Ombudsman Manitoba

750 - 500 Portage Avenue
Winnipeg, Manitoba R3C 3X1
Telephone: (204) 982-9130
Toll Free in Manitoba
1-800-665-0531
Fax: (204) 942-7803
Email: ombudsman@ombudsman.mb.ca

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

www.ombudsman.mb.ca

December 2004

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

Dear Mr. Speaker:

In accordance with Section 42 of *The Ombudsman Act*, I am pleased to submit the thirty-fourth Annual Report of the Ombudsman for the calendar year January 1, 2003 to December 31, 2003.

Yours very truly,

Original signed by

Barry E. Tuckett
Manitoba Ombudsman

TABLE OF CONTENTS

A Message from the Ombudsman 4-9

Missions and Values of the Office of the Ombudsman 10

Strategic Plan of the Office of the Ombudsman 11

Year 2003 in Review 12-13

Statistics 14-22

Provincial Government Case Summaries 24

Manitoba Conservation 25-30

Manitoba Family Services and Housing 31-32

Manitoba Finance 33-36

Manitoba Health 37-38

Manitoba Justice and Attorney General 39-50

Manitoba Transportation and Government Services 51-54

Child and Adolescent Services 55-58

Youth-Related Complaints and Enquiries Involving Manitoba Family Services and Housing 59-60

Boards and Corporations 61-66

Manitoba Hydro 67-68

WCB and WCB Appeal Commission 69-70

Municipal Government Case Summaries 71

City of Winnipeg 72-76

Other Municipalities 77-81

Legislation 82

Personnel at December 2003

Ombudsman Division:

Donna M. Drever
Deputy Ombudsman

Corinne Caron
Senior Investigator

Cheryl Ritlbauer
Senior Investigator

Robert Baker
Investigator

Linda Barker
Investigator

Debra DeGraeve
Investigator

Robert W. Gates
Investigator

Kris Ramchandar
Investigator

Wanda Slomiany
Investigator

Marni Yasumatsu
Investigator

Jack Mercredi
Intake Office/Investigator

Brandon Office:

Janet Wood
Senior Investigator

Mel Holley
Investigator

Sharon Krakowka
Intake/Office Manager

Access & Privacy Division:

Peter Bower
Executive Director

Gail Perry
Manager, Compliance Review

Nancy Love
Manager, Compliance Investigation

Patricia Cox
Compliance Investigator

Valarie Gural
Compliance Investigator

Carol Markusoff
Compliance Investigator

Darren Osadchuk
Compliance Investigator

Kim Riddell
Compliance Investigator

Candace Russell
Compliance Investigator

Aurele Teffaine
Compliance Investigator

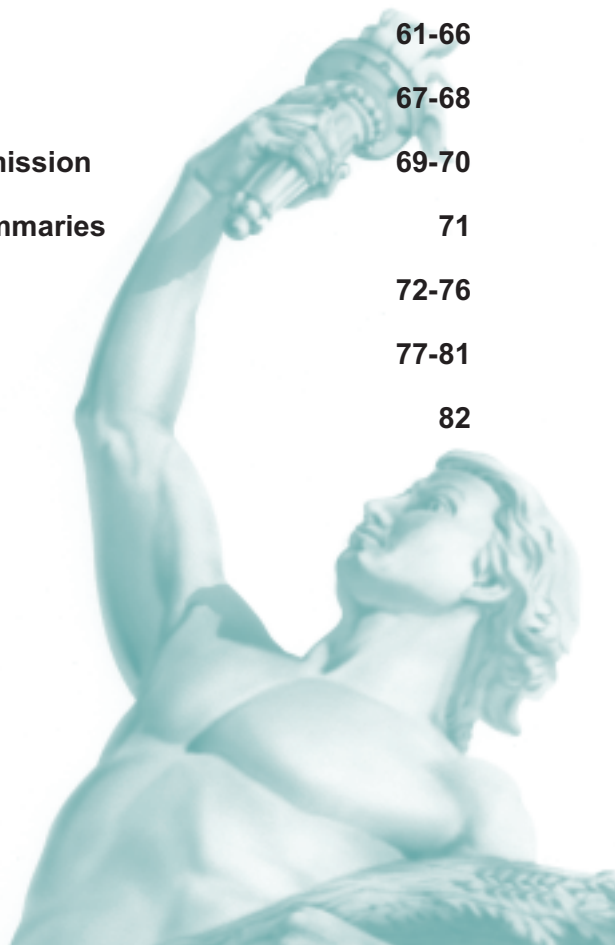
Administration:

Laura Foster
Office Manager

Helen Hicks
Administrative Support Clerk

Jacquie Laberge
Intake Assistant

Felicia Palmer
Administrative Support Clerk



Barry E. Tuckett
Manitoba Ombudsman

A Message from the Manitoba Ombudsman

Established in 1970 and Still Relevant

In 1970, the Manitoba Legislature proclaimed The Ombudsman Act which established an independent office of the Legislative Assembly to investigate complaints against departments and agencies of the provincial government relating to matters of administration. With its broad powers of investigation the office provided people, who felt they had been treated unfairly by government, with an avenue to obtain a thorough, impartial review of actions and decisions of government.

If, after investigating a complaint, the Ombudsman comes to an objective opinion that the complaint is valid, the Ombudsman has the powers to formally recommend corrective action and to report publicly. Many concerns, however, are resolved without the need for formal recommendations or public scrutiny. Even when the Ombudsman cannot support a complaint, the process of providing an independent review and an objective opinion in most cases assists not only in resolving concerns, but also in building public trust and confidence in the fairness of government administrative actions.

While the primary role of the Ombudsman is to investigate complaints, there is a much more important role that this office plays in terms of the value it brings in enhancing the principles of open, transparent and accountable government. This role was recognized in 1970 and I believe it is an even more relevant role today.

Democratic principles have been built into our parliamentary system of government and the role of the Ombudsman has been recognized as an integral part of the mechanisms that support compliance with these principles. This recognition was quite evident in 2003 when the Commonwealth Heads of Government met in Abuja, Nigeria, and fully endorsed the recommendations of their Law Ministers on what is referred to as the Latimer House Guidelines, which specified the "Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government". Of particular interest was the support for the role of independent oversight bodies. The guidelines read:

> **Oversight of Government**
>
> The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process.

Steps which may be taken to encourage public sector accountability include:

The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar

oversight institutions can play a key role in enhancing public awareness of good governance and rule of law. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances, Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

It is encouraging to see the articulation of these principles by the Heads of Commonwealth Governments. It is even more encouraging to note that Manitoba Legislatures over the years have shown their commitment to these principles with the passing of *The Ombudsman Act*, access and privacy legislation, human rights legislation, an *Auditor General's Act*, etc. I believe that while, it is critical to commit to these principles through the passing of legislation, it is also vital that government demonstrates commitment to these principles in a visible way through its decisions and actions.

The demand for public accountability seems to be on the increase as a result of various instances of questionable behaviour by some governments that have resulted in specialized inquiries that conclude with disclosures of wrong doing. Visible commitment to independent oversight is critical when public cynicism, distrust, and disillusionment are at a high level.

In past annual reports, I have commented that there is a price to pay in safeguarding the public's democratic right to open, transparent and accountable government. Ensuring that people receive fair and equitable treatment has its rigors for government. Time and money are required to ensure that these democratic rights are respected. Government must be prepared to endure intense scrutiny, opposition, and criticisms that come from meaningful public participation in matters of public interest when people raise questions, seek answers and voice concerns.

Empowering public participation in government decisions and actions not only enhances accountability, transparency and openness, it is also a positive way of revealing good governance and disclosing where government truly serves the public interest.

Reflections From The Past

Looking back over the twenty-six years that I have worked in the Manitoba Office of the Ombudsman, the last eleven in the capacity of Ombudsman, I have come to the realization that the challenges, the successes, and the frustrations that come with the work are not much different than those experienced by the first Ombudsman, Mr. George W. Maltby, with whom I had the pleasure of working during the first four years of my service with the Office of the Ombudsman. In looking back at Mr. Maltby's 1978 annual report to the Legislative Assembly, I see many similarities in the issues that our office faces now. The following case from Mr. Maltby's 1978 annual report is worth noting as it demonstrates the extraordinary effort sometimes needed to resolve a dispute, an effort which, unfortunately is still needed, from time to time, today.

Briefly, this case centered around a dispute over a $100 security deposit involving the Rentalsman. The Ombudsman had to go to great lengths before the matter was finally resolved. Mr. Maltby's annual report provided the details of the case which showed that common sense and reason were lost to defensive rhetoric and intransigence resulting in thousands of dollars of effort to resolve a $100 dispute.

In this case, the Ombudsman, after investigating the dispute, came to the opinion that no tenancy agreement existed between a landlord and a tenant and that the Rentalsman should

return the $100 security deposit to the tenant. Rather than accepting the opinion of the Ombudsman, the department initiated an arbitration process resulting in the arbitrator saying that law, equity, and common sense require the security deposit of $100.00 to be paid to the tenants.

The arbitrator went on to say:

> A man who could find such a tenancy agreement in this situation could also speak with inner conviction of Jonah's agreeing to reside temporarily in the belly of the whale.

Subsequently the security deposit, plus interest, was sent to the tenant bringing the dispute to a right and proper conclusion.

Mr. Maltby commented on the case in his annual report saying that although it was heavy going for what amounted to $100.17, the Ombudsman must be tenacious when he believes there has been an injustice.

This was in 1978, but what Mr. Maltby stated then is relevant today. The Ombudsman must not only be tenacious, but must also be vigilant in carrying out his/her duties and responsibilities on behalf of the Legislative Assembly.

One would hope that after all these years, such issues would rarely arise and that the Ombudsman's opinions and recommendations would always be given the acknowledgement and respect they require to bring about timely, inexpensive, fair, and reasonable resolution to disputes. My experience, however, suggests that these issues arise more often than they should.

Since 1994, my annual reports have brought forward cases where I have felt the role of this office has not received the respect that it should. Respect for the role of this office is essential if it is going have the credibility needed to serve the public, the Legislature and the Government effectively.

The Obstacles

The primary objective of this office under *The Ombudsman Act* is to provide an independent and impartial review of complaints against government and to facilitate the resolution of valid complaints in a timely, informal, non-adversarial, and non-legalistic manner. Challenges in meeting this objective come from a lack of understanding or misconceptions about the role of this office and from our limitation in terms of educational and outreach activities, including outreach to communities that would benefit from a greater awareness of this office.

There is also the ongoing challenge created when there are insufficient resources to meet the needs of an expanding jurisdiction and public demands for service in a system of governance that is becoming larger and more complex and from which people are feeling more isolated and powerless. Managing activities with insufficient resources is challenging, but I suppose one must endure this reality.

Harder to endure are unnecessary impediments largely unrelated to resources that have a negative impact on the value of this office to the Legislative Assembly, the government, and the public. Sometimes to a greater and sometimes to the lesser

degree, this office has experienced reactions and behaviours that do not support the public interest in demonstrating an open, accountable, and transparent government that is interested in identifying and resolving legitimate disputes. I have categorized some of these behaviours and activities as follows:

Looking to Legalize Rather Than Looking for Fairness

Just as we expect our government to act lawfully, we also expect it to act fairly. Clearly, public bodies have the responsibility to act lawfully and fairly. In fact, one would think that these principles should complement each other. It is discouraging at times, however, when it seems that public bodies use the law to avoid the encumbrance of acting fairly.

Too often, we find that a public body turns to legal arguments to dispute the Ombudsman's findings that an action, decision or omission by a public body has resulted in a valid grievance for a person. The most common argument is that the public body would not be found legally liable for its actions in a court of law because there was no negligence or bad faith involved. Another argument is that the aggrieved person can seek a remedy through the courts. These arguments do not address the matter of fairness, nor do they recognize the lawful role of the Ombudsman to resolve disputes through informal, non-legalistic, and independent investigation of complaints.

Fairness is not served by suggesting that a public body is not legally liable for its actions, thereby circumventing accountability for an administrative act, decision or omission that may be unfair or unreasonable. Fairness is not served by expecting people to go to court where there is an economical alternative for reviewing and resolving disputes on behalf of the Legislative Assembly as intended by The Ombudsman Act.

Actions of public bodies to unnecessarily legalize a process that, under The Ombudsman Act, was intended to be an alternative to costly, protracted, and formal legal processes, shows disregard for the role of the Ombudsman and is just wrong.

Worrying About Precedents

At times our office is faced with an unwillingness to accept a recommendation by the Ombudsman for fear of setting a precedent. Some public bodies have presumed that acknowledging a valid complaint and accepting the recommendation of the Ombudsman binds the public body to handle all such complaints similarly. This presumption is mistaken and not supported by the facts.

The Ombudsman Act establishes a process that is not structured to create precedents. The Ombudsman has no power to compel a public body to accept any opinion or recommendation of the Ombudsman. There is a restriction on the admissibility, in any court, of evidence gathered by the Ombudsman in the course of an investigation. The Ombudsman cannot be called to give evidence in any court in respect of anything coming to his/her knowledge in the exercise or performance of the functions and duties under the Act. Clearly, no legal precedent is set by accepting the Ombudsman's findings, opinions or recommendations, though they may be persuasive.

While there may be similarities in the nature of complaints, I have found over the years that there are always subtle or significant differences in facts or circumstances that require consideration of the merits in each individual situation. If, after considering the merits of a

particular case, the Ombudsman feels there are grounds to make a recommendation to resolve a valid grievance, I believe the respective public body is obliged to review the merits of the case and consider the Ombudsman's opinion and recommendation. If the merits of the case and fairness support acceptance of the Ombudsman's opinion and recommendation, then acceptance is the right thing to do.

Fear of setting a precedent is no reason to reject an opinion or recommendation of the Ombudsman that is based on the merits of a particular case and on fairness.

Reluctance to Acknowledge Mistakes

Government is made up of people who undertake thousands of actions and decisions daily that impact on our lives. As people are fallible, it should be of no surprise to anyone that from time to time mistakes are made. The role of the Ombudsman is to receive and investigate complaints about administrative actions and decisions made by people who are accountable to government.

The willingness of a public body to acknowledge a mistake and to resolve a problem brings credibility to the organization and shows commitment to principles of openness and accountability. There should be no shame or blame in acknowledging an error. There should be no reluctance to apologize for a mistake or to take action to remedy a valid grievance. In most cases it should be and is a straight forward process.

Unfortunately, however, there are cases where much time and effort is spent on attempting to resolve a valid grievance. These often occur when a public body is more concerned about defending its actions or decisions that are the subject of our investigation than it is about resolving the dispute. Perhaps it is felt that acknowledging a mistake may affect the credibility of the organization or that defending an erroneous act or decision demonstrates loyalty to the staff and/or the organization. There may be a fear of being penalized or embarrassed by acknowledging a mistake. Whatever the reasons, these cases, while few, are frustrating, unnecessarily protracted, and costly. They suggest a lack of regard for the role of the Ombudsman in resolving valid disputes in a timely, informal manner and they tend to undermine the public's trust and confidence in open and accountable government.

Overreacting to Financial Implications

Recommendations by the Ombudsman that have resource implications seem to pose more problems for government in terms of acceptance. Perhaps public bodies faced with financial demands and fiscal restraints are reluctant to accept a recommendation that will result in a commitment of financial resources which were not planned for in the budget. There may be concerns that the public body will not have the ability to pay what the Ombudsman has recommended.

From time to time, our office has been confronted with legal opinions arguing against acceptance of recommendations and/or irrelevant lengthy debate that fails to address the problem or issue. Rejecting a recommendation by the Ombudsman involving money is a false economy when one considers the cost to taxpayers of a public body engaging in defensive rhetoric to avoid accepting the recommendation. There is also the increased cost of carrying out the Ombudsman's mandate by inappropriately resisting his/her findings.

The reality is that no individual case that I recall since the late 70s, has had any significant financial impact for the government. The vast majority of cases have been resolved with no financial implications to government. Those that have, involved hundreds and occasionally

thousands of dollars. Few cases implicate more than ten thousand dollars and I am not aware of any cases even approaching one hundred thousand dollars.

Experience has shown that the cost of accepting a recommendation by the Ombudsman is a small price to pay for the value the Ombudsman role plays in promoting openness, accountability, fairness, public trust, and confidence in government. The value far exceeds the financial implications of accepting in good faith a recommendation from the Ombudsman.

The Need for Visible Commitment

In the majority of cases, we experience good cooperation from public bodies and we see a genuine interest in acting fairly and in resolving disputes. Nevertheless, the few cases where public bodies fail to respond to the Ombudsman in a timely manner or unreasonably dispute the Ombudsman's opinions and recommendations, disproportionately undermine public recognition of the good work of government. I am concerned about the degree to which these few cases result in a loss of public credibility in terms of government's commitment to fairness and accountability and the value of our office in promoting these worthy democratic principles.

The role of the Ombudsman complements good government and works with the government to serve the public interest on behalf of the elected representatives of the public. The Ombudsman is not an adversary. Opinions and recommendations by the Ombudsman are developed on the basis of a thorough, objective, non-partisan investigation and are offered in the spirit of fairness. Actions and behaviours of government showing a commitment to the role of the Ombudsman send a message to the public that government is prepared to be accountable, acknowledge mistakes, and to act fairly to resolve valid grievances.

It is important that government officials and the public recognize that the opinion of the Ombudsman is not just another opinion nor is it simply a personal opinion. The Ombudsman's opinions and recommendations are based on a thorough investigation of the facts and on established standards of fairness. The Ombudsman's opinions and recommendations should be taken seriously all the time.

This is not to say that there are never valid disagreements with the opinions or recommendations made by the Ombudsman. For instance, where a public body feels the Ombudsman has erred in fact or in law or that the Ombudsman's recommendation is clearly wrong or unreasonable or that implementing a recommendation by the Ombudsman is not in the public interest, the public body should have no fear of saying so and providing the Ombudsman with reasons supporting its position. Processes in The Ombudsman Act allow for discussion and disagreement conducted in good faith as part of a fair and reasonable process.

In Conclusion . . . . .

The Ombudsman role supports and reinforces the government's and the Legislative Assembly's commitment to open, accountable, and fair government. From time to time there is a need to refresh that commitment in a visible way through actions and behaviours that demonstrate to the public that they can have confidence and trust in the good work of government.

That time is now!

Mission and Values of the Office of the Ombudsman

MISSION:

To promote the fair and equitable treatment of people by the provincial and municipal governments of Manitoba and ensure that their information access and privacy rights are respected and upheld by public bodies and health information trustees.

We do this by:

- Conducting impartial, independent and thorough investigations of complaints from people.
- Investigating complaints and conducting reviews on the Ombudsman's Own Initiative.
- Conducting systemic reviews involving matters of administrative fairness and of access and privacy rights.
- Informing the public, the Legislature, public bodies and health information trustees.
- Appropriate referral of people to the proper agency.

VALUES:

- Openness, transparency and accountability.
- Trust, fairness, integrity, honesty, and respect.
- Credibility.
- Good-faith relationships.
- Supportive, dependable and cooperative relationships among staff.
- Professional, competent and knowledgeable staff.

