
The Ombudsman in Manitoba

by Irene Hamilton

The role of the Ombudsman is to protect the rights of members of the public. This article looks at the office of the Ombudsman from two perspectives – its relationship to government and the services provided to the public.

The Ombudsman is an independent officer of the Manitoba Legislative Assembly. He or she is appointed by an all party committee of the Legislative Assembly for a term of six years, renewable for one further term of six years. The Ombudsman Act was proclaimed in 1970 and the first Ombudsman was appointed that same year. I am the fourth Ombudsman appointed in the province.

The purpose of the office is to promote fairness, equity and administrative accountability through the investigation of complaints about government by an impartial and non-partisan office.

The Ombudsman has oversight responsibility under *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, and *The Personal Health Information Act*.

Under *The Ombudsman Act*, I can investigate any administrative act or omission by the provincial government, or an agency, commission or board appointed by the government; or by any municipal government including the City of Winnipeg.

The Ombudsman has broad powers of investigation under the Act. I have the powers and protection of a commissioner, appointed under *The Evidence Act*. This allows me to summon witnesses and examine them under oath. Wilfully obstructing the Ombudsman in performing her duties is an offence under the legislation.

The Ombudsman is not authorized to investigate any decision of the legislature, executive council or a resolu-

tion or bylaw of a policy nature made by a municipal government. The Ombudsman cannot investigate the decision of a judge or a judicial officer, or a decision made by an arbitrator under *The Arbitration Act*.

I may decline to investigate if there is an avenue of appeal available to the complainant that he or she has not exercised, although I can act if I believe that it would be unreasonable to expect the complainant to have exercised the right of appeal.

The Ombudsman can refuse to investigate if the complaint relates to something about which the complainant had knowledge for more than one year, or the complaint is frivolous or vexatious. If, on balance between the public interest and the person aggrieved, the Ombudsman is of the view that the matter should not be investigated, the Ombudsman can refuse to do so, or may find that the circumstances of the case do not require investigation.

In fact I rarely refuse to investigate a complaint. Even though the subject matter may seem unimportant, it is always necessary to consider the complaint from the perspective of the person who feels aggrieved. This is so, especially when the position of the complainant in relation to the state is such that the state exercises considerable or even complete control over that person's life. This would be applicable to inmates in provincial correctional facilities, persons held as involuntary patients in mental health facilities, or persons who are dependant on the state to provide or collect the funds they need for themselves or their children.

Relevance to the Government

When *The Ombudsman Act* was passed in 1970, it gave the Ombudsman the responsibility to investigate complaints about maladministration in the provincial government, its agencies, commissions and boards. Since the

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creation of the office, there have been a number of changes that have resulted in the Ombudsman in Manitoba having a broader scope of responsibilities.

In 1988, *The Freedom of Information Act* was proclaimed, providing Manitobans the right of access to any record in the custody or control of a provincial department or agency. The Ombudsman was named as the oversight body in that act.

In January 1997 the jurisdiction of the Ombudsman was expanded to include all rural and urban municipalities in the province, except the City of Winnipeg, which had its own Ombudsman.

In December 1997 *The Personal Health Information Act* was proclaimed which allows access to, and protects privacy rights in personal health information. This was the first act in Canada to uniquely address health information privacy. It applies not only to entities in the public sector but to a number of entities in the private sector, including regulated health professionals, personal care homes, clinics and laboratories. The Ombudsman was given responsibility for oversight through investigations, and proactive powers and duties including audits to ensure compliance with the Act.

In May 1998, *The Freedom of Information and Protection of Privacy Act* was passed replacing *The Freedom of Information Act*. Personal privacy protection was added to the scheme. In August 1998, the City of Winnipeg became subject to this legislation and in April 2000, other local government bodies, health care and educational bodies came under the Act. The Ombudsman's oversight role was expanded to include all aspects of compliance with the new act in relation to complaints about access and privacy. This is a role that in many other Canadian jurisdictions is referred to as Information and Privacy Commissioner. There are only three jurisdictions in Canada where the duties of the Ombudsman and Information and Privacy Commissioner are combined in one official and office – Manitoba, Yukon Territory and New Brunswick.

