

MANITOBA OMBUDSNEWS

Ombudsman, Access and Privacy Newsletter



PRIVACY & THE MANITOBA ENHANCED ID CARD

Starting June 1, 2009, American authorities will require Canadian citizens 16 and over to have a passport or approved alternative to enter the U.S. by land or water. MPI and the Manitoba Government have introduced the Manitoba Enhanced Identification Card (EIC) as a voluntary alternative to a passport for this limited purpose.



The Ombudsman has published information on the following points for your privacy awareness:

1. The EIC is voluntary and not necessary if you already have a passport.
2. A person interested in an EIC should first read the Manitoba *EIC Applicant's Guide*.
3. A person should understand the consents and declarations that must be signed to qualify for an EIC before beginning the EIC application process.
4. Up to five provincial, national and international authorities will handle the personal information of an EIC applicant/participant.
5. Third party information will not be collected or used in the Manitoba EIC program.
6. The EIC's technology (radio frequency identification) presents a risk of location tracking of the EIC cardholder.
7. The protective sleeve issued with each Manitoba EIC prevents this risk, but the cardholder must always be vigilant.
8. A damaged sleeve must be replaced immediately to maintain privacy and can be replaced, free of charge, at any MPI service location or Autopac broker office.
9. Once a traveller's personal information is shared with U.S. authorities (from EIC cards or passports), the Manitoba Government and MPI have no control over how it may be stored, used and further shared; it is retained in the U.S. Border Crossing Information system for 75 years.
10. To find out about privacy within the EIC Program or to raise concerns:

Contact:

MPI Access and Privacy Coordinator
Phone: (204) 985-7525

If any EIC privacy concerns cannot be resolved with MPI:

Manitoba Ombudsman
Phone: (204) 982-9130 or 1-800-665-0531 (toll free in Manitoba)

For more information, see the Ombudsman's February 2, 2009 news release and fact sheet, "Manitoba Enhanced Identification Card: 10 Points for Privacy Awareness" at www.ombudsman.mb.ca

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PROTECTED DISCLOSURES—IN THE PUBLIC INTEREST

200 years ago, the first public sector Ombudsman was appointed by the Parliament of Sweden. Since its origin, the public sector Ombudsman has been a valuable guardian of citizens' rights.

The public sector Ombudsman's mandate has expanded significantly since 1809. Society's expectation for transparency and accountability in all aspects of government administration has influenced governments to pass new laws to protect citizens' rights.

The Manitoba Ombudsman's Office was established in 1970 following the proclamation of *The Ombudsman Act*. In 1988, *The Freedom of Information Act* was proclaimed giving every person the right of access to any record in the custody and control of a provincial government department or agency, subject to certain exceptions. The legislation incorporated an oversight role for the Ombudsman to receive complaints.

Effective January 1, 1997, the Ombudsman's jurisdiction was extended to all urban and rural municipalities in Manitoba, and in 2003, was further extended to include the City of Winnipeg. Also in 1997, *The Personal Health Information Act* (PHIA) was proclaimed. This was unique legislation in Canada, being the first Act to provide access to information and protection of privacy rights for personal health information. In May 1998, *The Freedom of Information and Protection of Privacy Act* (FIPPA) replaced *The Freedom of Information Act*. This Act added personal information privacy protection to general access rights and the Ombudsman was given the oversight role under this Act as well.

In June, 1998, a regional office of the Ombudsman was opened in Brandon, Manitoba.

In April 2007, the Ombudsman's mandate expanded again with the proclamation of *The Public Interest Disclosure (Whistleblower Protection)*

Act.

Our 2008 Annual Report tells the public generally about our work involving disclosures of wrongdoing under whistleblower legislation. But, helping the public really understand what a disclosure of wrongdoing means is a challenge because detailed information can't be reported. The law requires that the identities of persons making disclosures be kept confidential to the extent possible. The Act states the purpose of the law is:

"to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service, that are potentially unlawful, dangerous to the public or injurious to the public interest; and to protect persons who make those disclosures."

It is the Ombudsman's duty to promptly and informally investigate disclosures that she determines require investigation. The Ombudsman can take any steps she feels are appropriate to help resolve the matter and that are in the public interest.

"The purpose of an investigation into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the appropriate department, government body or office, and to recommend corrective measures that should be taken."

Taking steps might mean notifying senior government officials of the allegation of wrongdoing, assuming they have not been named in the disclosure, and offering them the opportunity to investigate the allegation and report the findings to the Ombudsman. If the Ombudsman is satisfied with the outcome of the government office's investigation, the matter is concluded. If not, the Ombudsman can begin her own

investigation, or if appropriate, refer the matter to the Office of the Auditor General.

Not all allegations should be investigated as a disclosure of wrongdoing. There may already be an appropriate means of addressing them, and the Ombudsman will be careful not to undermine a review process established by statute.

As the title of the Act suggests, there must be a *public interest* component revealed in the allegation – not just an interest relevant only to the whistleblower. Could, for example, an employment related disclosure ever be considered a wrongdoing? These kinds of thorny questions must be determined in advance of any investigation of an allegation of wrongdoing. However, employees and others should not be discouraged from blowing the whistle on *wrongdoing* which is defined as:

- *an act or omission that is an offence under an Act or regulation (breaking the law)*
- *an act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment*
- *gross mismanagement, including mismanaging public funds or a public asset (government property); and*
- *knowingly directing or advising someone to commit any wrongdoing described above*

Like all aspects of Ombudsman work, the principles of fairness and natural justice must prevail. The Ombudsman makes recommendations designed to be corrective measures that will promote fairness and best practice in government administration - in the public interest.

