



Office of the Ombudsman

1 9 9 8 A N N U A L R E P O R T

For the period January 1, 1998 to December 31, 1998



YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman



YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman

April 1999

The Honourable Robert Bruce
Speaker of the Legislative Assembly
P.O. Box 2703
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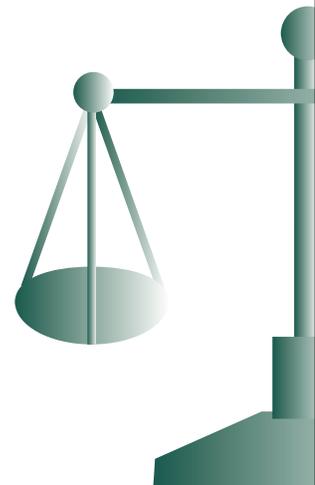
Mr. Speaker:

I have the pleasure of presenting to you and through you to the Legislative Assembly the Annual Report of the Yukon Ombudsman and Information & Privacy Commissioner.

This report is submitted pursuant to Section 31(1) *Ombudsman Act* and Section 47(1), *Access to Information and Protection of Privacy Act*. The report covers the activities of the Office of the Ombudsman and the Information & Privacy Commissioner for the period January 1, 1998 to December 31, 1998.

Yours truly,

Hank Moorlag
Ombudsman and
Information & Privacy Commissioner





Mission Statement

*It is the objective of the Office of the Ombudsman
and Information & Privacy Commissioner
to enhance public confidence and promote fairness and integrity
in public administration of the Government of Yukon*





Remarks of the Ombudsman and Information & Privacy Commissioner

This 1998 annual report of the Office of the Ombudsman and Information & Privacy Commissioner brings to a close the office's second full year of operation. This experience now allows us to do some comparative analysis of statistics in an effort to identify trends and indicators that may be helpful for planning into the future.



An increase in the number of Ombudsman complaints and requests for review to the Information & Privacy Commissioner leads me to believe that public awareness is being raised about the function of the office. At the same time government authorities and public bodies are becoming more familiar with the complaint handling process and the expectations of this office in the conduct of Ombudsman investigations and ATIPP requests for review.

My sense is that government is becoming more comfortable with the changes brought about by the *Ombudsman Act* and the *Access to Information & Protection of Privacy Act* (ATIPP Act). Clearly, the presence of a formal complaint handling process and a review mechanism for access and privacy legislation has had some significant implications for public servants in terms of accountability and openness. I do recognize, in my day to day contact with government officials that there have been some positive shifts in this respect.

Nevertheless, the nature of complaints under the *Ombudsman Act* and requests for review under the ATIPP Act suggests that public service managers can do more to resolve disputes earlier in the process. I am convinced that early intervention by first line

managers and/or impartial reviews of the issues in dispute by higher levels of supervision can significantly reduce the number of public complaints. I continue to see defensive postures being taken that are often inconsistent with accepted standards of administrative fairness. A recurring reminder is that a legal right to do something doesn't always make it the right thing to do.

Another observation during the work of the office over the past two years is that complaints typically centre around a lack of communication. In many cases the reasons for decisions or actions have not been adequately explained. Or, sometimes there have been a number of reasons for a decision that adversely affects an individual, but only one has been given. When the individual tries to resolve the matter by making arguments in relation to that reason, the second reason emerges. This causes frustration and undermines the integrity of an open and accountable decision making process.

I find it interesting how a relatively simple matter of not providing full and adequate reasons for decisions or actions can complicate matters as the dispute continues. Typically, resentment builds and conspiracy theories develop, often to the point where logic and reality have all but disappeared. I have found that, in the absence of adequate explanations from those who should be able to provide them, people will come to their own conclusions.

In my reports following investigations or requests for review, I have tried to address these concerns by including recommendations that are intended to bring about changes in administrative processes. I believe that one of the real strengths of the Ombudsman is to be an agent for change so that government administration can become more open and accountable, and public complaints are reduced as a result.



Ombudsman

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Many new issues have come to light in 1998. The variation and number of Ombudsman complaints demonstrate this point. One constant theme that the Office tries to stress is the basic right for all Yukoners to receive fair and equitable treatment in their dealings with government.

Year in Review

A total of 144 complaints were received by the Ombudsman during 1998. This represents an increase of 18% over 1997.

The majority of these complaints were handled by referrals to the relevant authority because there was a statutory or administrative avenue of appeal available to the complainant. Even in those cases where no specific review or appeal process was available, complainants were required to bring their concerns to the attention of the authority. This created an opportunity for the authority to receive the complaint, usually at a higher administrative level, and consider issues being raised.

Fourteen complaints resulted in formal Ombudsman investigations. This compares to 19 investigations commenced in the previous year. The decrease is an encouraging trend and I am cautiously optimistic that authorities are more willing to resolve complaints rather than maintain fixed positions on matters in dispute.

The results of Ombudsman investigations are provided directly to the operational head of the authority, the Deputy Minister in the case of a government department, or the president/chair of a government corporation or independent body. Ombudsman reports notify the authority whether or not the complaint is substantiated. If the complaint is substantiated, recommendations are made in an effort to settle the matter, and where appropriate, make changes to the administrative process that will

prevent a recurrence of the situation. I am pleased to report that all recommendations made during the year have been accepted and implemented by the relevant authorities.

The Office of the Ombudsman has worked hard at promoting fairness within public administration and I believe our case work has affected, in a positive way, how authorities are dealing with complaints. A 18% increase in the total number of complaints suggests, however, that there is more work to do.

The challenge in 1998 for Ombudsman work was to move investigations forward in the face of a very substantial increase in the workload of the Information & Privacy Commissioner. I was relieved, therefore, when a supplementary budget request was approved which allowed me to retain investigative resources to help clear a backlog of cases. An increase in next year's budget to continue the investigative work has been requested and the request has received favourable consideration by the Members' Services Board during the review of the budget estimates.

I also think it is important to acknowledge the service that is rendered by the numerous people who complain to the Ombudsman. It is in the resolution of their complaints that the quality of government administration can be scrutinized and maintained, if not improved.

Public Management and Good Governance

Public sector managers differ from their private sector counterparts in that they have an official ethical responsibility to act *in the public interest*. New ways of carrying out government business are creating situations in which public servants need to be highly attuned to ethical issues. However, there may be too few guidelines as to how they should act

in response to these changes. In 1998 the Organization for Economic Co-operation and Development (OECD), which provides governments with a setting in which to discuss, develop and perfect economic and social policy, established a framework of twelve ethical principles for good governance. The Office of the Ombudsman endorses these principles and encourages public officials to accept them as a standard for public administration.

