

MANITOBA OMBUDSNEWS

2010-1



Ombudsman, Access and Privacy Newsletter

The Manitoba Ombudsman's Office is Celebrating its 40th anniversary!



Join us at one of the following events:

Sunday, April 18 - Noon to 3:30 p.m. Visit our exhibitor table at the **Law Day Open House** in the Winnipeg Law Courts building. Law Day lets you visit exhibits, tour court facilities, and view elementary and high school mock trials and a special sitting of Citizenship Court.

Wednesday, April 21 - 12:10 p.m. to 12:50 p.m. Ombudsman Irene Hamilton is speaking about **"Fairness, Government and You"** in the Carol Shields Auditorium at the Winnipeg Public Library's Millennium Library. Join Irene in celebrating the 40th anniversary of the office, and learn how the office promotes fairness, equity and accountability in Manitoba. Everyone is welcome to attend. This session is generously co-hosted by the Winnipeg Public Library.

Ombudsman Defined

ombudsman/ombudsperson / **1** an official appointed by a government to investigate individuals' complaints against public authorities, etc. **2** N. Amer. an official within an institution who investigates complaints from employees, students, newspaper readers, etc. (Canadian Oxford Dictionary)

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During our week of anniversary celebrations, the Ombudsman's Office is also hosting an event for members of the Manitoba Council of Administrative Tribunals at their annual conference on April 19, Ombudsman Irene Hamilton is presenting to the Teachers' Institute on Parliamentary Democracy on April 20, and our Access and Privacy Division is hosting a special anniversary edition of their Brown Bag Talk series on April 22.

Ombudsman Origins

In 2009, ombudsman offices around the world celebrated the 200th anniversary of the first independent parliamentary ombudsman, which had been established in 1809 in Sweden. The word "ombudsman" is Swedish, and is often translated as "citizen's representative" or "representative of the people." After Sweden, ombudsmen were established in Finland (1919), Denmark (1954), Norway (1961) and New Zealand (1962).





An Ombudsman for Manitoba

Throughout the decade of the 1960s, the concept of an ombudsman to act on behalf of citizens when they had a grievance with government was discussed and debated frequently in many provinces, including Manitoba. It was the establishment of the New Zealand Ombudsman in 1962, the first ombudsman in a British Commonwealth country, that seemed to get everyone interested in the idea. There had been concern that the ombudsman idea would not transfer very well from Scandinavian countries, but the New Zealand ombudsman demonstrated that it could be done. Sir Guy Powles, New Zealand's Ombudsman, was a guest of the Institute of Public Administration of Canada (Winnipeg chapter) in February 1966. While in Winnipeg, he also met with the Legislature's special committee on statutory regulations and orders.

In December 1966, a kind of ombudsman was proposed - a "Legislative Commissioner for Administration" - in the *Citizen's Remedies Code White Paper* presented to the Manitoba Legislature. While similar to an ombudsman in that the commissioner was going to be an independent officer of the Legislature, it limited the role by proposing that the commissioner could only act at the request of a MLA and could not take complaints directly from Manitobans. The proposal excluded tribunals, crown agencies, corporations, and boards and commissions, from the commissioner's scrutiny. And while the proposed commissioner would have the ability to collect oral or written evidence, the government would have the right to refuse the production of documents. This proposal was never implemented, but it kept the debate going.

In 1970, Manitoba became the fourth province (after Alberta, New Brunswick and Quebec) to establish an ombudsman. *The Ombudsman Act* created the office and set out the Manitoba Ombudsman's authority to investigate complaints about administration by provincial government departments and agencies. In 1997, the Ombudsman's jurisdiction was extended to all urban and rural municipalities in Manitoba (except the City of Winnipeg), and in 2003, it was extended to the City of Winnipeg. *The Ombudsman Act* incorporates the hallmarks of all legislative ombudsmen:

- independence of the office,
- broad powers of investigation,
- informal procedures for conducting investigations,
- non-adversarial approaches to the resolution of problems, and
- the power to make recommendations, and
- the power to report publicly.

