



# In all fairness

2014 Annual Report of the Yukon Ombudsman



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Whistleblower legislation, passed in 2014, enables employees of public entities to disclose wrongdoings and protects them from reprisals by empowering the Ombudsman to investigate complaints.

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## Improving process, performance, services

I am pleased to provide my second Annual Report as Ombudsman.

The Ombudsman plays an important role in ensuring the Yukon public sector carries out its duties in a responsible, accountable manner. That role is to promote fairness in public service delivery. A member of the public who encounters unfairness while accessing public services can come to our office and make a complaint. Our staff will then work with the authority involved in the complaint to remedy any unfairness to improve service delivery.

The public sector does not set out to provide services unfairly. Unfairness occurs for a number of reasons including authorities delivering services with limited resources in a very complex structure. In many cases authorities are able to resolve unfairness brought to their attention. In other cases, the Ombudsman can help identify whether unfairness occurred and recommend a remedy. The authorities we work with are receptive to our feedback, which demonstrates a joint commitment to ensuring that public services are delivered fairly.

The role of the public is equally important to ensuring fairness in public service delivery given that the work of the Ombudsman is complaint driven. If concerns about unfair treatment are not brought to the Ombudsman's attention, service delivery may not improve.

In 2014, few complaints were received that were within our jurisdiction to investigate. This suggests I need to do a better job of informing the public about the Ombudsman's role and the kind of complaints we are able to investigate.

The stories in this Annual Report are intended to raise awareness about our work.

### How we did on 2014 Goals

One of my goals in 2014 was to improve the time it takes us to address complaints. When I examined our existing processes – conducting full investigations for each complaint file – I realized they were not conducive to timely complaint management, given our limited resources.

We learned that Ombudsman offices in all other jurisdictions used a leaner, informal complaints resolution process, and conducted few full investigations. As a result, we've adopted a new Early Case Resolution (ECR) process to help us manage *Ombudsman Act* complaints, and have divided our office into two teams.

The ECR Team, will focus on working with complainants and authorities to address complaints received under the *Ombudsman Act* in a timely manner. This team will also be responsible for settling complaints using the ECR process for complaints and requests for review received under the *Access to Information and Protection of Privacy Act* (ATIPPA) and the *Health Information Privacy and Management Act* and the *Public Interest Disclosure of Wrongdoing Act* once they are brought into force. We have established the goal of 90 days for completing an ECR file.

The Investigation and Compliance Review team, will be responsible for conducting full investigations when necessary.

The informal nature of the ECR process also helped us with our goal of building relationships with authorities to promote fairness. In 2015 we intend to develop an outreach strategy that will include helping authorities recognize and remedy unfairness in service delivery.

My last goal was to demonstrate accountability for our performance. In 2014, the office began gathering statistics on our performance. Those statistics can be found in this Annual Report and will be included in future

Annual Reports to facilitate measurement of our performance over time.

### Whistleblower Legislation Enacted

In December 2014, the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) was passed. As the Ombudsman is the Public Interest Disclosure Commissioner (PIDC), the office will spend the beginning of 2015 preparing for implementation.

The PIDWA enables an employee of a public entity to make a complaint about a wrongdoing or reprisal to the PIDC. The PIDC may investigate the complaint and make recommendations to a public entity to remedy any wrongdoing or reprisal found. I was very pleased to see the addition of the arbitrator provisions added to the PIDWA as it provides greater certainty that employees will be protected from reprisal.

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

As required by the *Ombudsman Act*, I am submitting this 19<sup>th</sup> Annual Report to the Honourable David Laxton, Speaker of the Yukon Legislative Assembly, who will in turn present it to that body.



Diane McLeod-McKay  
Ombudsman

**Case Summaries** These stories are good examples of how our office helps authorities, such as Yukon government departments, improve service through resolving fairness problems brought forward by Yukoners.

## Committed to resolving complaints quickly

We receive many calls from individuals who say they have been treated unfairly. In some cases we're able to resolve the issue quickly with a simple phone call. Here is an example of one such complaint, in which staff holidays caused a missed payment.

An individual contacted our office and said he was expecting reimbursement of certain expenses incurred on behalf of a child in care. He indicated that he could not get an answer from Health and Social Services (HSS) about when he would receive the cheque.

We contacted HSS's staff who informed us that the person responsible for processing the payment was away and arrangements had not been made to deal with the matter in her absence. HSS confirmed it had all the information required to issue the cheque and took steps to have it issued that day.

When we receive a complaint that cannot be resolved with just a phone call or two, we will request a complaint form be completed. We will then open a file and transfer it to the ECR Team who will try and settle the complaint in a timely manner using our new informal process.

See page two for more examples of complaints we resolved using our ECR process.