Principles for Managing Ethics in the Public Sector

1. Ethical standards for public service should be clear.
2. Ethical standards should be reflected in the legal framework.
3. Ethical guidance should be available to public servants.
4. Public servants should know their rights and obligations when exposing wrongdoing.
5. Political commitment to ethics should reinforce the ethical conduct of public servants.
6. The decision-making process should be transparent and open to scrutiny.
7. There should be clear guidelines for interaction between the public and private sectors.
8. Managers should demonstrate and promote ethical conduct.
9. Management policies, procedures and practices should promote ethical conduct.
10. Public service conditions and management of human resources should promote ethical conduct.
11. Adequate accountability mechanisms should be in place within the public service.
12. Appropriate procedures and sanctions should exist to deal with misconduct.

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Contracting Out and Accountability

Public rights can be eroded when governments privatize or contract out services to the private sector. Guaranteeing citizen rights under these circumstances has received a lot of attention in other Canadian jurisdictions. In the Yukon, an assessment is being made to determine the extent to which government services are contracted out and the Ombudsman has initiated discussions with Deputy Ministers to explore this area further.

The *Ombudsman Act* gives Yukoners the right of recourse when they feel they have been unfairly treated by a territorial government organization. This right is potentially affected when public services are delivered through private sector contracts. Similarly, contracting out services can have direct implications on a citizen's right to privacy and right to access information, rights normally upheld through the *Access to Information and Protection of Privacy Act*. Consumers of these privately delivered public services do not have the option of taking their "business" elsewhere. Furthermore, private contractors have no responsibility to individual citizens as no contract relationship exists between them. Accountability mechanisms should be built into these service arrangements in order to give people an avenue of redress.

*A right is not what someone gives you;
it is what no one can take from you.*



RAMSEY CLARK,
former Attorney General of the USA

The Office of the Ombudsman and Information & Privacy Commissioner believes that it is worthwhile for government to consider how public/private sector relationships are affected by the *Ombudsman* and *Access to Information and Protection of Privacy Acts*. Perhaps private sector organizations that enter into

arrangements with government should do so with the expectation that a level of public scrutiny will be available and is to be expected? And perhaps the people who are affected by these services should be allowed the same rights of privacy, access to information, and access to a higher review mechanism that they have when the service is directly delivered by government?

Ombudsman as Screener: Internal Trade Agreement

In 1998 the Ombudsman was appointed a “screener” under Canada’s Agreement on Internal Trade. The agreement, entered into by the federal, provincial and territorial governments, seeks to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada. It also serves to establish an open, efficient and stable domestic market.

The function of a screener is to act as a body, independent of government, to decide whether persons should be permitted to commence dispute resolution proceedings under the agreement. Since the Ombudsman’s appointment no cases have arisen.





Meetings and Visits

In 1998 the Office of the Ombudsman was invited to give a number of presentations within the territory. The presentations aimed to foster an understanding of various aspects of the Ombudsman process. Highlights from the visits are presented below.

The Ombudsman was invited to make a presentation to the **Yukon Law Society**. This was the first of a series of noon hour training sessions the Society set up for their members. The meeting helped develop an understanding about how the Ombudsman and the legal community can best serve clients that are having problems with government. Discussions explored situations where it may be appropriate for lawyers to refer clients to the Ombudsman and vice versa.

The **Rendezvous Rotary Club** had the Ombudsman speak about his role in the community at one of their breakfast meetings. The presentation was followed by a question and answer period.

The Ombudsman found it interesting that the Rotary 4-Way Test (of the things we think, say or do) aligns itself with practices that the Office of the Ombudsman tries to encourage. The 4-Way Test considers:

- Is it the truth?
- Is it fair to all concerned?
- Will it build good will?
- Will it be beneficial to all concerned?

Such a test promotes fairness and ethical practices and can be applied to almost any form of interaction.

As part of the **Ombudsman Community Visitation Program**, the Ombudsman made a trip to Watson Lake. He visited YTG offices and had informal discussions with staff about the role of the

Ombudsman and Information & Privacy Commissioner. The Ombudsman also made a presentation to the **Watson Lake Chamber of Commerce**. The Ombudsman noted that a good portion of the agenda dealt with the matters related in some way to government and the efforts of the Chamber to work with departmental programs and officials.

The Ombudsman was invited to visit the **Whitehorse Young Offender Facility**. The Ombudsman and the youths engaged in a dynamic ninety-minute discussion about the role of the Ombudsman and the function of the Office. The discussion period was both well attended and received.

Every kind of peaceful cooperation is primarily based on mutual trust and only secondarily on institutions.



ALBERT EINSTEIN

The Ombudsman met with Yukon Government **Deputy Ministers**. The philosophy of the Office, along with the notion that investigating public complaints need not be a confrontational process, was emphasized. The Ombudsman was pleased to report on the high level of cooperation that the Office has experienced with government departments to date. Matters of investigation and the Ombudsman's reporting process were also discussed. The Ombudsman plans to meet with the Deputy Ministers on a quarterly basis.

The Assistant to the Ombudsman was invited to talk with the inmate Case Managers at the **Whitehorse Correctional Centre**. This meeting enabled a mutual

understanding of their respective complaint procedures. Thus, it helped ensure that inmates would pursue the available review and appeal processes within the Whitehorse Correctional Centre prior to complaining to the Ombudsman. After the meeting, the Correctional Centre put up posters explaining when and how inmates could avail themselves to the services of the Office of the Ombudsman.

The Assistant to the Ombudsman also met with the staff of the **Teslin Community Correctional Centre**. As with the Whitehorse meeting, this opportunity for interaction led to a better understanding of each other's complaint processes and how they fit together. The Assistant to the Ombudsman was also asked to explain how the Access to Information and Protection of Privacy Act applied to the records of the Teslin Community Correctional Centre.

At **Yukon College**, the Assistant to the Ombudsman met with the Appeal Subcommittee to talk to them about the Principles of Natural Justice. Discussions also centred around the specific actions which help the Office of the Ombudsman identify a fair hearing process during an investigation.

Canadian Ombudsman Association

At the conference of Canadian Ombudsman held in Yellowknife, NWT last June, the Canadian Ombudsman Association (COA) was formed. The Yukon Ombudsman is proud to be a founding member and to have been named a director. The Ombudsman is also the current editor of the COA newsletter.

The COA has links to the United States Ombudsman Association (USOA) and the International Ombudsman Institute (IOI). This important networking provides a forum for promoting fairness in public administration. It also creates opportunities for speaking out collectively on issues of common concern. As expressed by Martin Luther King Jr.: "Injustice anywhere is a threat to justice everywhere."

One of the first initiatives of the COA was to call on the Parliament of Canada and the federal government to create a National Ombudsman. As ironically noted by COA President, and Ontario Ombudsman, Roberta Jamieson, "Canada stands in the world as a beacon of democratic government, and yet we have no office to receive the complaints of the public [on federal matters]."

Injustice anywhere

is a threat to justice everywhere.

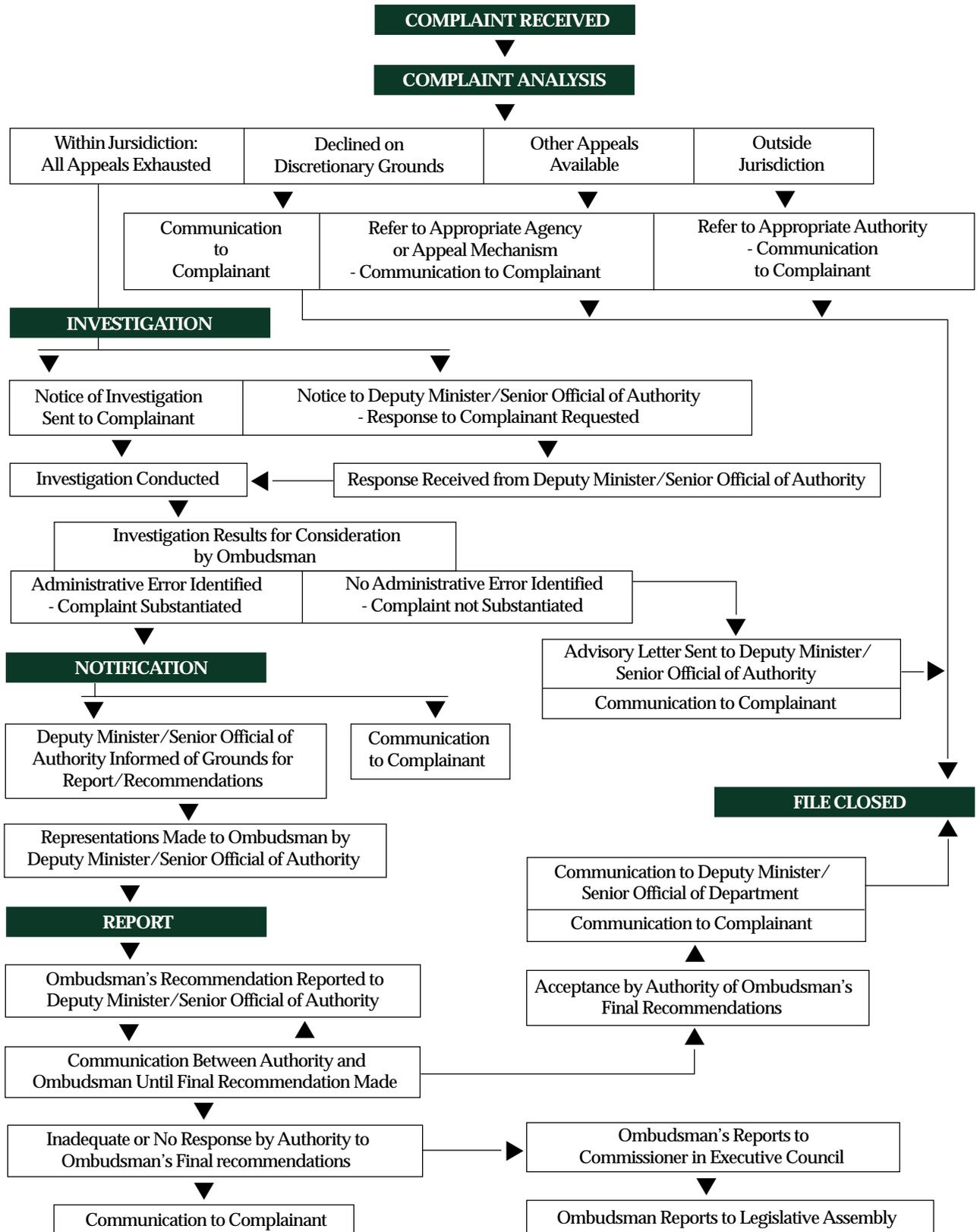


MARTIN LUTHER KING JR.





Ombudsman's Flow Chart of Complaints



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Case Summaries

The Ombudsman is an independent and impartial investigator, who has been appointed a number of investigative roles. It is the duty of the Ombudsman to:

- Investigate any complaint about a matter of administration of the Yukon Government and recommend corrective action if the complaint is justified;
- Investigate and report on any jurisdictional matter referred by the Yukon Legislative Assembly or a committee of the Yukon Legislative Assembly;
- Investigate and report on any matter referred by a municipality or a Yukon First Nation Government (on a cost-recovery basis).

In 1998 the Office of the Ombudsman received a total of 144 jurisdictional complaints. Of these new complaints, 14 proceeded to the investigation level, along with 18 cases that were carried over from 1997. Of these 32 cases, 24 are still under investigation.

Investigation Summaries

Yukon Workers' Compensation Health & Safety Board

A worker sustained an injury in 1981 that resulted in a partial disability. An appeal related to this injury was heard and a decision rendered in April 1997. The worker complained to the Ombudsman that the Appeal Panel did not properly address the legislative provisions in effect at the time of the injury.

Following the investigation, the Ombudsman determined that decisions at various stages of the claims process included terminology that was inconsistent with the legislation in place at the time of the complainant's injury. Aspects of the Appeal

Panel's decision related to the application of unreasonable or unfair procedures, and adequate and appropriate reasons for the decision were not given.

The Ombudsman recommended that the Appeal Panel rehear its decision and, specifically, apply the provisions of the prior legislation to the determination of compensation for the complainant's permanent partial disability.

The Yukon Workers' Compensation Health and Safety Board accepted the Ombudsman's recommendation and the matter was reheard in December 1998. The complainant is currently awaiting the outcome.

■ An injured worker complained to the Ombudsman that the Yukon Workers' Compensation Health and Safety Board terminated compensation without proper notice and without readying the worker for employment. Furthermore, the complainant felt that the decisions of the Internal Review Committee and the Appeal Panel were unfair.

An investigation into these concerns substantiated the complaint. The Ombudsman felt that the claim file records relied on by the Appeal Panel contained information that was irrelevant. Also, some of the records used by the Appeal Panel had not been disclosed to the injured worker and therefore did not permit the worker to fairly present their case to the Panel. The Ombudsman recommended that the matter be reheard.

The Ombudsman also reviewed the claim handling policy and concluded that the policy guidelines had not been consistently applied. The Ombudsman recommended that a process be implemented to ensure the provisions of all relevant policy are applied to claims and that the claim file reflect how those provisions are applied along with the supporting rationale.

Both recommendations were accepted by the Workers' Compensation Board. As a result, the worker's benefits were reinstated and the worker's rehabilitation is being dealt with according to policy.

Community and Transportation Services

The proprietor of a company seeking to do business in the Yukon complained to the Ombudsman about a land application review process.

The *Ombudsman Act* does not permit intervention in the application process. Normally, if one is affected by decisions of government there are statutory or administrative review processes that must be taken before the Ombudsman can investigate a complaint. The principle is that a government body ought to have the opportunity to review and correct a problem before the Ombudsman takes action.

The one exception to this is a complaint of unreasonable delay. The Ombudsman agreed in this case to investigate a complaint that the land application review process included unreasonable delays.

The investigation concluded that the length of time it was taking to process the application was excessive. The Ombudsman identified several factors that contributed to this. One of them was the practice of tasking an applicant with negotiating support for the application with other parties outside of the Land Application Review Committee (LARC) meetings. In this case, it was clear to the Ombudsman that this was an almost impossible task for the complainant to complete because of the competing interests of other parties. In the end it had the effect of frustrating and complicating the process rather than facilitating a speedier resolution.

On the basis of the investigation the Ombudsman came to the opinion that it was an unfair and unreasonable procedure for the complainant to confer with the other parties, despite the fact that there was mutual consent for the complainant to approach the groups. The concern raised by the

Ombudsman was that such a practice did not define specific expectations, did not set an appropriate time line and did not confirm that there was a reasonable expectation that the applicant could successfully complete such an undertaking.

The Ombudsman expressed the belief that it is unfair to all parties when an application process goes on indefinitely. In the interest of fairness it is desirable that closure of an application is planned and predictable after reasonable opportunities have been provided to hear all relevant interests and concerns.

Accordingly, the Ombudsman made a recommendation to the Deputy Minister of Community and Transportation Services, which was accepted and implemented. The terms of reference for the Land Application Review Committee were amended to ensure that applicants clearly understand what actions they are required to undertake and to confirm that they are willing and able to carry out such actions in a timely fashion. The changes will also help define the end objective for processes within the control of the committee.

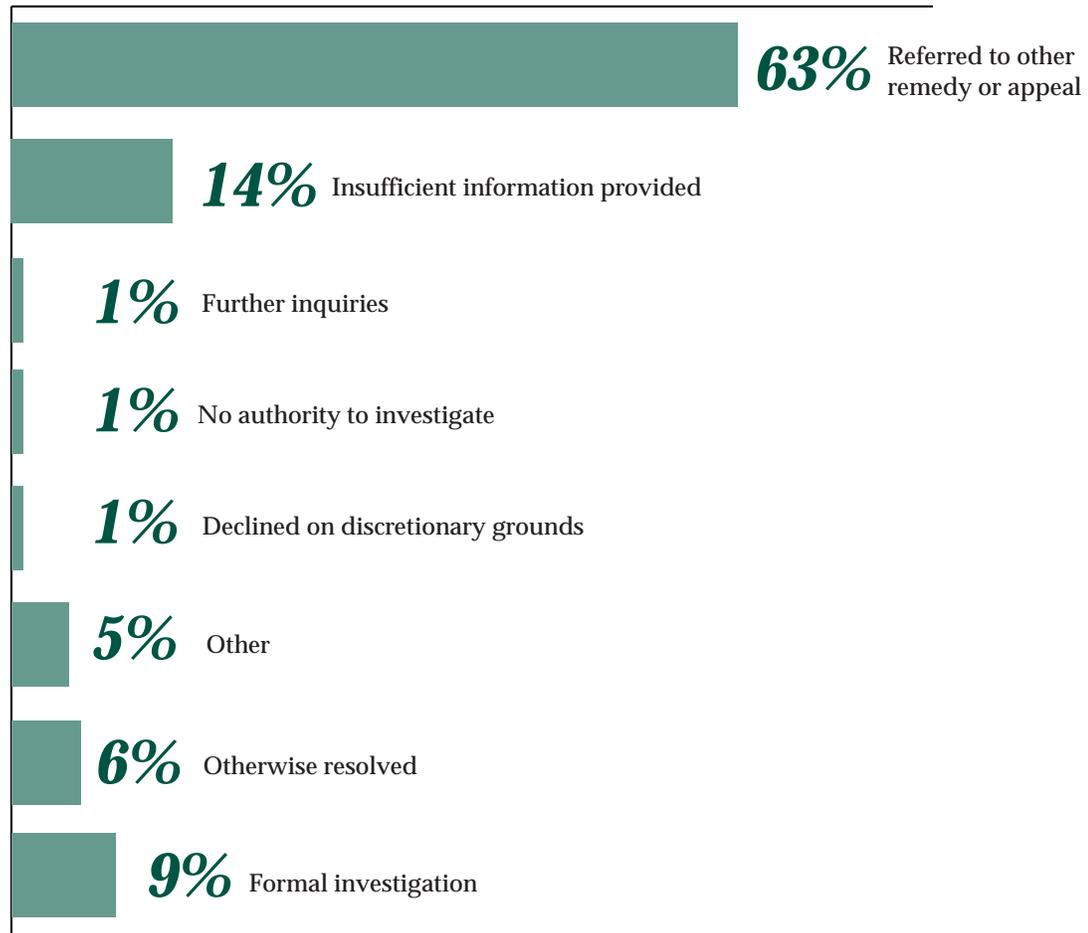
At the end of the year the complainant's application was still outstanding. The Ombudsman has communicated with the Deputy Minister to determine if the recommendation had the desired effect, or if continued delay is due to other factors.



Table 1 - Jurisdictional Complaints Received

Authority	Complaints Under Investigation	Complaints Otherwise Resolved	Total Complaints
Community and Transportation Services		9	9
Education		8	8
Finance		1	1
Government Services		3	3
Health and Social Services	2	30	32
Justice	3	8	11
Law Society of Yukon		1	1
Public Service Commission		7	7
Renewable Resources		4	4
Teslin Correctional Centre		2	2
Tourism		2	2
Whitehorse Correctional Centre		24	24
Yukon College		1	1
Yukon Fish and Wildlife		1	1
Yukon Housing Corporation		8	8
Yukon Human Rights Commission	1	2	3
Yukon Legal Services Society		2	2
Yukon Liquor Corporation		1	1
Yukon Medical Council		1	1
Yukon Workers' Compensation Health & Safety Board	7	16	23
TOTAL COMPLAINTS 1998	14	131	144
Total Complaints 1997	16	106	122

Resolution of Ombudsman Complaints



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Ombudsman Investigations

Opened in 1998	14
Carried forward from 1997	18
TOTAL	32
Reported to Authority	2
Discontinued	6
Carried forward to 1999	24



Report of the
Information & Privacy Commissioner



YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman



Information & Privacy Commissioner

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Office of the Information & Privacy Commissioner

The principles underlying the *Access to Information and Protection of Privacy Act* (ATIPP Act) are those of accountability and protection of privacy. These principles enable the actions of government to be held up to public scrutiny while also securing every individual's fundamental right to privacy. The Office of the Information & Privacy Commissioner impartially reviews government decisions that pertain to the Act and also provides comments on the administration of the Act. The services of the Office are open to all citizens.

Office Objectives

- To provide an independent review of decisions made by public bodies respecting access to information and the protection of personal information held in government records.
- To provide comments, information, advice and recommendations on information access rights, protection of privacy, and obligations of public bodies with respect to information and privacy.

Year in Review

When the Office of the Ombudsman was established in 1996 it was estimated that 20% of all work would pertain to requests for review and investigations under the ATIPP Act. During the past year, however, the Information & Privacy Commissioner's ATIPP related work has exceeded 50% of the overall office case load.

In fact, in 1998 the Office of the Information & Privacy Commissioner received an unprecedented number of cases. Table 1, in the statistics section of the report, reflects how the 1998 workload has more than doubled, from 17 cases in 1997 to 36 cases in the past year. The increase is attributed to a heightened public awareness of the legislation.

In total, the Office fielded 36 new requests for review. Of these requests 3 were discontinued, 6 were settled in mediation and 16 proceeded to the inquiry level. A further 9 cases are still under investigation. I also had the opportunity to comment on 3 issues that could potentially effect the privacy rights of Yukoners.

It is my impression that some cases were more difficult to handle, by the public bodies, the archivist, and the Information & Privacy Commissioner because of the lack of a policy manual and information directory. As the information directory is required by section 63 of the ATIPP Act, I was particularly pleased to learn that the government has made significant progress in the development of this directory during 1998. Full implementation is expected to take place by mid 1999. Initial work has also begun with the development of a policy and procedures manual. Input from the Information & Privacy Commissioner has been invited and I look forward to being involved in a consultative role in both these initiatives.

All ATIPP cases that proceeded to Inquiry result in the Commissioner reporting and making recommendations to the public bodies. I am pleased to report that all recommendations made to the various public bodies in 1998 were accepted and implemented.

Information and Privacy Summit 1998

The Yukon Office of the Ombudsman hosted the annual meeting of Canada's Information and Privacy Commissioners in Whitehorse on June 24-26, 1998.

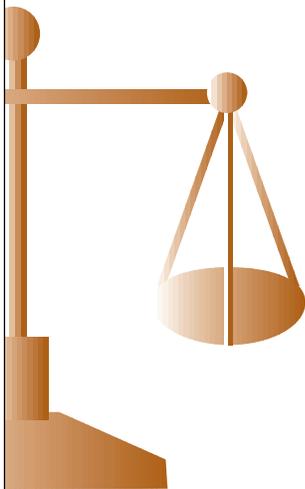
This IPC "Summit", as it has come to be known, has grown from a small informal gathering of the federal and three provincial Information & Privacy

Commissioners in the late 1980's, to a nation-wide representation of all but two provincial and territorial jurisdictions. The annual forum provides an opportunity for Commissioners to discuss matters of common interest.

The development of programs and legislation to handle health information in a number of provinces and federally, has been of interest to Access and Privacy Commissioners, particularly in light of technological advancements that allow high speed data transfers. The conference featured a very informative presentation by the developers of the Manitoba Health Information System, a system that illustrates how database management can conform to accepted privacy standards.

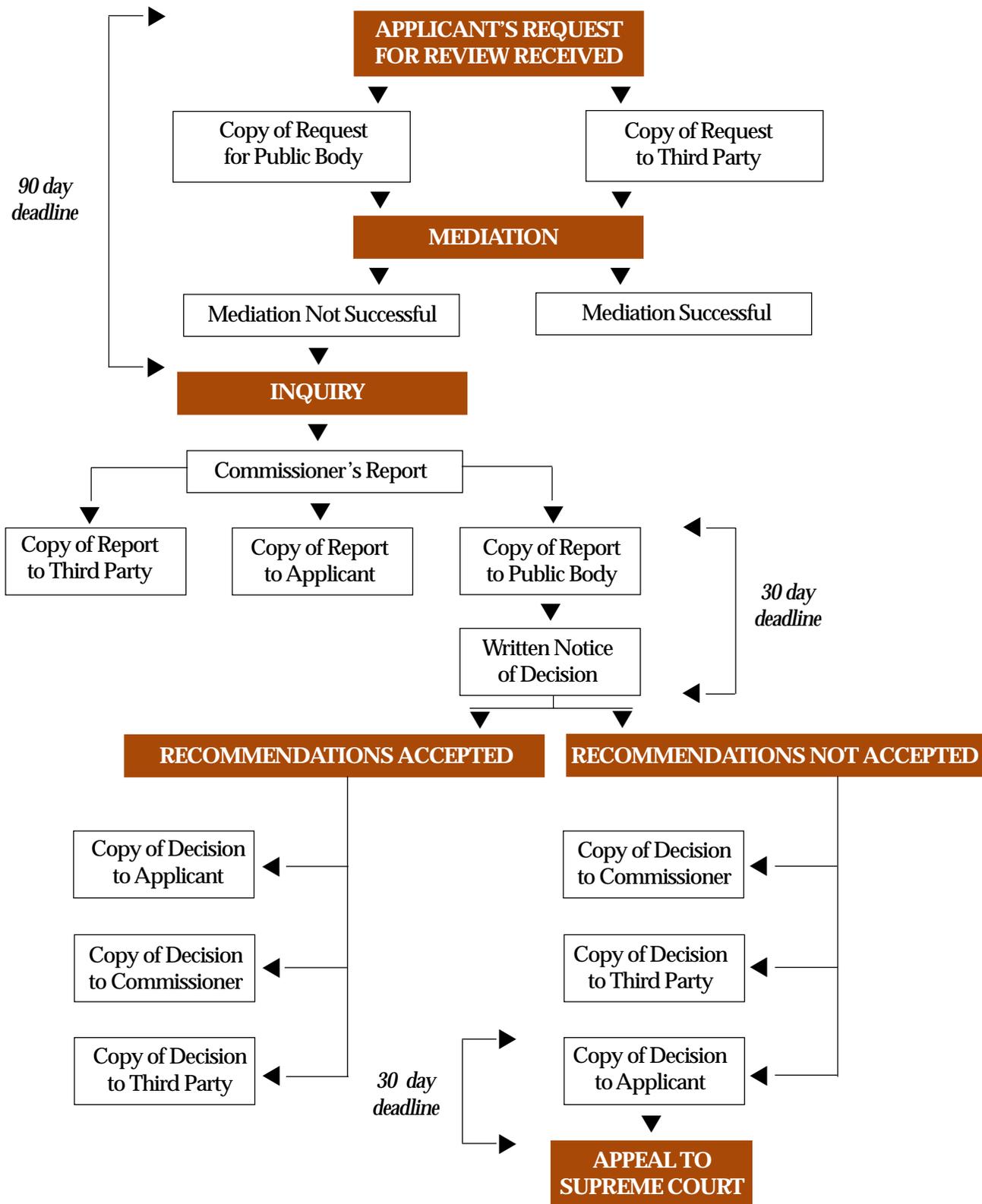
One of the important outcomes of the conference was the formation of a working group on health information. Through this working group valuable input was provided to the final report of the national advisory council on health information by Canada's Privacy Commissioners.

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Request for Review Flow Chart





In 1998 the Office of the Information & Privacy Commissioner received an unprecedented number of cases. In total, the Office fielded 36 new requests for review. Of these requests 3 were discontinued, 6 were settled in mediation and 16 proceeded to the inquiry level. A further 9 cases are still under investigation. The Commissioner also commented on 3 cases which had implications on the *Access to Information and Protection of Privacy Act*.

Request for Review: Mediation versus Inquiry

The review process offered by the Office of the Information & Privacy Commissioner includes mediation followed by the inquiry, if necessary. If the request for review is within the jurisdiction of the Office then a file is opened, information gathered, and mediation initiated. Mediation is an informal process that is used to resolve the issues brought forward in a request for review. Mediation facilitates discussions between the requester and the government body, is conducted by someone other than the Commissioner, and is completely confidential. If mediation is unsuccessful, or if the parties involved choose not to enter into the process, then the review moves to the inquiry. The Commissioner must now conduct an inquiry, which is a formal hearing process set out in the ATIPP Act. After the inquiry is completed the Commissioner makes a decision on the matter and gives his recommendations to the public body.

A selection of summaries, which are representative of the cases handled by the Office, are presented on the following pages.

Mediation Summaries

Is Your Personal Information Really Personal?

- ***Issue***

What happens when someone makes an access to information request for another person's personal information?

- ***The Act***

When a public body thinks that requested information may violate a third party's personal privacy, this person must be notified before the information is released. Notification must state that an information request has been made which may affect their personal privacy, include a description of the record, and explain that representations for non-disclosure can be made. However, if the public body does not believe that disclosure is harmful to personal privacy then they have no obligation to notify any of the parties involved and will release the records without notification.

- ***Case #1***

The Department of Renewable Resources, the public body, had duly notified a third party that someone had made an application to access information about them. When the Department refused the third party's request for non-disclosure, they approached the Office of the Information & Privacy Commissioner. A review of the public body's decision to disclose the personal information was initiated.

As part of the review process, this request was mediated. The affected party was more concerned about the reasons behind the request and its overall privacy implications than the actual disclosure of the records that had been identified to them. The third party had no idea why the request was being made

and were, therefore, unwilling to support the release of the information. Mediation helped clarify the reasons behind the information request by making the wording of the request available to the third party and answering some of their questions.

However, further mediation determined that some questions could probably only be answered by the public body directly.

The cooperation of both the third party and the public body enabled this request for review to be resolved through mediation. Such cooperation speeds up the review process, prevents a less timely, and perhaps unnecessary, inquiry by the Commissioner and more directly addresses the concerns of the requester.

Is Your Information Out of Control?

- ***Issue***

Can people correct personal information about themselves that a public body has on file?

- ***The Act***

Any person who believes there is an error or omission in their personal information may request that that information be corrected. If the public body does not correct the information they must annotate the record with the requested correction. A public body must give notice of the correction to any third party to whom that information has been disclosed. If that third party is another public body then they must correct or annotate that information. A problem arises, however, when copies of the record are distributed outside the public body's control. As the ATIPP Act does not apply to non-governmental bodies, there can be no guarantee that the request to correct information will be acknowledged.

- ***Case #2***

This case actually combines two different parts of the Act—the proper collection, use and disclosure of information, and the right to correct personal information. The request for review that the Office undertook was based on a complaint that a public

body did not collect, use, or disclose information in compliance with the ATIPP Act. However, this summary draws attention to another important aspect of the case: the ability of a person to control personal information about themselves.

The requester was concerned because a private record about themselves showed up in a Yukon Workers' Compensation Health & Safety Board (hereafter the Worker's Compensation Board or WCB) claim file belonging to an immediate family member.

All parties participated in mediation. The public body agreed to review the file and determine whether the requester's name, or the name of any other immediate family members, appeared in any other record held in the same claim file. It was also resolved that the public body would remove the record in question from their file and would correspond with all persons who had received it, requesting that it be returned. The mediator is still attending to this last point as it was agreed that WCB would advise the requester of the number of copies returned.

*Third Party: any person other than
the person who made the request*



SECTION 3 ATIPP ACT

The Yukon Workers' Compensation Health & Safety Board Management Team also recognized the broader need to put notices in all claim files that were opened prior to the ATIPP Act. These notices would alert claimants, and any other persons using the files, to bring any records "problems" to the attention of the adjudicator. Furthermore, the Management Team agreed to adopt a consistent process for information handling.

In this particular case, the requestor wanted to draw attention to a serious flaw in the record acquisition process. This concern was taken seriously by the Yukon Workers' Compensation Health & Safety Board Management Team and was mediated successfully.

Classified Conversation?

- ***Issue***

Can a conversation between two people be used for the purposes of law enforcement?

- ***The Act***

A public body is entitled to collect, use, and disclose personal information, without the person's knowledge or consent, for the purposes of law enforcement.

- ***Case #3***

An inmate requested the Commissioner to review how the Whitehorse Correctional Centre collected personal information for the purposes of law enforcement. After mediation, the inmate was satisfied that his concern would be addressed by the public body. Whitehorse Correctional Centre agreed to develop a disclaimer that all inmates being admitted would sign. Such a disclaimer would advise each inmate of the purposes for which information about them may be used, and would specifically state that information could be used for the purposes of law enforcement. Since mediation was successful the matter did not proceed to inquiry.

Inquiry Summaries

Health and Social Services

A request was made for "any draft copies" of a report prepared by consultants for the Department of Health and Social Services, the public body.

The public body had two different versions of this draft report in its custody. Upon the request, the most recent draft was released, but access to the

earlier one was denied on the basis that its release would be harmful to the business interests of a third party—the authors of the report.

Section 24 of the ATIPP Act sets out a three part test to determine if disclosure is harmful to the business interests of a third party. The public body can only refuse to disclose information when all three parts of the test are satisfied.

Public Body: each department, board, commission, foundation, secretariat, or corporation of the Government of Yukon



SECTION 3 ATIPP ACT

The public body argued that under Canadian law the draft report was copyright material of the authors and, as such, was a trade secret, protected by copyright. The public body also asserted that the draft did not become the property of the government until the consultants released the final draft in fulfillment of their contract.

Upon investigation, the Commissioner found that the draft report did not contain trade secrets as defined in the Act and noted that a draft report prepared for a public body under contract cannot be protected from disclosure by copyright. Furthermore, the Commissioner determined that the draft report became a record of the public body upon being received by the Department of Health and Social Services and no provisions of the ATIPP Act allow it to be treated differently. The public body failed to satisfy the Commissioner that there was a realistic expectation of harm to the business interests of the authors.

The Commissioner recommended that the draft report be disclosed to the applicant. The public body accepted the recommendation and made the disclosure.

Yukon Workers' Compensation Health & Safety Board

The Information & Privacy Commissioner reviewed a complaint that the Yukon Workers' Compensation Health & Safety Board (WCB), the public body, had collected and used personal information about the applicant in violation of the ATIPP Act.

Section 48(3) of the ATIPP legislation allows the Commissioner to review complaints that a public body has not "collected, used or disclosed personal information" in accordance with the Act.

The Act requires public bodies to limit the collection of personal information, without the knowledge and consent of the individual, to instances where:

- The collection of the information is authorized by an Act of Parliament or of the Legislature; or
- The information is collected for the purposes of law enforcement; or
- The information relates to and is necessary for carrying out a program or activity of the public body.

At inquiry, the public body argued that efforts to determine the applicant's eligibility for certain benefits are a legitimate activity related to a program of the public body.

The information in question included, in part, personal knowledge in the mind of an employee that did not consist of a record. Records containing personal information were collected from a third party as a result of this knowledge. However, it was brought to the attention of the Commissioner that the public body had made efforts to collect the personal information from the applicant before obtaining it from the third party.

The Commissioner found that, in this instance, the public body was authorized to collect and use the personal information in order to determine the applicant's benefit entitlement. The Commissioner also found that knowledge in the mind of an employee does not constitute the collection of personal information within the meaning of the ATIPP Act because personal information is defined in the Act as recorded information.

Government Services

A request was made for a contract bid proposal submitted to Government Services, the public body.

The public body refused to grant access to this record on the basis of section 24 of the ATIPP Act. This section requires a public body to refuse to disclose information when it is considered to be harmful to the business interests of a third party.

However, section 24 sets out a three part test to determine if disclosure is harmful. The public body can only refuse to disclose information if all three parts of the test are satisfied.

The first part of the test is that, if disclosed, the information would reveal either trade secrets or commercial, financial, labour relations, scientific, or technical information of the third party. The second requirement of the test is that the information was supplied to the public body either implicitly or explicitly in confidence. The final requirement is to establish that disclosure of the information could reasonably be expected to either:

- Harm significantly the competitive position, or interfere significantly with the negotiating position of the third party,
- Result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, or
- Result in undue financial loss or gain to any person or organization.

The requester asked the Information & Privacy Commissioner to conduct a review of the decision. The Commissioner, on review, agreed that the three criteria under section 24 were met and that disclosure of the requested information would be harmful to the business interests of the third party. The Commissioner confirmed that the public body was required to refuse access to the record.

Commissioner's Comments on the Application of ATIPP

The Commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes or programs of public bodies.

SECTION 42 ATIPP ACT

One of the roles of the Information & Privacy Commissioner is to make comments on legislation or government programs which can have an effect on the privacy or access rights of Yukoners. The Commissioner is pleased that he was able to contribute in this capacity in 1998. Two Yukon government departments approached the Commissioner for his comments on how access to information and protection of privacy affected the legislation under their control.

On a national level, the 1998 Information and Privacy Summit, held in Whitehorse, stimulated a Canada-wide initiative to safeguard citizens' right to privacy under the new national health infostructure.

Maintenance and Custody Orders Enforcement

The Department of Justice asked the Commissioner to comment on proposed changes to the *Maintenance and Custody Orders Enforcement Act*. Under both the original Act and the proposed changes, the rules governing the collection of personal information for the purposes of maintenance enforcement are quite liberal.

Although collecting third party information without the consent of those affected is inconsistent with the principles of the ATIPP Act, the Commissioner pointed out that an *overriding public interest* could justify legislative change that departed from this principle.

The Commissioner was also concerned about information that is shared with other jurisdictions. This is most commonly done to track down

individuals who have failed to make maintenance support payments. However, once information is out of the hands of Yukon public officials, our rules protecting disclosure cease to apply.

Community & Transportation Services

The Information & Privacy Commissioner was asked to comment on how the Department of Community & Transportation Services should handle information received from police accident reports. On one hand, the Department is required to develop data as part of a national safety code. On the other hand, it is concerned about using personal information that was collected for a different purpose.

The Information & Privacy Commissioner met with the Deputy Minister, who agreed to examine the problem. The Deputy Minister resolved to review the relevant legislation and RCMP agreements. Following research and review of similar practices in other jurisdictions, the Department will develop a proposal for data sharing. At that time the Commissioner may be invited to review and comment on the proposal.

Advisory Council on Health Info-Structure

The Advisory Council on Health was established to provide advice and recommendations for a national health info-structure. At the June 1998 Information and Privacy Summit in Whitehorse, the need to establish a "privacy voice" in the national health information infrastructure was identified. On behalf of the Commissioners from across Canada, the Yukon Information & Privacy Commissioner wrote to the Honorable Alan Rock, Federal Minister of Health, expressing these concerns. The Yukon Commissioner, and other Canadian Privacy Commissioners, stressed the need to include a privacy specialist on the Council and the need to establish a privacy working group to comment on privacy issues relating to the development of a national health program. These initiatives were accepted and implemented. As a result, there has been substantial improvement in both privacy protection measures and privacy standards in the new national health info-structure.



Statistical Summaries

Complaints and Requests for Review

Public Body	Number of Cases	
	1998	1997
Community and Transportation Services	4	1
Education	6	1
Executive Council Office	1	-
Government Services	1	-
Health and Social Services	1	2
Justice	4	1
Public Service Commission	4	2
Renewable Resources	2	1
Tourism	2	-
Whitehorse Correctional Centre	1	1
Yukon Housing Corporation	1	3
Yukon Workers' Compensation Health and Safety Board	9	5
TOTAL	36	17

Means of Settlement

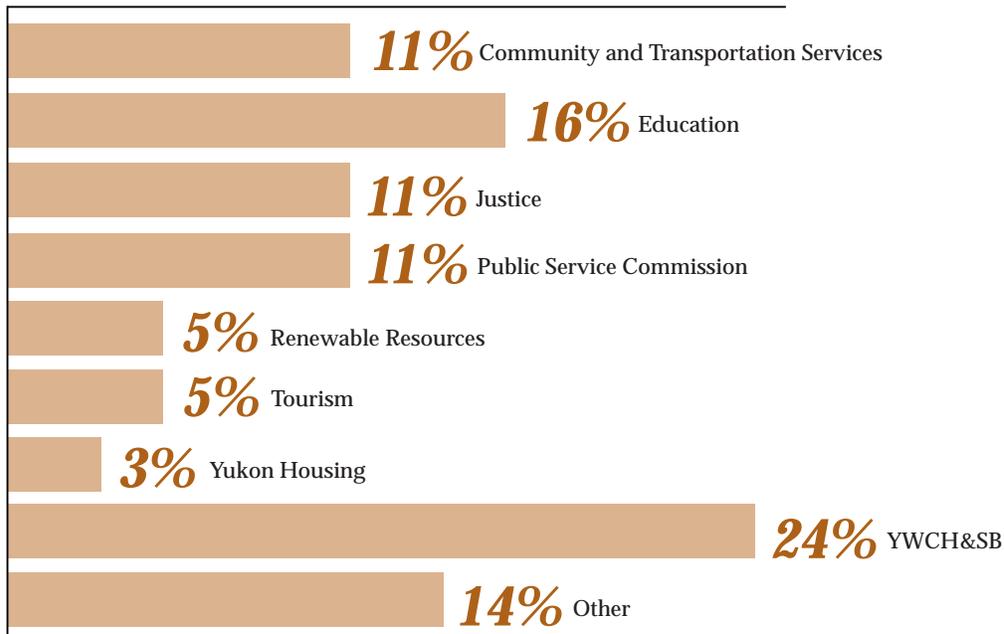
Settlement Type	Number of Cases	
	1998	1997
Inquiry	16	4
Investigation	9	1
Mediation	6	7
Discontinued	3	4
Section 42 Comment	2	-
TOTAL	36	16

Types of Cases

Description	Relevant Section of the Act	Number of Cases	
		1998	1997

10

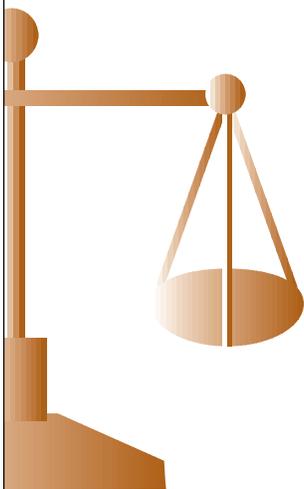
ATIPP Cases by Public Body





Web Site Links

- **Yukon Office of the Ombudsman.** Information about the Yukon Ombudsman and Information & Privacy Commissioner.
<http://www.ombudsman.yk.ca>
- **Government of Yukon.** Home page of our local government. Links to Yukon facts, travel, government, government leaders, and news.
<http://www.gov.yk.ca/>
- **Alberta Information and Privacy Commissioner.** Audit done by Alberta pertaining to the privatization of the provincial government's Motor Vehicle Registries.
<http://www.oipc.ab.ca/audits/welcome.htm>
- **Alberta Freedom of Information and Protection of Privacy Publications.** Several on-line publications on privacy. Of particular interest is the "Contractors' Guide to the Freedom of Information and Protection of Privacy Act"-a pamphlet that explains to contractors to the Government of Alberta how the Freedom of Information and Protection of Privacy Act affects them.
<http://www.gov.ab.ca/foip/pubs/index.html>
- **National Conference on Health Info-Structure.** The Health Info-Structure is a Health Canada initiative that uses information and communication technologies to modernize the health system.
<http://www.hc-sc.gc.ca/ohih-bis/>
- **Bill C-54.** Protection of Personal Information and Electronic Documents Act and related links.
<http://www.privcom.gc.ca/hotlinksc54.htm>
- **Canadian Standards Association (CSA).** The CSA is a not-for-profit, non-statutory, voluntary membership association engaged in standards development and certification activities. In 1996 the CSA developed its Model Code for the Protection of Personal Privacy (Q830-96), which provides 10 basic principles based on the OECD Guidelines.
<http://www.media-awareness.ca/eng/issues/priv/laws/csacode.htm>
- **Organization for Economic Co-operation and Development (OECD).** A group of 29 member countries that provide governments with a setting in which to discuss, develop and perfect economic and social policy.
<http://www.oecd.org/>



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