



# In all fairness

2011 Annual Report of the Yukon Ombudsman



In its more than 15 years of operation, this office has helped solve thousands of problems and improve government practices and decisions.

**Case Summaries** These stories are good examples of how our office helps Yukoners and the Yukon government solve problems and improve service. Names have been changed for confidentiality.

## Real solutions to real problems

### Five years fly by...

As I come to the end of my five-year term as Ombudsman and Information & Privacy Commissioner (IPC), it is important to reflect on all I have learned and accomplished during my time here.

Among what I have learned:

- public servants are, for the most part, doing a good job;
- to lead by example – listen carefully, respond clearly, and explain your decisions;
- openness and the right attitude are critical in problem solving; and
- good communication can help solve, or avoid, a lot of problems.

Of my accomplishments, I am proud to have:

- helped make government more open, accountable and fair;
- raised awareness about the Ombudsman office through the creation of a new Annual Report format, a new website, media coverage, community visits and numerous public presentations;
- fostered valuable local and national relationships; and
- increased the efficiency and administration of the office.

### Good work is being done

The Ombudsman and IPC offices help real people with real problems, problems with government that are not being addressed until we get involved. Sometimes we solve one problem for one citizen. More often, the solutions improve government service for everyone who comes behind.

Even still, many times, a call from us to government is met with anxiety, resistance and a lack of communication. This response is disappointing in the face of my constant message as Ombudsman that our work is to find solutions, not point fingers. The Ombudsman is entrusted to promote openness, accountability and to protect the interests of all citizens and ensure they are treated fairly in their dealings with government.

In addition, this office saves government money every day. In its more than 15 years

of operation, this office has helped solve thousands of problems and improve government practices and decisions. The annual budget of this office, including the work of the IPC, is five hundred and sixty-six thousand dollars. This is significant, but surprisingly cost-efficient when compared to the costs of a lengthy court case, or judicial or public inquiry.

### Moving forward

The effectiveness of the Ombudsman as a strong voice for Yukoners has grown since it began, but there is always room for improvement.

### Ombudsman Act Sunset Clause

The *Ombudsman Act* still contains what is known as a sunset clause which says that the *Act* will expire in five years unless it is extended by the Legislative Assembly. The process of considering, every 5 years, whether or not to renew the *Ombudsman Act* is unnecessary. The time has come to embrace the essential and beneficial role of the Ombudsman for both government and the public. The section 35 sunset clause should be repealed and replaced with a requirement to review the *Act* on a regular basis to consider if any amendments are needed.

### Modernizing the Act

At the request of Members' Services Board in the fall of 2010, I made recommendations for changes to the *Ombudsman Act*. My thirteen recommendations are designed to keep pace with improvements in Ombudsman process and ensure fairness for citizens in their dealings with government. I urge the government to make these amendments. My submission is available on our website at [www.ombudsman.yk.ca](http://www.ombudsman.yk.ca)

### Half-time Ombudsman

Currently the Ombudsman and Information & Privacy Commissioner positions are authorized to be done together as one half-time job. While this may have been sufficient when the positions were created in 1996, that is no longer the case. Each position has separate functions and responsibilities under two distinct and complex pieces of legislation. As well, the Yukon government is currently considering changes to existing legislation and adopting new legislation that will significantly expand

the responsibilities of the Ombudsman and IPC offices. I have urged Members Services Board to make these two positions one full-time job, or at least adopt a process to discuss it. They have refused. Keeping the Ombudsman and IPC positions as one half-time position will continue to limit their effectiveness.

### Thank you

Resolving conflict is hard work. It requires a balanced and cooperative approach. I thank all the individuals and departments that recognized our common goals and helped us achieve solutions.

Early on in my term, I told Yukoners that one of my goals was to meet every inquiry with professionalism and excellence. I am confident that during my term we have done so. We listened, we were fair, we built bridges and, ultimately, we helped improve government service.

It has been my honour and privilege to serve the Yukon as Ombudsman and Information & Privacy Commissioner.

### 16<sup>th</sup> Annual Report

It is my pleasure to offer the people of the Yukon this, my fifth, Annual Report as Yukon Ombudsman. It has been forwarded to the Honourable David Laxton, Speaker for presentation to the Yukon Legislative Assembly as required by the *Ombudsman Act*.

Tracy-Anne McPhee

**Ombudsman  
Information and Privacy Commissioner**



## Treated differently but not unfairly

**2011 Investigation:**  
Public Service Commission

Jeff was counting on receiving the same retroactive pay as his colleagues. He was told he wasn't eligible.

The Public Service Commission created a new position, and Jeff got the job. He was one of four people working in similar positions. Before Jeff got the job, the three other persons had requested a position reclassification to a higher level. Jeff made the same request. Jeff says he was led to believe that if the reclassification was successful, they would all receive retroactive pay.

When the reclassification was approved, Jeff's co-workers received retroactive pay. Jeff was told that he wasn't eligible for retroactive pay. Turns out that the Public Service Act sets out the circumstances that must exist for an employee to be eligible for retroactive pay. Jeff didn't meet the criteria because of when he was hired and his rate of pay. Jeff had been counting on this pay and thought it was unfair that he had not been told at the outset of the process that he was not eligible for the retroactive pay.

Our inquiries revealed that Jeff's circumstances were, in fact, different from the others which explained why he was the only one not eligible for retroactive pay. We considered the relevant provision in the Public Service Act and were satisfied that although it meant Jeff was treated differently, the legislation did not operate unfairly. We understood his disappointment; however, the failure to tell him from the outset didn't change the fact he wasn't eligible to receive retroactive pay. ■

## Contact Us

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After the flood, Joe needed a UV system and filters to restore his drinking water to pre-flood quality.

