



Action changes things

2015 Annual Report



Diane McLeod-McKay



The Honorable David Laxton
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 31 of the *Ombudsman Act*, I am pleased to submit my Annual Report of the Ombudsman for the calendar year 2015.

In keeping with past practices, I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,
Yukon Ombudsman

Ensuring fairness in the delivery of government services

Why helping us helps you

In my Annual Report last year, I asked Yukoners to bring concerns to my office about any unfair treatment experienced by public sector authorities. Those authorities include, for example, Yukon Government departments, schools, colleges, hospitals and governing bodies of professional and occupational associations. By bringing your concerns to our attention, we'd then work with these authorities to improve any unfairness in their service delivery. I also said that because our work first needs a complaint, we have to rely on you to start the process. I'm pleased to say that you answered the call! In 2015, we received 34 complaints about fairness compared to 11 in 2014. That's three times as many as last year.

A variety of complaints

These complaints varied. Some involved purchasing land from the Yukon government and the treatment of inmates by the Whitehorse Correctional Centre. Some involved investigations conducted by the Investigations & Standards Office, the handling of employee relations by Health & Social Services and Education, and the supervision of trails by Energy, Mines & Resources. Others involved the distribution of funds by Maintenance Enforcement, the management of a compensation claim by the Yukon Workers' Compensation Health & Safety Board, and the awarding of service contracts by Tourism & Culture. Some included the treatment of complaints about licensed practical nurses by Community Services, the purchasing of physician services by Health & Social Services, and the management of an investigation by Advanced Education. Still others included the processing of social assistance benefits by Health & Social Services, as well as a disqualification concerning insured health services.

Our role in dealing with these complaints created two important opportunities for each of these public authorities. The first allowed them to evaluate their services for unfairness. The second allowed them to address any unfairness found in the delivery of those services. As a result, these authorities improved a number of their

procedures. This is important because any of you who use their services will also benefit from the improvements.

As the Ombudsman and a fellow Yukoner, I wish to express my thanks to those of you who did your part to improve fairness in government service delivery. We all have the right to expect fair treatment. But you also have a very important role in this right. Only you can bring concerns to us about any unfairness you may have experienced. When you do this, we can then continue to help all of us improve the fair delivery of public sector services.

Update on goals

In the last two Annual Reports, I talked about three long-term goals that came out of a review of the Ombudsman Office in 2012. All organizations require constant work to become better at what they do and we're no different. Meeting our goals is a process of review, measurement and adjustment over time. They keep us heading in the right direction, give meaning to what we do and help us overcome problems. They allow us to take on today's task without losing sight of the big picture. And they're concrete. Below is an update on how we did on building relationships, improving performance and showing accountability in 2015.

Building relationships with authorities

This year much of our focus in this area was on building relationships with authorities through our informal Early Case Resolution (ECR) process.

If our ECR procedures are to work effectively, authorities must be willing to work with us to identify and resolve issues of unfairness. To do so requires a relationship built on trust and respect for the experience and expertise each party brings to the table.

Of the 34 complaints we received this year, more than 90% were resolved informally through our ECR process. This demonstrates that there is a willingness by authorities to work with us in resolving complaints about unfairness. Our experience in working through these processes so far has been, for the most part, a positive experience for those involved. More importantly, it's allowed us to resolve issues of unfairness in a much more effective and

efficient manner. We'll continue to use the ECR process as a method to build relationships with authorities.

Improving our performance

In late 2014, we began using our ECR process to handle complaints in a much timelier way. A full year has passed. Since then, I'm very pleased with the results. The ECR team handled every complaint we received under the *Ombudsman Act* in 2015. The team resolved nearly 50% of them within 90 days. This represents a significant improvement over last year. In 2014, we settled just 9% of these complaints within that same time frame. That's a more than a five-fold improvement in only one year!

Here's why that's important. We conducted a survey in 2012 about the management of *Ombudsman Act* complaints. From your answers, we



learned two key things. One was we were taking too long to complete an investigation. The other was a lack of communication about progress. We listened to you. As a result, the new ECR process addresses most of your complaints in a very short time frame compared to the past. My ECR team, the public authorities and the complainants who participated in this process deserve big congratulations for their excellent work. Their success is your success.

In 2016, we'll continue to work on meeting our time frame goal. That's the 90-day goal of managing all complaints going through the ECR process. To meet it, we'll focus on evaluating and improving our procedures. We'll also focus on improving our interaction with public authorities. That means our ability to help resolve complaints in a timely way will get better as we all become more comfortable with this proven tool.