Strategic Plan for the Office of the Ombudsman

Much has changed since Manitoba's first Ombudsman was appointed in 1970 to investigate complaints from persons who felt they were unfairly treated by provincial government departments or agencies. With the addition of *The Freedom of Information and Protection of Privacy Act, The Personal Health Information Act* and expanded jurisdiction under *The Ombudsman Act*, the mandate of the office has moved well beyond dealing exclusively with provincial government department and agencies.

Responsibilities have been added for handling complaints associated with hospitals, regional health authorities, health professionals, school divisions, universities and colleges, rural and urban municipal governments, including the City of Winnipeg.

The magnitude of these changes cannot be overstated. The pace of change has been hectic for both the Ombudsman and Access and Privacy components of the Ombudsman's operation.

To address the challenges associated with these new demands, the Ombudsman completed work on a three-year strategic plan that took effect beginning in 2004. As part of the plan to remain a dynamic organization upholding fairness, openness and accountability in public administration and public access and privacy rights, a number of primary goals were targeted for achievement within a three year period ending on December 31, 2007. These include:

- timely completion of investigations
- a comprehensive information management system providing reliable and relevant organizational reporting
- a comprehensive professional staff development plan that incorporates performance review, training and succession planning
- a policy and procedures manual, and
- a sustained strategic planning process.

Year 2003 in Review

In 2003 we received over 4700 telephone inquiries, drop-ins and formal complaints from members of the public. This was an increase of over 700 contacts in 2003.

There were 909 formal complaints and 3,818 telephone calls regarding actions and decisions of boards, corporations, departments and agencies of the provincial and municipal governments. A number of both the written and oral complaints related to entities over which we have no jurisdiction. In those cases referrals were made, or the individual was advised of alternate appeal routes.

With 276 files carried over from previous years, the office handled 1185 complaint files, closing 831. We carried 354 files into 2004.

Of the 831 complaint files closed in 2003:

17% were resolved;

6% were partially resolved;

5% were closed as assistance rendered;

28% were concluded as information supplied;

27% were not supported;

15% were discontinued either by the Ombudsman (6%) or the client (9%);

2% were declined.

Speaking Engagements, Presentations and Educational Outreach

Our Winnipeg and Brandon regional office continued to respond to requests for presentations on the role and mandate of our office.

As in past years, we were actively involved with Manitoba Corrections and are pleased to regularly participate in the correctional officertraining program and the Recruit Training class.

A presentation was also made to Health Services Managers for Corrections and to youth in correctional facilities. Tours of both the adult and youth provincial correctional facilities were also conducted during the year.

In addition, presentations were made to Managers of Community Services, City of Winnipeg; senior staff of the Manitoba Housing Authority; staff of the in-patient psychiatric unit at The Pas Regional Health Complex; employees of the Manitoba Conservation Districts; and the Western Bar Association. I also participated in numerous media interviews to provide information on the work of our office.

Requests for the Ombudsman to make presentations at educational facilities, service clubs, special events, etc. are normally accommodated. Last year the Ombudsman made approximately a dozen presentations, including the University of Winnipeg and Manitoba and the Government of Manitoba Interns.

In 2003 an opportunity was provided to attend a meeting of Deputy Ministers to discuss our working relationship and mutual expectations. It was encouraging to receive verbal support for the role of the Ombudsman from these senior executives.

I was also pleased with the invitation to make a presentation to the newly elected members of the Legislative Assembly. This was an excellent opportunity to advise new members about our role and how we can assist in addressing concerns from their constituents.

In June 2003 a senior level delegation for the Ukraine came to Canada to study "citizen participation in decision-making by government." I was very pleased to meet with members of the delegation who visited Manitoba and provide them with an overview on our role in dealing with citizen complaints. It is always an enriching opportunity to share our experiences and listen to and learn from the international community.

Informing the public, government and the Legislative Assembly on the role of the Ombudsman continues to be an important activity of the office.

French Language Services

Ombudsman Manitoba actively offers services in French to citizens who contact the office. Inquiries or complaints received in French under *The Ombudsman Act*, *The Freedom of Information and Privacy Act* (FIPPA), and *The Personal Health Information Act* (PHIA) are responded to by bilingual staff. Information brochures, annual reports, special reports and media releases are produced in both official languages. Our web site is also in English and French. Several presentations in French were made to the public and media in 2003.

Statistics

This section of the report contains statistical information on the telephone enquiries that the Ombudsman received as well as the work done on complaints to the Ombudsman.

Telephone Enquiries	**3,818**

Disposition of Complaint Files

New complaint files opened in 2003	909
Complaint files carried into 2003 from previous years	276
Total complaint files worked on in 2003	**1,185**
Complaint files closed in 2003 that were opened in 2003	640
Complaint files closed in 2003 from previous years	191
Total complaint files closed in 2003	**831**
Total complaint files carried over into 2004	**354**

New Complaint Files Opened in 2003 by Department or Agency

PROVINCIAL GOVERNMENT DEPARTMENTS (640)

Aboriginal & Northern Affairs (1)

Advanced Education & Training (4)

Agriculture & Food (3)

Civil Service Commission (1)

Conservation (14)

Education & Youth (5)

General	3
Ombudsman's Own Initiative (OOI)	2

Family Services & Housing (92)

General	12
Child & Family Services	11
Employment & Income Assistance	44
Manitoba Housing Authority	19
Social Services Advisory Committee	5
Ombudsman's Own Initiative (OOI)	1

Finance (30)

General	3
Automobile Injury Compensation Appeal Commission	4
Residential Tenancies Branch	20
Residential Tenancies Commission	2
Securities Commission	1

Health (44)

General	7
Manitoba Adolescent Treatment Centre	1
Mental Health	17
Regional Health Authorities	15
Ombudsman's Own Initiative (OOI)	4

Intergovernmental Affairs (1)

Justice & Attorney General (416)

General	26
Agassiz Youth Centre	12
Brandon Correctional Centre	26
Dauphin Correctional Centre	3
Headingley Correctional Centre	103
Milner Ridge Correctional Centre	18
Portage Correctional Centre	62
The Pas Correctional Centre	3
Winnipeg Remand Centre	92
Maintenance Enforcement	15
Human Rights Commission	6
Legal Aid Manitoba	8
Public Trustee	15
Manitoba Youth Centre	3
Courts	4
Ombudsman's Own Initiative (OOI)	20

Labour & Immigration (9)

General	4
Employment Standards	1
Manitoba Labour Board	4

Transportation & Government Services (20)

General	12
Driver & Vehicle Licencing	7
Ombudsman's Own Initiative (OOI)	1

BOARDS & CORPORATIONS (110)

Workers Compensation Board (21)

WCB Appeal Commission (3)

Corporations and Extra Departmental (86)

General	1
Manitoba Hydro	16
Manitoba Lotteries Corporation	2
Manitoba Public Insurance	67

MUNICIPAL GOVERNMENTS (114)

City of Winnipeg(78)

General	1
The Board of Trustees of the Winnipeg Civic Employees' Benefits Program	1
Clerk's Office	3
Community Services	8
Corporate Finance	12
Fire Paramedic Service	4
Planning, Property & Development	16
Public Works	4
Transit	2
Waste & Water	8
Winnipeg Police Service	16
Ombudsman's Own Initiative (OOI)	3

Other Municipal Governments 36

NON-JURISDICTIONAL (45)

Federal Departments & Agencies (10)

Legislative Assembly (1)

Private Matters (34)

Total Complaint Files 909

Where do the people making formal complaints in 2002 live?

Alexander	4
Altona	1
Anola	1
Arborg	1
Arden	1
Ashern	1
Baldur	1
Beausejour	24
Belmont	1
Binscarth	1
Boissevain	1
Brandon	54
Camp Morton	2
Carlowrie	1
Cromer	1
Dallas	1
Dauphin	6
Dominion City	1
Dufresne	1
Dugald	2
East Selkirk	2
Eddystone	1
Eden	1
Elkhorn	1
Erickson	2
Eriksdale	1
Falcon Lake	1
Flin Flon	3
Forrest	1
Foxwarren	1
Gimli	2
Glenlea	1
Grand Marais	4
Hamiota	1
Hartney	1
Headingley	99
Justice	1
Kelwood	2
Kleefeld	1
La Broquerie	1
Lac du Bonnet	1
Lockport	1
Lorette	2
Lowe Farm	1
Manigotagan	1
Mariapolis	1
Melita	1
Minnesdosa	5
Morden	2
Neepawa	1
Niverville	1
Oak Point	1
Oakville	2
Petersfield	1
Pilot Mound	3
Pikwitonei	1
Plume Coulee	1
Poplar Point	2
Portage la Prairie	73
Rivers	1
Riverton	1
Roland	1
Rossburn	1
Sandy Lake	2
Sarto	1
Selkirk	14
Snow Lake	2
Somerset	1
Souris	1
Springfield	1
St. Adolphe	1
St. Germain	1
St. Jean Baptiste	1
St. Laurent	1
Ste Rose du Lac	3
Ste. Anne	2
Steinbach	3
Strathclair	1
Stonewall	1
Swan River	1
Teulon	1
The Pas	4
Thompson	3
Vogar	2
Warren	1
Waskada	1
West St. Paul	1
Winkler	6
Winnipeg	487
Winnipegosis	1
Winnipeg Beach	2
Zhoda	1
Subtotal	**885**
Alberta	8
British Columbia	3
Ontario	8
Saskatchewan	5
Subtotal	**24**
Total	**909**

New Complaint Files Opened in 2003 by Category and Disposition

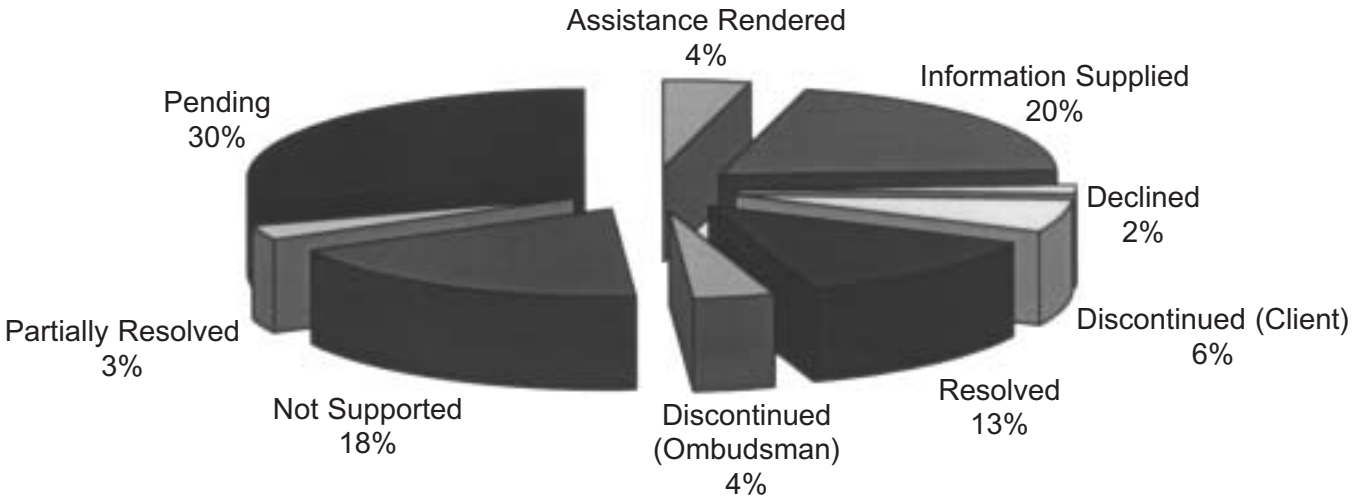
Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Resolved	(1) Recom-mendation (A)(NA)	Pending
Provincial Government Departments	**640**										
Aboriginal & Northern Affairs	**1**	1	-	-	-	-	-	-	-	-	-
Advanced Education & Training	**4**	-	1	-	-	1	1	-	-	-	1
Agriculture & Food	**3**										
General	2	-	-	-	-	-	-	-	-	-	2
Manitoba Crop Insurance Corporation	1	-	-	-	-	-	-	-	-	-	1
Civil Service Commission	**1**	-	-	1	-	-	-	-	-	-	-
Conservation	**14**	1	-	-	1	-	1	1	1	-	9
Education & Youth	**5**										
General	3	-	-	-	-	1	1	-	-	-	1
Ombudsman's Own Initiative (OOI)	2	-	-	-	-	-	-	-	-	-	2
Family Services & Housing	**92**										
General	12	-	1	-	-	3	3	1	1	-	3
Child & Family Services	11	3	-	-	-	3	1	1	-	-	3
Employment & Income Assistance	44	3	-	3	-	12	8	1	11	-	6
Manitoba Housing Authority	19	3	-	-	-	1	2	-	4	-	9
Social Services Advisory Board	5	-	-	1	1	2	1	-	-	-	-
Ombudsman's Own Initiative (OOI)	1	-	-	-	-	-	-	-	-	-	1
Finance	**30**										
General	3	-	-	-	1	1	-	-	-	-	1
Automobile Injury Compensation Appeal Commission	4	-	-	-	1	-	-	-	-	-	3
Residential Tenancies Branch	20	2	-	3	1	3	3	-	3	-	5
Residential Tenancies Commission	2	-	-	-	-	-	-	-	-	-	2
Securities Commission	1	-	-	1	-	-	-	-	-	-	-
Health	**44**										
General	7	-	-	-	-	1	-	-	4	-	2
Manitoba Adolescent Treatment Centre	1	-	-	-	-	-	-	-	1	-	-
Mental Health	17	-	-	2	-	4	3	-	-	-	8
Regional Health Authority	15	1	-	2	-	2	3	-	2	-	5
Ombudsman's Own Initiative (OOI)	4	-	-	-	1	-	-	-	-	-	3
Intergovernmental Affairs	**1**	-	-	1	-	-	-	-	-	-	-
Justice & Attorney General	**416**										
General	26	3	3	2	1	7	5	-	1	-	4
Agassiz Youth Centre	12	-	-	3	1	3	-	1	1	-	3
Brandon Correctional Centre	26	1	-	1	1	4	8	3	5	-	3
Dauphin Correctional Centre	3	-	-	-	-	1	-	-	-	-	2
Headingley Correctional Centre	103	2	-	9	1	10	23	3	27	-	28

New Complaint Files Opened in 2003 by Category and Disposition *cont'd*

Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Resolved	Recom-mendation (A)(NA)	Pending
Milner Ridge Correctional Centre	18	-	-	2	-	6	3	1	4	-	2
Portage Correctional Centre	62	1	2	5	4	13	26	3	6	-	2
The Pas Correctional Centre	3	-	-	-	-	1	2	-	-	-	-
Winnipeg Remand Centre	92	2	-	4	3	20	23	8	18	-	14
Maintenance Enforcement	15	1	1	-	-	1	-	-	2	-	10
Human Rights Commission	6	-	-	1	-	1	1	-	-	-	3
Legal Aid Manitoba	8	2	-	-	-	1	2	-	-	-	3
Public Trustee	15	1	-	2	-	4	1	-	1	-	6
Manitoba Youth Centre	3	-	-	-	-	-	2	-	1	-	-
Courts	4	-	1	1	-	-	2	-	-	-	-
Ombudsman's Own Initiative (OOI)	20	-	-	-	-	-	-	-	1	-	19
Labour & Immigration	**9**										
General	4	-	-	-	-	-	1	-	1	-	2
Employment Standards	1	-	-	-	-	-	1	-	-	-	-
Manitoba Labour Board	4	-	-	1	-	-	1	-	-	-	2
Transportation & Government Services	**20**										
General	12	1	2	1	1	-	1	-	1	-	5
Driver & Vehicle Licencing	7	-	-	-	-	1	2	-	-	-	4
Ombudsman's Own Initiative (OOI)	1	-	-	-	-	-	-	-	1	-	-
Boards & Corporations	**110**										
Workers Compensation Board	**21**	-	1	1	-	5	3	-	4	-	7
WCB Appeal Commission	**3**	-	-	-	-	-	-	-	-	-	3
Corp. & Extra Departmental	**86**										
General	1	-	-	1	-	-	-	-	-	-	-
Manitoba Hydro	16	-	-	2	-	4	1	-	4	-	5
Manitoba Lotteries Corporation	2	-	-	-	-	-	-	-	-	-	2
Manitoba Public Insurance	67	3	2	3	9	7	13	2	5	-	23
Municipalities	**114**										
City of Winnipeg	**78**										
General	1	-	-	-	-	1	-	-	-	-	-
The Board of Trustees of the Winnipeg Civic Employees' Benefits Program	1	-	-	-	-	-	-	-	-	-	1
Clerk's Office	3	-	-	1	-	1	-	-	-	-	1
Community Service	8	-	-	-	-	-	4	-	1	-	3
Corporate Finance	12	-	-	-	2	1	2	-	-	-	7
Fire Paramedic Service	4	-	-	-	-	2	2	-	-	-	-
Planning, Property & Development	16	-	-	-	1	2	4	1	1	-	7
Public Works	4	2	-	1	-	-	-	-	-	-	1
Transit	2	-	-	-	1	1	-	-	-	-	-
Water & Waste	8	1	-	1	-	1	1	-	1	-	3
Winnipeg Police Service	16	2	-	-	2	8	2	-	-	-	2
Ombudsman's Own Initiative (OOI)	3	-	-	-	-	-	-	-	-	-	3
Other Municipalities	**36**	-	1	1	1	5	5	1	3	-	19
Non-Jurisdictional	**45**										
Federal Departments & Agencies	**10**	-	-	-	-	9	-	-	-	-	1
Legislative Assembly	**1**	-	-	-	-	1	-	-	-	-	-
Private Matters	**34**	1	1	-	1	29	-	-	-	-	2
Total Complaints	**909**	**37**	**16**	**57**	**35**	**184**	**168**	**27**	**116**	**-**	**269**

(1) Recommendation (A) = Accepted, (NA) = Not Accepted

Disposition of Files Received in 2003



What People Called us About

PROVINCIAL GOVERNMENT DEPARTMENTS (1,450)

Aboriginal & Northern Affairs (1)	
Advanced Education &Training(8)	
Agriculture & Food (17)	
Civil Service Commission (4)	
Conservation(21)	
Culture, Heritage & Tourism(1)	
Education & Youth (10)	
General	9
Student Financial Assistance	1
Family Services & Housing (459)	
General	59
Child & Family Services	69
Employment & Income Assistance	262
Manitoba Housing Authority	60
Social Services Advisory Board	9
Finance (82)	
General	20
Automobile Injury Compensation Appeal Commission	1
Residential Tenancies Branch	53
Residential Tenancies Commission	7
Securities Commission	1
Health (169)	
General	28
Addictions Foundation of Manitoba	1
Manitoba Adolescent Treatment Centre	1
Mental Health	89
Regional Health Authorities	50
Intergovernmental Affairs (3)	
Justice & Attorney General (600)	
General	57
Agassiz Youth Centre	7
Dauphin Correctional Centre	6
Brandon Correctional Centre	75
Headingley Correctional Centre	110
Milner Ridge Correctional Centre	19
Portage Correctional Centre	30
The Pas Correctional Centre	12
Winnipeg Remand Centre	99
Maintenance Enforcement	46
Human Rights Commission	45
Legal Aid Manitoba	29
Public Trustee	29
Manitoba Youth Centre	3
Courts	33
Labour & Immigration (29)	
General	9
Employment Standards	5
Manitoba Labour Board	15
Transportation & Government Services (46)	
General	19
Driver & Vehicle Licencing	27