## Differing definitions muddy the waters

**2011 Early Resolution:**  
Yukon Housing Corporation

After Joe's well flooded, he made repairs to restore his water quality. But compensation wasn't forthcoming.

In spring, a river overflowed, flooding Joe's well. His pump was damaged and the well water was contaminated. Joe replaced the pump and installed a UV protection system and filters to ensure the water was safe to drink again. He applied to Yukon Housing Corporation (YHC) for compensation under the disaster financial assistance program. He received compensation for the new pump but not the UV protection system and filters.

Joe contacted YHC and program staff reviewed the decision. They confirmed the decision to pay only for the pump because the UV protection or filter system had not been in place before the flood. His repairs were classified as enhancements that were not eligible for compensation.

Joe didn't think this was fair. Prior to the flood his well water was safe to drink.

He only needed the UV protection system and filters to restore the water to pre-flood quality. Also Joe believed others in the neighbourhood had received compensation for repairs that were not in existence before the flood.

Our contact with YHC confirmed that in some cases "enhancements" had been compensated. YHC said they considered the nature and reason for the enhancement in deciding about compensation. Acknowledging there was some flexibility in the application of the program, a senior staff person agreed to review the decision in Joe's case.

Our inquiries also revealed another issue. Joe had the right to appeal YHC's decision so long as he did so within 10 days of receiving it. YHC did not tell him he could appeal or how to do so. When we discussed this problem with them, YHC agreed that they will treat their review of Joe's case as an initial decision. If his compensation is denied he may appeal to the YHC Board Appeal Committee.

Joe is awaiting the decision of YHC. ■

## Issues at a Glance

All services of the Office of the Ombudsman are free and confidential. We investigate all kind of concerns. Some issues we have dealt with are:

- daycare licensing
- employment dispute and hiring processes
- enforcement of a court order
- social assistance benefits
- coverage for medical expenses
- seniors and subsidized housing
- workplace injury
- child support, custody and access
- financial assistance for education
- recovery of an overpayment
- contract dispute
- driver's license suspension
- health care insurance

## Statistics

It is always difficult to report complex work with simple numbers. No two matters brought to the Ombudsman are the same. Some files can be resolved in a few days, while others can take a few years. If the Ombudsman does not have jurisdiction, we assist by referring the individual to the authority that can deal with their complaint.

2011	
Complaints/Investigations	45
Early Resolution Files	87
Non-Jurisdictional Matters	44
<b>Total New Files for 2011</b>	<b>176</b>
Carried Forward from 2010	38
<b>Total Files for 2011</b>	<b>214</b>
Files Completed in 2011	174
Carried Forward to 2012	40

## The challenge was in the waiting

**2011 Investigation:**  
Highways and Public Works  
Bid Challenge Committee

Debra made a complaint about the awarding of a government contract. Six months later, she was still awaiting a final report.

The Bid Challenge Committee (BCC) is a place for bidders and contractors to make complaints about the fairness of the tendering process and awarding of contracts. The BCC cannot delay award of a contract or cancel, revoke, amend, or alter a contract. But it can make recommendations it considers appropriate to improve the tendering process. It can also recommend compensation for reasonable costs of preparing a bid and for participating in the hearing process. The BCC is required to consider the facts and merits of the case and prepare a report.

In Debra's case, a panel was struck to hear her complaint. At the hearing she provided details of what occurred and explained why she thought the process was unfair. Economic Development (ED), as the contracting authority, attended the hearing to provide information on the tendering process and address the complaint.

After the hearing, the BCC wrote to Debra saying they were continuing the inquiry into the matter. Over the next six months Debra made several written and verbal requests for the BCC final report. Tired of waiting, she came to our office. We contacted BCC, explaining that a failure to produce a report was unfair to Debra and rendered its process meaningless and irrelevant.

BCC assured our office the report was going to be issued shortly. Despite this assurance months passed and there was no report. We decided to conduct an investigation and learned why BCC had been unable to make a decision and issue a report.

We learned that:

- the BCC panel felt it needed more information from the contracting authority to come to a decision and finish its report;
- the contracting authority said it had provided all the information relevant to the complaint and challenged the mandate of the BCC to ask certain questions;
- the BCC panel asked Highways and Public Works (HPW) to fund independent legal counsel for advice on how to proceed, but it was refused;
- the BCC panel felt it was unable to render a decision and therefore did not write a report.

We recommended that BCC immediately make a decision and produce a report. We also made a number of recommendations to ensure a fair and effective hearing process including training for committee members, provision of administrative support and, when necessary, legal support and the development of timelines for issuing reports.

Prior to this investigation, government had committed to reviewing and revising government contracting regulations, policies and procedures. We urged HPW to take into account the issues identified by this case in its review. ■



Our team, from left to right: Tracy McPhee, Susan Dennehy, Colleen Gillis and Catherine Buckler Lyon

" Nothing I have accomplished on behalf of Yukoners in the past 5 years could have been done without the dedicated support of the three remarkable women that staff this office. Under challenging circumstances, they produce exceptional work on a daily basis. I am proud of the work we have done together to find fair solutions for Yukoners. I thank them for their friendship and support."

Tracy McPhee, IPC

## Budget Summary

The budget summary below covers the operations of the Office of the Ombudsman and the Information and Privacy Commissioner for the period from April 1, 2011 to March 31, 2012.

Category	Expenditures
Personnel	\$401,000
Office and Operations	\$153,000
Supplies and Services	\$7,000
Capital Items	\$5,000
<b>TOTAL</b>	<b>\$566,000</b>

## Raising Awareness

The Ombudsman's goal of raising awareness about the work of her office was achieved through many meetings and presentations to all kinds of people.

The many groups she met with included school kids, college students, MLAs, seniors, club members, international information commissioners, the national ombudsman, deputy ministers, government staff, college officials and members of the public.