

Manitoba Ombudsman Celebrating 50 Years



Special Report
October 2021

Ombudsman's Message

International Ombuds Day is an opportunity to create awareness about Manitoba Ombudsman, its history and practices, and the value ombudspersons and their teams have brought to citizens in communities across Manitoba. In Manitoba and other provinces, ombudsmen are an important pillar of our parliamentary system who help strengthen democracy, advance the rights of citizens and enhance good governance. Ombudsmen uphold the professional standards of confidentiality, impartiality and independence. In practice we employ an informal, non-adversarial and objective approach to our work promoting fairness, transparency and accountability in public programs and services.

As an independent office of the legislature, Manitoba Ombudsman offers confidential, responsive and respectful services designed to informally address and help resolve concerns raised by citizens about public programs. Through the authority to investigate complaints, educate and outreach to the public, and comment on the privacy and fairness implications of new initiatives, the ombudsman is uniquely positioned to bring attention to significant systemic issues that otherwise may not have come forward.

Since the legislature passed Manitoba's Ombudsman Act in 1969, its basic principles have remained unchanged. For 50 years, the core function of the ombudsman has been to deal with concerns of Manitobans stemming from their interactions with government bureaucracy.

What has changed significantly in Manitoba since 1970 is the expansion of the ombudsman's mandate with the addition of oversight responsibilities related to access to information, privacy protection and public interest disclosure matters, and also the expansion of the number and type of public-sector organizations to which the ombudsman's jurisdiction applies.

Under the ombudsman's expanded mandate, the impartial and objective assessment and investigation of complaints has been, and continues to be, a primary focus. Bringing complaints forward to the ombudsman provides access to justice for many Manitobans by informal dispute resolution and independent review of the actions, decisions or omissions of government programs and services. The ombudsman's authority to make recommendations with respect to administrative and access and privacy matters can bring about positive change and help to restore public trust and confidence in public systems.

In recent years, a more proactive role for the ombudsman has emerged, informed by decades of experience and the insight of the broader community in which the ombudsman operates. Formal and informal consultation with public bodies in Manitoba and our collaboration with ombudsmen, information and privacy commissioners and the broader oversight community across the country has become an integral part of how the office functions.

When my office celebrated its 50th anniversary in 2020, we wanted to share our story. To facilitate this, we combed through 50 years of reports, scrapbooks and other publications to find examples that highlight our history, the different aspects of our work and the ombudsmen who together with their dedicated teams, made it all happen. This report is the culmination of our efforts and I am pleased to share it with you.

Jill Perron
Ombudsman
October 14, 2021

Available in alternate formats upon request

The 1960s: An Ombudsman for Manitoba

By the mid twentieth century, government administration around the globe had grown in size and scope. As administrative powers expanded, so did the possibility for administrative injustices that affected the rights and liberties of citizens. The concept of a legislative officer, such as an ombudsman, to act on behalf of citizens when they had a grievance with government was discussed and debated frequently in many jurisdictions, including in Manitoba.

A parliamentary ombudsman had first been established in 1809 in Sweden. The word “ombudsman” is Swedish in origin and refers to a person who acts as a spokesperson or representative of another person. The word 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). A parliamentary commissioner was established in the United Kingdom in 1967.

Sir Guy Powles, New Zealand’s ombudsman, was a guest of the Winnipeg chapter of the Institute of Public Administration of Canada in February 1966 to deliver a public presentation on “The Office of the Ombudsman: An Aspect of the Search for Administrative Justice.” While in Winnipeg, he also met with the legislature’s special committee on statutory regulations and orders to discuss the operation of the ombudsman in New Zealand.

In December 1966, a kind of ombudsman was proposed for Manitoba – a “legislative commissioner for administration” – in the Citizen’s Remedies Code White Paper presented to the legislature. In this proposal, the commissioner was going to be an independent officer of the legislature, but the role was limited as the commissioner could only act at the request of an 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 the subject of much criticism and was never implemented. One critic remarked that the institution described by the white paper could best

be described as the “Nonbudsman” because of all the restrictions and limitations. Another group suggested that the term “legislative commissioner for administration” had no meaning to the average person, but the term “ombudsman” did because it had found its way into English vocabulary and had come into wide usage.

Bill 57, the Ombudsman Act, was introduced in the 28th legislature on April 29, 1969; however, an election and change in government in June 1969 delayed the bill’s passage. The bill was reintroduced a couple of months later as Bill 25, the Ombudsman Act, in the 29th legislature on August 18, 1969. Bill 25 was read a third time and passed on September 30, 1969.

Where the ombudsman finds that a complaint is justified, he recommends a remedy...He has power to investigate, criticize and publicize, but not to reverse an administrative action.

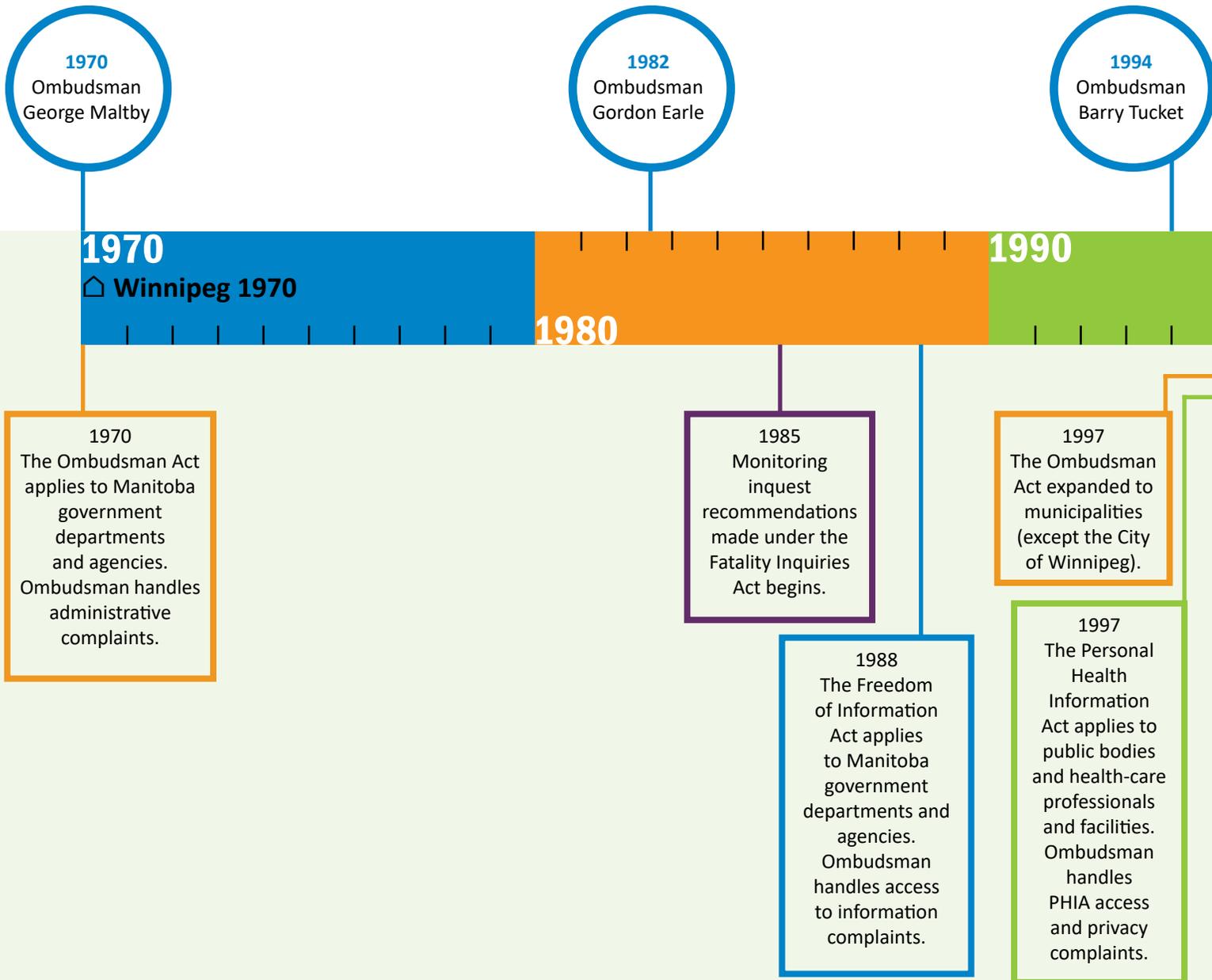
(From a February 1969 news release about the principles of the Ombudsman Bill)

