confirmed that this promise was not given in writing. The Municipality contacted the former councillor who advised that he did not make such a promise. Whatever the discussion between Mr. D and the former councillor, decisions to open and construct roads require a decision of Council and it was clear in this case that Council had decided on several occasions that the R.M. would not build a road.

Our Assessment

Mr. D had asserted that the R.M. should not have issued a building permit if they were not going to build a road. We concluded that the issuance of a building permit is related to zoning criteria and building standards. There is no statutory or regulatory connection between the criteria for building and the establishment of roads. It is not a requirement that there be road access in order to acquire a building permit, nor does there appear to be any basis for the assertion that the issuing of a building permit requires Council to construct a road.

Finally, Mr. D suggested that road work done on his behalf by the Municipality obligated them to build a road. He asserted that sections of *The Municipal Act*, in place at the time but subsequently repealed, supported this position. Our investigation disclosed that the Municipality had in fact done some work in an effort to improve access to the property. The Municipality noted that the statutory provisions in question related to land that is improved for use as a highway. We were advised that the improvements made by the Municipality before and after the repeal of the statutory provisions in question were not intended to create or open a highway, nor were they done on land intended for use as a highway. Moreover, it was pointed out that council had consistently maintained the position that it would not construct an access road for Mr. C. The evidence reviewed in our investigation supported this position.

RM Reconsiders

Subsequent to Mr. D's complaint to our office, the Municipality again reconsidered his request. By Resolution, they decided to contribute to the cost of an access road if Mr. D. decided to construct one at his own expense on the public road allowance. Agreement would have to be reached prior to any work being undertaken.



Revisiting an issue when a complaint is received demonstrates openness and accountability.

In this case, we concluded that the position of the Municipality was consistent with the law and based upon sound reasoning after a thorough, exhaustive and well documented process in which the complainant was given numerous opportunities to make his case. The position of the Municipality had been clearly and consistently communicated to the complainant. We could find no basis to conclude that Mr. D had been treated unfairly or unreasonably and, therefore, declined to make any recommendation in this matter. The willingness of the Municipality to revisit this issue after the complaint to our office and their further efforts to find a solution to this problem demonstrate a level of patience and responsiveness for which they must be commended.

Our office receives occasional complaints and enquiries from individuals who feel that municipalities are under a legal obligation to provide access roads to private property. Ombudsman staff reviewed this issue with staff from Manitoba Intergovernmental Affairs. We were advised that there is no general legal obligation to provide access to private property or to maintain existing road access beyond the level deemed necessary by the municipality.



Boards and Corporations Case Summaries

71 Complaint Files Carried into 2000

114 New Complaint Files Received in 2000

434 Telephone Enquiries Received in 2000

143 Complaint Files Closed in 2000

Complaints about Boards and Corporations accounted for almost 15% of the 777 formal complaints our office received in 2000.

Of the 114 formal complaints received about Boards and Corporations this year:

- 63% involved Manitoba Public Insurance
- 21% involved the Workers Compensation Board
- Almost 10% involved Manitoba Hydro
- About 4.5% involved Manitoba Lotteries Corporation
- Almost 2% were of a general nature

Of the 42 complaints our office will be carrying over into 2001:

- 57% involve Manitoba Public Insurance
- 38% involve Workers Compensation Board
- The remaining 5% are evenly split between Manitoba Lotteries Corporation and Manitoba Hydro.

Manitoba Public Insurance (MPI)

- 45 Complaint Files Carried into 2000
- 72 New Complaint Files Received in 2000
- 264 Telephone Enquiries Received in 2000
- 93 Complaint Files Closed in 2000

This year there was a significant reduction in both formal complaints and telephone enquiries against MPI. Formal complaints were down 44% from last year's total of 128, and telephone enquiries were down 20% from last year's total of 327. Yet, it is also very interesting to note 60% of our telephone enquiries regarding public Boards and Corporations in 2000 involved MPI.

It is difficult to conclusively determine why complaints have gone down so significantly. While there is no one factor that can or should be singled out for this reduction, we are hopeful that MPI's newly formed Fair Practices Office (FPO) has had a positive impact on complaints against MPI.

In December 1999, MPI launched the FPO. The FPO identifies patterns of complaints and reviews customer concerns with the division of MPI that is responsible for administering the applicable rules, policies or procedures. When they examine a particular rule or policy, part of the review includes considering alternatives and determining whether changes should be made.

We have had extensive dealings with the FPO and received good cooperation in trying to resolve complaints. We routinely refer individuals who call us to enquire about steps that they can take on their own in an effort to resolve a concern that they might have prior to their filing a formal complaint with our office.