In January 2003, the Ombudsman was given oversight responsibilities under *The Ombudsman Act* for the City of Winnipeg. The City Ombudsman's term had expired earlier and the City Council recommended that legislation be amended to allow the Manitoba Ombudsman to provide Ombudsman services.

The expansion of the jurisdiction of the Ombudsman over time reflects that the government has seen the continuing need for the office as an impartial reviewer of allegations of wrongdoing about government. The role of the Ombudsman has been reinforced through successive pieces of legislation that provide members of the public

with a mechanism for review of government as it affects people through its actions and decisions.

Relevance to the Public

It is essential for the effective functioning of the office that the bodies over which the Ombudsman has oversight responsibility understand the role and function. As well, in order for the office to be truly relevant, its role and responsibilities must be well understood by the public and entrenched as an impartial office of last resort that the public is confident in approaching to assist with their problems.

The most significant challenge to the Ombudsman is to reach all Manitobans to ensure that they are aware of the existence of the office and what it can do. As described, the jurisdiction of the office is very broad and the powers of investigation are great. But that is meaningless if the public is unaware that an office exists to allow them an independent party to review the actions or omissions of government. The responsibility for ensuring an awareness of the office rests with the office. To expand the understanding of the public about the Ombudsman there are a number of initiatives that have been undertaken recently and a number that need to be pursued further.

A direct way of providing that understanding is through education. There are two different streams in which our educational efforts have been focused. One is to provide information and education to specific groups that we hear from regularly. In these efforts we are trying to provide information about the internal processes and procedures that are available to ensure that the person is taking responsibility to ask the questions that he or she needs to, in order to first pursue their issues on their own behalf. This is not done to try to defer work but rather to try to develop the self-advocacy that is important in ensuring that accountability is promoted. The public should understand what its avenues of complaint are and how to exercise their rights.

To achieve this, we have restructured our office to enhance the strength of our intake function. Resources have been added and members of the unit are armed with information that can be given to anyone who calls about the appeal processes that are available to them. If members of the public contact us and we are unable to assist them because the matter is outside our jurisdiction or the person has not taken the steps necessary to appeal the decision through established mechanisms, we ensure that the caller is provided with the information necessary to further the process themselves. We try to ensure that no one is turned away without receiving advice or assistance about dealing effectively with government.

If other avenues of appeal or complaint have been pursued unsuccessfully or if the person is not capable of advocating for themselves, then we would become involved in pursuing a complaint within our jurisdiction.

The second stream of our efforts is targeted to people who do not know about the role and function of our office.

The best place to start a discussion of how the public can participate in democracy is to provide information to students who are learning about government and participatory democracy in the school system. We looked at a program developed by the Chief Electoral Officer, designed to educate students about elections, and how voting allows members of the public to have a say in the shape of the government that will represent them.

Although awareness of the Ombudsman and its use as a resource is a more passive expression of those rights, we believed that the Chief Electoral Officer's focus on school age young people was the right place to start to have this discussion. So we have also developed a program for students to inform them of how the Ombudsman can play a part in the exercise of democratic rights and the role of the office in ensuring government accountability.

We also target educational efforts to those groups of employees with whom many of our complainants come into contact. For example, a component of correctional officer training is on the role of the Ombudsman. Staff from the office attend these training sessions and provide information on the role and function of the office to the class and answer questions that they may have.

We have developed posters and brochures that are in easily understood language for inmates and that are designed to assist them in pursuing their complaints. If they have been unsuccessful then they are given easy to understand instructions on how to contact us and what they should be including in a complaint. A complaint form is attached to the brochure. There are different posters and brochures for adult inmates and for youth who are incarcerated in provincial correctional facilities.

We have developed a series of noon hour discussion sessions that we host for people working in public bodies who receive and process access to information applications and privacy complaints. We have also developed a series of practice notes to inform access and privacy personnel about our views of how applications should be

processed and how we interpret the applicable legislation.