The Ombudsman Act created the ombudsman role and set out the ombudsman’s authority to investigate complaints about administration by provincial government departments and agencies. The act incorporated the hallmarks of legislative ombudsmen:

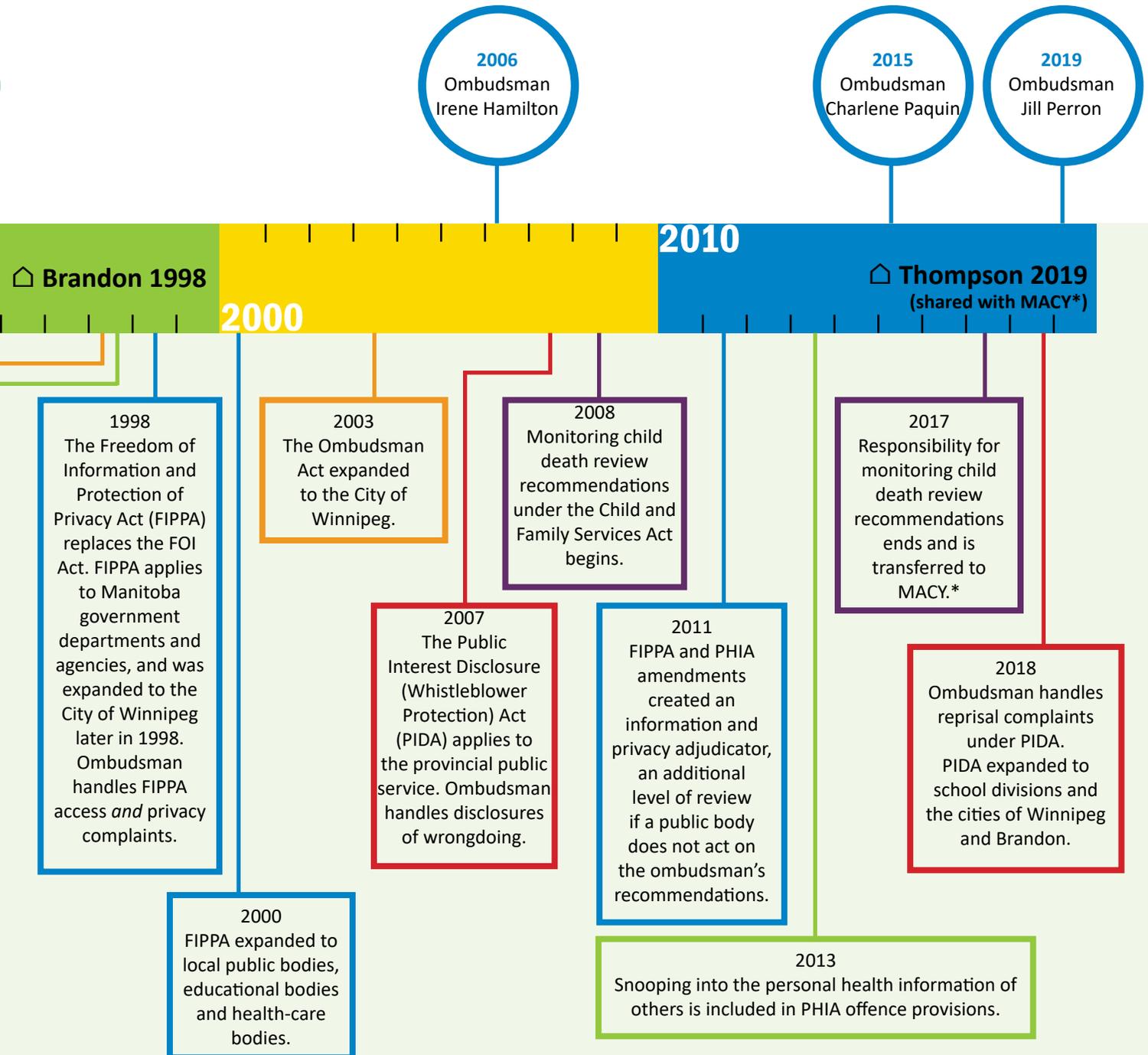
- independence of the office
- broad powers of investigation
- informal procedures for conducting investigations
- non-adversarial approaches to the resolution of problems
- the power to make recommendations
- the power to report publicly

Manitoba was the fourth province (after Alberta, New Brunswick and Quebec) to establish an ombudsman. George Maltby, Manitoba’s first ombudsman, was sworn in on March 31, 1970, and began work on April 1.