As with previous years, concerns raised with our office relate to coverage issues, responsibility for collisions, and the manner in which claims are handled.

Client has Out of Provincial Body Coverage Experience

The Complaint

In December 1998, we received a letter from Mr. D who asked for our assistance in resolving a dispute about a claim he had filed with MPI after his vehicle was stolen in Alberta in June 1998.

In his letter to our office, he advised that initially it appeared that MPI was going to pay the claim. However, because the vehicle was stolen while Mr. D was in Alberta, MPI investigated the claim. After investigating the circumstances of his residency, MPI denied the claim on the basis that he exceeded the 90 days allowed by Alberta law to register his vehicle in that province. Mr. D indicated that MPI had determined that he had been living in Alberta as early as January or February of 1998. He denied this.

The Review

MPI advised our office that the decision to deny the claim was based on several factors. The most important factor was that on a rental property application, Mr. D indicated that he had resided in Alberta since early 1998. In addition, MPI had other information that supported the contention that he had been living in Alberta in early 1998.

In response to the information provided by MPI, Mr. D explained in a written submission that he did travel back and forth between Manitoba and Alberta in the early part of 1998. However, he did not actually move to Alberta until approximately May 20, 1998.



Additional Information

Mr. D's information seemed to clarify several aspects of his travels between Manitoba and Alberta in the months leading up to his move to Alberta in May 1998. In addition, while there was information on MPI's file that supported the denial of coverage, some of it was inconclusive or at least was subject to other interpretations. While it appeared that Mr. D's vehicle had been seen in Alberta in early 1998, it was not clear that he had remained in Alberta or that he had lived there prior to May 1998. The rental application did reflect that Mr. D had been in Alberta for some time, but he advised he gave that information to improve his chances of getting rental accommodations. He felt that his application would be looked at in a more favourable light, if he could show that he had established roots in Alberta. Our office sent MPI a copy of the information that Mr. D had sent to us and MPI agreed to review the matter.

Shortly thereafter, MPI advised that after further considering the facts and circumstances surrounding the case as well as the information provided by Mr. D, the claim would be paid. In the end, MPI was willing to accept Mr. D's explanation regarding information on his rental application and why his vehicle was seen in Alberta on different occasions in early 1998.

Our complainant was pleased that his claim would be paid, and we appreciated MPI's willingness to take another look at the circumstances of this case and reconsider the decision several months after denying the claim.



Clients Not Responsible for Accident Yet Feel They Are Paying Too High a Price

The Situation

In April 1999, Mr. T and his son contacted us regarding difficulties they were having with the son's accident claim. The son was not responsible for the accident but raised several issues regarding the extent of coverage provided by MPI. In addition, Mr. T felt that MPI had unfairly denied paying for any of his son's alternate transportation expenses. This portion of the claim was a result of the son's inability to use his vehicle after the accident.

Our Review

It should be noted that at the time we were approached for assistance, the claim was ongoing. After considering information from various car repair facilities, MPI provided additional coverage for some items, but maintained its position on others. In a report to our office, MPI provided a reasonable explanation for its position on the physical damage coverage.

However, MPI resisted providing coverage for alternate transportation expenses. Following our review of the facts and circumstances surrounding various repair-related issues, we were satisfied that our complainant's request for compensation for his alternate transportation expenses had merit. Particularly as there were several days when the son did not have use of the vehicle as a result of difficulties encountered in determining which damages could be directly related to the motor vehicle accident.

The Meeting

In December 1999, our office met with staff from the MPI Claims Centre and reviewed the circumstances that led to the son's request for compensation. MPI agreed to consider a claim for alternate transportation expenses, and provided our office with the details they would need from Mr. T and his son.

Resolution

In early February 2000, details were obtained from Mr. T and were provided to MPI for consideration. Later in the month, MPI confirmed that the Claim Centre would be processing a payment for the son's alternate transportation expenses in the amount of \$373.80.

We reported to Mr. T and advised that MPI's position on physical damage coverage did not seem unreasonable, and the decision to compensate his son for his alternate transportation expenses resolved the alternate transportation expense issue.

Client Feels Independent Reviewer Overlooked Witness's Testimony: Ombudsman asks MPI to Reconsider Facts

The Problem

In August 1999, we received a letter from an individual who was involved in a motor vehicle accident. He explained that MPI was holding him 75% responsible for the accident in spite of the fact that he had an independent witness that supported the information he had given to MPI about the circumstances of the accident.

