

Manitoba Ombuds News

2019-1 Ombudsman, Whistleblower, Access and Privacy Newsletter

Thompson office grand opening

On April 16, 2019, Marc Cormier from Manitoba Ombudsman and Daphne Penrose from the Manitoba Advocate for Children and Youth officially opened our shared office in Thompson. About a hundred people gathered in the mall to mark the occasion with a traditional feast, cake and welcoming remarks.

The office is part of a two-year pilot project to more effectively connect people in Thompson and the north with the ombudsman's and advocate's services.

Find us in the **City Centre Mall** at 300 Mystery Lake Road -- we're right in the mall across from the Corner Deli and adjacent to Safeway. Our hours are 9 a.m. to 5 p.m., Monday to Friday.



Colleen Smook, mayor of Thompson

Thank you to everyone in Thompson for such a warm welcome!

New Ombudsman Act reports

City of Winnipeg: Handi-Transit (Transit Plus)

In early January we released our investigation report on the City of Winnipeg's Handi-Transit service, now called Transit Plus. The service provides transportation for approximately 7,500 clients who are unable to use the fixed-route transit system because they are legally blind or have a physical disability that significantly impairs their mobility. We initiated the investigation in response to a complaint from the Independent Living Resource Centre, a Winnipeg-based organization that supports people with disabilities, many of whom use the city's Handi-Transit service.

Overall, we found that in many instances, Handi-Transit provides a reasonably equivalent service to fixed-route transit, but in certain areas falls short. We made 19 recommendations to improve the service, including that the city:

- broaden its Handi-Transit eligibility criteria
- change the membership of the appeal hearing body (the panel that hears appeals from applicants determined to be ineligible for Handi-Transit service)
- better communicate about its complaint process and about the outcome of complaint investigations
- revisit its approach to "no show" charges (penalties applied in order to discourage registrants from booking trips but not taking them)
- produce a comprehensive user guide

The city accepted all 19 recommendations, and has taken steps to implement some of them, such as changing the membership of the appeal hearing body and working on a user guide. Other recommendations, such as broadening the eligibility criteria for service, will be further studied and would ultimately require funding and council approval.

Our report is available at:

www.ombudsman.mb.ca/uploads/document/files/case-2016-0057-en.pdf

Investigation Report on City of Winnipeg's Handi-Transit Service

January 2019



Manitoba Justice: Youth Corrections

Manitoba Ombudsman and the Manitoba Advocate for Children and Youth conducted a joint investigation into the use of pepper spray and segregation in youth correctional facilities, with each office examining the issues from the perspectives of their distinct mandates.

Our office examined legislation, regulations and policies related to the use of pepper spray and segregation and determined whether they were being appropriately followed by Corrections staff. The advocate looked at whether using pepper spray and segregation is justified and in the best interests of youth while they are in custody. Each office issued an independent report. Our office made 32 recommendations to Manitoba Justice, all of which were accepted.

Our report is available at:

www.ombudsman.mb.ca/uploads/document/files/case-2016-0154-en.pdf

The advocate's report is available at:

manitobaadvocate.ca/wp-content/uploads/MACY-2019-Learning-from-Nelson-Mandela-FINAL.pdf

Investigation Report on Use of Pepper Spray and Segregation in Manitoba's Youth Correctional Facilities

February 2019



New FIPPA reports

Case 2018-0302: An individual requested access to Manitoba Hydro's mandate letters for 2017/18 and 2018/19. Manitoba Hydro identified a letter, but concluded that because it was a draft, it was not in its custody or control for the purposes of FIPPA and refused access to the letter. Our office determined that Manitoba Hydro had mistakenly identified a draft framework letter as the responsive record; however, the basis for refusal still applied as the mandate letter requested by the individual did not exist. As the initial response from Manitoba Hydro was based on a mistaken identification of the responsive record, our office partly supported the complaint.