The Ombudsman in Manitoba



1970-2020

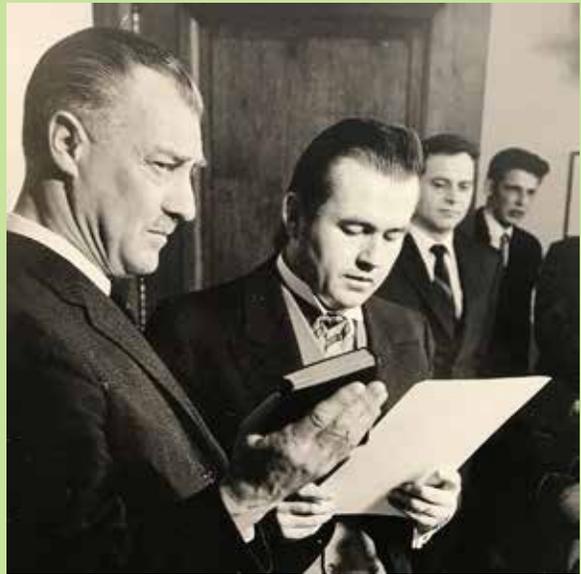


*MACY refers to the Manitoba Advocate for Children and Youth

The 1970s

George Maltby began his police career in England in 1935 and served with the Royal Air Force from 1941 to 1946. In 1960, he immigrated to Canada and was deputy chief of police for the City of St. James, becoming chief in 1962. On January 10, 1970, an all-party committee of the Manitoba legislature selected Maltby for the ombudsman position. He was sworn in on March 31, 1970, and began work on April 1. He was reappointed for a second six-year term in 1976 and held the position until 1982.

For the first couple of weeks, the office was temporarily located in the legislative building until renovations were completed in the office's permanent location at 491 Portage Avenue, also called the Mall Centre. The premises were completely separate from any department or agency of government, reflective of the unique and independent nature of the ombudsman. The office initially operated with four staff – the ombudsman, two investigative assistants and a secretary. In 1974, two staff were added – one additional investigative assistant and one clerk. Staffing levels remained at six for the remainder of the 1970s.



George Maltby (left) was sworn in as Manitoba's first ombudsman, with Speaker Ben Hanuschak administering the oath.

On April 1, 1970 – the ombudsman's very first day – a man walked in to the office with a complaint about the Department of Mines and Natural Resources. A trapper by occupation, the man had inadvertently caught a fisher – a protected animal under the Wildlife Act. The fisher was seized by conservation officers and refrigerated. The trapper asked the department to return the fisher so that he could take it to a taxidermist and preserve it as a centennial project (Manitoba was celebrating its 100th anniversary that year). The department refused, which resulted in the complaint to the ombudsman.

Although the ombudsman agreed with the way the department applied the provisions of the Wildlife Act and its decision to seize the fisher, the case did not end there. The ombudsman sought a remedy to satisfy everyone. With the cooperation of the department, the Museum of Man and Nature and the trapper, the fisher was officially donated to the museum for display in its woodlands gallery.

The ombudsman concluded that the trapper would be able to visit the fisher in the museum and “gaze upon this fine looking beast,” knowing that it was his “centennial compromise.”



The Manitoba Museum (formerly the Museum of Man and Nature), which officially opened in July 1970, is not able to verify if the fisher in its collection is the same fisher donated by the ombudsman complainant in spring 1970. We like to think it is. (photo credit: Maria Gheorghe)

The contact the ombudsman has with a complainant and a government department or agency against which a complaint has been made can help resolve a complainant's specific issue. This is often referred to as the direct impact of an ombudsman. However, if the department or agency changes its procedure or policy so that such an issue will not occur again, then persons who may have had a similar issue in the future will benefit. This is the indirect impact of the ombudsman.

The ombudsman received two complaints in 1975 about a long-standing hiring practice of the Civil Service Commission that had been in effect since the late 1940s. After a department held a competition for a vacant position, selection boards would submit the names of three candidates to the minister responsible for the department in which the vacancy occurred. This "rule of 3" practice allowed the minister – the "political head" – to make the final hiring choice.

After the two individual complaint investigations concluded, the ombudsman made a recommendation to the commission about the practice that if accepted, would affect how hiring decisions would be made in the future.

The ombudsman told the commission to assert its independence and cease the improper practice of involving ministers in hiring decisions. He pointed out that just because the practice had "been in vogue for a long period of time does not make it right."

In 1977, the ombudsman learned that his recommendation had been implemented. The commission abolished the "rule of 3" and selection boards began choosing the best qualified candidate on the merit principle. Maltby considered these cases important investigations that would have repercussions far beyond the two individual complaints.

In explaining the ombudsman's recommendation-making power, Maltby assured government that recommendations stemming from his investigations would be made with "due consideration of the facts, law, and issues involved," and whenever possible, his criticism would be constructive.

Maltby reported that natural justice was always his guiding light. "Natural justice means that everyone has the right to be heard and the right to hear what is said against him."

From April 1, 1970, to December 31, 1970, the ombudsman received 333 complaints. He determined that 156 were within his jurisdiction and 177 were not. Right from the beginning, the office helped individuals navigate bureaucracy, even if the ombudsman was unable to look into their complaints. In his first annual report, Maltby wrote,

For my part, I would rather have people write to me even though their complaint is "non-jurisdictional," than have them reluctant to write because they are not sure. Many of the non-jurisdictional complaints are helped by being channeled to the proper source or by being given requested information.

If Maltby found a complaint not justified, his job was to try to make the complainant understand the reason for a decision, act or omission that may have adversely affected the complainant – this he described as the most difficult part of his job.

By the end of its first decade in operation, the office handled 5,225 complaints.

Overall, complaints received from outside the City of Winnipeg outnumbered those received from inside the city. Although the office was located in Winnipeg, Maltby believed the source of complainants attested to broad awareness of the ombudsman by Manitobans, likely in part to his 168 public speaking engagements and 54 television and radio appearances in his first 10 years as ombudsman.

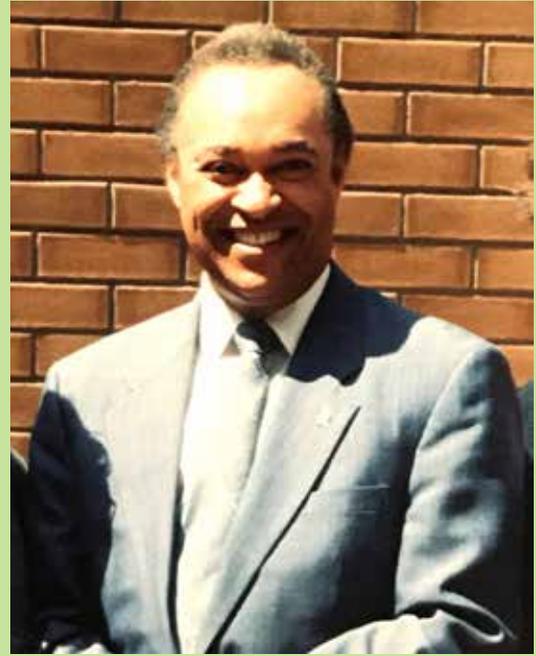


The 1980s

Gordon Earle was appointed ombudsman effective September 7, 1982. He was reappointed for a second six-year term in September 1988. Prior to his appointment, he spent 17 years with the Nova Scotia public service, including 10 years as assistant ombudsman.