For more information or to make a confidential disclosure, contact: Manitoba Ombudsman at 982-9130.



OTTAWA CONFERENCE



In February, staff from our office participated in a national conference held in Ottawa for investigators with access and privacy oversight at the provincial, territorial and the federal levels. Topics discussed at the two-day conference included biometric identification, public education and outreach, case management and

exercising discretion in disclosing personal information.

Access and Privacy Division staff presented information on the duty to assist an applicant seeking access to information. *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA) require public sector bodies and trustees to make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely. Some examples of this duty include conducting thorough searches for records, explaining processes under the Acts and providing detailed reasons for access decisions.

Ombudsman, Irene Hamilton, participated on a panel with Information and Privacy Commissioners and Ombudsmen, and provided updates from their jurisdictions. The panel discussed legislative changes nationally that impact on access and privacy rights and Ms Hamilton discussed amendments to FIPPA and PHIA.

Following the conference, Ms Hamilton participated in meetings with her Federal/Provincial/Territorial colleagues on issues of mutual concern, including enhanced drivers licences and electronic health records.

COMMUNITY OUTREACH

Our goal is to inform more Manitobans about the Ombudsman's role in the democratic process. This spring, our office participated in a number of community events. On Sunday, April 19th, Ombudsman staff greeted almost 300 visitors to our exhibit in the Winnipeg Law Courts as part of the annual LAW DAY open house. Manager, Gail Perry staffed the Right to Know Information sessions running simultaneously. This year's theme was "Celebrate Our Rights and Freedoms".

We facilitated two half-day workshops for City of Winnipeg staff this April: *Working with the Ombudsman* and *FIPPA & PHIA Work with the Ombudsman*.

Our Joining the Herd school presentations continue to be popular. This spring, we spoke with students and teachers in Winnipeg: West Kildonan Collegiate and Children of the Earth High School and other centres: Gimli High

School, Vincent Massey High School (Brandon), and Carmen Elementary and MPA students at the University of Winnipeg.

The students' knowledge of and interest in the Ombudsman's role in the democratic process is an impressive testimony to Manitoba teachers' efforts to help students learn about their rights and responsibilities as citizens of Manitoba and Canada. The response to our offers to speak with students, especially social studies students has been very positive. We look forward to continuing this relationship with Manitoba schools.

In April, we met with the staff of Welcome Place, Manitoba Interfaith Immigration Council. We also spoke to newcomers at Adult Learning Centres in Winnipeg and Brandon and to Blue Sky Youth Alliance and the Native Addictions Council of Manitoba to inform



Margaret Hand (far right) and her grade 6 class at Carmen Elementary

Manitobans of the free services we provide to anyone who believes s/he has been treated unfairly by government departments or agencies in Manitoba.

To arrange for a presentation to your organization or classroom, please call 982-9130 or toll free: 1-800-665-0531.

OMBUDSMAN CELEBRATES 200TH ANNIVERSARY OF THE OMBUDSMAN ROLE

In April 2009, Manitoba Ombudsman staff attended a joint conference in Montreal hosted by the Forum of Canadian Ombudsman, the International Ombudsman Association, and the Association of Canadian College and University Ombudspersons.

The conference, "Evolution of the Ombudsman [1809-2009]: A Rich History, A Promising Future," celebrated the creation of the role of the modern ombudsman in Sweden in 1809.



Innovative ideas, best practices, and philosophical discussions - it was a meeting of the minds meant to look back and look forward, to provoke and inspire. With 320 delegates from around the world in attendance at the conference from as far away as Europe and South Africa, it was also an opportunity to renew old acquaintances and make new ones.

Acknowledgements

We have appreciated having Devi Gobherdan assisting us for the past year with our outreach programs, especially in our youth programs. Congratulations to Devi on her graduation in the Masters, Public Administration program and success in her career.

This summer, Leila Francoeur-Gilbert, an Exchange student from Gatineau, Quebec, is helping us create French language presentations to expand our outreach efforts into our francophone community.



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UPCOMING EVENTS

If you wish to subscribe to the Manitoba OmbudsNews or be removed from our distribution list please send your e-mail address to ideandrade@ombudsman.mb.ca

- June 17– Brown Bag Talks, "Making Effective Representations in Responding to Complaints about Refused Access", 750-500 Portage Ave.
For Access and Privacy Officers and Coordinators
- September 2009 - The Business Case for Fair Decision Making -**NEW!**
A new 2 hour workshop offered by OSD & delivered by the Ombudsman's Office for new & experienced senior public servants. Please check the OSD online calendar www.gov.mb.ca/csc/osd for more information and availability.
- September 28– October 2, 2009- Right to Know Week events in Manitoba
Stay tuned for 2009 information at <http://www.ombudsman.mb.ca/righttoknow.htm>
- November 30- December 1, 2009- Prairie Health Information Privacy Day
at the Hyatt Regency, Calgary
for Access and Privacy officers and coordinators, all health professionals and health organizations, staff of provincial and municipal government, school divisions, universities
- For more information and registration on Prairie Health Information Privacy events,
<http://www.verney.ca/phiipd2009/>



Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions