

# Manitoba OmbudsNews

## 2015-2 Ombudsman, Access and Privacy Newsletter

### Manitoba's new ombudsman



Charlene Paquin became Manitoba's ombudsman on May 4, 2015. Prior to her appointment as ombudsman, Charlene was employed as the assistant deputy minister of the Community Service Delivery Division at Manitoba Family Services. She has many years of public service experience including both policy and service delivery. Charlene holds a bachelor of arts degree from the University of Winnipeg and a master's degree in social work from the University of

Manitoba. She also has board experience, most recently having served on the Winnipeg Region board of directors for the Canadian Mental Health Association.

Born and raised in Winnipeg, Charlene resides here with her husband and two children.

#### The Manitoba Ombudsman's office turned 45

The Manitoba Ombudsman's office celebrated its 45th anniversary on April 1, 2015! Lots has changed in 45 years. 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 Manitoba Ombudsman's authority to investigate complaints about administration by provincial government departments and agencies. Manitoba's first ombudsman took office on April 1, 1970. Fast forward to today – we now do investigations under *The Ombudsman Act* of provincial government departments, agencies, and municipalities, access and privacy investigations under FIPPA and PHIA, investigations of disclosures of wrongdoing under PIDA, and we monitor and follow-up on recommendations made in inquest reports under *The Fatality Inquiries Act* and in special investigation reports under *The Child and Family Services Act*. We cover a lot of ground! Happy belated anniversary Manitoba Ombudsman, and many more.

#### 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 six years, and may be re-appointed for a second term of six years (but not for more than two terms).

Manitoba's ombudsmen, 1970 to present:

- Charlene Paquin (2015 to date)
- Mel Holley (Acting) (2011-2015)
- Irene Hamilton (2005-2011)
- Barry Tuckett (1994-2005)
- Gordon Earle (1982-1994)
- George Maltby (1970-1982)



Charlene Paquin was officially sworn in as ombudsman, with the Honourable Daryl Reid, speaker of the Legislative Assembly of Manitoba. Charlene officially began her first six-year term as ombudsman on May 4, 2015.

# 2014 Manitoba Ombudsman annual reports

In early June, we tabled our 2014 annual reports in the legislature. It's through the annual report process that we reflect on the past year and share selected case summaries and detailed statistics about the work that we do. It gives us the chance to identify and report on issues and trends as well.

Our 2014 annual reports are available in print by contacting the office or on our website at: [https://www.ombudsman.mb.ca/documents\\_and\\_files/annual-reports.html](https://www.ombudsman.mb.ca/documents_and_files/annual-reports.html)



With the emergence of arm's length, public/private hybrid organizations that often undertake large development projects and other initiatives, we felt it was important to share our perspective on custody and control over records of subsidiary corporations or business partnerships. Custody and control of records was an issue that arose in two investigations under **FIPPA** – one related to the City of Winnipeg and BBB Stadium Inc. and the other related to the University of Winnipeg and the University of Winnipeg Community Renewal Corporation. Given the increasing prevalence of these types of business models, it is imperative that public bodies ensure that the resulting contracts and agreements document the rights and responsibilities of the parties as to their respective records, and to the records that will grow out of the business arrangement.

We often talk about the privacy protections of **PHIA** as they relate to the need to protect personal health information, but in 2014, access matters under PHIA came to the forefront on several occasions. We highlighted one investigation where, for the first time, we received a complaint about an alleged failure to fulfill a hospital in-patient's right of access within the 24-hour time limit. We also highlighted the issue of administrative access fees under PHIA – an issue deserving of attention during the next legislative review of PHIA, particularly with the increasing implementation of electronic medical/patient records and the potential of reduced administrative costs when it comes to providing access to the information in electronic records.

Under **The Ombudsman Act**, we continued to see an increase in the number of complaints we received about municipalities – a trend we've been noticing over the last five years – which suggests that there's a lot of interest in accountability at the local (municipal) government level. In the report, we highlighted four cases that dealt with a variety of municipal issues – collection of a special accommodation tax in The Pas, the City of Winnipeg's Board of Adjustment and the need to issue reasons for its decisions, the City of Winnipeg's process for designating and altering truck routes and the RM of De Salaberry's code of conduct for elected officials.

Under section 16.1 of **The Ombudsman Act**, we reported on the status of implementation of recommendations made by the children's advocate in reports of the deaths of children involved with the child welfare system. Between 2008 and the end of 2014, 71 per cent of recommendations had been implemented.

With respect to **The Public Interest Disclosure (Whistleblower Protection) Act**, we discussed many of the amendments we proposed to the Civil Service Commission, the public body responsible for administering PIDA. Our proposed amendments focused on strengthening the authority and responsibilities of designated officers within departments and the process of investigating alleged complaints of reprisal – a process that currently rests with the Manitoba Labour Board.



## Nine new investigation reports added to website in June 2015

### Ombudsman Act reports

**2013-0117:** An individual complained about how the North Eastman Health Authority (now the Interlake-Eastern Regional Health Authority) handled a critical incident resulting from an injury he sustained at a health-care facility. The ombudsman found that the health authority was not in compliance with some policies related to critical incidents. While Manitoba Health was not the subject of the complaint, the ombudsman directed two recommendations to Manitoba Health because it is the body that provides direction to health authorities on a number of matters, including critical incident reporting. Manitoba Health agreed with the ombudsman's recommendations.