Between the retirement of George Maltby and the appointment of Gordon Earle, Reginald Webb held the position of acting ombudsman.

From 1980 to 1989, the office doubled in size from six employees to 12. By 1989, in addition to the ombudsman, the office employed a deputy ombudsman, six investigators, an office manager/intake officer and three administrative employees. Two of the new positions had special functions. The office manager was an intake officer whose purpose was to be the first point of contact with the public and to determine if inquiries and complaints were within the ombudsman's jurisdiction. One of the new investigators was assigned to deal specifically with children's concerns, which included any complaints involving children and to monitor provincial agencies and institutions that dealt with children.



Gordon Earle

In 1983 the office moved from the Mall Centre at 491 Portage Avenue to Colony Square at 500 Portage Avenue, where it remains today.

CASES

Ombudsman investigations typically arise in two ways – from citizen complaints about specific matters or on the ombudsman's own initiative. Ombudsman-initiated investigations may relate to a systemic issue identified through the course of a complaint investigation or may relate to an issue brought to the ombudsman's attention through the media or from another source.

In late 1985, the minister of Manitoba Community Services asked the ombudsman to investigate an incident in which a resident at the Manitoba Developmental Centre in Portage la Prairie was seriously injured. The centre was the subject of media scrutiny and a host of issues were raised.

The ombudsman waited until the RCMP completed their investigation in April 1986. The RCMP were unable to determine how the resident's injury was sustained or who might have been responsible, so no criminal charges were laid. At that point, the ombudsman determined that his review would look more comprehensively at the centre's

general conditions, including:

- the injured resident's situation
- programs and staffing
- the facility and environmental issues

In his 1987 investigation report, the ombudsman issued eight recommendations related to staffing levels, resident health and safety, and building issues.

In subsequent annual reports, the ombudsman tracked progress on implementation of his recommendations. In his 1989 annual report, he highlighted some positive developments and also noted some outstanding issues, some of which had significant cost implications. He announced that he was concluding his review, adding that our elected government "is responsible for establishing program priorities and allocating resources." The ombudsman had made recommendations based on thorough investigation; it was up to government to take the steps necessary in order to continue to improve conditions at the centre.

The office received many citizen complaints about agencies such as Manitoba Hydro, Manitoba Public Insurance Corporation and Manitoba Telephone System (the latter before it was privatized in 1996). As Gordon Earle pointed out, “normally where a department or agency has more involvement with the public, there is more potential for complaints.”

Most of these kinds of complaints were very personal and often involved issues with customer service and billing. In one case, an MTS worker, while running a phone line from the basement to a bedroom, misjudged the location and drilled up through a hardwood floor, through a waterbed frame and into a mattress. MTS offered what the homeowner believed was an inadequate amount of compensation for water damages, so the homeowner contacted the ombudsman. Sometimes the involvement of the ombudsman as a neutral third party can help achieve a satisfactory resolution. In this case, negotiations continued until the homeowner and MTS arrived at a mutually agreeable settlement.

“The Ombudsman’s Office measures its success, or better still its effectiveness, not by the number of cases we show as “rectified” but rather by the degree to which we have been able to help people resolve their problems or at least fully understand the situation that gave rise to the problem; and understand as well the options, if any, available for further recourse.”

Gordon Earle

LEGISLATIVE CHANGES

Inquest Monitoring

Under the Fatality Inquiries Act, inquests are called to determine the circumstances relating to an individual’s death and to determine what, if anything, can be done to prevent similar deaths from occurring in the future. In 1985, the ombudsman agreed to monitor recommendations issued by an inquest judge to ensure that necessary changes are made by the relevant public bodies “to ensure that the administrative systems of provincial institutions, departments or agencies were not directly or indirectly attributing to causing deaths.”

Freedom of Information

Manitoba’s Freedom of Information Act was passed on July 11, 1985. The act set out that, subject to certain restrictions, every person upon application has a right of access to any record in the custody or control of a department, including any record that contains information about the applicant. The FOI Act established two levels of review or appeal to ensure the right of access – the ombudsman and the court. The FOI Act came into force in September 30, 1988. By the end of 1989, the ombudsman had handled 56 FOI complaints.

Under the Ombudsman Act, the ombudsman may investigate a “matter of administration.” Although not defined in the act, the phrase generally refers to administrative actions and decisions and not legislative ones. But as George Maltby pointed out early in his tenure, “the delineation between [legislative] policy and administration is sometimes obscure.”

In a 1984 Supreme Court of Canada case, *British Columbia Development Corp vs Friedmann (Ombudsman)*, the issue of jurisdiction arose. In its decision, the court stated:

In the Act under consideration, and in the Ombudsman Acts of Alberta, Saskatchewan, Manitoba and Newfoundland, the relevant phrase is a “matter of administration”...[The phrase] encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the Legislature and the Courts from the Ombudsman’s scrutiny.

The Supreme Court’s decision helped clarify the ombudsman’s jurisdiction and is still referenced today.

How the ombudsman’s work is reported has changed over time. In 1982, for example, the office began to report telephone inquiries in annual complaint statistics, in addition to written complaints received. Capturing telephone inquiries helped internally with managing work in the office and reporting these numbers publicly in annual reports better reflected the workload of the office.

From 1980 to 1989, the office handled 7,083 complaints and 14,502 inquiries.



The 1990s

With the departure of Gordon Earle in January 1994, Barry Tuckett became acting ombudsman – a position he held for two years before being sworn in as Manitoba’s third ombudsman on March 21, 1996. Tuckett began working for the Manitoba government in 1969. He joined the ombudsman’s office as an investigator in 1978 and became deputy ombudsman in 1982.

To handle an increased workload as a result of expanded jurisdiction to municipalities in 1997 under the Ombudsman Act and with the introduction of the Personal Health Information Act in 1997 and the Freedom of Information and Protection of Privacy Act in 1998, the office received additional staffing resources. By the end of 1999, the office employed 24 people in two divisions – the Access and Privacy Division and the Ombudsman Division – supported by an administration team.

The office also grew geographically. In April 1998, an office was opened in the Scotia Towers building at 1011 Rosser Avenue in Brandon. Three of the office’s 22 staff were located in Brandon.



Barry Tuckett (right) was sworn in as Manitoba’s third ombudsman, with Speaker Louise Dacuquay administering the oath.

