



In all fairness

2013 Annual Report of the Yukon Ombudsman



We are committed to improving our performance so that we can better manage our workload.

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2013 Ombudsman's Annual Report to the Legislative Assembly

I am deeply honoured to serve as your new Ombudsman.

While I am new to the role of Ombudsman, I am not new to the concepts of administrative law and fairness, having practiced in this field. Since becoming Yukon's Ombudsman in June of 2013, I have had the benefit of working with my team who are well versed in this work. I have also made connections with my colleagues across Canada to gain more insight on how to be an effective Ombudsman. In the coming years I intend to put my knowledge and skill toward development of a more proactive approach to promoting fairness among authorities.

My predecessor, Ombudsman Koepke, undertook an organizational review of the Ombudsman Office and its performance. The report generated from the review found that management of our Ombudsman complaints was less than satisfactory. As a result, we have started to implement the report's recommendations to improve our performance.

Implementing the report's recommendations

The report set out several recommendations which we have incorporated as goals into our business plan. These goals are as follows:

Goal 1—To build relationships with authorities, including Yukon government departments, to promote fairness

I had positive meetings with several senior officials of authorities, including deputy ministers of each department, to discuss the role of our Office and my philosophy of working together to resolve fairness issues in a timely manner. I also invited these officials to bring any matters of concern to my attention.

Goal 2—To improve our performance

The report identified that complainants were not satisfied with the length of time it took to complete an *Ombudsman Act* investigation. The report also identified that our dual mandate under the *Ombudsman Act* and the *Access to Information and Protection of Privacy Act (ATIPPA Act)* is one of the main reasons *Ombudsman Act* investigations take longer to complete.

Under the *ATIPPA Act*, we are required to complete reviews in a very short time frame. There are only three investigators in our Office to complete all reviews and investigations under both the *ATIPPA Act* and the *Ombudsman Act*. This results in delays in completing *Ombudsman Act* investigations. This is a problem for which we must find a solution.

We are reviewing our business processes and making changes as needed to improve how we are doing our work. In 2014 we plan to implement a new case management system which will help us better manage our work by reducing the time it takes us to manage our intake and our case files. A case management system will also help us to identify and address performance issues through its tracking and reporting capabilities.

The *Health Information Privacy and Management Act (HIPMA)* passed in December 2013. The responsibility for oversight rests with the Information and Privacy Commissioner (IPC), meaning the *HIPMA* will increase our investigative workload and have a significant impact on our resources and our ability to effectively perform our three mandates under the *ATIPPA Act*, the *Ombudsman Act* and now the *HIPMA*. Planning for implementation will also increase the amount of work for our Office.

Goal 3—To demonstrate accountability

To demonstrate accountability, this year we will begin capturing more information about our work, such as how long it takes us to complete an investigation, our outreach work, and the authorities we are investigating. We will report this information in the 2014 Annual Report to provide the public with a better indication of our workload, and how effectively we are managing it.

18th Annual Report

As required by the *Ombudsman Act*, I am submitting this 18th Annual Report to the Honourable David Laxton, Speaker of the Yukon Legislative Assembly, who will in turn present it to that body.



Diane McLeod-McKay
Ombudsman
Information and Privacy Commissioner

Case Summaries These stories are good examples of how our Office helps Yukoners and authorities, such as Yukon government, solve problems and improve service. Names have been changed for confidentiality.

Timely resolution to inmate complaints

Whitehorse Correctional Centre

In the spring of 2013, Whitehorse Correctional Centre (WCC) implemented a new inmate telephone system (ITS) to manage inmate calls that requires inmates to pay for most telephone calls.

In June 2013 we received several complaints about the new ITS. The complaints were about interruptions in service during telephone calls, no free calls to lawyers, the inability to make collect calls, and incurring costs for calls terminated unexpectedly. Since the new ITS can monitor calls, a concern about privileged calls being recorded was also raised.

We met with WCC to discuss these complaints. WCC acknowledged that it was having start-up difficulties and we were satisfied that WCC was resolving many of the inmates' concerns. A short time later WCC confirmed it had made changes to allow inmates to contact their lawyer free-of-charge and would be continuing to provide any indigent inmate with a free phone card (for a limited number of calls) on admission and other times where the need was identified.

WCC advised that privileged calls are not recorded. We were satisfied with the explanation received about the privacy protection features of the ITS. The ITS is now fully operational and we have found on an ongoing basis that WCC staff are proactively helping inmates understand and use the new ITS.



Child support payments can have different end dates depending on varying provincial or territorial law.

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Cross-border confusion leads to complaint

Yukon Maintenance Enforcement Program

Jennifer and her family lived and worked in Alberta. Her daughter, Kayla, from a previous marriage lived with her father in Yukon.

Jennifer had faithfully made her monthly court ordered maintenance payment to Alberta Maintenance Enforcement Program (MEP) who forwarded it to Yukon MEP. When Kayla turned 18, the age of majority in Alberta, Alberta MEP told Jennifer that it would cease collecting the maintenance payment. Jennifer understood this to mean she was no longer required to pay maintenance for Kayla.

Six months later Kayla's father contacted Yukon MEP requesting payment of maintenance for Kayla. Yukon MEP issued a garnishing order to Jennifer's employer to collect the maintenance payments for the previous six months.

Jennifer was confused. She had stopped paying maintenance payments relying on Alberta MEP's decision. Jennifer came

to our Office with her complaint about Yukon MEP.