BOARDS & CORPORATIONS (561)

Workers Compensation Board (96)	
WCB Appeal Commission (1)	
Corporations and Extra Departmental (464)	
Manitoba Hydro	99
Manitoba Liquor Commission	1
Manitoba Public Insurance	361
Public Utilities Board	3

MUNICIPAL GOVERNMENTS (298)

City of Winnipeg (202)	
General	24
The Board of Trustees of the Winnipeg Civic Employees' Benefits Program	2
Community Services	7
Corporate Finance	13
Fire Paramedic Service	7
Planning, Property & Development	23
Property Assessment	11
Public Works	33
Transit	3
Waste & Water	18
Winnipeg Police Service	61
Other Municipal Governments (96)	

NON-JURISDICTIONAL (1,509)

Federal Departments & Agencies (150)	
General	144
Employment Insurance	1
Legislative Assembly	3
RCMP	2
Private Matters (1,359)	
General	1,221
Consumer	74
Courts	4
Doctors	15
Lawyers	14
Schools	31

Total number of telephone calls	**3,818**

Complaint Files Carried into 2003 from Previous Years

Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Resolved	Recom-mendation (A)(NA)	Pending
Provincial Government Departments	**196**										
Aboriginal & Northern Affairs	**1**	-	-	-	-	-	-	1	-	-	-
Agriculture & Food	**3**										
General	2	1	-	-	-	-	1	-	-	-	-
Manitoba Crop Insurance Corporation	1	-	-	-	-	-	-	-	-	-	1
Civil Service Commission	**1**	-	-	-	-	-	-	-	-	-	1
Conservation	**26**	-	-	-	4	-	5	1	1	-	15
Consumer & Corp Affairs	**13**										
General	2	-	-	-	-	-	2	-	-	-	-
Automobile Injury Compensation Appeal Commission	1	-	-	-	-	-	-	-	-	-	1
Residential Tenancies Branch	4	-	-	1	-	-	1	1	-	-	1
Residential Tenancies Commission	4	-	-	1	1	-	1	-	-	-	1
Securities Commission	2	-	-	-	-	1	1	-	-	-	-
Culture, Heritage & Tourism	**1**	-	-	-	-	-	1	-	-	-	-
Education, Training & Youth	**6**	-	-	1	-	3	1	-	1	-	-
Family Services & Housing	**32**										
General	4	-	-	-	-	2	-	1	1	-	-
Child & Family Services	14	-	-	1	-	2	-	2	1	-	8
Employment & Income Assistance	6	-	-	2	-	2	1	-	1	-	-
Manitoba Housing Authority	1	-	-	-	-	1	-	-	-	-	-
Ombudsman's Own Initiative (OOI)	7	-	-	-		-	-	-	-	-	7
Health	**19**										
General	4	-	-	-	-	1	3	-	-	-	-
Mental Health	3	-	-	-	-	-	-	-	-	-	3
Regional Health Authority	7	-	-	-	-	2	2	-	-	-	3
Ombudsman's Own Initiative (OOI)	5	-	-	-	-	-	-	-	1	-	4
Justice & Attorney General	**79**										
General	10	-	-		-	4	3	-	1	-	2
Agassiz Youth Centre	2	-	-	1	-	-	-	-	1	-	-
Brandon Correctional Centre	7		-	-	-	2	3	2		-	-
Headingley Correctional Centre	13	-	-	2	-	4	1	-	4	-	2
Milner Ridge Correctional Centre	1	-	-	-	-	-	-	-	1	-	-
Portage Correctional Centre	13	-	-	3	2	1	2	-		-	5
The Pas Correctional Centre	1	-	-	-	-	-	1	-	-	-	-
Winnipeg Remand Centre	12	-	-	3	-	2	3	1	2	-	1
Maintenance Enforcement	1	-	-	-	-	-	-	-	-	-	1
Human Rights Commission	2	-	-	-	-	-	1	-	-	-	1
Legal Aid Manitoba	2	-	-	-	-	1	1	-	-	-	-
Public Trustee	3	-	-	-	-	2	-	-	-	-	1
Manitoba Youth Centre	1	-	-	-	-	1	-	-	-	-	-

Complaint Files Carried into 2003 from Previous Years *cont'd*

Department or Category	Total	Assist. Rendered	Declined	Discont'd (Client)	Discont'd (Omb.)	Info. Supplied	Not Supported	Partially Resolved	Resolved	Recom-mendation (A)(NA)	Pending
Justice *cont'd*	**79**										
Ombudsman's Own Initiative (OOI)	11	-	-	-	4	-	-	-	-	-	7
Labour & Immigration	**7**										
General	3	-	-	1	-	-	2	-	-	-	-
Employment Standards	2	-	-	-	-	-	1	1	-	-	-
Ombudsman's Own Initiative (OOI)	2	-	-	-	-	-	-	-	-	-	2
Transportation & Government Services	**8**										
General	5	-	-	-	-	1	-	2	-	-	2
Driver & Vehicle Licencing	3	-	-		-	-	1	1		-	1
Boards & Corporations	**60**										
Workers Compensation Board	**19**	-	-	2	2	2	4	2	3	-	4
Corp. & Extra Departmental	**41**										
Centra Gas		-	-	-	-	-		-	-	-	-
Manitoba Hydro	4	-	-	-	-	-	1	3	-	-	-
Manitoba Lotteries	1	-	-	-	-	-	-	1	-	-	-
Manitoba Public Insurance	36	5	-	-	-	10	11	2	2	-	6
Municipalities	**19**										
General	18	1	-	1	-	3	4	2	2	1	4
Ombudsman's Own Initiative (OOI)	1	-	-	-	-	-	-	-	-	-	1
Non-Jurisdictional	**1**										
Private Matters	1	-	-	-	-	1	-	-	-	-	-
Total Complaints	**276**	**7**	**0**	**19**	**13**	**48**	**58**	**23**	**22**	**1**	**85**

At the close of 2002, there were 276 complaint cases still pending:

- 215 were carried over from 2002
- 33 originated in 2001
- 21 originated in 2000
- 4 originated in 1999
- 2 originated in 1998
- 1 originated in 1997

We closed 191 or 69% of these pending cases. Of the 85 complaints still pending:

- 50 originated in 2002
- 18 originated in 2001
- 14 originated in 2000
- 2 originated in 1999
- 1 originated in 1997

Selected Overviews of Organizations and Case Summaries

This section of the Annual Report is intended to profile some of the cases that my staff and I worked on in 2003. 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.

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 or administrative accountability.

We hope that the case summaries will help to facilitate greater public awareness and discussion about the issues raised by Manitobans in 2003. 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.

Provincial Government Case Summaries

196 **Complaint Files Carried into 2003**

640 **New Complaint Files Received against Provincial Government Departments and Agencies in 2003**

1,450 **Telephone Enquiries Received in 2003**

630 **Complaint Files Closed in 2003**

70% of our total number of formal complaints received in 2003 involved the provincial government.

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

- 65% involved Manitoba Justice and Attorney General
- 14% involved Family Services and Housing
- 7% involved Manitoba Health
- 5% involved Manitoba Finance
- 3% involved Manitoba Transportation and Government Services
- 2% involved Manitoba Conservation
- 2% involved Manitoba Labour and Immigration

The remaining 2% of new complaint files were spread amongst Aboriginal and Northern Affairs; Advanced Education and Training; Agriculture and Food; Civil Service Commission; Education and Youth; and Intergovernmental Affairs.

Manitoba Conservation

26 Complaints Carried Into 2003

14 New Complaint Files Received in 2003

21 Telephone Enquiries Received in 2003

16 Complaint Files Closed in 2003

Complaints received against Manitoba Conservation tend to be quite complex and emotionally charged, especially when they involve drainage and flooding issues, water rights licensing and Crown land leases and permits. One should expect that dealing with these types of complaints can be time consuming as we conduct the investigation, clarify the issues with the complainant and the department and prepare a report with our findings and conclusions. However, even with this expectation, I am feeling frustrated by what I feel are undue delays in bringing cases to a reasonable conclusion.

In my 2002 Annual Report to the Legislative Assembly, reference was made to cases which had been under investigation for several years and have remained unresolved. It was noted that we were looking for the department to show willingness to resolve these disputes and recognize the value of the findings and opinions from an independent and impartial office of the Legislative Assembly. In 2003, we received some encouragement from the Deputy Minister that the department would be accepting our findings and would be taking steps to bring outstanding cases to a conclusion.

The following case summaries include one case which was finally resolved after two years of time and effort by our office. This case should have been resolved much sooner.

Another case concerns a recommendation made to the Minister in September 2003 after approximately four years of interaction with the department and the complainant. While our investigation began with Manitoba Conservation, the matter was transferred to Manitoba Water Stewardship when that department was created in November 2003. The recommendations were accepted by the Minister, but at the time of writing this report, they have not been implemented and we are finding it necessary to continue to monitor the situation.

There are several other cases that I feel are subject to undue delays and remain unresolved. One involves seasonal fees applied to a campground within a provincial park. A complaint was received about an excessive increase in campground fees that appeared to be contrary to park fees regulations. Three years of interaction with the department had not brought about a satisfactory resolution, resulting in a report being made to the department with a proposed recommendation. After three campground seasons, we felt that this outstanding issue would be resolved by the summer of 2004. However, at the time of writing this report, I understand the department has still not brought this matter to a conclusion and the matter remains unresolved.

Approximately two and one-half years ago, our office received a complaint relating to a dispute between cottage owners in a provincial park concerning structures built contrary to regulations.

From our review, we understood that in November 2001 the Whiteshell Advisory Board had made a recommendation for the removal of a portion of a structure which was the subject of the dispute. In February 2002, in accordance with this recommendation, the department made an

order for the removal of unapproved development which was to be complied with by the early summer of 2002.

Our office has continued to follow up on this matter, but in spite of assurances over the last two years that corrective action would be taken, to date it has not and the dispute remains unresolved.

Over the past four years our office has received complaints from individuals concerned with the department's handling of the resettlement of Hecla Island. The Auditor General's Report and findings with recommendations was released in August 2003, and the department indicated that it accepted all the recommendations contained in the Auditor General's Report. Our office has been following up on the matters relating to the administrative decisions made by the department affecting some of the residents who felt they were aggrieved. I feel that to date this matter has not received timely and adequate responses to bring the matter to a conclusion.

These delays suggest a lack of due regard for the role this office plays on behalf of the Legislative Assembly in terms of bringing timely and reasonable resolutions to valid complaints. Concerns about these delays have been raised with the department and as we find most staff of the department to be courteous and cooperative, I am optimistic that steps will be taken to address our concerns.

Manitoba Conservation

Mistakes happen - so accept the responsibility

In June of 2002 two employees of the provincial government contacted our office for assistance with a request for compensation from Manitoba Conservation. They tried to resolve the issue on their own and had submitted their request to the department in April 2002. When they did not receive a response to their request, they wrote to us about their situation.

Background

In April 2000 Mr. P and Mr. O applied for a Crown Lands Permit to construct a remote recreational cottage.

They received a letter in August 2000 from Manitoba Conservation, Lands Branch, advising that their Crown Land Permit application had been approved for the purpose of a remote recreational cottage, subject to some conditions. In May 2001 they also received a letter from the Regional Land Manager approving the location where their cottage could be built.

On the strength of the written approvals, Mr. P and Mr. O purchased materials and incurred travel and other related expenses in preparation for building on this lot. They also reported having spent considerable time precutting material to facilitate hauling it to the site.

However, some nine months later, much to their surprise they received another letter in February 2002, notifying them that the letter of approval was "…an unfortunate error…" and their Permit was cancelled. Because they were departmental employees, Order-in-Council approval had to be obtained. The problem was that this approval had not been obtained. The

Lands Branch advised that it was going to submit the circumstances of their situation to the department for review. However, Mr. P and Mr. O were advised in April 2002 that Order-in-Council approval was not given.

They believed they were entitled to fair compensation, as the Permit cancellation was a result of government error and not their fault. In April 2002, they wrote to the department requesting compensation for expenses incurred in preparation to build on the lot. When no response was received, they contacted this office in June.

Our Review

Enquiries were made with the department and we understood that their request for compensation was being considered. However, we were informed that a response to the complaint was delayed due to an ongoing review of Crown Lands sales and leasing policies. It was late in November 2002 before we were advised that the department was in a position to address the compensation issue. The department was in direct contact with Mr. P and Mr. O to discuss the situation, but resolution was not achieved.

Generally speaking, the Ombudsman does not become directly involved in negotiating financial settlements. However, Mr. P and Mr. O contacted us stating that they felt the department's position was unreasonable and unfair. We made further enquiries with the department regarding the rationale for their decision.

After considering the position of both parties to this dispute, we believe that Mr. P and Mr. O's request for fair compensation was reasonable. I advised the Deputy Minister in July 2003 that I proposed to make a formal recommendation that negotiations be undertaken to compensate them fairly for the costs they incurred as a result of the department cancelling their Crown Land Permit. However, before doing so, an opportunity was extended to provide further comment.

Resolution At Last!

It was the complainants who subsequently contacted our office in August 2003, advising that they had successfully negotiated a settlement with the department.

While we feel that the department could have resolved this issue sooner, the perseverance and patience shown by Mr. P and Mr. O paid off for them, and together this file was brought to a successful conclusion.

Manitoba Conservation

Incorrect public information leads to revenue loss for meat processor

An individual who operated a meat processing business near the Manitoba/Saskatchewan border complained to our office about what he felt was a premature notice concerning changes to the rules for hunters bringing in game from out of province. Hunters frequently brought animals killed in Saskatchewan to his business in Manitoba to be processed. Because of the notice, he had turned away business and had lost income.

An August 2002 notice issued by the department stated, in part, “Effective immediately, it is illegal for anyone to bring into Manitoba a cervid that has been killed in another jurisdiction without first….”. The complainant turned away animals brought to him for processing because they did not comply with the new and strict conditions set out in this notice.

Our investigation disclosed that the regulation making it illegal to import certain animals, except in accordance with the new conditions, was registered on November 15, 2002 and published in the Manitoba Gazette on November 30, 2002. It appeared as though the complainant was entirely correct and that the department’s notice was premature.

In response to our inquiries the department provided information in support of the new rules and the purpose and importance of its overall objective. We noted, however, that the department did not dispute the allegation that the notice in question provided incorrect information. I advised the department that the complainant was not about the decision to change its regulation or policy but simply about the administrative decision to send out notification advising that something was illegal when it was not. I felt the complainant had a valid grievance because he had made a decision based on incorrect information from the department that resulted in a loss of income.

I informed the department that I was prepared to make a formal recommendation that they enter into negotiations with the complainant to determine reasonable compensation. However, a formal recommendation was not necessary because the department accepted our position.

This case was particularly important as the public has a right to rely upon the government to provide correct information about significant changes to the law. If the public is expected to understand and comply with new rules, it is critical that the information they are given is accurate.

Manitoba Conservation

Water management complaint stagnates in department

In 2003 I made a recommendation to the Minister of Conservation based on a four-year investigation of a complainant alleging inadequate enforcement of certain provisions of *The Water Rights Act.*

In December 1999 two southern Manitoba ranchers had complained about massive flooding and erosion damage to their property from unlicensed upstream drainage. The complainants alleged that the department had been made aware of the unlicensed drainage, and its downstream impact but had failed to take the appropriate enforcement action and, in one case, had even “permitted” additional unlicensed drainage, resulting in greater damage to their property.

Upon inquiry we were advised by the department that they were aware of the problem but a solution for the complainants alone was not practical, as what was required was a watershed plan that would meet the concerns of both groups: individuals who felt it necessary to drain water and the affected downstream landowners. We were told that the department was attempting to work with all of the parties to achieve such a solution.

In late 2000 the complainants advised us that no progress had been made, and we began an investigation of the specific concerns raised in the complaint. In June of 2001, I wrote to the department setting out our investigative findings and inviting the department to respond. I advised the department that our review supported the conclusion that the complainants' problems arose from unlicensed water works; that the department had failed to exercise its enforcement authority in response to legitimate complaints; that the department was involved in the design and engineering of an unlicensed project; and that the department authorized unlicensed drainage without adequate concern for the rights of downstream landowners.

I further advised that while the actions of the department were consistent with existing policy, those actions were inconsistent with the responsibilities placed on the department by *The Water Rights Act.*

I suggested that in light of the facts disclosed by the investigation it seemed reasonable to expect that the department take appropriate enforcement action in respect of all complaints about unlicensed drainage and compensate the complainants for damages they had suffered as a result of the department's failure to enforce the provisions of the *Act*.

The department's position was that damage to the complainants' property was due in large part to an increase in precipitation throughout the period in question, or to the complainants' own actions and land management practices, and that one of the unlicensed drainage projects had actually benefited the complainants. The department stated that it had responded to the complainants' concerns and that it was still trying to address the situation in a manner that would satisfy all of the involved parties.

I was extremely disappointed in the department's response, and particularly its failure to acknowledge any responsibility for its actions in light of the overwhelming evidence that appeared to support the complainants' allegations. Nevertheless, I felt it was important to allow the department another opportunity to resolve the matter through further efforts involving all of the affected parties.

Those further efforts again failed to address the complainants' concerns or to achieve any agreement on an overall solution to area drainage issues. I was obliged to advise the Minister that notwithstanding the department's efforts to resolve the problems giving rise to the complaint, our investigation had concluded that the department had not met its obligations with respect to enforcement under *The Water Rights Act* and had not taken adequate or appropriate action in response to the complaints.

We advised the Minister that a significant part of the drainage affecting the complainants arose as a result of an unlicenced project for which the province bore direct responsibility. We advised, as well, that the department had failed and neglected to take the appropriate action in response to complaints about other unlicenced drainage projects and that this had resulted in damage to property owned by the complainants. I recommended to the Minister that the department take appropriate enforcement action in respect of all the complaints about unlicenced drainage affecting the complainants and that the department compensate the complainants for damage suffered as a result of the department's participation in unlicenced drainage works and its failure to enforce the provisions of the *Act*.

In response to my recommendations we were advised by the Minister of Water Stewardship that he had decided to accept the recommendations, that he had instructed the department to initiate

the appropriate enforcement action, and asked staff to determine how they might address the second recommendation concerning compensation. The Minister indicated that they would keep our office informed of the progress in carrying out the recommendations.

While my recommendations were accepted, I continue to have some concern about the department's failure to address the complainants' obvious concerns when first brought to their attention, as well as the department's reluctance to meets its obligations once we had presented them with a detailed review confirming the validity of the complainants' allegations. My office will continue to monitor the efforts made by the department in 2004 to implement the recommendations to ensure that the complainants are not subjected to further undue delay.

Manitoba Family Services and Housing

32 Complaint files carried over into 2003

92 New complaint files received in 2003

459 Telephone enquiries received in 2003

87 Complaint files closed in 2003

In 2003, our office received 92 new complaints, an increase from the 85 complaints we received in 2002. Our telephone inquiries also show an increase from 388 calls to 459 calls.