“I believe in the past, people were more accepting of what they were told and less willing to challenge senior officials in government, politicians and professionals such as their doctors or lawyers. I think things have changed. They are now more prepared to question and challenge actions and decision that affect them.” Barry Tuckett

CASES

Administrative and quasi-judicial boards and tribunals make some of the most significant decisions affecting citizens. Such bodies include the Workers Compensation Board and Appeal Commission, the Public Utilities Board, the Residential Tenancies Commission, the Automobile Injury Compensation Appeal Commission, the Social Services Appeal Board, and many others.

In 1992, the ombudsman received a complaint from an individual about denial of financial assistance by the Manitoba Disaster Assistance Board for repairs and clean up after a flood. The board informed the individual that his claim was being denied for two reasons – there was no flood compensation program in spring 1992 and the ombudsman’s report from a previous claim by the same individual was still pending, and therefore the board was not prepared to deal with additional claims from the individual.

In communications between the board and the individual, and between the board and the ombudsman, there were inconsistencies in explaining why the claim had been

denied. Some of the reasons provided seemed unrelated to the merits of the claim itself.

When dealing with boards and tribunals, the ombudsman does not substitute his or her own opinion for that of the board. In order to make a recommendation stemming from a complaint, the ombudsman would have to be satisfied that some aspect of the board’s decision-making process was clearly wrong or unreasonable. In this case, the ombudsman believed that to be so.

In December 1993 the ombudsman contacted the minister of Manitoba Government Services (the department responsible for the board) disputing the board’s rationale for not paying the claim. The ombudsman advised the minister that the board’s policy did not appear to contain any provision to deny the claim on the grounds they provided. The ombudsman believed the individual had been treated inequitably and his claim unreasonably denied. The ombudsman recommended that the department compensate the individual, and the department accepted the recommendation.

From the time an investigator position specifically for child and adolescent services was created in the mid-1980s, every ombudsman's annual report contained highlights and case summaries of youth-focused work. Much of this work involved youth corrections or Child and Family Services agencies.

In 1996 an upset youth contacted the ombudsman for help. She explained that she was living independently in an apartment under the care of Child and Family Services, which meant that a social worker visited her from time to time to make sure she was well. One day, the worker visited the girl's apartment while she was not home and removed her cat. The girl explained that no one had told her that her cat was going to be taken away and she could not find out why it was taken or where it had been sent. She was worried that it may have been given to the Humane Society and might be adopted by someone else or put down. An ombudsman investigator contacted the social worker, who agreed that the situation could have been handled differently. Ultimately the cat was located, and with help from the girl's family, the social worker and a local veterinarian, a plan was developed to allow the girl to keep her cat.

In describing his work, Tuckett explained that ombudsmen were likely to “carry out their function in an informal, non-adversarial, non-legalistic manner resolving complaints and concerns out of the limelight, so to speak.” He called that “the preferable way of doing things.” He added that if necessary, “the traditional Ombudsman role provides formal powers and is a role that can be adversarial and legalistic if necessary. It is actually the recognition of these powers that encourage resolutions informally before the need to exercise the formal powers of the Ombudsman.”

LEGISLATIVE CHANGES

Municipal Jurisdiction

A new Municipal Act, passed in November 1996, came into force on January 1, 1997. The Ombudsman Act was amended at that time to extend the ombudsman's jurisdiction to municipalities (except for the City of Winnipeg).

Personal Health Information

The Personal Health Information Act, proclaimed on December 11, 1997, was the first legislation of its kind in Canada designed specifically to provide access to information and protection of privacy rights for personal *health* information. PHIA applies not only to public bodies, but also to health-care professionals such as doctors and dentists, and to health-care facilities such as personal care homes, psychiatric facilities and medical clinics. Under PHIA, the ombudsman investigates complaints from people who have concerns about access to their personal health information, or privacy concerns about the way their personal health information has been handled.

Access to Information and Protection of Privacy

The Freedom of Information Act, which had been in place since 1988, was repealed on May 4, 1998, and replaced with the Freedom of Information and Protection of Privacy Act (FIPPA). FIPPA contains similar access provisions to the former FOI Act with respect to records held in the custody or under the control of public bodies. New to the legislation were provisions related to privacy protection, specifically to the collection, use, disclosure, disposition and security of personal information held by public bodies. Also new were the number and kinds of public bodies to which the act applied. In addition to Manitoba government departments and agencies, FIPPA was expanded to cover educational bodies, local government bodies and health-care bodies.

The ombudsman's role under both FIPPA and PHIA was expanded to include additional powers and duties, such as auditing to monitor and ensure compliance with the acts, informing the public about the acts and commenting on the access and privacy implications of proposed legislation, programs or practices.

From 1990 to 1999, the office handled 8,709 complaints and 32,288 inquiries.



The 2000s

Barry Tuckett remained in the ombudsman role until February 11, 2005. Irene Hamilton, Manitoba's first female ombudsman, was appointed on March 31, 2005. Prior to becoming ombudsman, she held various positions including assistant deputy minister of the Courts Division of Manitoba Justice, the public trustee of Manitoba, and vice president, licensing and corporate counsel, at the Liquor Control Commission.

By the end of 2009, the office employed 30 people in the Ombudsman Division, the Access and Privacy Division, Intake Services and administration. New positions were created to oversee large, systemic investigations under the Ombudsman Act and systemic investigations and audits under FIPPA and PHIA. Additionally, a couple of positions – a legislative and policy analyst and a communications, education and training coordinator – were created to provide corporate support.



Irene Hamilton

“The jurisdiction of the office is very broad and the powers of investigation and reporting are extensive. But that is meaningless to the public if it is unaware that the office exists to allow them access to an independent review of the actions or omissions of government.”

Irene Hamilton

CASES

A Manitoba Public Insurance customer went to an agent to renew the insurance on his vehicle and was told that he had been overpaying premiums for 14 years because his vehicle had been registered in the incorrect classification. His truck was listed as a 1991 Toyota long bed two-wheel drive rather than a 1991 Toyota pickup two-wheel drive. The error was discovered because of a new computer system that matched the registration class with the manufacturer's vehicle identification number, rather than the former system that used a vehicle description. MPI estimated that approximately 2,000 vehicle owners had overpaid premiums.

MPI told the customer that while he would be paying a lower insurance premium, they would not provide a refund for previous overpayments, which prompted the complaint to the ombudsman. MPI had implemented a policy that premium overpayments would not be refunded and premium underpayments would not be pursued. MPI took the position that it was the customer's obligation to ensure the correct description was on their application for insurance.