With Jennifer's consent we contacted Yukon MEP. We learned that Alberta MEP ceases to collect maintenance payments for a child over 18 unless the person entitled to receive the payments provides information indicating that the payments are to continue beyond that age. Kayla's father did not respond to Alberta MEP's request for information so it ceased collecting the maintenance payments.

We reviewed the basis for the action taken by Yukon MEP. In Yukon the age of majority is 19. Therefore, under the Court Order between Kayla's parents and Yukon Law, Jennifer was required to continue to pay maintenance for Kayla until she turned 19. Once Kayla's father contacted Yukon MEP, it was required to collect the outstanding maintenance.

After Jennifer contacted Yukon MEP, the garnishing order was removed and alternate payment arrangements were made to pay the arrears over time. This action sufficiently addressed Jennifer's concerns. As such, we decided investigation was unnecessary.

No unfairness, no reimbursement

Insured Health and Hearing Services

Sally contacted our Office because she thought it was unfair that Insured Health and Hearing Services (IHHS) refused to reimburse her for expenses incurred for surgery she had at a private, for-profit clinic outside Yukon.

Sally had gone to a private clinic when her surgeon said the surgery was necessary but informed her there was a waiting list for that surgery. That meant the surgical repair could not be done in Yukon within the short timeframe the surgeon said would give Sally the best outcome. Sally was worried about the consequences

of delaying the surgery so opted to have the surgery done immediately at a private for-profit clinic outside Yukon.

IHHS is responsible for the administration of the Yukon Health Care Insurance Plan. After obtaining Sally's consent, we contacted IHHS to review the facts, policy and law applied by IHHS in coming to its decision not to reimburse Sally for any of her expenses incurred for medical treatment in a private for-profit clinic. We confirmed what efforts Sally had made to obtain the surgery locally and the possible effect on the outcome of delaying the surgery. We were satisfied IHHS had correctly applied the law and policy on the facts of this case. We were also satisfied that IHHS had followed a fair procedure in considering Sally's request for reimbursement of the medical expenses. In the end, we found the complaint unsubstantiated.

Statistics

The statistics provided only relate to matters managed by our Office under the *Ombudsman Act*.

Contacts (interactions with our Office requiring action)			
	2013	2012	
Jurisdictional contacts	162	132	Files opened for analysis/investigation
Non-jurisdictional contacts	38	44	Carried forward from previous year
Total new contacts	200	176	Total analysis/investigation files
			74 83
Jurisdictional matters resolved/referred	124	87	Jurisdictional/investigation files closed
			To be carried forward
			23 47
			51 36

Budget summary

This budget summary is for the fiscal year for the Office of the Ombudsman, which runs from April 1, 2013 to March 31, 2014.

The budget for personnel and capital items are for the Office of the Ombudsman and Information and Privacy Commissioner combined. In prior years the budget amounts reported were for both Offices and were not reported separately. This year, other than for personnel and capital item costs, the budget amount for the Ombudsman's Office is being reported separately and will be reported this way going forward.

The significant increase in personnel costs in the 2013/2014 budget are due to the cost-of-living increases for staff and the salary increase for the Ombudsman and Information and Privacy Commissioner to bring the position from part-time to full-time status.

2012 (combined with IPC's Office)		
Personnel		\$497,000
Capital items		\$6,000
Office and operations		\$162,000
Supplies and services		\$7,000
TOTAL		\$672,000
2013 (combined with IPC's Office)		
		Since last Report
Personnel	\$628,000	26% increase
Capital items	\$2,000	67% decrease
TOTAL	\$630,000	25% increase
2013 (Ombudsman's office only)		
		Since last Report
Office and operations	\$93,000	15% increase
Supplies and services	\$4,000	14% increase
TOTAL	\$97,000	15% increase



Reimbursement for surgery performed outside Yukon is not a guarantee.

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Error caught by investigation

Health and Social Services

Jean was in receipt of social assistance benefits for a few months before she got a job.

Health and Social Services (HSS) determined Jean was eligible for the Yukon Supplementary Allowance (YSA) in addition to regular social assistance benefits. If a person is eligible for YSA, income from employment up to \$3,900 per year is not included in the calculation of income for the purpose of determining how much assistance the individual is eligible for in a month. For Jean this meant that for a few months after she started working, she was still eligible for some social assistance.

Jean contacted us after being told by HSS that she had received an overpayment of social assistance and was required to pay back the overpayment. HSS said that the overpayment occurred because Jean inaccurately reported her earned income from her job. HSS did not explain how it had come to that conclusion. Jean believed she provided HSS with the correct information about her earnings.

Upon receiving Jean's complaint we asked HSS to review the calculation of Jean's alleged overpayment. We also asked HSS to provide us with information it relied on to make the calculation. We were not satisfied that HSS had correctly applied the policy and the law. We decided to investigate.

During our investigation, we pointed out the error we believe occurred and once again asked HSS to review the calculation. HSS reviewed the facts and calculations and this time found an error had been made in the method used to calculate the amount of Jean's earned income. HSS redid the calculation. On the basis of this new recalculation HSS confirmed Jean was not overpaid social assistance. HSS sent Jean a letter advising she was not required to repay money to HSS and apologized for the error.

This case raised the possibility that those eligible for YSA and working while receiving social assistance could be affected by an error in how earned income is being calculated. We made a number of recommendations, which were accepted by HSS, in order to prevent this situation from reoccurring.