He indicated he had filed an appeal through MPI's independent review process, but his appeal was not successful. In his letter to our office, he was critical of the independent reviewer's decision. He did not feel the decision took into consideration the factors relevant to the issue of liability.

The Action

We contacted MPI and asked for clarification regarding the assessment of liability. MPI sent our office a report indicating it was satisfied that the finding of liability against our complainant was reasonable and that MPI must abide by the independent reviewer's decision. MPI further advised our complainant that he could pursue the assessment of liability through the Court if he did not agree with the independent reviewer's decision.

We discussed MPI's position with our complainant who raised several points that seemed to call into question MPI's finding (which the independent reviewer had supported) that he was 75% responsible for the collision. While the circumstances of the accident were such that it would be difficult to establish that he was less than 50% responsible, MPI's finding that the other party was only 25% responsible seemed to be inconsistent with the statement given by the independent witness.

Reconsideration

To address his concern, this matter was again discussed with MPI and the claim file was resubmitted to the independent reviewer. After considering the issues, the 75% liability decision was set aside, and liability was split 50/50.

As a result of this decision, our complainant received a 50% refund of his deductible. Since the reconsideration resulted in a reduction in his responsibility for the collision, MPI refunded the \$25 fee he paid for the independent review. Our complainant was more accepting of the 50% finding of liability and indicated that he would think about the revised decision and determine whether he would further pursue the assessment of liability through the Court.

In Conclusion

While our complainant always had the option to challenge MPI's assessment of liability in Court, we feel that an individual should not have to go to Court if the



conclusion reached on liability is not supported by the facts. In this case, the 75/25 finding did not seem to be supported by the facts. On the other hand, given the circumstances of the collision, the 50/50 split in liability, while still not totally agreeable to our complainant, did not appear unreasonable.

Once again, the willingness to further consider a matter such as this typifies the excellent cooperation that our office receives from MPI.

Manitoba Hydro

- 3 Complaint Files Carried into 2000
- 11 New Complaint Files Received in 2000
- 42 Telephone Enquiries Received in 2000
- 13 Complaint Files Closed in 2000

As in years past, the majority of contacts tended to involve disputes over residential billings. We did receive complaints about service quality and concerns over location of hydro poles. Our office continues to receive good cooperation from Manitoba Hydro in the course of our enquiries.

Sights Set On Relocating Hydro Pole

Our office received a complaint from an individual who advised that he had been dealing with Manitoba Hydro for a number of years in order to rectify a situation involving the placement of the meter pole in his yard. The location of the pole had made it virtually impossible for him to read the meter. As a result, he was unable to send in his meter readings and had received estimated billings that he felt were inaccurate. He claimed that he had fallen into arrears on his account, partially as a result of these inaccurate billings.

The metered pole was placed in a low area in his yard. Furthermore, after the pole was installed, a road with no culvert had been built in the vicinity. The effects of this road, combined with high precipitation, had worsened the problem and had turned the low area around the meter pole into a swamp full of cattails and bull rushes. The complainant said that it had become impossible for him to get close enough to the pole to read the meter and he had been forced to resort to some ingenious ways to get the information. For example, he had read the meter at various times through the scope on his rifle. On other occasions, the complainant alleged that Manitoba Hydro representatives came to get an accurate reading and resorted to borrowing the complainant's canoe to get close enough to read the meter! The complainant advised that he had tried numerous times, without success to get Manitoba Hydro to listen to him.

Our office made enquires with Manitoba Hydro who acknowledged that the meter pole was in an area that was now surrounded by water, making it extremely difficult to read the meter. It was also a safety concern, should the hydro have to be switched off from the pole.

They also spoke of several attempts to meet with the complainant to discuss his concerns and ways to rectify the problem. However, the complainant did not return any of the phone calls made to discuss the situation.

Our staff met with the complainant. He advised that he had not been able to meet with Manitoba Hydro for several reasons and indicated to us that it was not his intent to avoid resolving this problem. We informed Manitoba Hydro of the complainant's position and confirmed that both sides were willing to speak with each other in an effort to rectify this situation. A date was confirmed on which the two parties were to meet.



Subsequently, the parties met in the complainant's yard and agreed that the meter pole was inappropriately located in a low area which was now wet year-round. Manitoba Hydro confirmed to the complainant that that the pole location caused significant problems in providing accurate meter readings. It was agreed that Manitoba Hydro would accept responsibility for the relocation of the pole at no cost to the complainant. As well, Manitoba Hydro agreed to review the complainant's account in an effort to identify and cancel any inappropriately assessed special meter reading charges. Finally, in a gesture of good faith, Manitoba Hydro agreed to reduce the complainant's late payment charges by 50%.

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