Case 2018-0016: A request was made to Manitoba Intergovernmental Affairs and International Relations for access to correspondence with a third-party business and/or the federal government regarding the Port of Churchill and Hudson Bay Railway. The department refused access on the basis that disclosure of the records could harm Manitoba's relationship with the federal government, legal proceedings or negotiations. Our office found that the cited sections of FIPPA did not apply to one of the withheld records and we recommended that the department issue a revised access decision granting access to that record. The department accepted the recommendation and complied with it.

Case 2017-0458: An individual requested access to records from the City of Winnipeg – Winnipeg Police Service (WPS) about stayed breach charges. The WPS determined that the records related to an ongoing prosecution and were therefore not subject to FIPPA. Our office found that the records were subject to the act and we recommended that the WPS issue an access decision in response to the request. The WPS accepted the recommendation and subsequently reported that it had complied with the recommendation and issued an access decision granting access in part to the records.

You'll find FIPPA investigation reports at www.ombudsman.mb.ca/documents_and_files/investigation-reports.html

PHIA fine for snooping stands

The intentional unauthorized access to personal health information (snooping) by an employee is a very serious matter under the Personal Health Information Act. PHIA was amended 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. For example, if an employee is given access to personal health information to perform their job duties and deliberately accesses the information for purposes other than to perform those duties, this would constitute an offence under PHIA. An employee can be prosecuted under PHIA for an offence and if found guilty by the Provincial Court, can be issued a fine.

In 2017, we released a report about an investigation under PHIA related to incidents of 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 had initiated an investigation into this privacy breach in 2014. We identified some instances of unauthorized access that occurred between December 2013 and the end of June 2014, when the employee ceased to have access to personal health information.

PHIA permits the ombudsman to disclose information to the minister of justice and attorney general (the Crown), if the ombudsman has reason to believe that an offence

has been committed under the act. However, personal health information may only be disclosed by our office if we have the consent of the individual the information is about. One individual consented to the disclosure of their personal health information for this purpose, which resulted in the Crown authorizing the ombudsman, in April 2016, to charge the employee with an offence under PHIA.

A trial was held in this matter in 2017 and the employee was found guilty of committing an offence by using or accessing the personal health information of the individual contrary to the requirements of PHIA. The Provincial Court sentenced the former employee to a fine of \$7,500.

Subsequently, the former employee appealed the sentence to the Court of Queen's Bench. In March 2019, the court dismissed the appeal. As a result, the sentence of the \$7,500 fine stands.

We held the finalization and release of our investigation report in abeyance pending the conclusion of the prosecution. As we have mentioned before, it was released in December 2017 and is available on our website at: www.ombudsman.mb.ca/uploads/document/files/case-2014-0500-en.pdf

Inquest reporting

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, Manitoba Ombudsman agreed to monitor recommendations issued by an inquest judge to ensure that necessary changes are made by the relevant public bodies. This role is not a legislated one; however, it fits well with our goal of making improvements to the administrative processes of government. Since 2008 we have publicly released our final reports.

An inquest report issued on December 12, 2014, detailed the circumstances of Brian Sinclair's death on September 21, 2008, at age 45 in the Emergency Department at the Health Sciences Centre, which resulted in 63 recommendations to programs, policies and practices at Manitoba Justice and Manitoba Health, Seniors and Active Living. In March 2019 we released our final report to the Honourable Margaret Wiebe, chief judge of the Manitoba Provincial Court, with the departments' responses to the 63 recommendations.

Inquest reports are available on the Manitoba Courts website at www.manitobacourts.mb.ca/provincial-court/inquests/inquest-reports/

Our final reports are available on our website at www.ombudsman.mb.ca/documents_and_files/inquest-reports.html



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www.ombudsman.mb.ca
ombudsman@ombudsman.mb.ca
 Facebook: [fb.com/manitobaombudsman](https://www.facebook.com/manitobaombudsman)

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

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

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