As successful as the ECR process is, we couldn't use it to resolve three complaints. Since two of these were nearly identical, we managed them together. Unfortunately, the ECR team and the public authority disagreed on the nature of the unfairness. As a result, they couldn't find a way to resolve the complaint. For the third complaint, the ECR team and the public authority agreed about the unfairness but couldn't find a way to resolve it. That meant assigning these three complaints to our Investigation & Compliance Review team. This team is responsible for conducting full investigations within a goal of one year. The team completed its investigation on one of these complaints within that time frame. We're working with the public authority on recommendations for the other two. We expect to close these files and meet our goal.

Demonstrating our accountability

Due to the success of our ECR program, we've got less *Ombudsman Act* files to carry over from the previous year to the next. This is a big improvement. At the end of 2013, we carried over 51 files. In 2014, that number dropped to 27. At the end of 2015, we've got only 17 files still open. These numbers indicate that we're making positive progress in effectively managing all our *Ombudsman Act* files. If you want more details on the work we did in 2015, please see the stats page.

About the Ombudsman

People often ask what an Ombudsman does. And some also ask what does "Ombudsman" mean?

The answer to the first question is based on our legislation. Under the *Ombudsman Act*, the Ombudsman takes complaints from you about unfair treatment you may have experienced when accessing public services. But first you have to bring your complaint to our attention because we can't initiate complaints on our own. We then work with the folks involved in the complaint to try to resolve the problem in a reasonable manner. This also means helping the public authority to fix the things that caused your complaint about their service delivery in the first place.

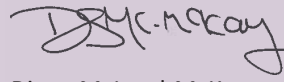
A list of public authorities are found at the end of the *Ombudsman Act*.

They include Yukon government departments, bodies appointed to carry out official duties, schools, colleges, hospitals and others.

An Ombudsman isn't a judge in a courtroom. But the Ombudsman's ability to investigate your complaint and make recommendations to fix the problem has proven to be effective.

The answer to the second question is based on a word borrowed from another country. 'Ombudsman' is actually Swedish for 'protector of our people'.

Many foreign words have become part of our language. They don't change because their meaning is special. 'Ombudsman' or 'protector of our people' is a very clear way to describe our key purpose. We provide a fair and independent method to have your complaint heard and investigated. And we work hard at this.



Diane McLeod-McKay
Ombudsman

▶ Decision taken at face value not good enough

ACCEPTING INFORMATION WITHOUT CHECKING IT OUT MAY PREVENT YOU FROM LEARNING THE WHOLE STORY AND LEAD TO A WRONG DECISION

On admission to Whitehorse Corrections Centre (WCC) Candice was assessed for being at risk of suicide. She was placed in a cell in the Admissions and Discharge (A&D) Unit. To minimize the risk that Candice would harm herself, she was required by policy to wear only a heavy smock and was also not allowed to wear her bra, panties or socks. A person at risk of suicide is required by WCC policy to be checked by staff every 15 minutes. The checks on Candice were done primarily by male staff. Candice made a complaint about her placement to WCC. Candice was aware the law required WCC make an effort for her to be supervised by female staff. WCC administration responded confirming her placement was appropriate. Candice wasn't satisfied with their conclusion so she complained to the Investigations & Standards Office (ISO).

ISO is an independent office within the Department of Justice whose purpose includes investigating and responding to inmate complaints about decisions made by WCC. The ISO investigator accepted a statement by a senior corrections officer that the segregation cells in the female unit were full at the time. She concluded that the cell in the A&D Unit was the only available cell where Candice could be monitored as required. She was satisfied with WCC's conclusion that the placement decision was reasonable. Candice then complained to us.



We investigated by looking at ISO's investigation to determine whether it was fair. A fair investigation must be thorough and objective. Our investigation determined that the segregation cells in the female unit were not full. The failure by ISO to confirm this information raised a question about the thoroughness of the investigation. ISO agreed to reinvestigate the complaint. As part of this, ISO interviewed more staff and reviewed more records. It confirmed that the segregation cells in the female unit were not full but found other evidence to support that WCC's decision not to place Candice in the female unit was reasonable. As part of their investigation, ISO clarified for WCC what their legal requirements are for "female supervision."

An oversight body responsible for investigating complaints must be thorough in its investigation. Too much is at stake if the investigation is not fair.

▶ More money please..!!

SOMETIMES IT'S BETTER TO BREAK THROUGH THE NATURAL HESITATION AND JUST ASK. IT MAY NOT BE FAIR BUT IF YOU DON'T ASK NOW, YOU DON'T GET LATER.

Education hired Ben from outside the public service following a competition for a collective bargaining position. He took the job and started at the minimum pay rate. Sometime later, Ben requested a pay raise because of his qualifications and previous experience. Education told him they couldn't give him a pay raise. They informed him that, as a member of the Union, pay raises were governed by the collective agreement and because he hadn't asked for higher pay when he was first offered the job, higher pay wasn't considered.

Ben didn't know he could negotiate a higher starting rate when he was hired. He also didn't know that once he agreed to the pay rate, he was locked in. He felt this was unfair and made a complaint to our office.

We investigated and found that Yukon government has the ability to hire a new employee at a rate of pay higher than the minimum rate. This requires Deputy Minister approval and consideration of how many competed for the job, the fit between the candidate's previous experience and the job, the pay levels of others in similar jobs, and the department's budget. We also found that fairness does not require that the government raise with a potential candidate the possibility of a higher pay rate than the minimum unless the candidate asks about this possibility before accepting the job.

The prospect of a new job is exciting but, like many things, you should ask key questions before signing. You might not get what you want but asking after you accept the offer is too late. After hire, pay increases for employees in the Union are only allowed by the collective agreement.



▶ Trails of woe

NAVIGATING THROUGH GOVERNMENT PROCESS IS ALREADY CHALLENGING BUT ADDING IN MISINFORMATION ONLY MAKES IT WORSE.

Bob became concerned about someone building a bike trail on vacant public land. At some points, the bike trail overlapped an existing trail used by hikers in the neighborhood. In his opinion, this trail-building raised safety and land impact issues.

He complained to the Yukon government's Land Management Branch (LMB). He wanted the trail-building to stop. The LMB visited the site and decided this activity was permitted under the law and the Local Area Plan. But it also decided that the trail-builder needed to get a development permit and approval from the LMB to do the work. In addition, approval would not happen until public consultation took place on that part of the trail yet to be built.

This seemed confusing. In the first place, he disagreed the activity was

permitted by law and policy. And even if it was allowed, he didn't understand why the trail-builder needed a permit or to go through a consultation process. He complained to the Municipal Board. It said it couldn't review anything until the LMB made a decision about the development permit. He then made a complaint to our office. We investigated and found the trail-builder could continue his activity without the need for a permit or consultation. The LMB agreed and apologized for its mistake.

The government is responsible for administering the laws and policies governing land use. But it has a higher responsibility to make sure it does this correctly. Doing so incorrectly can lead to confusion.

for persons living in households with both First Nations and non-First Nations persons. Because Jenny's spouse was a First Nation's person, the case required HSS to review and approve the treatment plan first and inform the First Nation directly of the approval. The First Nation, through the spouse and household, would then provide payment approval so Jenny could receive services. Unfortunately, shared confusion about the administrative process, and that

the process was done differently in the past, Jenny did not have the information required for HSS to review and approve her request. Later that day, after a few calls to the First Nation to clarify what was needed, the dental services were approved. At the request of HSS, we informed Jenny about the process to follow in the future and the behind the scenes administrative problem that caused the delay in her case.

▶ Dentist, please!

CONFUSION CAUSES PAIN

Jenny attended our office concerned that she was unable to get approval for emergency dental work by Health & Social Services (HSS). She informed us that she had waited over a day and not heard a reply. Jenny was in pain and felt she was getting the run around.

We contacted HSS about the concern. We were informed by HSS that the reason for the delay was due in part to how assistance benefits are provided



Ombudsman accountability metrics

File management goals

- See diagrams below

Proactive compliance work

- attended a workshop on The Path to Becoming an Effective Advocate

Skills development

Staff attended:

- a webinar on Ombudsman Innovation and Advancing Open Government
- a class on Interpreting Legislation

- a workshop on how to conduct systemic investigations
- a Forum of Canadian Ombudsman
- a national meeting of Canadian Parliamentary Ombudsman

Complaints

We received two written complaints this year from the same complainant. Both complaints were about delay in completing his complaint. His complaints were valid and were reviewed as part of our quality assurance process.

Budget summary

The office of the Ombudsman budget covers the period from April 1, 2015 to March 31, 2016.

Operations and maintenance (O&M) are expenditures used in carrying out day-to-day activities. A 'capital' expenditure is used to buy things that last longer than a year and are quite expensive, such as office furniture and computers.

'Personnel' is the largest part of our annual O&M budget. It includes salaries, wages and employee benefits. For accounting purposes, 'Personnel' is reported jointly for the offices of the Ombudsman, the Information and Privacy Commissioner (IPC), and the

Public Interest Disclosure Commissioner (PIDC) because all staff have duties in these three areas. We also received funds under 'Personnel' to hire a new position. The *Health Information Privacy and Management Act* will soon become law and we'll be filling this position shortly. In addition, we received a small 'cost-of-living' increase for staff.