These same hallmarks are evident in subsequent laws that established the Manitoba Ombudsman as the oversight authority over provincial information privacy legislation - *The Freedom of Information Act* (1988-1998), *The Personal Health Information Act* (1997) and *The Freedom of Information and Protection of Privacy Act* (1998). Under FIPPA and PHIA, the Ombudsman investigates complaints from people who have concerns about any decision, act or failure to act that relates to their requests for information from public bodies or trustees, or a privacy concern about the way their personal information was handled. Under FIPPA and PHIA, the Ombudsman's mandate includes municipalities and entities in the health and education sectors.

The Manitoba Ombudsman has additional responsibilities under other legislation:

- Under *The Fatality Inquiries Act*, the Chief Medical Examiner may direct that an inquest be held into the death of a person. Following the inquest, the judge submits a report and may recommend changes in the programs, policies and practices of government that, in his or her opinion, would reduce the likelihood of death in similar circumstances. The Manitoba Ombudsman began monitoring the implementation of inquest report recommendations in 1985.
- In 2007, *The Public Interest Disclosure (Whistleblower Protect) Act* was proclaimed. The Ombudsman is one of the parties to whom a person can make a disclosure of wrongdoing.
- In 2008, *The Child and Family Services Act* was amended. The Children's Advocate conducts comprehensive reviews of the deaths of children. Similar to the way the Ombudsman's office monitors recommendations arising from inquest reports, the Ombudsman receives the child death review reports with recommendations from the Children's Advocate, and monitors the implementation of those recommendations.

Television!



Four Canadian provinces had ombudsmen, Canadians were in a period of increased awareness about the rights of consumers and citizens,

and the CBC launched *Marketplace and Ombudsman*. *Ombudsman*, which debuted in 1974, "invited viewers to inform the show of run-ins with

institutions and with government and corporate bureaucracy". The show ran until 1980, and yes, Robert Cooper (the TV Ombudsman) did deal with some complaints from Manitobans.



Manitoba's Ombudspersons

In Manitoba, the Ombudsman is appointed by the Lieutenant Governor in Council on the recommendation of the all-party Standing Committee of the Assembly on Legislative Affairs. The Ombudsman is appointed for a term of 6 years, and may be re-appointed for a second term of 6 years (but not for more than two terms).

Since 1970, Manitoba has had four Ombudsmen: George Maltby (1970-1982), Gordon Earle (1982-1994), Barry Tuckett (1994-2005), and Irene Hamilton (2005 to present). In April 2010, Irene Hamilton will begin her 6th year as ombudsman.



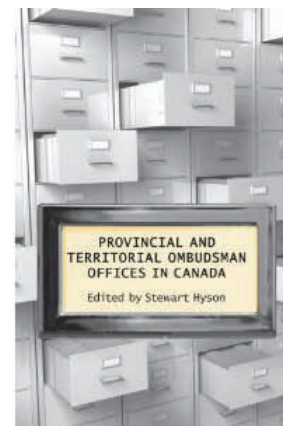
Ombudsmen in Quotes

"I don't start from the position that the complainant is right...I must have the facts. I can't go just on emotion. I get the facts from the complainant, then I get the official version. When I've got the complete story from both sides, am assured I have all the facts and I have studied the law involved, then I come to a decision of judgment. Is the complainant right? If he is, then I become the citizens' spokesman." (George Maltby, in the *Winnipeg Tribune*, February 11, 1972)

"When government tries to do more, people invariably expect more and are more vocal about their problems with various government agencies." (Gordon Earle, in the *Winnipeg Free Press*, May 12, 1983)

"There are thousands of complaints we have had over the years that have been resolved with informal work, which if it hadn't been for us could have ended up in the courts." (Barry Tuckett, in the *Winnipeg Free Press*, November 18, 2004)

Recommended reading:



Edited by Stewart Hyson
University of Toronto Press, 2009
ISBN: 1442640677

Five Questions for Irene Hamilton

1. What is the most satisfying aspect of your work as Ombudsman?

The most satisfying aspect of my work is affecting change in the way in which government works that results in people being treated more fairly, in a way that assists them in dealing with their problems, and in a way that helps their understanding that government is working for them.