**2014-0070:** An individual contacted our office about an invoice she received from the Winnipeg Fire Paramedic Service (WFPS) for costs WFPS had incurred by hiring a private company to secure a fire-damaged garage. The individual did not believe that the contractor carried out work on her property, nor did she believe that WFPS adequately responded to her concerns about the invoice. After our office contacted WFPS, they found that the work described on the contractor's invoice had not been done. WFPS refunded the individual the full invoiced amount and has implemented administrative improvements. The ombudsman found that WFPS gave reasonable consideration to this matter and administrative improvements implemented should help to prevent future complaints of this nature.

**2014-0252:** A property owner complained that the Local Government District (LGD) of Pinawa unfairly denied her request to be reimbursed for a portion of the charges she incurred for multiple sewer line inspections and repairs. The individual also questioned whether an increase in property tax assessment was related to her disagreement with the LGD. The ombudsman found that the LGD followed applicable legislation, policies and procedures regarding the complainant's sewer line repairs and that the property tax assessment increase was not affected by the complainant's sewer dispute with the LGD. The ombudsman also identified two administrative changes that, if implemented, would improve the LGD's administrative practices regarding property owner requests for reimbursement.

**2013-0069:** Property owners complained that the Red River Planning District and the Rural Municipality of St. Clements handled their subdivision application unfairly. The RM delayed making a decision about the subdivision application (despite having approved similar requests in the past) on the basis that an anticipated secondary development plan would provide guidance on such matters. The secondary plan, however, had not yet been finalized, so after a two year delay, the RM approved the subdivision application, which was then subsequently denied by the planning district. The property owners appealed the decision to the Municipal Board and the appeal is still ongoing. The ombudsman found that the subdivision application was not treated consistently with how other similar applications were treated, and that the property owners experienced an inordinate and excessive delay. The ombudsman suggested that the planning district and RM review the process by which they deal with subdivision applications in the interest of providing better customer service, and that the RM develop a policy that sets out when, how and for what period a subdivision application may be tabled. The RM agreed to develop a policy, and the planning district explained that it is revising its brochures to ensure that the subdivision process and procedures are clear to the public.

### FIPPA reports

**2013-0244:** An individual requested access to the City of Winnipeg's vacant buildings registry. The application was refused on the basis of a FIPPA exception that allows a public body to refuse access if releasing information could "reasonably be expected to harm or threaten the security of any property or system..." The ombudsman agreed that the FIPPA exception applied in this situation.

**2013-0407:** An individual requested access to records from Manitoba Infrastructure and Transportation about the St. Jean Baptiste Bridge project. Access was initially granted in part. The ombudsman found that some information withheld from briefing notes was factual in nature and was not subject to the exception, and the public body released this information to the applicant. The ombudsman agreed that information in a draft document would reveal advice, opinions, analyses and recommendations to government and that the public body reasonably exercised its discretion to withhold this information.

**2014-0037:** An applicant requested records from Manitoba Education and Advanced Learning related to expenses of Red River College's president. The department provided access to a severed advisory note, and later disclosed additional information from the record after the ombudsman found that some of the severed information was publicly available.

**2014-0280:** An individual requested a video from Manitoba Housing. Access was denied on the basis that the record was part of an ongoing Winnipeg Police Service investigation and that disclosure of the record could be harmful to the investigation. The ombudsman was satisfied that the exceptions to disclosure in FIPPA were reasonably applied.

**2014-0317:** An individual sought access to records related to her spouse's application made under the Manitoba Provincial Nominee Program. Manitoba Labour and Immigration refused access on the basis that disclosure of the records would result in an unreasonable invasion of her spouse's privacy. The ombudsman determined that they contained personal information that the public body was prohibited from disclosing.

## PHIA Day at Southern Health

For the 7th year, Southern Health hosted an annual PHIA Day to build privacy awareness among employees. Held on June 18th this year, PHIA Day incorporated a variety of practical sessions and case studies to help employees understand their obligations and deal with challenging privacy issues. We're always pleased to be invited to participate in this event. This year, we delivered a session called "Practicing Good Privacy and Security Hygiene." Just as having good hygiene practices in health care settings promotes the health of patients, practicing good privacy and security hygiene promotes the protection of patients' personal health information.



### Coming soon! Our new Privacy Impact Assessment tool

Protecting privacy is more than just upholding the law, it also involves taking a proactive approach to safeguarding the public's personal (and personal health) information.

Manitoba Ombudsman will soon be releasing a user-friendly privacy impact assessment (PIA) tool that 'tells the story' of a project from a privacy perspective. Simply, it encourages public bodies and/or trustees to think about privacy when evaluating an existing or proposed program/activity.

While going through the PIA process, it is our goal that potential privacy risks will be identified and the public body and/or trustee will be in a better position to address those risks early on.



### Law Day 2015 Winnipeg | Brandon



Manitoba Ombudsman joined other government, community and law-related agencies to mark Law Day 2015 at the Law Courts building in Winnipeg and Brandon. Law Day commemorates the signing of the Canadian Charter of Rights and Freedoms and educates the public about the legal system, and is usually held in mid-April. We always enjoy meeting everyone who attends the event!

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### Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

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Winnipeg Office  
750 - 500 Portage Ave.  
Winnipeg, MB R3C 3X1  
Phone: 204-982-9130  
Fax: 204-942-7803  
Toll Free in MB: 1-800-665-0531

[www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)  
[ombudsman@ombudsman.mb.ca](mailto:ombudsman@ombudsman.mb.ca)  
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Brandon Office  
202- 1011 Rosser Ave.  
Brandon, MB R7A 0L5  
Phone: 204-571-5151  
Fax: 204-571-5157  
Toll Free in MB 1-888-543-8230