Most of the concerns we received related to Employment and Income Assistance (EIA) (44), the Manitoba Housing Authority (MHA) (19), Child and Family Services (CFS) (11), and the Social Services Appeal Board (SSAB) (5). One file was opened on the Ombudsman's Own Initiative (OOI) relating to the Manitoba Housing Authority's policy on crime-free housing, and eleven files were more of a general nature.

Cases involving complaints against Child and Family Services are reported in the Child and Adolescent Services section of this report.

Almost 50% of the complaints we received in 2003 pertained to EIA. The issues include denial of emergency assistance, termination of prescription medication, unfair incorrect delay or termination of benefits and unfair treatment by staff.

Many times the complaints we receive relating to EIA are urgent. Our complainants are often upset, and sometimes the situation has even escalated to the point that the person has been banned from the government offices involved. This makes it necessary for the investigators handling these cases to be sensitive to the issues and address the concerns as quickly and thoroughly as possible.

We continue to receive good cooperation, and work closely with staff from EIA. Our office attempts to informally resolve these types of situations whenever possible. We feel that it is important to at least clarify the situation so our complainant can understand why the department has taken a particular action. When appropriate, we advise our complainants of their right of appeal to the Social Services Appeal Board.

Case Summary

Manitoba Family Services and Housing

Review into nuisance neighbour complaint shows authority acted fairly

An individual complained to our office that her landlord, the Manitoba Housing Authority (MHA), had failed to take appropriate and reasonable action in response to her concerns about a neighbour who she alleged was creating a nuisance and disturbance.

Under *The Residential Tenancies Act* tenants have an obligation not to create a nuisance and disturbance. Landlords have an obligation to bring to the attention of an offending tenant any nuisance and disturbance created, and to request that the offending conduct cease. In the event that the nuisance and disturbance does not cease, a landlord has the option of giving the offending tenant a Notice of Termination. However, this notice does not ensure that a tenant will vacate. A tenant has a right to stay in the rental unit until the landlord obtains an Order of Possession from the Residential Tenancies Branch, after a hearing. There is a further appeal available to the Residential Tenancies Commission. This is the context in which landlords must make decisions about giving notice of termination.

In investigating the complaint we reviewed the detailed allegations made by the complainant, the relevant provisions of *The Residential Tenancies Act*, and the documentation relating to the ongoing dispute between the tenants in question. In response to our inquiries we were advised that the MHA was aware of the complainant's allegations, had investigated them and brought the complainant's concerns to the attention of her neighbour. The MHA had concluded that any application for an Order of Possession would be contested by the neighbour and that based on the evidence in the files, specifically allegations, counter allegations, and witness statements involving both tenants, they felt it unlikely they would be able to obtain the Order of Possession. Our review found no basis to take issue with this conclusion.

While the complainant was not satisfied with the action taken by the MHA, it was clear that they had acknowledged her concerns and attempted to address them in a manner consistent with the governing legislation. As well, the MHA advised us that they continue their efforts to resolve the dispute between neighbours, including the exploration of a voluntary relocation of the neighbour that was the subject of the complaints.

We advised the complainant that in light of the existing provisions of The Residential Tenancies Act and the facts available to the landlord, our review found no basis on which to take issue with their approach to this problem. The value of an independent objective review of the circumstances surrounding a dispute is not diminished simply because we do not support the complainant. It is important and necessary at times for an independent review to confirm that government has in fact acted fairly and reasonably. It is a component of building public trust and confidence in the workings of government.

Manitoba Finance

13 Complaint Files Carried over into 2003

30 New Complaint Files Received in 2003

82 Telephone Enquiries Received in 2003

29 Complaint Files Closed in 2003

Late in the year 2002 the Department of Finance was expanded to include the Department of Consumer and Corporate Affairs. The Department of Consumer and Corporate Affairs had in its portfolio the Automobile Injury Compensation Appeal Commission (AICAC), the Residential Tenancies Branch (RTB), the Residential Tenancies Commission and the Securities Commission.

In the year 2003 we received 30 new complaints. The majority of those complaints were filed against the RTB. The complaints range from inquiries regarding the correct process followed by the RTB for tenant evictions, to allegations that hearing officers did not consider all relevant information before arriving at the decision.

Also included in the Department of Finance were a few complaints filed against the AICAC. As one could very well appreciate, the issues surrounding landlord tenant disputes and the challenges against the AICAC would no doubt be complex matters which require a great deal of effort in our attempts to clarify these concerns.

In our discussions and dealings with the department we have received a great deal of cooperation from staff in the course of reviewing these complaints.

Manitoba Finance

Complaint raises concerns about conflict of interest and processes followed

Our office received a complaint from a tenant who raised concerns about the manner in which an application for rent increase was considered by the Residential Tenancies Branch (RTB).

Apparently the landlord of the complex in which our complainant resided filed an application requesting an annual rent increase of 11.5%. Our complainant, along with other tenants, filed an objection with the RTB claiming that the rent increase was excessive. The application from the landlord and the objection from the tenants were considered by the RTB, following which a decision was made to grant an increase to the landlord in the amount of 9.4%. Both the tenants and the landlord were advised of the RTB's decision, and they were also notified in writing of their right to appeal the decision to the Residential Tenancies Commission (RTC).

Our complainant, along with other tenants, had exercised their right to appeal the decision of the RTB to the RTC. In contacting our office, our complainants had raised concerns about the process followed by the RTB and questioned how the decision to approve the rent increase was supported.

In reviewing this matter with the RTB, we learned that the RTB had considered information relative to the expenses incurred by the landlord and without obtaining the actual receipts for those expenses, made a determination on the basis of the information provided by the landlord to grant an increase in rent.

In our review of the matter, we considered the legislation which provides the mandate for the RTB. The legislation states that before making an order under this section, the director shall consider in accordance with the regulations, the increase in actual expenses.

In reviewing this matter with staff at the RTB, while the officer did not see the actual receipts, the section of the legislation was interpreted to mean that the RTB may ask for invoices when they deem necessary.

After reviewing this matter, we came to the conclusion that it was unclear to our office how the RTB could determine that the increase was reasonable and that the application succeeded without verifying the actual expenses incurred by the landlord. We felt that it would seem prudent for the RTB to obtain actual invoices for the expenses claimed by the landlord, particularly in those cases where the increases were over a $1,000.

As a result, while the matter was appealed to the RTC, we wrote to the RTB asking if they could obtain appropriate verification to support the landlord's claim to satisfy themselves that the claim was justified. In our correspondence to the RTB we mentioned that based on our review of the situation, we have some questions about the current policy or practice of the RTB to accept statements from landlords without invoices or receipts to support the claim. We also questioned whether their practice was consistent with the legislative requirement to determine "the increase in actually expenses".

In responding to our suggestion, the RTB advised that they had contacted the landlord and he provided them with copies of all the invoices for the two financial reporting periods in question. On reviewing the invoices, the RTB advised that they were satisfied that the original reviewing officer would have probably arrived at the same decision as they did without reviewing the actual invoices.

In the meantime, however, our complainant had also filed an appeal to the RTC, which is the statutory appeal body for reviewing decisions of the RTB. The RTC convened a hearing to address the appeal of our complainant. After hearing the matter and considering the information from both the landlord and the tenant along with other witnesses, the RTC concluded that the award of the RTB was upheld and that the landlord would be entitled to an increase of rent in the amount of 9.4%.

Our complainant, however, had raised several issues relating to the manner in which the hearing was conducted by the RTC. These issues included conduct issues relating to dealings with panel members, conflict of interest issues and the actual decision of the panel.

Our complainant explained that during the hearing she felt that the chairperson displayed preferential treatment towards the landlord and that panel members were disrespectful towards her. She also reported that the chairperson yelled at her, that one of the panel members laughed at her and that other members of the staff took offence to remarks she made when questioning issues around this matter.

Our office met with staff of RTC on these issues. During our meeting these allegations were denied. The chairperson advised that the hearing was a contentious hearing, with the complainant and her father being very disruptive, talking continually and making references or suggestions that the landlord could have been submitting information or invoices from other properties which he owned.

After reviewing this matter, there was a clear difference of perception between the parties as to what occurred, and in the absence of conclusive evidence, we were unable to make a determination as to what transpired during the hearing.

On the conflict of interest issue, our complainant explained that the hearing was not fair because one of the panel members had worked for the landlord prior to being on the panel. It is our understanding that our complainant did not raise this objection at the hearing.

In reviewing the matter with the RTC, we were advised that the chairperson was aware of the panel member's earlier involvement with the landlord prior to the hearing. The chairperson advised our office that prior to the hearing he had asked the individual whether he felt comfortable sitting as a panel member and whether he could render an unbiased, impartial decision. The panel member reportedly responded that he would not have any difficulty doing so.

The chairperson also advised that before the hearing began he asked the parties if they had matters which they wished to raise. If, at that time, our complainant had objected to the panel member sitting on the panel, he would have adjourned the hearing to another date with a different panel.

Our office felt that while the panel member may not have been considered in a conflict, given the length of time since he worked for the landlord, it would have been prudent to disclose at the start of the hearing that the panel member had worked for the landlord at one time. This would avoid any apprehension of bias and allow for any objections from the parties at the hearing.

The chairperson acknowledged during a meeting with our office that in the future he would handle the situation differently.

Regarding the panel's decision, from our review of this matter, we felt that the purpose of the panel hearing is to provide citizens with the right to challenge the legitimacy of landlords' claims. Quasi-judicial boards and tribunals are also intended to be less formal than a court proceeding and representation by legal counsel is not a requirement. It can be expected, therefore, that some of the individuals appearing unrepresented before the tribunal may lack the ability and skills to clearly articulate a question the way an advocate or lawyer might. We felt that while our complainant may not have specifically articulated a request that the landlord representative produce bills or receipts, it appears that the complainant was taking issue with expenses claimed by the landlord in support of his rent increase application.

Following our review of this matter, we advised the RTC that in the absence of any proof to verify the landlord's financial statement, we were unable to conclude that the decision of the RTC to uphold the award of the RTB was fair.

To our knowledge neither the RTB nor the RTC had received independent verification to validate the claim of the landlord before issuing their decisions. While our complainant may not have

directly asked for proof of costs, in our opinion she was in fact questioning the authenticity of the records and whether the expenses were supported. In our view it seemed that there should be some onus or responsibility on the RTC to canvass this issue to satisfy both the appellant and the panel that the costs were justified. This did not occur in this case. Accordingly we advised that in the absence of any proof to verify the landlord's financial statement, we were unable to conclude that the decision of the RTC to uphold the award of the RTB was fair.

In subsequent correspondence to the Assistant Deputy Minister for the department, we advised that the landlord voluntarily provided additional information to the RTB and they were satisfied that the original reviewing officer and the RTC, on appeal, would have probably arrived at the same decision. Accordingly, this information, albeit after the fact, satisfied that aspect of the complaint.

The other concern relating to conflict of interest was subsequently addressed by the Chief Commissioner for the RTC. He advised that in their guidelines before the RTC, it included that parties to an appeal are to inform the RTC of any potential or perceived conflicts of interest at, or before, the commencement of the hearing. Copies of the updated guidelines were being provided to all parties to the appeal and also forwarded to the Deputy Commissioners and panelists with instructions to adhere to same. Upon receiving this confirmation, our office wrote to the Chief Commissioner of the RTC and acknowledged the consideration provided by his office in addressing the conflict of interest situation.

This concluded our involvement in the case.

Manitoba Health

19 Complaint Files Carried over into 2003
44 New Complaint Files Received in 2003
169 Telephone Enquiries Received in 2003
35 Complaint Files Closed in 2003

The number of files (44) and telephone inquiries (169) related to Manitoba Health rose in 2003. Telephone calls relating to mental health matters rose from 66 to 89, while inquiries about Regional Health Authority (RHA) matters rose from 22 to 50. However, formal complaint files only rose slightly, from 39 to 44.

As in past years, most investigations in this area begin with an effort to identify and distinguish administrative matters from the decisions of health care professionals. Our office does not investigate the decisions of health care professionals who are subject to their own licensing and regulatory bodies.

The types of complaints we investigated involved out-of-province medical coverage; ambulance charges; delay in having an appeal heard; staff in a conflict of interest situation; the cleanliness of a hospital; placement in a nursing home and concerns regarding the care or lack of care received. Other concerns were from patients in mental health facilities. Some of their concerns related to the interception of mail by hospital staff; their admittance and confinement; confiscation of clothing; conduct of staff and room searches.

As well, in 2003 we opened three Ombudsman Own Initiative files. Two of these files pertained to recommendations from inquests involving the death of children and one related to the department's responsibility to notify of available appeal routes.

MANITOBA HEALTH

Assiniboine Regional Health Authority
Complainant finds out there is no free ride

A woman from rural Manitoba complained to our office that she had been unfairly billed for an ambulance transfer from a small rural hospital to a larger facility. She complained about the bill because she had not requested ambulance transportation, she had not been advised prior to the trip that she would be responsible for the cost nor was she asked for consent to incur the cost, nor did she think her medical status required transportation by ambulance.

Our investigation confirmed that the decision to transfer the woman by ambulance was made by her doctor on the basis of the urgency and severity of her medical condition. We found that the decision to bill the woman for the trip was consistent with existing RHA and provincial policy. We also learned that the RHA was in the process of finalizing a consent form, which would include patient consent for ambulance transfer.

We were unable to confirm, however, that the woman had been advised prior to the trip that she would be responsible for the cost or of the medical necessity for transport by ambulance.

The issue of informed consent is important. However, while we were unable to confirm that the complainant or her family had been effectively made aware of the necessity for an ambulance transfer or consented to the cost, nevertheless, we felt that any reasonable person upon being advised of the urgency and severity of the situation, would not object to the decision to transport by ambulance.

We advised the complainant of our findings but also suggested to the RHA that it might be appropriate for them to fully explain to the complainant the circumstances that warranted the decision. The RHA followed up on our suggestion by writing the complainant and explaining why it was medically necessary for her to travel by ambulance.

Manitoba Justice and Attorney General

79 Complaint Files Carried over into 2003
416 New Complaint Files Received in 2003
600 Telephone Enquiries Received in 2003
376 Complaint Files Closed in 2003

This year, the number of formal complaints received by our office against Manitoba Justice has increased by 67 complaints from the year 2002. Individuals incarcerated in the provincial correctional facilities generate most complaints and enquiries related to Manitoba Justice. The Ombudsman office initiated 20 Ombudsman's Own Initiative (OOI) investigations within the Justice Department in the year of 2003. The complaints from inmates in the correctional facilities related mainly to medical treatment, placement in segregation and property issues.

In 2003, Ombudsman staff visited the Portage Correctional Centre, Milner Ridge Correctional Centre, the Winnipeg Remand Centre, Headingley Correctional Centre, Agassiz Youth Centre and the Manitoba Youth Centre. Throughout the year, staff attended the institutions to review inmate files, interview inmates and complete a walk-through of the facility. The Ombudsman staff provided six information sessions for correctional officers and staff within the institutions.

Other complaints involve the Legal Aid Services Society, Public Trustee, Human Rights Commission, Maintenance Enforcement, Courts Administration and Sheriffs and the Law Enforcement Review Agency.

Adult Correctional Services

Statistical Information

Brandon Correctional Centre	26
Dauphin Correctional Centre	3
Headingley Correctional Centre	103
Milner Ridge Correctional Centre	18
Portage Correctional Centre	62
The Pas Correctional Centre	3
Winnipeg Remand Centre	92
Total	**307**

Issues that relate to youth in the correctional system are reported in the section of the report on Child and Adolescent Services.

This year our office received 307 complaints from inmates in correctional facilities throughout the province relating to a variety of issues or concerns. These individuals are dependent on Correctional Services for basic necessities such as food, shelter, clothing, and medical care. This fact is reflected in the types of complaints we receive.

Many of the complaints we receive relate to medical services provided by corrections to the inmates while in custody. The medical units within the provincial correctional system are comprised of nurses and contract physicians. The nurses routinely respond to inmates' medical

requests and have an important role in determining if and when a physician will see an inmate. Furthermore, the nurses regularly make decisions respecting the disbursement of certain medications and are tasked with the responsibility of carrying out the prescription orders of the physicians. Many of the complaints received relate to the administration of medication and matters relating to physician availability.

Another area in which our office often receives complaints is dental services for inmates in correctional facilities. A contract dentist provides dental services for inmates and, once again, nurses are tasked with the responsibility to review, assess and triage the inmates' dental requests. Inmates often raise concerns regarding the disbursement of pain medication and the period of time they wait for dental services.

Although minor dental and medical concerns relating to issues such as the availability of over-the-counter medication may seem trivial in nature, to the individual completely dependent on the correctional facility for care, it is a primary issue.

Other complaints involve inmate property. In one case, an inmate contacted our office to advise that correctional staff had misplaced his property and they reportedly were not addressing his concern. Our office made inquiries and confirmed the property was inadvertently lost during the inmate's transfer from one area of the facility to another. The matter was resolved by the correctional facility replacing the missing property.

We recognize the difficulty of correction's work, and although the department strives to provide professional service rooted in integrity, there are cases that can indirectly raise questions surrounding the level of service that is provided. A number of correction cases are included in this Annual Report which emphasize the importance of administrative accountability.

Manitoba Justice and Attorney General

Outstanding charges and warrants – but for what?

A resident of British Columbia contacted our office as she was unable to obtain any information regarding outstanding charges that had been laid against her son in Manitoba. Ms. M advised that in 1995, when her son was still a minor, he came to live with extended family in Winnipeg. He returned to British Columbia in 1996. Several years passed and in 2002, her son (now an adult) applied to college. As part of his college application, he was required to undergo a criminal records check. The check revealed that there were outstanding charges against him in Winnipeg from the time he had lived here as a minor. This was the first time that either she or her son became aware of the charges.

For more than one year, Ms. M and her son tried to determine the nature of the charges. They went to a local police station, the British Columbia Courts, the Royal Canadian Mounted Police, the Winnipeg Police Service, British Columbia Legal Aid, a private lawyer and a Senior Crown Attorney with Manitoba Justice's Prosecutions Division. They were able to determine the type of charges and also that there were two outstanding warrants for Ms. M's son in Manitoba. However, they were unable to obtain any details regarding the charges. Ms. M was advised by various parties that her son only had two options. He could go to Winnipeg, turn himself in to

authorities and go to court regarding the outstanding charges or he could have the file waived to British Columbia and have the charges dealt with there. In order to have the file waived to British Columbia, her son would have to plead guilty to the charges.

Ms. M contacted our office and expressed her frustration at her inability to obtain any information regarding the charges. She believed she should have been informed of the charges when they were first laid since her son was a minor at the time. She also felt it was not fair to expect her son to plead guilty to charges about which he could not obtain any information. She advised her son's education had been put on hold for more than a year while they attempted to obtain information about the charges.

Our office made inquiries of the Winnipeg Police Service. We were informed that the charges against Ms. M's son were based upon statements given by other youths involved in the incidents. As charges were still pending, any information regarding the charges could not be disclosed and it would be up to the Crown to determine what information, if any, could be released to Ms. M. We then contacted Prosecutions and explained the situation to a Senior Crown Attorney, who advised that Ms. M would not have been notified of the warrants as parents are not notified until a youth has been arrested and detained. If the warrant is never executed, the parents are not notified. The Crown Attorney also indicated that if Ms. M or her son wrote directly to her she would review the files and determine what information she would release to them.