After an investigation, the ombudsman recommended that MPI provide refunds to all vehicle owners who had overpaid premiums. The ombudsman did not accept MPI's assertion that responsibility for this error rested entirely with the complainant. “It's not like anyone is setting out to provide MPI with wrong information,” Hamilton said to the media. MPI refused to accept the recommendation, arguing that recalculating and refunding premiums to the 2,000 affected customers would be labour-intensive and take dozens of staff many months.

In cases where recommendations are not accepted, the ombudsman's power lies in the ability to publish findings and recommendations to facilitate further discussion on an issue between decision makers and their constituents. The public report of the ombudsman's recommendation in 2007 appears to have prompted such discussions. Shortly after, Manitoba Public Insurance reversed its position and issued the appropriate refunds.

In early 2006, Manitobans heard horrifying reports of the death of a child who at one point had been in the child welfare system. In March 2006, the minister of Manitoba Family Services and Housing called for a review to be conducted of cases of children in care. The ombudsman, the children's advocate and the executive director of a northern Ontario child welfare agency were named as co-chairs of an administrative review to examine standards, processes and protocols related to the opening, closing, and transfer of child welfare files, as well as any other issues identified by the co-chairs.

To date, the review remains one of the largest undertakings of the office in terms of the number of people and organizations involved. The review team was composed of ten people – six from Manitoba Ombudsman, two people seconded from the First Nations Child and Family Services Authorities, one from the Office of the Children's Advocate and one from the Office of the Auditor General. Focus groups and interviews were conducted in 32 communities around the province including First Nations communities. The team received information from over 760 individuals. The review was conducted over the course of six months.

The review found that the existing governance structure of the child welfare system was inadequate to meet its goals of protecting children and preserving families and that parts of the statutory mandate were not being met. There were significant problems with both provincial case management standards and information systems. The legislative provisions for reviewing the circumstances surrounding the deaths of children in care and making the necessary improvements in the system were inadequate. In many cases the problems identified related to inadequate funding, while in others the source of the problem was a gap in communication between the people designing the systems and those delivering services on the front lines, or between the system and collateral service providers.

A report, *Strengthen the Commitment*, contained over 100 recommendations, some calling for significant expenditures and system wide changes. All of the recommendations were accepted by the government. In subsequent years, the ombudsman published several follow-up reports to track progress on implementing the recommendations.

In many investigations, a common theme emerged – the ombudsman often identified problems with information sharing and communication. On many occasions, the ombudsman expressed the belief that if people were routinely provided with meaningful information and clear reasons for decisions, fewer people would submit complaints to the ombudsman.

When a hundred people were turned away from a Killarney-Turtle Mountain municipal council meeting in 2007 where they wanted to voice their concerns about a local improvement plan, some of them complained to the ombudsman.

A local improvement plan is one way a municipality can raise additional taxes for a special project. In this case, residents were concerned about the cost of a \$10 million project – a recreation centre – and the impact this could have on their property taxes. They also felt that they had not been given an opportunity to express their views to their elected representatives.

Concerned about the speed at which the project was moving forward, the ombudsman issued a preliminary report to the municipality recommending that it immediately hold a special meeting to hear residents' concerns before proceeding. The municipality accepted the recommendation and over a hundred people attended the meeting to get detailed information about the cost of the project and to voice their concerns.

The investigation also resulted in a report to Manitoba Intergovernmental Affairs, which at the time administered the Municipal Act, with recommendations designed to enhance requirements for public notices about local improvement plans. The department accepted and implemented the recommendations, ultimately improving transparency and accountability for all municipalities undertaking local improvements.

When asked in 2010 if the ombudsman was still a necessary role, Hamilton replied, "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."

Since 1997 when the Ombudsman Act was expanded to cover municipalities (and the City of Winnipeg in 2003), complaints about municipalities have been steady. As the most local level of government, some person or group of people in the community is affected every time a municipality takes action or makes a decision. Matters most complained about include land use decisions (development plans, zoning bylaws, conditional uses and subdivision agreements), local improvement plans, council matters (procedures, conflict of interest), municipal business (tendering, maintenance of roads and drainage) and bylaw enforcement.

To help council members and municipal administrators make fair decisions, Manitoba Ombudsman released a fairness guide for municipalities titled *Understanding Fairness* in 2009, which was updated in 2013.

LEGISLATIVE CHANGES

Expanded FIPPA jurisdiction

In 2000, school divisions, colleges and universities, hospitals and regional health authorities, local government districts and planning and conservation districts were brought within the scope of FIPPA.

City of Winnipeg Jurisdiction

In 2003, the ombudsman's jurisdiction under the Ombudsman Act was expanded to include the City of Winnipeg.

Whistleblower Protection

The Public Interest Disclosure (Whistleblower Protection) Act came into force on April 2, 2007, providing a process for disclosing significant and serious wrongdoing in the public service and reprisal protection. Disclosures of wrongdoing can be made to supervisors, to designated officers in each public body subject to the act or to the ombudsman.

Monitoring Recommendations in Child Death Reviews

The Child and Family Services Act was amended in 2008, transferring responsibility for conducting comprehensive reviews of the deaths of children from the Office of the Chief Medical Examiner to the Office of the Children's Advocate (OCA). Similar to the way the ombudsman monitors recommendations arising from inquest reports, the ombudsman was assigned responsibility for monitoring the implementation of the recommendations made by the OCA in its child death review reports.

“While complaint investigation remains the primary activity, there has been a growing recognition that the Ombudsman role promotes broader principles of fairness, equity and administrative accountability,” Tuckett reported in 2003.

How the office connects and communicates with the public and public bodies changed significantly in the 2000s:

- The office's first website was launched in 2000
- *Manitoba OmbudsNews*, a quarterly newsletter, was first published in 2006
- A series of access and privacy practice notes were first published in 2006 and “Brown Bag Talks” for access and privacy coordinators and officers began the same year
- “Rights of Youth” pamphlets were first developed in collaboration with the Manitoba Human Rights Commission and the Office of the Children's Advocate in 2006
- *Joining the Herd*, a curriculum guide for grades 6, 9 and 11 was released in 2007 and updated in 2011.

How the work of the ombudsman was reported changed in 2005. Rather than report on the number of written complaints received, the office began reporting on the total number of complaints and inquiries handled and on the number of investigations (in recognition that not all complaints received proceeded to formal investigations).

From 2000 to 2004, the office handled 5,379 written complaints and 17,456 inquiries. From 2005 to 2009, the office handled 3,088 investigations and 12,471 inquiries and complaints.



The 2010s

Irene Hamilton was reappointed for a second term as ombudsman on March 31, 2011, and remained in the position until January 4, 2012. Mel Holley was appointed acting ombudsman, a position he held for over three years.