2. What challenges you the most?

The need to reach as many Manitobans as possible to promote their understanding and knowledge of the office as a means to ask questions of, and challenge the way government is working. If people don't know about our office and its mandate, we cannot be effective in what we do.

3. In Manitoba you fulfill the function of an Information and Privacy Commissioner. How do you manage your dual role?

I have the incredible good fortune to work with a team of colleagues who are dedicated to their

work under each of the pieces of legislation that give us a mandate. Their expertise and the collegial way in which everyone in the office works makes managing these roles possible.

4. Is an ombudsman still necessary in 2010?

Yes, absolutely an ombudsman is necessary because we have the ability to take a second look at what has been done by government and assist in achieving administrative improvement, ensuring access to information rights, and promoting openness and transparency. There is always room for improvement in any program, including ours.

5. What do you want Manitobans to know about your office?

Manitobans first and foremost need to know we are here, available to any person and provide our services at no charge. Our goals are administrative improvement, open and transparent government, and privacy protection for individuals' personal information, importantly including their personal health information.



In Our View

In the previous issue of *OmbudsNews* we introduced a new column called "In our view". In this edition, we look at a recurring privacy issue that is often brought to the attention of our Access and Privacy Division.

Employees in the public sector as well as in the health care sector often need to carry records containing personal and personal health information of clients or patients outside of the workplace. This typically involves transporting the records in a vehicle (whether in paper documents or files, stored electronically on a laptop or portable storage device).

Both *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA) require public bodies and trustees to implement "reasonable" safeguards for personal and personal health information. Public bodies and trustees should have written policies that outline the manner in which the information will be kept secure when it is necessary for employees to remove the information from the workplace.

Personal or personal health information left unattended in a vehicle is exposed to risks such as disclosure of the information, loss, theft and destruction. Locking the information in the trunk of a vehicle is not an effective safeguard for the information. Information in a trunk can be compromised by breaking into the trunk or by the vehicle being stolen. There have been instances of thefts of personal and personal health information from vehicles on a

private driveway, at a grocery store, at a restaurant and at a shopping mall.

When personal and personal health information entrusted to the care of public bodies and trustees is compromised, various harms can result. Further to having one's privacy breached, an individual may be exposed to other harms, including identity theft or fraud, embarrassment, damage to reputation or relationships or employment, and physical or emotional harm. After a privacy breach, the public body or trustee may be exposed to harms including damage to reputation, loss of public confidence or trust, diminished ability to deliver services if the information does not exist in another format, and loss of resources (staff time and expenditures for dealing with the breach).

In our view, personal and personal health information (whether contained in paper records, on a lap top, or on a mobile storage device) should not be left unattended in a vehicle unless there is no option for an employee to take the information with them when exiting the vehicle. It is difficult to imagine a scenario where it would be impossible for employees to carry the information with them. While it may be inconvenient to take the information with them, the only way for employees to adequately protect it is to do so, even when leaving the vehicle for a few minutes.



UPCOMING EVENTS

Brown Bag Talks for Access and Privacy Coordinators and Officers under FIPPA and PHIA are held the 3rd Wednesday of each month at our office from 12:05 - 12:50 p.m. Upcoming talks are scheduled for April 22 (Thursday), May 19 and June 16. Check our website for topics to be discussed and call 982-9130 for details or to register.

April 18, 2010 **Law Day 2010 Open House** - Noon to 3:30 p.m. at the Winnipeg Law Courts building.

April 19, 2010 **Manitoba Council of Administrative Tribunals** fifth annual conference at the Caboto Centre.

April 21, 2010 **"Fairness, Government, and You,"** a public presentation by Ombudsman Irene Hamilton - Carol Shields Auditorium, Winnipeg Public Library's Millennium Library, 12:10 p.m. to 12:50 p.m.

May 13, 2010 A workshop for the City of Winnipeg - **"FIPPA & PHIA: Working with the Ombudsman"** will be held at the City's corporate education facility. 8:30 a.m. to noon.

May 27, 2010 A workshop for the City of Winnipeg - **"Working with the Ombudsman under *The Ombudsman Act*"** will be held at the City's corporate education facility. 8:30 a.m. to noon.

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