Ms. M wrote to the Crown Attorney and was provided with information sufficient to permit her son to determine how to proceed with the matter. Ms. M expressed her gratitude to our office as she had been unable to obtain the information for more than a year and believed she never would have if we had not become involved.

Case Summary

Manitoba Justice and Attorney General

Headingley Correctional Centre
46 inmates had no winter jackets

An inmate at Headingley Correction Centre contacted our office advising that there were insufficient winter jackets available to inmates when they are required to walk to the main building. He resided in the Community Release Unit annex that is outside of the main building and is the furthest annex from the institution. There were 66 inmates residing in all three of the annex buildings that walk to the main building for meals and/or programs. However, there were only 20 winter jackets provided to the inmates. Consequently, 20 inmates were able to wear winter jackets to go outside and 46 did not have the proper outerwear to go outside in the winter.

Upon contacting the Centre, we were advised the information was accurate. Additional jackets were ordered for all of the inmates residing in the annex buildings and an additional 46 jackets were received.

It remains a mystery as to why 46 inmates did not have jackets. It appeared that staff had no knowledge of this situation.

Case Summary

Manitoba Justice and Attorney General

Headingley Correctional Centre

Was it necessary to walk over broken glass?

An inmate contacted our office alleging that he was subjected to excessive force at Headingley Correctional Centre (HCC) during a cell extraction and was forced to walk barefoot over broken glass. He advised our office he sustained injury to his feet and was denied medical attention.

Our office made inquiries with HCC and determined this complaint stemmed from a disturbance at HCC which resulted in a broken window and damaged sprinkler heads. The complainant was reportedly seen kicking at his cell window while another inmate was observed attempting to break the same window, from the other side of the glass.

As a result of the incident, correctional officers extracted the complainant from his cell. There was broken glass inside and outside of the cell and the complainant sustained minor cuts to his feet when he was escorted from the cell. The HCC health care department later cared for the complainant's injuries, contrary to the allegation that medical attention had been denied.

Our office and HCC management reviewed the video recording of the incident. HCC concluded there was no evidence to substantiate that excessive force had occurred when the complainant was extracted from his cell.

However, our office raised concern that broken glass was not removed or set aside prior to HCC staff conducting the cell extraction. We questioned why hazardous objects would not be removed prior to cell extraction to avoid injuries to correctional staff and inmates.

HCC reviewed the matter and determined that reasonable efforts would be made to remove broken glass and other hazardous objects prior to conducting cell extractions in the future. Taking precautionary measures may help reduce preventable injuries from occurring during the cell extraction process.

Case Summary

Manitoba Justice and Attorney General

Headingley Correctional Centre

Complaint leads to medication policy changes

An inmate contacted our office and advised that Headingley Correctional Centre (HCC) had escorted him to the hospital where he was examined by an emergency room physician and was prescribed medication. He alleged the HCC health care department declined the medication when he returned to the facility.

Our office made inquiries with HCC and established that the complainant had been provided with over-the-counter medication as a substitute for the prescribed medication. HCC indicated one of their contract physicians had authorized the substitution.

HCC explained the process for filling prescription medications and informed our office that their nurses cannot authorize an outside prescription unless approved by a HCC contract physician. This raised the question of how prescription medications are addressed after hours, when the contract physicians are not available at HCC.

As a result of our investigation, HCC determined prescription medication concerns requiring immediate consultation would include a contract physician being notified after hours. Policy was later introduced establishing those medications that are pre-approved by the contract physicians and which may be disbursed by the nurses as required.

These changes appear to streamline the process and may improve medical care in circumstances where outside physicians prescribe medication to HCC inmates.

Manitoba Justice and Attorney General

Headingley Correctional Centre
Extended use of restraint chair justified?

An inmate at Headingley Correctional Centre (HCC) contacted our office and complained he had been subject to excessive amounts of time in the emergency restraint chair. The complainant also questioned why he was not separated from a correctional officer who had brought criminal charges against him.

Our office made inquiries with HCC and we were informed that the complainant was criminally charged while at HCC as a result of an incident with a correctional officer. Despite a criminal investigation, it appeared the complainant remained housed in the same area to which this correctional officer was assigned. Our office questioned the reasonableness of allowing an alleged victim and alleged offender to remain in proximity to each other. Following this matter, HCC separated both parties and acknowledged separation should occur in these types of situations.

In addressing the complainant's concern relating to the emergency restraint chair, we learned he was pepper sprayed after allegedly assaulting a correctional officer. This situation led to the complainant being placed in the emergency restraint chair as an interim control measure.

HCC policy directs staff to provide decontamination to offenders in the restraint chair after pepper spray has been applied. In this incident, it appeared policy was not followed and decontamination was not provided for the complainant while secured in the emergency restraint chair.

The situation became further complicated when the same correctional officer who had been assaulted gave the authorization for the restraint chair to be utilized beyond the two-hour limit. HCC advised there were grounds for the continued use of the restraint chair, but acknowledged an alternate person should have made the decision to avoid a conflict of interest.

During our review, it was determined the prescribed forms for documenting the use of the emergency restraint chair were not completed. HCC staff used the wrong forms and as a result, no observations regarding behavior were noted and the required checks were not recorded. When the correct forms are completed, it can substantiate the reason for the continued use of the emergency restraint chair and ensures accountability with respect to the application of the device.

As a result of our inquiries, HCC created policy relating to investigations involving inmates and correctional officers. This policy should assist HCC in preventing conflict of interest situations from occurring within the facility. In addition, HCC reviewed the existing policy regarding pepper spray and the emergency restraint chair in order to promote and ensure staff compliance with all aspects of the policy.

We were satisfied with the action taken by HCC in addressing these concerns.

Case Summary

Manitoba Justice and Attorney General

Headingley Correctional Centre

Backlog prevents inmates from receiving psychiatric medication for up to 10 weeks

Mr. L contacted our office and complained that the Headingley Correctional Centre (HCC) health care department was denying him medication that had been prescribed by his physician prior to his incarceration.

Our office made inquiries with HCC and discovered they had received a letter from the complainant's physician, who confirmed the prescription medication. HCC advised they were experiencing difficulty facilitating an opportunity for the HCC psychiatrist to review the matter. HCC advised their practice was to have the psychiatrist authorize the psychiatric medications prior to it being disbursed by staff. HCC explained Mr. L would likely be facing a six-to-ten week delay as a result of a backlog relating to psychiatric services.

In the end, the complainant received the prescribed medication and was pleased his medication concern had finally been addressed. Our office noted there was a delay in processing the request for prescribed psychiatric medications. In this particular case, nearly a month had elapsed from the date HCC had received a letter from the complainant's physician to the date the medication was processed.

HCC advised our office that efforts would be made to address the existing backlog by having the contract physicians work jointly with the psychiatrist and authorize prescriptions where appropriate.

Case Summary

Manitoba Justice and Attorney General

Headingley Correctional Centre

How long is too long to wait for dental services?

An inmate at the Headingley Correctional Centre (HCC) complained to our office that his written dental requests were being ignored at HCC. He disclosed he was experiencing dental pain and believed he had an infection.

Our office made inquiries and learned that the complainant had submitted three requests in which he disclosed pain and the presence of a possible infection. HCC records indicated the dentist did not meet with the complainant until two weeks after the first request was received at HCC.

Based on our review of the documentation, it appeared the complainant's written requests were received by the HCC health care department and forwarded to the dental department without any action being taken. HCC staff did not respond to the complainant's immediate concerns, but rather, noted a future dental appointment was scheduled.

As a result of the investigation, HCC ensured our office the health care department would properly screen all future dental requests in order to address pain or infection when reported. The increased efforts during the screening process should prevent inmate dental needs from being overlooked.

Our office was satisfied with the corrective action taken by HCC in addressing the situation.

Case Summary

Manitoba Justice and Attorney General

Winnipeg Remand Centre

Reality proves to be contrary to information supplied by WRC

Mr. N. made a complaint to our office alleging a correctional officer at the Winnipeg Remand Centre (WRC) assaulted him and he felt the department was not addressing his concerns in an appropriate manner. The complainant also claimed a female WRC nurse saw him naked during pepper spray decontamination. Mr. N. found the incident to be degrading.

Though our office does not investigate criminal or misconduct matters, we do investigate decisions and actions of provincial and municipal governments that relate to matters of administration. For this purpose, our office made inquiries with the WRC to determine what administrative process was followed when addressing the complainant's concerns.

The WRC initially informed our office that correctional officers, following a number of incidents, had extracted Mr. N from his cell. During the cell extraction, force had been applied and pepper spray was introduced. Initially we were not made aware a video recording of the incident existed.

Our office later reviewed the videotape with WRC management and concerns were identified with respect to the conduct of a specific correctional officer. The WRC reported the conduct issue had been addressed.

The WRC informed our office the female nurse did not observe Mr. N while naked and explained she was in the area to respond to any medical concerns resulting from the cell extraction. We later confirmed the WRC nurse had seen Mr. N naked during the pepper spray decontamination procedure, contrary to the information we were originally provided. The WRC maintained this was an error and it was not an intentional act to mislead or withhold information from our office.

As a result of this investigation, the WRC completed an internal review of the incident and determined changes to the process were required. WRC management concluded these types of incidents need close review and all follow-up action should be properly documented. In addition to the change in process, the WRC addressed the personnel concern.

Our office set out the penalty provisions of *The Ombudsman Act* and gave notice to the WRC as it appeared we were misled with respect to our investigation. The WRC concluded that in the future, all relevant information would be made accessible to our office and apologized for the misinformation and miscommunication. Our office was assured this was not a willful attempt to obstruct, hinder, resist or mislead our investigation.

Case Summary

Manitoba Justice and Attorney General

Winnipeg Remand Centre

Inmate misses court appointment as a result of staff error

Mr. V contacted our office and complained that staff at the Winnipeg Remand Centre (WRC) had refused him an opportunity to attend a family court hearing. The court hearing had been scheduled to determine if Child & Family Services would be granted a Permanent Order of his children. The complainant felt it was unfair that he had been denied an opportunity to address the court and expressed an interest for future access to his children.

Our office investigated the matter and confirmed the complainant had been served with court documents while in custody at the WRC. The WRC informed our office there was no record of a missed court appearance and the court documents were not placed in the legal file to reference.

As a result of this complaint, the WRC reviewed their procedures regarding court documents and advised our office they were not convinced the processing of legal documents was being handled in a consistent manner. The WRC drafted an Interim Order that outlined the WRC management's expectations with respect to processing court documents.

Adult Correctional Services also reviewed the matter and acknowledged a staff error had occurred, resulting in the complainant missing the court hearing. The department provided the complainant with a letter explaining what had transpired and apologized for their error. Child & Family Services was also provided with a copy of the letter in order to explain the complainant's absence at the court hearing. The complainant was pleased the department accepted responsibility for their error.

Although the outcome of the investigation could not overturn the decision that was made by the court in the absence of the complainant, he was optimistic child access may be resolved by petitioning the court in the future.

Our office was pleased with the cooperation we received from the department in resolving this matter.

Manitoba Justice and Attorney General

Milner Ridge Correctional Centre
Inmate segregated from his medication

An inmate from the Milner Ridge Correctional Centre (MRCC) contacted our office and advised he had been denied medication while in preventive segregation at the MRCC.

Our office made inquiries with MRCC and confirmed the complainant had missed medication while housed in preventive segregation. MRCC acknowledged the medication should have been provided to the inmate from the outset and there should not have been a disruption in the disbursement of medication. MRCC rectified the situation and the inmate was provided with the authorized medications.

As a result of the investigation, MRCC provided a directive to all staff requesting they confirm whether an inmate has current medication prescriptions when the inmate is placed in segregation. MRCC management directed staff to make certain all medication is brought to the preventative segregation area and the supervisor will ensure the medication is administered according to directions in the future. MRCC concluded it is their responsibility to ensure inmates receive the necessary medication whether housed in a unit or in the segregation area.

Our office was pleased with the action MRCC took in response to the complainant's concerns.

Case Summary

Manitoba Justice and Attorney General

Housing inmates for court appearances in Thompson poses a problem

Complaints About Conditions Form a Pattern

Over a period of several months our office received a number of complaints regarding the conditions at the RCMP Detachment in Thompson, Manitoba from adult inmates awaiting court appearances. Individuals complained about missed medications, unsanitary cells, no showers, no clean clothing or bedding, inadequate or inedible food, no telephone access and no fresh air.

Similar complaints were also received from youth regarding their experiences in the Thompson holding cells.

In one conversation with a youth on another matter, she recalled her experience and the conditions at the Thompson holding cells. She stated that all inmates were kept in their cells for 24 hours per day. On her most recent stay, she was not allowed out of her cell for 3 days. She stated that she was not permitted to shower and was not given a toothbrush, toothpaste or soap. She was not allowed to use the phone and had not received a message that had been left for her by one of my staff. She further stated that, when transported from the MYC to the Thompson holding cells by Sheriff's Officer's, she was not allowed to take any clothing or personal belongings with her. She understood that this was standard practice when youth were sent to the Thompson holding cells. Although she had already been released into the community, she raised concerns on behalf of other youth that might be sent there.

Inquires Made With Manitoba Justice - Youth and Adult Correctional Services

The information we received from the youth was discussed with the Executive Director of Community and Youth Correctional Services. She was aware of these issues, as she had reviewed a report completed by the Children's Advocate in September of 2001 that had raised some similar concerns. She stated that she would be advising her senior management team of the recent concerns that had been raised.

Inquiries were also made with Adult Corrections and the Thompson detachment of the RCMP to determine who had responsibility for the care of these inmates when transferred from a provincial facility to the Thompson holding cells.

We were advised that the northernmost provincial correctional centre in Manitoba was in the City of The Pas; however, many inmates remanded to custody were required to attend court in Thompson. The distance between the two communities made it impossible to accommodate court appearances without at least one overnight stay in Thompson. As a result, an arrangement was made through the RCMP, the City of Thompson and several branches of Manitoba Justice to house remanded individuals in the RCMP detachment holding cells when they were in Thompson to attend Provincial Court. The complaints received by our office seemed to suggest the minimum standards of care and custody were not being met for these inmates.

In order to fully review these complaints, our office opened an OOI (Ombudsman's Own Initiative) investigation to pursue this investigation.

Discussions and Commitment

Corrections suggested that a meeting be held between our office and the various branches of Manitoba Justice to discuss the complaints. In February 2003, staff from our office met with the Assistant Deputy Minister (ADM) of the Corrections Division; the Director of Operations and Assistant Director of Operations for Corrections; the ADM of the Courts Division; the Executive Director of Regional Courts; and the Director of the Sheriff's Office.

The parties acknowledged that the situation in Thompson needed to be addressed. They recognized the problems of holding young offenders in the same proximity as adult offenders, and the concerns relating to the living conditions, which were exacerbated by lengthy periods of confinement.

In April 2003, we were advised by Corrections that a working group had been established and that there was a commitment to resolve the concerns identified by working on short-term and long-term solutions. It was also stated that resolution required a cooperative, integrated effort from all the parties involved (Corrections, the Courts, Sheriffs and the RCMP).

Corrections also reported their belief that they needed to proceed along two separate tracks:

- a short-term solution to alleviate the concerns identified, and

- a long-term solution that would involve some type of facility improvement or construction.

Improvements Made and Action Taken

A further progress report was received in July 2003 advising that the working group toured the holding cells in Thompson and met with the RCMP and City officials. The following action was reported:

> Corrections provided the detachment with clothing and personalized laundry bags. This would ensure that prisoners have reasonably clean clothing and access to additional clothing if required.
>
> The Sheriffs planned to hire and train some part-time officers for guarding duties. They would provide additional supervision of any youth prisoners, and escort prisoners for phone calls and showers. They expected to have these officers hired, trained and deployed by January 1, 2004.
>
> The working group was seeking direction from the Manitoba Justice Executive Management Committee with respect to pursuing the option of new construction.
>
> Meal service would remain unchanged. There were no cooking facilities in the detachment, other than a microwave oven.
>
> In addition there was an administrative/procedural court change that they felt should reduce both the number of inmates and their length of stay in the holding cells. Youth court was changed to Thursdays, which would allow the Sheriffs to reduce the time spent in the holding cells for youth.

We were encouraged by this report, as it appeared that concerted effort was being made to address the concerns.

Another Complaint

However, approximately 3 months after receiving the progress report, a resident from a youth correctional facility contacted our office and advised that for 6 days he was housed at the Thompson holding cells in order to facilitate his appearance in court.

He reported that while staying at the Thompson holding cells, the living conditions included:

- no hygiene products other than a bar of soap and a wash cloth
- one gym mat and one blanket with no other bedding supplied
- one shower during his six-day stay
- no change of clothes during his 6-day stay
- he was denied telephone calls to legal counsel and the Manitoba Ombudsman
- he was housed in an area that included adult offenders.

In light of the most recent allegation concerning both the general living conditions, as well as the issue of placement of youth in the Thompson holding cells with adult inmates, it raised questions as to whether there had been significant improvements. We made further inquiries with Corrections requesting an update.

March 2004 Update

We were informed that the lack of telephone calls was a long-standing issue at the Thompson lock-up and was attributed to the fact that the civilian guards are not allowed to take a prisoner out of their cells — a RCMP member must be in attendance. This was also the reason why prisoners were so seldom allowed out for a shower. It was acknowledged that during his stay the youth should have been allowed to contact his lawyer and the Ombudsman.

Regarding the clothes, bedding, and hygiene products, we were advised that Manitoba Corrections could assist the detachment in this regard. They informed our office that they had already provided prisoner clothing and laundry bags, and this was supposed to have improved the situation. They indicated that they could also supply some bedding and hygiene products, but there was little point unless the RCMP was prepared to use these products.

It was also noted that there had been a change in command at the Thompson detachment and Corrections planned to meet with the new Inspector when he took charge.

The department further advised that:

Sheriffs' Officers had been hired and were currently in the process of being trained and outfitted to assist in the Thompson cells. It was now anticipated that they should be operational by approximately May 2004.

The Courts Division had taken the lead on some initiatives to reduce the numbers of adult and youth prisoners being detained in the Thompson cells. Although no data had yet been analyzed, the department felt that the custody coordination initiative appears to have met with some success. This project sought to reduce the numbers of accused being brought to Thompson by requiring the accused in court only for a first appearance, bail hearing, trial, or sentencing.

A video phone hook-up between The Pas Correctional Centre and the Thompson courthouse

had been approved and was expected to be operational by April 2004. This would result in fewer prisoners in the Thompson cells by allowing accused to consult with their legal counsel without having to be brought to Thompson.

We were advised that the objective of these initiatives was to have a substantial reduction in the numbers being housed in the Thompson cells. This should not only eliminate the need for those individuals to be housed in the cells, but improve the conditions for those who are housed in the cells.

Corrections reported that they felt progress was being made in reducing to a minimum, the number of prisoners requiring detention in the cells, and, making improvements to the living conditions. However, it was acknowledged that the following issues remain outstanding:

- Monitoring of the staffing project and improvements to living conditions.
- Questions regarding the issue and process of holding of young offenders in the facility were still being pursued with Prosecutions and the Courts Division.
- The development of options for a separate youth holding unit.
- Corrections advised that they planned to travel to Thompson in 2004 to meet with the newly appointed RCMP Inspector to continue pursuing the issues brought forward.