Charlene Paquin became Manitoba's fifth ombudsman on May 4, 2015. Prior to this appointment, she was employed as the assistant deputy minister of the Community Service Delivery Division at Manitoba Family Services. She remained in the ombudsman position until July 29, 2018. Marc Cormier was appointed acting ombudsman effective July 30, 2018.

Jill Perron was sworn in as Manitoba's sixth ombudsman on May 28, 2019. Prior to this appointment, she was an assistant deputy minister in Manitoba Families where she provided executive leadership to the Child and Youth Services Division and served as director of Child and Family Services. Previously, she served as acting assistant deputy minister of Manitoba Housing and Community Development.



In 2019, Manitoba Ombudsman and the Manitoba Advocate for Children and Youth opened a shared office in Thompson to more effectively connect people in Thompson and the north with the ombudsman's and advocate's services.

By the end of 2019, the office employed 35 people in the Ombudsman Division, the Access and Privacy Division, Intake Services and a Corporate Services and Community Relations team.

CASES

Systemic investigations or reviews allow the ombudsman to address situations where there may be gaps between the intention of legislation and subsequent policy set by government, and the actual results that occur when policies and programs are implemented. These kinds of gaps often affect large numbers of people. Administrative improvements in these kinds of situations can have far-reaching results.

In May 2010, the ombudsman issued a report on the Employment and Income Assistance Program with 68 recommendations. The investigation was launched in 2008 in response to a complaint from twelve community organizations, many of whom had clients who were participants in the EIA program. The complainants requested a comprehensive review of the program, including the adequacy of specific services and benefits, and whether the program was treating participants fairly.

The recommendations were made to improve the fairness and administrative efficiency of the program and to assist in aligning the program with the province's overall goal of poverty reduction. Manitoba Family Services and Consumer Affairs accepted the majority of the recommendations and disagreed with some. In December 2010, the ombudsman published a follow-up report with the department's responses to the recommendations.

In addition to this EIA review and the child welfare review mentioned earlier, the ombudsman has also undertaken systemic reviews of the licensing and enforcement practices of Manitoba Water Stewardship, the Protection for Persons in Care Office and the City of Winnipeg's Handi-Transit service (now called Transit Plus).

After FIPPA and PHIA were introduced in the late 1990s, Barry Tuckett noted that “privacy issues...are proving generally to be the most difficult and time-consuming cases to investigate because of their very intimate, usually intricate, and individualistic nature.”

Public sector organizations collect, use and disclose information about Manitobans in order to deliver various programs, services and benefits. As they increasingly use technology and electronic records to store and share more information than ever before, the possibility that privacy breaches will occur has increased.

Whatever the cause – use of technology, human error, employee snooping – privacy breaches can have significant consequences for affected individuals, including a damaged reputation, embarrassment and identity theft. They can also diminish public confidence in the health-care system and other public services.

In 2012, the ombudsman concluded an investigation where an employee of CancerCare Manitoba snooped in the electronic personal health information of a patient to whom she was not providing care. The ombudsman made a number of recommendations to strengthen CancerCare’s privacy safeguards and to promote greater communication between the organization and any individuals affected by a privacy breach in the future.

The investigation, however, highlighted that snooping into the personal health information of others was not an offence under the Personal Health Information Act (PHIA). To address this shortcoming, the ombudsman asked Manitoba Health to consider amending PHIA to provide strong sanctions to deter snooping and any other unauthorized use of personal health information. PHIA was amended in December 2013.

In 2014, the ombudsman launched an investigation into an employee’s unauthorized access to personal health information in the databases of the Provincial Drug Program branch within Manitoba Health, Seniors and Active Living. The ombudsman reviewed the incidents of unauthorized access and the department’s response to these incidents, and examined the measures in place to prevent, detect and respond to the privacy breach. At the conclusion of the investigation, the ombudsman made 11 recommendations to the department.

In this case, the ombudsman went one step further. Given that PHIA had been amended in 2013 to make snooping an offence, the ombudsman charged the former employee of the department under this new provision. A trial was held in 2017 and he was found

guilty. The Provincial Court sentenced the former employee to a fine of \$7,500. He appealed the sentence to the Court of Queen’s Bench and in March 2019, the court dismissed the appeal.

In 2017, the ombudsman began an investigation after the personal health information of 91 patients who received magnetic resonance imaging scans within the Winnipeg Regional Health Authority (WRHA) between 2008 and 2016 was disclosed to several media organizations. In this case, the source of the disclosure could not be determined. The ombudsman examined the steps taken by the WRHA to safeguard the personal health information of patients and identified preventative measures to minimize the risk of privacy breaches in the case of bulk disclosures of personal health information of many individuals.

“I cannot stress enough how important it is for all trustees of personal health information to remember that they are in possession of some of the most sensitive information about Manitobans. This puts those trustees and their employees in a powerful position, especially when people seek care at a very vulnerable and emotional time in their lives, such as during the diagnosis or treatment of an illness. We cannot presume that anyone accessing health care won’t mind, or won’t be negatively affected by, having their personal health information revealed without their consent or in another unauthorized way.” *Charlene Paquin*

To better understand how organizations prepare for and manage privacy breaches, the ombudsman conducted a survey of public sector organizations across Manitoba in 2016. The survey findings led to the development of privacy management program guidelines and other resources to help organizations improve their privacy protection policies and practices.

“The right of timely access to information enables citizens to meaningfully participate in democratic processes and to understand government decision making. Under FIPPA, a delay in access is a refusal of access.” Jill Perron

FIPPA provides citizens a right of access to information held by public bodies. FIPPA requires public bodies to respond to access requests in a timely manner and the act sets out a time limit, which may be extended in certain circumstances. FIPPA also places other obligations on public bodies, such as the duty to assist applicants throughout the FIPPA process. To assess compliance with these FIPPA obligations, the ombudsman may conduct audits.

In 2018 and 2019, the ombudsman audited Manitoba Finance, Executive Council, Civil Service Commission and Crown Services. The audit arose from a complaint about numerous late FIPPA responses and lack of communication. In this case, the ombudsman made five recommendations to improve the public bodies’ response times and aid in strengthening communication with applicants.

Between 2010 and 2019, the ombudsman conducted FIPPA audits of the Workers Compensation Board, Manitoba Justice, University of Manitoba, Manitoba Hydro, Manitoba Innovation, Energy and Mines, Manitoba Public Insurance, and the City of Winnipeg (including a separate audit of the Winnipeg Police Service).

PROACTIVE ROLE

In addition to conducting investigations, audits and systemic reviews, the ombudsman proactively initiates contact with public bodies when a new program is announced that may have privacy or fairness implications. The ombudsman seeks to understand the initiative and provides guidance on privacy or fairness best practices. The office is also consulted by public bodies and trustees dealing with complex access and privacy issues or matters of fairness. These consultations are focused on factors to consider in interpreting legislation and encouraging the use of our resources developed for public bodies.