We will be including an online complaint form to allow people to contact us more easily and to do so at times when the office is not open. We anticipate that this will facilitate communications for those who might otherwise not write in.

We are also undertaking outreach activities where members of the office are holding discussions with members of the public and government officials about our roles and functions. These meetings are taking place outside Winnipeg as well as within the City for various interested groups.

Another way of informing the public is to enhance the awareness of the office through efforts that are not directed at a particular group or through formalized means.

As Ombudsman, I have the power to initiate an investigation on my own. This power has been used when we have received the same or similar complaints a number of times with regard to a department or agency. In those situations, an investigation has been undertaken to determine what the cause of the issue might be rather than focusing on the particular decision or action complained of. This kind of investigation is the one where there is the greatest potential for increasing the awareness of the office and developing an understanding for what it does.

If a matter comes to the attention of the office that appears to require a review of the system, rather than just the issue itself, the office should be poised to deal with that through an intensive investigation that will quickly get to the heart of the matter. Once concluded, a report should be issued to inform the public of the findings in the circumstances, and the recommendations for changes that we believe will correct the problem. We have recently completed a planning exercise within the office through which a process for this kind of investigation will be enshrined as one of the features in the work of the office and we intend to pursue this in the short term.

We have, however, gained considerable experience and insight into this type of investigation through the External Review of the Child Welfare System.

In March 2006, the Ombudsman was named as co-chair of a review of the child welfare system. The scope of the review was originally stated to be to recommend changes in "the standards around the opening, closing and transfer" of cases in the child welfare system. However, in order to understand those standards, and to determine what recommendations were appropriate in analyzing them, it was necessary to understand the child welfare system as a whole. Only then could the deci-

sion-making process that would lead to a case being opened, closed or transferred be properly understood. The review was conducted over the course of six months. The review team was composed of ten people: six from my office, two people seconded from the First Nations Child and Family Services Authorities, one from 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 148 page report, containing over 100 recommendations, was forwarded to the Minister of Family Services and Housing within the time frame set for the review. All of the recommendations were accepted by the government.

Because an investigation of a system such as this is of such importance to so many Manitobans, the byproduct of an investigation will be to increase the awareness of the office and develop a better understanding of the type of work that we do.

The planning for systemic investigations therefore is critical both in terms of ensuring that the work is done effectively and within a short time frame, but also in ensuring that the information that is generated from such work is of importance to a large segment of the public and that the result will be of benefit, both in improving a process or practice, but also in dealing with concerns that may affect large numbers of people at one time.

The Ombudsman has the power to issue reports to the Legislative Assembly. This has traditionally been done through an annual report to the Assembly outlining the results of the previous year. However, the Act also contemplates a report being issued at any time. These re-

ports may be issue specific. Reports of this nature may come to the attention of the public more readily than general reports tabled annually.

In order to ensure that reports are relevant and of value to Manitobans, we intend to change our format to include more analysis of the impact that the implementation of recommendations from the office, or tracked by the office, has had. If we report not only on whether a recommendation has been implemented, but also on its impact, then we are providing valuable information on the outcomes of a particular change rather than just whether there is an intention to change the practice.

To summarize, the office must function on many levels in order to remain relevant to the public.

- **Education** – There is a need for members of the public to be aware that they have an avenue and a right to question the decisions made by government with which they feel are unfair or wrong.
- **Assistance** – The office must strive to ensure that even if a matter is outside its mandate, that information and assistance is provided to the person seeking help. Because the office is a last resort, the front end of our system needs to be well resourced with people who are knowledgeable and able to deal with matters quickly and effectively.
- **Awareness** – The public needs to know about the office and what it can do. Demonstrating that through the investigations of issues that affect many people in their daily lives, and reporting on the results of those investigations provides an increasing level of understanding to the public.
- **Outreach** – The office must analyze who it is not reaching through other methods, and then develop educational and informational programs to try to reach those members of the public. The responsibility for awareness rests with the office.