We will continue to monitor the progress being made. We will report on any new developments in next year's Annual Report.

Manitoba Transportation and Government Services

8	**Complaint Files Carried into 2003**
20	**New Complaint Files Received in 2003**
46	**Telephone Enquiries Received in 2003**
16	**Complaint Files Closed in 2003**

The nature of complaint files our office reviewed in this category was reflective of the range of programs and services provided and administered by this department. We investigated concerns relating to "transportation" responsibilities of the department through the Driver and Vehicle Licencing Division and the Licence Suspension Appeal Board. We also reviewed cases respecting "government services" provided by the Emergency Measures Organization. Our office also undertook a review by way of an Ombudsman's Own Initiative (OOI) into a matter concerning the Disaster Assistance Appeal Board. Examples of the types of issues raised with this department are provided in the following case summaries.

Manitoba Transportation and Government Services

Enquiries lead to procedure changes regarding license suspension hearings

Mr. T contacted our office regarding a decision of the License Suspension Appeal Board (Board) where the Board denied him a restricted driver's license for work purposes (work permit). Mr. T believed that the Board's decision was wrong and that the Board failed to adequately address the hardship that would result from the denial of a work permit.

Mr. T advised that in January 2003 he attended a show cause hearing to address numerous driving infractions that he was charged with in 2002. At the time his license was suspended, he was issued a 45-day work permit to allow him to appeal the suspension to the Board.

In February 2003 Mr. T attended a hearing before the Board, where the Board determined that it would not be in the public interest to grant Mr. T a work permit.

Our office sought clarification from the Board as to the basis on which it rendered the denial. The Board indicated that at his February 2003 hearing, Mr. T failed to provide any explanation as to his numerous driving infractions. When asked by the Board about specific details surrounding his driving record, Mr. T would state that he could not remember anything.

The Board advised our office, however, that if Mr. T provided additional information to the Board explaining his driving record, the Board could grant a new hearing.

In April 2003, Mr. T sent a letter to the Board containing a detailed explanation of his driving record. Later that month, the Board wrote to Mr. T advising that they would grant a new hearing to consider the information provided in his letter.

In May 2003, the Board conducted a hearing and based upon the information provided by Mr. T, they issued him a work permit. Mr. T later advised our office that he was pleased with the Board's decision and that his concern had been resolved.

We then spoke with the Board, who indicated that as a result of Mr. T's case, the Board was considering whether to amend its procedures to adjourn hearings when a party does not present sufficient information on which the Board can render a decision. We were advised that in these cases, if procedures were amended, then the hearings would be adjourned without prejudice to allow a party to be able to fully present his or her case.

In June 2003, we contacted the Board inquiring as to whether it had decided to amend its procedures to allow for an adjournment in cases like Mr. T's. We were advised that the Board decided to amend its procedures in that regard and we were fully satisfied that this matter had been resolved.

Manitoba Transportation and Government Services

Complaints question Disaster Assistance Appeal Board Hearing process

Our office received two similar complaints that related to the hearing process followed by the Disaster Assistance Appeal Board (Board). These individuals objected to the fact that they, as appellants, and Manitoba Emergency Measures Organization (MEMO) staff do not appear together before the Board at the appeal hearing. Concern was voiced that appellants do not get an opportunity to question MEMO staff. In addition, concern was raised about the process's "lack of transparency", in that MEMO meets privately to brief the Board prior to the hearing. This briefing includes information regarding the reasons for the appeal, background information, current status, and rationale for the denial at the first stage appeal.

I note that the Board had previously advised our office that it believed that the process was fair, equitable and transparent. Further, the Board indicated that the appeal process provided claimants with an equal opportunity to present information regarding their claims, and to have this information considered by the Board in an impartial venue. The Board also stated that this was an independent review of the actions of the Emergency Measures Organization to ensure adherence to the Disaster Flood Assistance Policies and Guidelines.

After considering the points raised by our complainants, we wrote to the Board explaining that we were seeking further clarification about the process followed by the Board at its hearings. Specifically, we asked if there were any written policies or procedures that guide the Board when it conducts an appeal hearing. Further, we wondered whether the potential for appellants to question the appropriateness of MEMO's private briefing with the Board caused the Board to feel that its procedures should be reviewed, and if so, if the Board was prepared to conduct such a review.

In response to our inquiry the Board advised that it was prepared to review its process and as a part of that review it would document its process and procedures. The Board made a commitment to provide us with additional information once its review was completed. At the time this report was being written the review was still in progress and we will continue to monitor this matter with the Board.

Case Summary

Manitoba Transportation and Government Services

Unreasonable delay in resolving dispute

This summary details a complaint that was originally filed with our office in 2001. The complaint arose as a result of a couple receiving an unfavourable decision from the Manitoba Disaster Assistance Board (Board). This decision related to a 1997 flood claim that they made with the Manitoba Emergency Management Organization (MEMO).

Following an extensive review of the many issues that had been raised by our complainants, we reported our findings to them in February 2003. We explained that we were not able to support their complaint, but that there was one issue that we were prepared to pursue with the department. This issue related to a claim they had made for travel expenses they incurred to attend a Land Value Appraisal Commission hearing.

By way of background, MEMO sought the assistance of the commission to establish a value for their flood-damaged home. The commission convened a hearing and rendered its decision. As a part of its finding, the commission determined that our complainants and their lawyer should receive compensation for reasonable legal and appraisal costs, plus reasonable travel costs to attend the hearing.

The lawyer received compensation for his legal fees and travel costs, and MEMO also paid the related appraisal costs. However, our complainants did not request compensation for their travel expenses until after the Board made its decision on their flood claim. This ruling dealt with many issues but did not address the travel expenses in question.

In pursuit of these travel expenses, the complainants contacted my office seeking information as to how they could recover these travel expenses. We contacted MEMO and were advised that they should submit their request to Land Management Services (LMS). It is our understanding that they did so, and LMS referred them back to MEMO, who in turn passed on their request to the Board.

The Board decided that it had already ruled on the claim and that all issues that had been presented were addressed. Therefore, the Board considered that the claim had been concluded in accordance with the disaster financial assistance policies and guidelines. However, the decision the Board referred to did not in any way address or refer to compensation for the travel expenses incurred by our complainant to attend the commission's hearing.

Starting in November 2002 our office endeavoured to have the department address the issue of these travel expenses, but to no avail. It appeared to our office that payment of compensation of approximately $100 for travel expenses was clearly reasonable and appropriate in this situation. Accordingly, the Ombudsman wrote the Deputy Minister for Government Services and Emergency Measures, which at the time was a part of Manitoba Transportation and Government Services, in August 2003. Assurances were given by the department that this matter would be addressed. However, several months passed with no decision.

In the latter part of 2003 the department was restructured and the Emergency Measures Organization was moved to a new department (Manitoba Industry, Economic Development & Mines) with a new Deputy Minister. To our dismay this matter was referred to the new Deputy

Minister for a decision and we were advised that the matter was being reviewed. The Ombudsman contacted the new Deputy Minister expressing his frustration with the time and effort that had been consumed over what seemed to be such a simple and valid complaint.

Within days of our office approaching the new Deputy Minister, a decision was made to reimburse our complainants for their travel expenses. This brought to an end months of frustration. While favourable consideration was given to our report, the Ombudsman could not help but regret the time that it took to resolve something that seemed to be so straightforward.

Child and Adolescent Services

Provincial Government Cases Involving Children and Youth

Each year in the Annual Report, the Ombudsman provides an overview of our activities relating to our role with youth in the province of Manitoba. In 2003, we received:

82	**telephone inquiries**
69	- Family Services and Housing
11	- Justice and Attorney General
1	- Private
1	- Schools

42	**formal complaints**
21	- Justice and Attorney General
11	- Family Services and Housing
3	- Health
1	- Education and Youth
1	- Education, Citizenship and Youth
2	- City of Winnipeg
3	- Manitoba Public Insurance

Our office continued to monitor inquests called by the Chief Medical Examiner. Seven Ombudsman Own Initiative files relating to inquests that involved children and government departments were opened in 2003. Six Ombudsman Own Initiative files involving inquests into the death of children remained open from previous years. In 2003, three new files were opened on the Ombudsman's Own Initiative relating to systemic issues involving children and youth. Three Ombudsman's Own Initiative files remain open from previous years.

Our office continues to be involved in a number of activities relating to youth. In addition to investigating complaints/concerns and responding to telephone inquiries in the area of children and youth, we are also involved in a number of outreach programs.

Over the past year we have continued to make presentations at the training program for new correctional officers with Manitoba Justice. This provides information on our role and function and explains the process involved in our investigations. Staff also met with the Health Services Managers of Corrections to discuss our role and function.

Staff try to meet regularly with the residents in youth correctional facilities. This year staff met with the residents in each cottage at Agassiz Youth Centre (AYC) to advise of our role and jurisdiction and discuss any issues the youth may have.

Our office and the Office of the Children's Advocate attended a presentation prepared by Manitoba Justice on the new *Youth Criminal Justice Act*.

A staff person was interviewed for a show called System Kidz by Voices – Manitoba's Youth in Care. It is a youth run radio show on CKUW 95.9 FM. The purpose was to talk about the services we provide to youth under *The Ombudsman Act*. It was a great opportunity to address youth who may not know a lot about our office.

Staff from my office attended the Annual Meeting of the Manitoba Adolescent Treatment Centre (MATC), the Manitoba Aboriginal Youth Achievement Awards and the Manitoba Youth Centre (MYC) Pow Wow.

A staff member also met with two staff visiting Winnipeg from the Children's Advocate office in Newfoundland to discuss our role and function and how it relates to youth.

Complaints and Enquiries Involving Justice/Youth Corrections

Youth Corrections Cases

In 2003 our office responded to 11 telephone enquiries related to youth and Manitoba Justice. We investigated 21 complaints regarding youth and corrections.

Agassiz Youth Centre - 13
Manitoba Youth Centre - 4
Inquests - 2
Thompson holding cells - 2

The types of complaints we investigated involved: the use of the restraint chair; use of pepper spray; denial of medication; handling of special needs youth; transfer to Lakewood and the length of time spent there; restraining of residents; denial of a required special diet; number of phone calls allowed to family; hygiene products provided; and staff conduct.

Two inquest files were opened that involved the death of children and follow-up required with Manitoba Justice. Two Ombudsman Own Initiative files were opened relating to staff conduct at the MYC and the handling of special needs youth at AYC. One Ombudsman Own Initiative file was opened relating to the use of the Thompson holding cells for youth. Information on this file is contained earlier in this Annual Report in the section on Manitoba Justice and Attorney General.

We continued to monitor the holding of youth in correctional facilities under *The Intoxicated Persons Detention Act.*

Our review of the use of a correctional facility as a place of safety continued. As this case involved Child and Family Services, it can be found in the Family Services and Housing section of Child and Adolescent Services.

Child and Adolescent Services

Agassiz Youth Centre
Youth's illness the subject of jokes by staff

While residing at the Agassiz Youth Centre (AYC), a resident complained to this office that he could no longer cope with the joking and hassling he was receiving from staff and peers regarding his condition, narcolepsy. It appeared that not only peers were teasing him regarding his condition, but staff also participated. It was also a concern that staff had no, or little, understanding of narcolepsy, which created a number of concerns and issues such as:

He was often punished and ridiculed for falling asleep;

He was confronted by staff who would yell at him for falling asleep and threatened to send him to "adult";

He was placed on security for falling asleep;

Staff were making inappropriate comments to him and suggested he "try harder" to stay awake;

Staff had instructed other peers of the group to poke him when he would fall asleep.

He was transferred from the Manitoba Youth Centre (MYC) to AYC in March 2002. It appeared that in the referral information sent from one institution to another, there was no mention of his condition of narcolepsy.

Ms. O believed that a number of issues contributed to the events related to the youth. They are:

A detailed summary from the MYC had not been compiled when the youth was transferred from one facility to another;

There is no assessment period at the AYC when a youth is admitted, they are sent straight into a group;

The youth was not a suitable group member and should not have been sent to their facility;

Staff did not provide written information related to the youth's condition of narcolepsy due to fears of breaching *The Personal Health Information Act* (PHIA).

The final outcome of this file:

The staff who had treated the youth inappropriately were dealt with (undefined in the file) and are being monitored (again, undefined);

MYC is in the process of developing a Special Needs Unit for youths in corrections (this unit could possibly provide the necessary documentation between institutions when a youth is transferred);

The youth was relocated to a group that had a greater understanding of his needs;

Finally, the youth was transferred back to MYC.

The file was closed.

Child and Adolescent Services

Manitoba Youth Centre
UPDATE - The saga goes on …… and on

This is the sixth consecutive year that we have reported on the safety issues surrounding the placement of intoxicated youth in the Manitoba Youth Centre (MYC) under the *Intoxicated Persons Detention Act* (IPDA).

Based on a complaint from a youth a number of years ago, our office discovered that youth detained under the non-criminal nature of the IPDA were routinely held at the MYC.

In 1996/1997 Manitoba Corrections discussed this situation with Winnipeg Police Services, however nothing was resolved. It is our understanding that the majority of other Canadian jurisdictions do not detain youth in a young offender facility. I voiced my feelings in 1999, and today it is still my feeling that the MYC is not the right place to detain intoxicated youth.

Our office continued to make inquiries over the years with respect to this situation.

1999

At the time of writing our 1999 Annual Report we had been advised that representatives from the departments of Justice, Health and Family Services had met and were working together to locate an alternate placement for youth being held under the IPDA.

2000

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. At the time of writing this report, it was our understanding that a joint submission to Treasury Board was being discussed.

2001

Corrections officials continued to make an effort to address the issue.

2002

Effective June 1, 2002 the Winnipeg City Police and Manitoba Justice agreed to limit the number of intoxicated youth admitted to the MYC to two at one time. This was an interim measure pending arrangement for alternative accommodation for these youth. It was our understanding the plan was to delist MYC as a detoxification centre in 2003.

2003

The number of intoxicated youth held under the IPDA remains limited to two at any one time, however the MYC was not delisted as a detoxification centre. We have been advised that the Justice department has been reviewing the situation carefully, involving discussions with the City and with agencies. The department has indicated that this is a very complex issue with no easy solution. However, they have informed our office that they continue to make every effort to resolve the situation.

Youth-Related Complaints and Enquiries Involving Manitoba Family Services and Housing

In 2003 our office responded to 69 telephone enquiries related to Family Services and Housing. We investigated 11 complaints in this area, with all 11 of these complaints related to Child and Family Services.

The types of Child and Family Services complaints we received pertained to denial of visits to family members; inadequate communication; denial of information through the Adoption Registry; denial of appropriate services for a child in need of protection; access to file information; and concerns relating to the actions of an agency.

We continued our investigations on Ombudsman Own Initiative files related to the designation of a youth correctional facility as a place of safety, and the case planning and decisions made for a vulnerable permanent ward. As well, we continued to monitor 4 cases relating to inquests and a situation where a child died and there was Child and Family Services involvement.

Manitoba Family Services and Housing

Manitoba Youth Centre
Not a child welfare place of safety!

2001

In our 2001 Annual Report we reported on an Ombudsman's Own Initiative file regarding a systemic review we were conducting on the designation of a correctional facility as a "Place of Safety" for youth under *The Child and Family Services Act*. The issue came to our attention after our office had investigated a situation where a 17-year-old permanent ward of Winnipeg Child and Family Services (Agency) was being housed, without charge or sentence, at the Manitoba Youth Centre (MYC) pursuant to a "Place of Safety" designation.

We advised the Family Services and Housing of our view that it was not acceptable to use correctional facilities as a Place of Safety. We felt it was questionable in terms of a child's constitutional rights.

2002

In 2002 the Youth Correctional Services Branch, Manitoba Justice and the Child Protection and Support Services Branch, Manitoba Family Services and Housing entered into a Protocol regarding the designation of youth custody facilities as Places of Safety under *The Child and Family Services Act.*

2003

Our office wrote to both the Acting Executive Director of Child Protection and Support Services and the Acting Executive Director of Community and Youth Correctional Services to advise of our office's concern. We reiterated our view that to detain an individual in a correctional facility when he has not been sentenced and there are no criminal charges pending is unacceptable and wrong.

Family Services agreed that in the past the use of correctional settings for temporary detainment without appropriate advocacy infringed on the child's rights. They indicated that they recognized the negative impact of holding non-criminal youth in correctional facilities, and this practice has been reduced dramatically over the last several years. However, they felt that the protocol developed in 2002 would safeguard the best interests of the child.

The Youth Corrections Branch advised that they had been opposed to the use of the MYC as a Place of Safety but recognized the authority of the Executive Director, Child Protection and Support Services to designate it as such and had worked to minimize that use.

It is our understanding that the issue of placing children at MYC under a Place of Safety designation is on the agenda for the Standing Committee, represented by the Chief Executive Officers of the four Child and Family Services Authorities and the Child Protection Branch. It is our understanding, with the proclamation of *The Child and Family Services Authorities Act* in November 2003, the authorities and their agencies will now be in a position to make a request for place of safety designation to the branch. Therefore, the Standing Committee must carefully consider the issue and make a joint recommendation as to how to manage it.

We will continue to follow up on this issue in 2004.

Boards and Corporations

60 Complaint Files Carried into 2003
110 New Complaint Files Received in 2003
561 Telephone Enquiries Received in 2003
121 Complaint Files Closed in 2003

Complaints regarding Boards and Corporations accounted for approximately 12% of the complaints our office investigated this year, and approximately 14.7% of the telephone enquiries in 2003.

Formal complaints in 2003 were divided approximately as follows:

61% involved the Manitoba Public Insurance Corporation
19% involved the Workers Compensation Board of Manitoba
15% involved Manitoba Hydro
3% involved the WCB Appeal Commission
2% involved the Manitoba Lotteries Corporation

Manitoba Public Insurance (MPI)

Overview of our strained relationship with MPI senior management

Telephone inquiries handled by our office were up marginally (4%) compared to 2002. In 2003 we received 361 telephone calls compared to 347 in 2002. On the other hand, we received 67 formal complaints in 2003, which was down slightly (14%) from the 78 we received in 2002.

The types of concerns that are presented to us do not seem to differ from year to year. Typically we receive complaints regarding injury benefits, liability assessments for traffic accidents, denial of claims, disputes regarding the extent of coverage provided, as well as claims handling issues.

Given that MPI handles anywhere from 200,000 to 300,000 claims a year, it should not be a surprise that at times there may be some legitimate disputes relating to the fairness of an action or decision made by the corporation.

While we generally receive between 70 to 80 concerns a year about MPI, in most cases our office feels that the corporation has acted fairly and reasonably. However, there are cases where, following a thorough impartial review of the circumstances, including discussions with MPI and the complainant, we feel that a complaint is supported and we look to resolve the matter in an informal, non-adversarial and non-legalistic manner.

Over the years there have been times where I feel the corporation has looked to strictly legal arguments to avoid accepting the Ombudsman's opinion or recommendation, which is based on fairness and not exclusively on legal grounds.