Similar consultations occur under PIDA, where public bodies are required to have procedures that set out how they will handle disclosures of wrongdoing that are received internally. The ombudsman’s expertise and insight can support and strengthen that process. Public bodies can request that the ombudsman review their procedures or the ombudsman can initiate a review.

Manitoba Ombudsman is also part of a network of federal, provincial and territorial ombudsmen and information and privacy commissioners and this oversight community often works together on issues of mutual interest and concern. For example, *Fairness by Design: An Administrative Fairness Self-Assessment Guide*, was developed by parliamentary ombudsman offices from across Canada. The guide, released in 2020, can be used by all public-sector organizations to evaluate the fairness of existing or new systems, policies and practices.

Legislative Reviews

On a daily basis, the ombudsman sees the issues that arise between Manitobans and public bodies. Knowledge and experience gained from contact with citizens and public bodies, as well as our investigative, consultative and collaborative work have informed the ombudsman’s recommendations for changes to legislation.

In 2004 and 2017, the ombudsman participated in the formal legislative review process for FIPPA and PHIA, making many comments and recommendations for changes to Manitoba’s access and privacy legislation.

In 2013 the government began a review of PIDA. In aid of this review, the ombudsman identified a number of issues with Manitoba’s whistleblower legislation that warranted further consideration.

“Proactive ombudsmanship enables discussions with public entities, informed by citizens and the oversight community, about emerging systemic issues and offers opportunities for future improvements to policy and services. By promoting the *Fairness by Design* self-assessment guide to help public bodies assess fairness in decision making, we are developing a common understanding of fairness standards that should help prevent unfairness before it happens”” Jill Perron

LEGISLATIVE CHANGES

New Offence Provision in PHIA

PHIA was amended at the ombudsman's request in December 2013 to make it an offence for an employee of a trustee to wilfully use, gain access to, or attempt to gain access to another person's personal health information, contrary to the act. This provision makes snooping into the personal health information of others an offence.

Monitoring Recommendations in Child Death Reviews

Responsibility for monitoring and reporting on the implementation of recommendations made in special investigations of child deaths was transferred from Manitoba Ombudsman to the Manitoba Advocate for Children and Youth (formerly the OCA) in 2018. From the time the OCA received its mandate to perform special investigation reviews on September 15, 2008, to the end of December 31, 2017, the OCA made 546 recommendations. By December 2017 when the ombudsman's monitoring role ended, 481 of those recommendations, or 88 per cent, had been implemented.

Whistleblower Protection

Effective December 1, 2018, a number of changes were made to the Public Interest Disclosure (Whistleblower Protection) Act. Coverage was broadened to include school divisions and school districts and municipalities by regulation, including the City of Winnipeg and the City of Brandon. In addition to the ability to investigate disclosures of wrongdoing, the ombudsman can receive and investigate reprisal complaints from employees of public bodies who allege that acts or threats of reprisal have been taken against them for seeking advice about making a disclosure, making a disclosure, or cooperating in an investigation under PIDA.

Information and Privacy Adjudicator

In 2011, FIPPA and PHIA were amended to create an information and privacy adjudicator. The adjudicator provides an additional level of independent review available to the ombudsman if a public body or trustee does not act on the ombudsman's recommendation. The adjudicator has the power to make orders.

In 2015, the ombudsman referred a matter under PHIA to the adjudicator. In this case, a registered psychologist and health information trustee had refused access in response to a request from an individual to view and receive copies of the individual's own personal health information. The ombudsman recommended release of the records to the complainant, but the trustee refused. The adjudicator concluded that the trustee must provide the records to the complainant, subject to certain conditions, and issued an order to the trustee.

OPERATIONAL CHANGES

In recent years, the role of intake services within the office has evolved. At the intake level, the ombudsman's focus is primarily on early resolution. This may involve providing guidance on a public body's internal resolution process, providing referrals to other offices, facilitating communication with the public body and/or requesting more information such as correspondence or decision documents. Resolving complaints informally without the need for a formal investigation can in most cases provide the individual with a possible remedy for their concern.

From 2010 to 2019, the office handled 4,137 investigations and 36,885 inquiries and complaints.

Since its inception in 1970, Manitoba Ombudsman has handled 147,223 inquiries, complaints and investigations. In addition, the ombudsman has engaged in numerous formal and informal consultations with public bodies and collaborations with the broader oversight community across the country about common issues and matters of public interest. This is expected to continue in the years ahead.

.....

Looking Ahead

While the role of the ombudsman in Manitoba has shifted in the last 50 years to encompass an expanded mandate, what has not changed is the basic premise of the ombudsman as a place for citizens to bring forward their concerns about their interactions with government. Handling citizen complaints and working proactively with public bodies helps to support better policy, processes and administration.

As government continues to grow in size and complexity, public programs and services are seeking innovative ways to serve and interact with the public. Citizens today also expect greater engagement in the development of government policy, more participation in decision-making processes, the ability to receive timely and accurate information from governments and the ability to choose how they access and interact with programs and services. Increasingly, governments are turning to technology to design programs, provide more efficient service delivery and to aid decision making.

In this environment, the possibility of administrative injustices affecting the rights and liberties of citizens will continue to exist. The ombudsman's role to promote and protect citizen rights, to encourage fairness, transparency and accountability in public programs and to resolve concerns that help maintain public trust and confidence will continue to be of value for citizens in the decades to come.

Venice Principles

The ombudsman concept has continued to spread globally. In early 2019, the Venice Commission (the Council of Europe's Commission for Democracy) adopted the "Principles on the Protection and Promotion of the Ombudsman Institution," also known as the Venice Principles. These 25 principles represent the first independent, international set of standards for the ombudsman institution.

Contact us

Winnipeg office:

750 - 500 Portage Avenue
Winnipeg, MB R3C 3X1
Phone: 204-982-9130
Toll free phone: 1-800-665-0531

Email:

ombudsman@ombudsman.mb.ca

Web:

www.ombudsman.mb.ca

Facebook:

[www.fb.com/manitobaombudsman](https://www.facebook.com/manitobaombudsman)

Twitter:

[@MBOmbudsman](https://twitter.com/MBOmbudsman)

Brandon office:

202-1011 Rosser Avenue
Brandon, MB R7A 0L5
Phone: 204-571-5151
Toll free phone: 1-888-543-8230

Thompson office:

Suite 1720, City Centre Mall
300 Mystery Lake Road
Thompson, MB R8N 0M2
Phone: 204-677-7270
Toll free phone: 1-877-677-7270

OMBUDSMAN DU
MANITOBA
OMBUDSMAN
50
ANS
YEARS
1970-2020