'Other' includes such things as rent, contract services, supplies, travel and advertising. It's possible to report separately on the Ombudsman's expenditures. Please see the second row in the budget table at right. We also received a small increase in funding to

Ombudsman Act - 2015 activity

Resolved at intake - no file opened

Non-jurisdiction	27
Referred-back	42
Requests for information	63
Informal complaint resolution	12

Total 144

ECR files opened	34
Investigation files opened	0
Mediation files opened	0

Total files opened in 2015 34

Files carried over from prior years 24

Files closed 41

Files to be carried forward 17

2014/15 Budget

Personnel (combined)	\$ 645,000
Other (Ombudsman's office)	\$ 81,000
Other (IPC's office)	\$ 134,000
Capital Items	\$ 12,000
Total	\$ 872,000

* 100,000 was revoted to 2015/16

2015/16 Budget

Personnel (combined)	\$ 765,000
Other (Ombudsman's office)	\$ 104,200
Other (IPC's office)	\$ 131,000
Other (PIDC's office)	\$ 17,800
Capital (combined)	\$ 34,000
Total	\$ 1,052,000

manage the new costs associated with the new *Public Interest Disclosure of Wrongdoing Act*.

For accounting purposes, 'Capital' is also reported jointly for the three offices because all staff use these assets in their work. The capital budget in 2014 included \$100,000 to purchase a case management system. This means we'll be able to handle case files and perform other work more effectively. It's taken longer than expected to obtain this asset so the Legislature has carried the funds forward. We expect to have the system in place sometime this year.

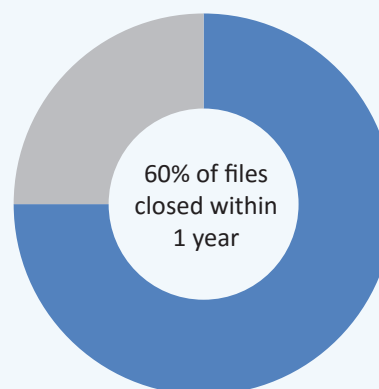
Files opened in 2015 by authority

Authority	Early case resolution	Investigation	Total	Recommendations		
				*Formal	Accepted	Not yet implemented (includes prior years)
Community Services						
Economic Development	1		1			
Education	3		3			
Energy, Mines & Resources	2		2			
Environment	2		2			
Finance						
Health & Social Services	5	2	7	7	7	5
Highways & Public Works	1		1			
Justice	11	1	12			
Public Service Commission	1		1			
Tourism & Culture						
Women's Directorate						
Yukon College						
Yukon Hospital Corporation						
Yukon Housing, Liquor and Lotteries						
Yukon Workers' Compensation Health and Safety Board	4		4			
Child & Youth Advocate						
Yukon Energy Corporation						
Yukon Human Rights Commission	1		1			
Total	31	3	34	7	7	5

*Formal recommendations are those made by the Ombudsman in a formal Investigation Report issued in 2015.

Investigation performance

Files opened in 2015 and those carried over from 2014	Closed (within 1 year)	Closed (over 1 year)	Still open (under 1 year)	Still open (over 1 year)
4	3	1	0	0
3 from 2015	3	0	0	0
1 from 2014	0	1	0	0

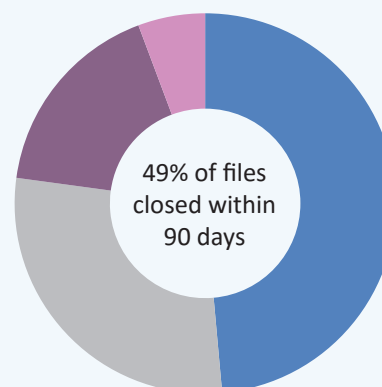


Investigation - 1 year target

- Closed (within 1 year)
- Closed (over 1 year)
- Still open (under 1 year)
- Still open (over 1 year)

Settlement performance

Files opened in 2015 and those carried over from 2014	Closed (within 90 days)	Closed (over 90 days)	Still open (under 90 days)	Still open (over 90 days)
35	17	10	2	6
31 from 2015	15	8	2	6
4 from 2014	2	2	0	0



Settlement - 90 day target

- Closed (within 90 days)
- Closed (over 90 days)
- Still open (under 90 days)
- Still open (over 90 days)

Contact us

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All services of the Ombudsman's office are free.

We welcome your feedback on our Annual Report including the method of delivery.