There seems to be a feeling that accepting the Ombudsman's findings, conclusions, opinions or recommendations is precedent setting.

In December 2003 I met with the then President to discuss the relationship between our offices. I expressed the feeling that a better understanding of the role by senior corporation officials

would be beneficial. The President advised that he would be suggesting to his senior staff that the Ombudsman's opinions or recommendations should be accepted unless it was felt that they were clearly wrong or unreasonable.

Boards and Corporations

Liability over left turn incident leads to discussion: Legal opinion vs Ombudsman opinion

Summary

This case involved our review of a concern related to a finding of liability. What is particularly noteworthy about this case is that MPI challenged the ability of the Ombudsman to review such matters.

Mr. W. contacted our office with the following complaint. In 2001, Mr. W was travelling near his home, headed west in a pickup truck. He had slowed down, and had signal lights on to make a left turn. This fact was verified by independent witnesses. He was hit from behind by a van driven by Ms. X. While he acknowledged he was preparing to make a left turn, the damage to his truck was at the rear of his vehicle. He was found to be 50% at fault for the accident. He appealed the finding through MPI's Independent Review process. At that point, he was held to a finding of 75% liability which was entered against him. The fact that this accident was characterized as a "left turning accident" placed the burden of liability against Mr. W. He felt this decision was unfair and contacted our office.

MPI's Position

We reviewed information from MPI's files. We noted that there was evidence to support that this was "…more of a rear end collision rather than a left turning accident," which was the estimator's conclusion.

A review of this case by MPI's Fair Practices Office resulted in the following: "We confirmed that the damage to Mr. W's rear bumper was consistent with a rear-end collision rather than a left turning accident. In this particular case, the damage to Mr. W's vehicle was not consistent with a left turning accident, but rather a rear-end collision. When we spoke in December 2001, we concluded that reducing liability to 49% against Mr. W was reasonable, and forwarded the recommendation to the Claims Centre. The adjuster, supervisor and manager of the Claims Centre reviewed the recommendation. They concluded that, based on the areas of damage to both vehicles, there was an element of doubt as to the placement of the vehicles on the roadway. Based on this information, a decision was made to maintain the 50/50 assessment and to waive the driver's surcharge penalty against Mr. W."

Our Review

Our office took the position that the location of damage on Mr. W's vehicle was consistent with a rear-end collision rather than a left-turning accident. We had concerns with the Claims Centre response that "....there was an element of doubt as to the placement of the vehicles on the roadway."

The independent witness statements and the statements made by the parties involved tend to support that this was a rear-end collision. Mr. W said he was hit before he had an opportunity to make the left turn.

We noted from our review that an independent witness to the collision stated that "...the first vehicle had not yet started its left turn when it was hit in the rear left bumper." The witness also said Mr. W had slowed down and had his signal on prior to the impact.

DISCUSSION

Our office had many discussions with representatives of MPI regarding this case. MPI commented that they strongly considered the weight of the statements given by the parties involved and not just the areas of physical damage. MPI also provided a review of relevant case law to support their contention that there was no clear judicial direction as to determining liability in these kinds of scenarios. While we agreed that there was no one clear position as to the court's determination in cases where there were illegally made movements to pass or to turn left, we did not feel that the lack of one clear outcome would necessitate our complainant having to resort to the court to resolve this matter.

Because we like to see consistency in departmental approach, we referred to a decision letter MPI had copied to our office on another rear-end collision case that stated "the onus is always on the vehicle following behind." In considering the totality of the evidence, we determined that it would be reasonable to suggest that the greater onus and therefore greater degree of liability should rest with the other party who was travelling in the rear and who collided with Mr. W's vehicle.

We concluded discussions with a decision to bring this case to the attention of the President of MPI. In a letter from our office, we noted that there was support within MPI's own information that this collision was of a rear-end nature in which the onus rests more heavily on the party following behind. The physical evidence of damage seemed reasonably able to dispel doubt as to the location of the vehicles involved. The fact that there was case law to support a more favourable liability assessment for Mr. W in light of all the factors considered in determining liability would lead us to suggest that perhaps this was a case that required intervention on the basis of fairness and prevention of undue hardship.

In 2003, we received notification that MPI had reverted to a finding of liability against Mr. W of less than 50% liability for the accident, but noted this was done out of respect for the authority vested in our office. From the comments made in the letter to advise us of the change in liability, it appeared that there was some misapprehension about the role of the Ombudsman as an independent officer of the Legislative Assembly. That role involves providing an independent, objective, unbiased opinion relating to any act, decision or omission by the corporation. I believe it was felt that only the court could determine liability in this case.

In a letter from MPI dated April 22, 2003 notifying us that the corporation had accepted our opinion;

> "Accident liability decisions become adversarial between the drivers involved. Our staff will utilize their best judgement in making liability decisions for the purpose of administering the insurance program, but the ultimate authority for making such a decision rests with the courts. The Corporation will default to the decision of the courts whenever such a decision is obtained."

> "Recognizing that some customers may want more than just our opinion on liability, the Corporation has put in place a simple review mechanism where the evidence can be sent to a Judge for his opinion on liability. The Corporation will abide by whatever decision the Judge makes. If the customer chooses not to seek the opinion of the Judge or is not satisfied with the opinion of the Judge, or is not satisfied with the opinion obtained, they still have the right to have this matter heard in court for an ultimate ruling."
>
> "When Mr. (complainant) did not like our decision, he asked that this matter be referred to the Judge for his opinion."
>
> "Your letter of March 14, 2003 presents arguments as to why your thoughts on liability are more valid than that of our people or the Judge."

Clearly our point was being missed. The Ombudsman's office was created in 1970 to settle disputes without resorting to formal legal processes.

Subsequent discussion and correspondence between our offices has led to what I think is a better understanding of the work this office does, and we concluded that MPI acted fairly in resolving the complaint from Mr. W.

Boards and Corporations

Should Manitoba Public Insurance have to honour policies accepted by its agents?

The following is a case where the accident took place outside of Manitoba, and after considering the circumstances of the loss, Manitoba Public Insurance (MPI) determined that the vehicle should have been registered and insured in Alberta, and denied the claim. The basis for the denial was that the vehicle registration should have been changed once it had been in Alberta for more than ninety days (as legislated in that province), and the failure to do so invalidated our complainant's Autopac coverage.

In this case, the registered owner of the vehicle was living in Manitoba but the vehicle was purchased and used in Alberta by her husband, who was working there temporarily. There was some uncertainty as to exactly what information passed between the insured, the agency, and the dealership in Alberta when the vehicle was purchased, registered and insured.

Concerns were raised about the agent's adherence to the operating agreement and we questioned the thoroughness of MPI's investigation of the claim. Information provided by the claimant suggested that the circumstances of the purchase and use of the truck in Alberta for an unknown length of time was discussed with the agent when the policy was purchased.

Our Review

As with the previous cases we felt there was enough information to support that the claimant believed she was eligible to purchase insurance from MPI, and paid the premium for her Autopac policy believing she had valid coverage. It did not appear that there was any intent on her part to mislead or withhold information from the agent or MPI.

Our Comments

It was our view that information was presented to the agency by our complainant and she purchased a contract of insurance, which she expected MPI to honour in the event that a claim was filed. Accordingly, we asked that MPI reconsider this case.

Facts of the Case

Our complainant felt that MPI treated her unfairly, and explained as follows:

The vehicle was registered in her name and was being used by her husband, who was working temporarily in Alberta. She acknowledged that her husband had worked there for several months. He had exclusive use of the truck but did not use it to travel to and from work. She maintained that her husband did not "reside" there, nor in their view did he ever become a resident of Alberta.

Her husband lived in a camp at the job site. His employer's certification on the Revenue Canada form stated that his duties were "temporary", i.e. he could have been let go without notice. Our complainant also explained that he had Manitoba Health coverage, he paid income and property taxes in Manitoba, and his principal residence was in Manitoba. She pointed out that they could have saved considerable money on provincial sales tax had the vehicle been registered in Alberta. She said that it never occurred to them to register the vehicle there because they had not moved. When her husband's job came to an end, his plan was to return to Manitoba. She advised that they probably could not have insured it in Alberta because they did not reside there. She pointed out that with the trips home her husband was never in Alberta for longer than the legislated 90 days.

We confirmed that discussions took place between the Alberta dealership and the Autopac agency in Manitoba. However, our complainant said that there was never any mention that it should be registered in Alberta, i.e. neither the Autopac agent nor the dealership expressed concern about how the truck was to be registered. It is important to note that our complainant raised the agent's involvement as an issue early on in the claim, but there was no indication that MPI sought information from the agent to clarify his role in this matter.

As a result of telephone calls between the dealership and the Autopac agent, the agent knew that the vehicle was being operated outside of Manitoba. Our complainant said the agent told her that as soon as she returned to Manitoba (she was only in Alberta over the weekend), she should bring in "the papers" so the transaction could be completed.

Upon her return to Manitoba (the following Monday), she went to the agency and provided them with the required paperwork. When she completed the transaction, the truck was still in Alberta. Apparently, plates were transferred from another vehicle that they owned, and the sole purpose of the visit to the agency was to finalize the paperwork.

Apparently, the Autopac agent recommended that she should take out additional liability insurance because the vehicle was new and was being used out of province. Accordingly, she purchased additional coverage.

While the agency did not know how long the vehicle would be out of the province, our complainant maintained that she told the Autopac agent that her husband was working in Alberta and that he would be using the vehicle in Alberta. She said she also told the agent that

her husband might be required to travel to other provinces for extended periods of time because of his work. She claims that she was never told that if the vehicle was going to be out of province for ninety days, it should be registered/insured in that province or that she would have to discuss these matters with the province having jurisdiction.

MPI's Response

MPI indicated that our complainant was a resident of Manitoba and that coverage in this case dealt with the location of and the exclusive use of the vehicle. MPI was satisfied that the vehicle was registered incorrectly, i.e. the vehicle and its exclusive operator were in Alberta for more than the legislated ninety days. Nevertheless, MPI was prepared to accept that there might have been some misunderstanding as to how the vehicle should have been registered.

MPI was satisfied that there was no attempt to defraud or deceive the corporation, and therefore MPI was prepared to consider extending insurance protection to our complainant on an "ex gratia" basis, subject to any proceeds they might have received. MPI advised that it would contact our complainant to determine the exact extent of her loss and conclude the claim.

Manitoba Hydro

4 Complaint Files Carried over into 2003
16 New Complaint Files Received in 2003
99 Telephone Enquiries Received in 2003
15 Complaint Files Closed in 2003

In 2003, our office saw a significant increase in telephone enquiries and complaints regarding Manitoba Hydro and its natural gas division, which was formerly known as Centra Gas. The majority of complaints to our office related to billing disputes. Several service quality issues were identified and are further explained in the following case summaries. One case highlights Manitoba Hydro's responsiveness to a unique concern.

Boards and Corporations

Manitoba Hydro
Letter wrongly holding couple responsible for delinquent account leads to policy change

We were contacted by a couple who took exception to a policy being followed by Manitoba Hydro (Hydro). They explained that they received a letter from Hydro in which they were accused of owing money to the utility for an address that was not known to them. Although they had clarified this with Hydro, they were upset that Hydro had sent the letter to both of them when only one of their names matched with another Hydro account that was in arrears.

The letter to our complainants stated that they were both responsible for the delinquent account. They were asked to contact Hydro so that service to their present address would not be disrupted. After contacting Hydro, they received a letter in which they apologized for the "inconvenience" they experienced. Nevertheless, they contacted our office and enquiries were made to seek clarification of the policy regarding the collection letter.

Information received from Hydro indicated that it does a search any time that a customer moves to a new service location. The search involves a check to see if the customer's name matches an outstanding account. If a match exists a form letter is sent advising the customer to call and confirm whether the outstanding bill is their responsibility. While the information was helpful, we pointed out that in this case only one of the names matched an account that was in arrears and yet the letter was addressed to both of our complainants. The letter also concluded that the addressee was in fact responsible for the account.

Upon further review of this matter, Hydro was in agreement that our complainants had a valid point and advised us that it would review this matter with a view to making changes to the collection letter. Firstly, the letter would only be addressed to the person whose name matches an outstanding account. Secondly, unless Hydro was sure that the person was responsible for the account, the tone of the letter would be softened somewhat to reflect the possibility that the addressee may not be the person who is responsible for the delinquent account. We were grateful for Hydro's willingness to further consider this situation even though an apology letter had been sent. It should be noted that this case was resolved quickly and informally by Hydro.

Case Summary

BOARDS AND CORPORATIONS

Manitoba Hydro

Finds a solution that pleases all parties affected

Mr. L contacted our office regarding Manitoba Hydro's response to his concern about a street light located on the street behind his home. He advised that the street light had recently been changed and the newer brighter light shone into his backyard, which interfered with his family's enjoyment of their deck. He also expressed a concern that the light shone brightly through his children's windows.

Mr. L communicated his concerns directly to Manitoba Hydro. However, he advised that when he requested that the light be shielded on one side to prevent it from shining into his backyard, Manitoba Hydro did not respond. Mr. L contacted our office and we made an inquiry regarding the situation. In response, Manitoba Hydro proposed the following solution. If Mr. L obtained the consent of the residents of the street on which the light was located and obtained the approval of the City of Winnipeg, Hydro would make the adjustments necessary to prevent the light from shining into his backyard.

Mr. L surveyed the neighboring residents and spoke with the City of Winnipeg regarding the alteration of the light. As there were no objections, Manitoba Hydro placed a bracket on the back of the light so that it would not shine directly into Mr. L's backyard. This resolved Mr. L's concern.

Workers Compensation Board and the Workers Compensation Board Appeal Commission

Individuals who complain to our office that they have been treated unfairly by the Workers Compensation Board (WCB) and the WCB Appeal Commission have frequently already been through several levels of internal review and appeal. This can make the job of clearly identifying the specific act, error or omission by which they are aggrieved complex and time consuming.

Boards and Corporations

WCB Appeal Commission

Ombudsman and Chief WCB Appeal Commissioner differ on view of "what's new"

The Complaint

Mr. M. contacted our office after being denied a request to have his claim for WCB benefits reconsidered by the WCB Appeal Commission.

Mr. M. had initially been provided with compensation benefits for a brief period and then returned to work. He suffered a recurrence of his symptoms and contacted the Board for further assistance. The Board determined that he suffered from a pre-existing condition and concluded that he could only receive further benefits if it was demonstrated that his condition was related to his work injury. Mr. M. went through the appeal process and was denied.

Mr. M. was examined after his appeal by a specialist who reported that his pain was related to his compensable injury. Mr. M. submitted this medical information to the Appeal Commission on a couple of different occasions but was refused reconsideration because, in the opinion of the Commission, the information he submitted did not meet the test for "new" as contemplated under *The Workers Compensation Act.*

Our Analysis

The jurisdiction of the Chief Appeal Commissioner with respect to an application for an order directing reconsideration is defined by statute. When a request is presented "on the ground that new evidence has arisen or has been discovered since the hearing", the statutory test requires that the following criteria must be met in order for the Chief Appeal Commissioner to consider granting an order for reconsideration:

> The evidence must be substantial and material to the decision.
>
> The evidence did not exist at the time of the previous hearing.
>
> The evidence must not have been known to the applicant at the time of the previous hearing and could not have been discovered through the exercise of due diligence.

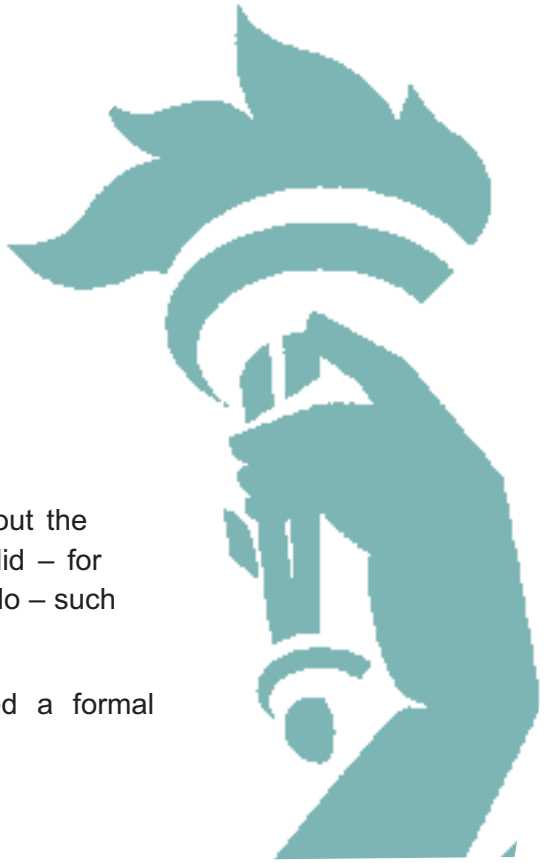
Our analysis of Mr. M's complaint suggested that his evidence met this test and that the Chief Appeal Commissioner should grant an order for reconsideration. The Chief Appeal Commissioner felt that because this diagnosis had been discussed in the file previously the medical information did not meet the test for "new evidence" and they refused to order reconsideration of Mr. M's case. We felt that while the diagnosis may have been discussed, the specific medical evidence (the report) did not exist at the time of the appeal hearing.

The Conclusion

After numerous discussions and a significant exchange of correspondence on this case, I met with the Chief Appeal Commissioner to explain our interpretation of the statutory requirements for an order granting reconsideration. I also obtained a legal opinion and instructed legal counsel to provide that opinion to the Chief Appeal Commissioner, along with further representations on what I felt were the merits of the complainant's position. This was an unusual process in terms of how our office normally seeks resolution to complaints. The discussion of what constitutes new evidence, and the need to have our legal counsel make representation to the Chief Appeal Commissioner on our behalf, resulted in a somewhat protracted but successful conclusion to the matter.

In the end, the Chief Appeal Commissioner accepted our position and ordered a new hearing for Mr. M.

Municipal Government Case Summaries



19 **Complaint Files Carried into 2003**

114 **New Complaint Files Received in 2003**

298 **Telephone Enquiries Received in 2003**

52 **Complaint Files Closed in 2003**

The complaints we received were directed at municipalities throughout the province. Complaints involved disputes about what a municipality did – for example, overcharge for taxes, as well as what a municipality did not do – such as enforce a by-law.

None of the complaints received about municipalities necessitated a formal recommendation by the Ombudsman.

City of Winnipeg

78 New Complaint Files Received in 2003

202 Telephone Enquiries Received in 2003

50 Complaint Files Closed in 2003

Overall,our interactions with the City of Winnipeg have been positive. Early on, we had to deal with a jurisdictional challenge from the Corporate Finance Department, Risk Management Division. The position put forward was that a dispute about liability should go to Small Claims Court and was not subject to investigation by the Ombudsman. There was also the suggestion that responding to inquiries from the Ombudsman would be too time-consuming.

Our responsibility is to promote fairness, equity and administrative accountability through impartial, non-partisan, and thorough investigations. Resource or time issues faced by departments and agencies of government responding to our enquiries are not a basis for us to refuse or cease to investigate a complaint. While we are sensitive to these issues, not responding to our inquiries on that basis is unacceptable.

We endeavour to resolve any conflicts or misunderstandings on our role and responsibility on a case-by-case basis and are optimistic that our continued involvement with the City will be positive.

Three of the complaints were opened under the Ombudsman's Own initiative (OOI). Two of the OOIs related to our role in monitoring inquest recommendations that were directed to the City of Winnipeg. The third OOI was opened to consider whether the Board of Trustees of the Winnipeg Civic Employees' Benefits Program (Board) falls under the Ombudsman's jurisdiction. We were advised that since January 1, 2003 the Board has been governed by trust agreements with the City, and as such, consider themselves to be independent of the City. We will be reviewing their by-law amendments and the new agreements to determine if the Board now comes under the Ombudsman's jurisdiction.

The other complaint files we received related to a variety of issues involving Winnipeg city departments such as Community Services; Corporate Finance; Fire Paramedic Service; Planning, Property and & Development; Public Works; Transit; Waste and Water; Winnipeg Police Service; and the Clerk's office.

Case Summary

City of Winnipeg
Coincidence or punitive action for making complaint?

The Complaint

A resident living in a hotel made a complaint with the Environmental Health Services Branch (Branch) about the living conditions at the hotel. He wanted to make an anonymous complaint but was told that his name and address were required. He provided these reluctantly to the Branch on the understanding that his identity would not be revealed to the hotel management.

He advised our office that, after the environmental health officer attended at the hotel and inspected the premises, the hotel management advised him that any further complaints would lead to his eviction.

Some time later, the hotel told him that he had to vacate his room as it was scheduled for renovations. He believed this was a punitive action and that his identity had been disclosed to the hotel by the inspection officer.

The Guideline

The City responded to our inquiry advising that, as a result of receiving a significant number of unjustifiable anonymous complaints, it had established a guideline that a complainant is to provide their name and address to guarantee that the complaint will be investigated. Environmental Health Officers are not required to investigate anonymous complaints. However, depending on the information received, an anonymous complaint might be investigated at the discretion of the inspector. The officers are also to report their findings and proposed course of action to complainants. An address and name is required for that purpose.

What Happened

We were advised that the officer in this case did not disclose the identity of the complainant. However, some of the issues related directly to his suite, so the officer gained access to inspect it. As a result, the officer advised the front desk of the hotel about the deficiencies and that a reinspection would be conducted to ensure compliance. Given the location and nature of the complaint, it was possible the hotel management assumed who had complained.

The Outcome

The process followed by the City was explained to our complainant. We were advised the officer had not disclosed his name. He understood that it would be difficult to address his complaint and have it rectified without bringing the deficits to the attention of the hotel so they could be remedied. As many of the complaints related to his room, he accepted the explanation from the City.

City of Winnipeg
There are some grey areas issuing red light camera tickets

The City of Winnipeg recently implemented an Image Capturing Enforcement System (red light cameras), which has generated concerns from motorists. The program is implemented through the use of intersection safety cameras and mobile photo radar vehicles. The intersection safety camera has the ability to both determine the speed of the vehicle passing through the intersection and to detect vehicles that run the solid red light.

We received a letter of complaint from an individual who wrote on behalf of his wife, who had received a traffic offence for going through a red light. The ticket, or offence notice, was sent to our complainant as he was the registered owner of the vehicle driven by his wife.

In explaining the situation, our complainant advised that his wife had driven through an intersection which was monitored by a safety camera. The offence occurred after the red light was activated for a period of one second. Our complainant was not denying the fact that his wife had gone through the red light but felt that there may be a margin of error within the individual camera, usually in the range of one to two seconds, and as a result, felt that discretion should be used in this case and an offence should not have been recorded. In the notice to our complainant reference was made to the relevant section of The Highway Traffic Act which states that when a red light is shown at the traffic control signal, the driver of the vehicle approaching the intersection shall stop the vehicle before entering the intersection.

In reviewing the matter with the Winnipeg Police Service, the amount of time the car is in the intersection and the speed of travel are taken into account before the ticket is issued. In this case, the Winnipeg Police Service took the position that it is illegal to enter the intersection on a red light regardless of how little time had past. In addition, they advised that not only is it against the law to enter the intersection on the red light, it is also against The Highway Traffic Act for the driver to enter the intersection on the amber light, which precedes the red light, unless the driver can safely clear the intersection. The amber light, we understand, stays on between 3.8 to 4.0 seconds before turning red. The fact that the vehicle was photographed in the intersection one second after the light had turned red would indicate that the driver had ignored the amber light, which would have been on for approximately 4.0 seconds, and used another second so there appeared to be no intention to stop before entering the intersection. We were advised that a fair amount of discretion is given to the driver before a ticket is issued.

From reviewing the situation, and based on the information available to our office, it would appear that the Winnipeg Police Service had reviewed the circumstances surrounding the incident involving our complainant, considered all the facts, and utilized appropriate discretion before issuing the ticket. The Winnipeg Police Service had provided appropriate consideration to this situation, and our complainant was advised that there was no recommendation our office could make on this matter.

Case Summary

City of Winnipeg
"Oh rats, house demolished"

Our office received a complaint from an individual who claimed that she was being treated unfairly during her dealing with the City of Winnipeg.

In reviewing the situation both with the department and our complainant, we understand that the initial concern arose out of a complaint filed by our complainant's neighbour to Manitoba Conservation that rats were running around her home and the surrounding area was unkempt. Manitoba Conservation representatives attended the home and conducted an inspection. It was noted that there was a fair amount of debris and old cars on the property, which was felt to be unsanitary. Our complainant did not deny having all the cars on her property but claimed that they were antique vehicles, which she was trying to sell. In her opinion, the property was not unsanitary and she was quite comfortable. She acknowledged that the house was quite old but livable. While others may think it was broken down or in needs of repairs, she and her older son, who resided with her, were quite comfortable. She described the surrounding as being

more like a park with trees and flowers. As a result, she felt that the visits from the conservation officers were not warranted.

Manitoba Conservation advised that on receiving complaints from neighbours that the property was dirty, had a lot of debris and old cars and that it was a breeding ground for rats, they had no choice but to go out and conduct an inspection as required by *The Public Health Act*. In their attempts to conduct the inspection, they reported that they had received a fair amount of resistance from our complainant and her son. However, they explained that they had an obligation under the legislation to conduct the inspection, which they did. However, having noted the deficiencies, the City of Winnipeg Inspections Unit was contacted to follow up on the inspection of the home.

A City of Winnipeg inspector attended the home and after inspecting the premises came to the conclusion that the foundation was badly in need of repair and the safety of the occupants was being compromised. The inspector noted that as a result of the shifting foundation, the windows and doors were badly aligned and the entire structure was affected. The City inspector also noted that the premises was infested with rats and mice and the home required a great deal of renovation. We understand that this situation had been reviewed by the City quite some time previously and that they had been discussing this matter with our complainant in an attempt to have the repairs completed in order to make the home safe. Failing completion of the repairs, the City Inspections Unit would have no choice but to have the building demolished. In fact, the City of Winnipeg Inspections Unit had hand delivered an order to our complainant to have the building repaired or demolished. With this order the City explained that our complainant had the ability to appeal the order by appearing before the Standing Policy Committee on property and development within 14 days of receiving the order. Our complainant appealed the order and the Standing Policy Committee on property and development had granted an extension of time for compliance of the order.

As we continued to review this matter with the City of Winnipeg Inspections Unit, it came to our attention that this matter had been considered by the City some two years earlier and that our complainant was advised that the building was unsafe and in contravention of the City of Winnipeg building by-law. Our complainant was ordered at that time to complete the necessary repairs to the building and given a set time for the repairs to be completed. However, the City did not follow up on the previous order and only re-examined the situation when the more recent inspections were conducted.

After considering all the information available to us, which included the file documentation at the City of Winnipeg Inspections Unit; the City of Winnipeg by-law; examining photographs of the property; and conducting a site inspection, we explained to our complainant that it appeared the City was acting in accordance with the required by-law. In order to ensure their safety, the home needed to be repaired. Our complainant wanted to remain in the home, and suggested that they would complete the appropriate repairs to satisfy the City of Winnipeg. However, as this matter progressed they were unable to secure the appropriate repairs and the City had taken the position that the home needed to be demolished. It was suggested that our complainant should get in touch with the City to try and resolve the matter and when discussions failed, the City moved towards having the building demolished.

As the position taken by the City appeared to be in compliance with the appropriate by-law, and not unreasonable, we advised the complainant accordingly. It was suggested that they may

want to continue discussions with the City to ensure that the repairs could be completed or face the possibility of having the building demolished.

Prior to concluding our involvement, and prior to the city taking further action to demolish the building, our complainant obtained the services of legal counsel and obtained an injunction to prevent the City from taken such action. We later learned that an interim injunction was granted preventing the City from demolishing the building and allowing our complainant to argue the matter in court.

At the time of preparing this report we understand that our complainant could not complete the required repairs to the home to ensure its safety. As a result, the City of Winnipeg demolished the building. Our complainant had secured accommodation at a second property she owned outside the City.

Other Municipalities

19 Complaint Files Carried over into 2003
36 New Complaint Files Received in 2003
96 Telephone Enquiries Received in 2003
24 Complaint Files Closed in 2003

Case Summary

Town's noisy cooling plant frosts residents

In February 2002 our office received a complaint from residents who lived close to an arena in a rural Manitoba town. They expressed concern about the noise level created by the arena's refrigeration plant.

They advised that the noise generated by the cooling plant had been a major nuisance in their lives and that this had been an ongoing issue for several months. The complainants acknowledged that efforts had been made by the town to address this problem, but they still felt that the noise was not reasonable.

Initially, the town advised our office of steps that it took to address the noise complaint. Further, the town explained that it had noise readings done and that these readings indicated that the levels met the guidelines the town was using. However, our complainants provided information that cast doubt on whether the noise levels met the town's guidelines. Accordingly, our office arranged for an independent assessment of the noise levels.

The results of these tests indicated that the noise created by the plant was not within the town's guidelines. We noted that up to this point considerable effort had been made to resolve this matter informally. However, as you can see from the reply we received, the town was firm that our office issue a formal report.

> *Based upon the sound level tests taken it is the opinion of the Town the noise levels generated by the condenser unit are reasonable….*
>
> *The town is not prepared to take any further action on this matter.*
>
> *Thank you for your work and we await your report.*

Accordingly, we reported to the town pursuant to the provisions of *The Ombudsman Act*. I provided the town with a summary of the facts and advised as follows:

> *While I can appreciate the efforts made by the Town to address this problem, the fact remains that the independent assessment that was done in January, at the request of the Town, reflects that the noise levels generated by the condenser unit exceed the guidelines that the Town used to determine reasonable noise levels. Accordingly, I feel that the concern expressed by our complainants is justified in that, at times, the noise level exceeds the guidelines used by the Town in considering what is a reasonable level of noise.*

In a formal recommendation we advised the town that while it did not willfully cause a grievance to nearby residents, it was apparent that the noise levels exceed the guidelines and the noise was interfering with their peaceful use and occupation of their homes. We recommended that the town explore and, where possible, implement the recommendations that had been proposed by the person who had performed the independent testing. In addition, we recommended that the town meet with our complainants to discuss this matter in general, and clarify issues regarding the operation of the refrigeration unit. We explained that our complainants had indicated that they had information regarding the operation of other arenas and that this information should be shared to encourage productive discussions.

Shortly thereafter we received notification that the town was prepared to take action to address this matter, based on the information contained in our recommendation. We wrote to the town and expressed our appreciation for its favourable consideration of our recommendation. We also wrote to our complainants to advise them of the action the town had planned to take to address their concern.

The file was closed with the hope and expectation that the parties would deal directly with each other until this matter was concluded. When we last heard from our complainants, they expressed optimism that their concern would be addressed and resolved in a fair and equitable manner.

Loose dogs – loose by-law!

In the summer of 2002 we were contacted by a couple who was having difficulty resolving a dispute they were having with their municipality. They indicated that the municipality (RM) had impounded their two dogs because they had been caught while running loose. The complainants acknowledged that this was the third incident involving their dogs, but explained that there were mitigating circumstances. They felt that the dogs were being singled out and that the RM was being selective in its enforcement of the its animal control by-law.

The couple explained that they had taken steps to confine the dogs but that someone unknown to them was opening their gate, allowing the dogs to get out of the yard and run loose. They acknowledged that they had paid fines and boarding fees in the past, but indicated that in the most recent incident the RM had declared that the dogs were vicious. When the couple contacted us, the RM's animal control officer had impounded the dogs and the RM was threatening to have the dogs destroyed pursuant to the provisions in the by-law.

The RM had written to the couple and set forth a number of conditions that had to be met if they wanted the dogs returned. In addition to feeling that the RM was selectively enforcing the by-law, our complainants were of the view that the conditions were unreasonable and questioned whether the RM had the authority to impose such conditions.

Following our preliminary review of the by-law and as a result of discussions we conducted with all parties involved, the RM decided to approach our complainants with a proposal that would resolve this situation. The proposal, which was accepted by our complainants, included the following:

The complainants were required to construct a suitable enclosure to house the dogs. Once constructed, the enclosure was to be inspected and approved by the RM's animal control officer.

The complainants could then redeem their dogs after paying a fine and the related kennel fees.

The complainants were required to acknowledge and agree that if the dogs were found running loose again, that the RM was authorized to have them impounded and destroyed without further notice.

Notwithstanding the resolution that had been reached, we wrote to the RM about our review of this complaint. We advised the RM that we recognized and accepted its obligations to those who live in the municipality in terms of public safety issues. We acknowledged that the RM had demonstrated that there has been a problem with the dogs owned by our complainants. However, we made some observations based on our review of the RM's handling of this situation and the RM's animal control by-law. The following is a summary of those observations:

The documentation of the incidents involving these dogs was lacking. Given that the RM was threatening to destroy the dogs, it seemed that the incidents in question should have been properly documented.

While our complainants felt that their dogs were being unfairly singled out and that the RM was selectively enforcing the by-law, information obtained from the animal control officer and the RM indicated that the RM did not have other "problem" dogs, i.e. dog(s) who were "repeat offenders" of the by-law.

The RM advised the complainants that the dogs were "vicious." While the RM was entitled to its opinion, it wasn't clear whether this designation was made based on the definition of "vicious" as stated in the by-law. Further, the RM's designation did not have a specific standing under the by-law; i.e. the by-law refers to the dog catcher's (animal control officer) finding/determination that a dog is vicious or a nuisance, not the RM's. It was our belief that that the animal control officer never deemed the dogs to be vicious or a nuisance as defined in the by-law.

We accepted that the animal control officer had both the grounds and authority to impound the dogs. However, in this case, the animal control officer seemed to have little involvement in the decisions/plans for the dogs once they were impounded. Once impounded, the animal control officer indicated to us that he planned to act upon instructions he received from his employer, the RM.

This view seemed to be inconsistent with the authority given to the animal control officer under the by-law.

In terms of a dog running loose, the by-law seemed clear in that the animal control officer or any person authorized by the by-law, could enter onto any lands or buildings where he/she had reasonable grounds to believe that an offence was being committed or had been committed. However, in discussions with the RM's animal control officer, he described his authority to enter onto private lands as being a "grey area."

The by-law also seemed clear in that a dog did not have to be deemed vicious or a nuisance for the animal control officer to order the destruction of the animal. It was our understanding

that a dog could be destroyed if it was found to be in contravention of the by-law, which included running loose. However, in conversations with the animal control officer, he described this too as a "grey area."

We also drew to the attention of the RM several sections of the by-law that seemed to indicate that a review of the by-law might be in order.

In response to our report, the RM reviewed the animal control by-law and made many changes to address the concerns that had been presented. In addition, it reviewed its procedures in terms of how a situation like this was to be handled in future. The RM provided us with a copy of the new by-law and explained that it felt that the by-law addressed the needs and requirements of the municipality.

In the end, our complainants, the RM and our office were satisfied with the outcome of this matter. Our complainants had a proper enclosure for their dogs, as well as a clear understanding of their rights and responsibilities under the RM's new and improved by-law.

City of Brandon
City shows they are responsive to citizen's input

An individual living on a quiet residential street in the City of Brandon (City) complained to our office about a decision to extend his street to connect two major thoroughfares. He complained about increased traffic and noise, as well as increased danger to local residents, including pedestrians. The individual felt that the City had been less than responsive to the suggestions and proposals made by local residents through correspondence and at public meetings.

We reviewed with the civic administration each of the proposals and suggestions made by local residents and learned that, in fact, they had been carefully considered and, in some cases, accepted. For instance, the City had installed an additional three-way stop sign and was in the process of making significant improvements for both pedestrian and bicycle traffic.

In other cases, we learned that suggestions were beyond the jurisdiction of the City, or raised liability issues. In response to the concern for safety, our office made inquiries of the Brandon Police Service and learned that while there had been an increase in infractions, this was related primarily to increased enforcement activity. An analysis of the accident statistics prior, and subsequent, to the street extension did not demonstrate that safety was an increased concern.

In discussions with the City administration, we learned that they appreciated the responsible manner in which the residents had researched and raised their concerns, and understood their desire that the change have as little impact as possible on local residents. The City's position was that the extension of the road was a necessary by-product of urban growth and that they had made every reasonable effort to facilitate this while keeping in mind the interests and concerns of the affected neighbourhood. Our analysis found no basis to take issue with this assessment.

Although it had initially appeared that this was a "you can't fight city hall" complaint, it became apparent in the course of the investigation that "fight" was not an appropriate term for the

exchange that had gone on between the parties in this case. It appeared to us that the residents had achieved a considerable measure of success and that the city had taken their concerns seriously. The City assured us that not only were they continuing to investigate and monitor the issues raised by the complainant, they remained open to further consultation with the complainant and his fellow residents.

We advised the complainant that to the extent that he had been in a "fight" with city hall, he might have already won. He accepted our analysis.

Rural municipality shows consideration for complainant's situation

Ms. F. owned property outside of the community in which she currently resides, in the RM of X. She contacted our office in January 2003 to express concern over a Notice of Violation issued against her under the RM's "unsightly property" by-law which required her to take steps to remedy the property deemed to be unsafe. Ms. F was seeking an extension of the deadline in which to comply with this Notice. She advised us that she was not able to deal with arranging for repairs, sale of the property, or even removal of her belongings as she lived in another community some distance away, was elderly, and had recently suffered medical difficulties. She had hoped to have more time to deal with the Notice's requirements.

Our inquiries with the RM were instructive; this RM had not had any prior dealings with our office, so this case was an opportunity to educate the RM about the role of our office and what information we required in response to such a complaint. We explained that we were not advocating on behalf of the complainant to obtain an extension, but we did want to determine whether the RM Council would be giving any consideration to Ms. F's request for an extension.

Interestingly, we were advised that the complainant had been given extensions the previous year to comply with the Notice, but had not yet taken steps to deal with the property. Given that the RM had not yet taken action as permitted under the by-law with regard to this property, and given the circumstances explained by the complainant, we discussed with the RM the reasonableness of granting a further extension. The RM considered her request and did grant her additional time for compliance. The complainant indicated that she now had time to proceed with the expected sale of this property, which was expected to resolve the concerns of all parties involved. Our office commended the RM for giving consideration to the particular needs of the property owner and for taking a reasonable and patient approach to this concern.

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 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