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After waiting months for a specific physician to return from holiday, a Yukoner learned that he could have had his benefits application submitted by a different physician.

### Lost benefits recovered

An individual complained to the Ombudsman about a dispute with Health and Social Services (HSS) over when he should begin receiving the Yukon Supplementary Allowance (YSA).

YSA is a financial benefit available to social assistance recipients who are unable to work due to a serious medical condition. A physician must complete and submit the application to HSS, who then determines eligibility.

In August the individual picked up the YSA application from HSS. He advised HSS his family physician was away until October so he wouldn't be able to submit the application until that date.

His physician, on his return in October, submitted the completed application to HSS. HSS confirmed he was eligible for the allowance starting in October instead of August. He didn't think it was fair his allowance started later because the delay in submitting the application was caused by something out of his control so he contacted us for help.

When we spoke with HSS we learned that the application didn't need to be submitted by the individual's own physician. HSS keeps a list of physicians who will see an individual for the purpose of completing the application. HSS didn't tell the individual this when he told them his own physician would not be available. HSS agreed to backdate his application and indicated they are exploring ways to improve the YSA application process.



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Properly addressing accounting errors is an important part of providing quality services.

### Mix up in money fixed

An individual complained to the Ombudsman that the Maintenance Enforcement Program (MEP) had failed to credit him with \$1056.37 deducted from his paycheques and submitted by his employer to MEP under a garnishing order.

His employer had provided MEP with a statement showing the amount it submitted but nothing changed. We asked MEP to review the file. MEP confirmed that the money received from the employer was not properly credited towards the individual's maintenance arrears. MEP apologized for the error, adjusted the account and reimbursed the overpayment.

## Investigations find unfairness in service delivery

Two long-standing investigations were completed this year. Unfairness was found to have occurred in both cases:

### Decision-making procedure must be fair

An individual complained to our office that Advanced Education (AE) in the Department of Education had unfairly terminated her from one of their programs. The program was designed to assist individuals on Employment Insurance start a business in order to become self-sufficient. We agreed to investigate whether the procedures used by AE to make the decision to terminate the individual from the program were fair.

Our investigation found that in coming to a decision AE did not use a fair process. Where there are significant consequences of a decision for an individual, as in this case, a fair process requires the person directly affected by the decision be given adequate notice that a decision is going to

be made. The notice should include brief information about who is involved, what the issues are, relevant information about the case and the potential consequences or outcomes. Notice has to be provided in sufficient time to allow the person a reasonable opportunity to respond.

In this case the individual did not know the decision to terminate her from the program was going to be made and was not given an opportunity to give her side of the story. She was simply told that she was terminated from the program.

AE accepted our recommendation about the need to ensure the requirements for procedural fairness are met when making decisions that affect individuals in the course of administering a program.



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A policy change by the Yukon Liquor Corporation left a Yukoner with fewer benefits than expected from her original liquor licence – and the expense of a new one.

### Unfair to incur costs when wrong information received

An individual who had a liquor licence to sell beer and wine also wanted to sell spirits. She approached Yukon Liquor Corporation (YLC) and learned that a new liquor licence application was required to be able to sell spirits. This prompted a complaint to our office.

Several years prior, the individual, on advice from YLC, applied for a licence limited to beer and wine sales on the understanding that certain benefits would be realized. As it turned out, a policy change had removed those benefits. Given that the individual only applied for the licence after having

received inaccurate advice provided by YLC she felt it was unfair to have to go through a new liquor licence application process and incur the costs of doing so. We found there was no unfairness in requiring the individual to apply for the new liquor licence as this was a requirement in the *Liquor Act* and *Liquor Regulations*. However, we found it was unfair to require the individual to incur the costs of reapplying for a new liquor licence given she had acted on the advice from YLC. We recommended YLC contact the individual directly to remedy the unfairness.

# 2014 Annual Report Ombudsman accountability metrics

## File management goals

- see diagrams

## Proactive compliance work

- delivered one *Ombudsman Act* general awareness presentation
- met with senior officials of authorities for annual review

## Skills development

- two national meetings
- one presentation
- one course
- one workshop
- one job shadowing at Nova Scotia Ombudsman's office to learn Early Case Resolution procedure

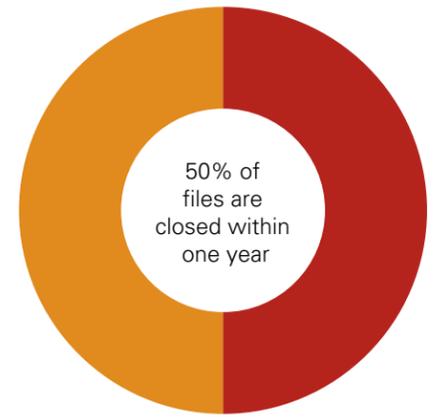
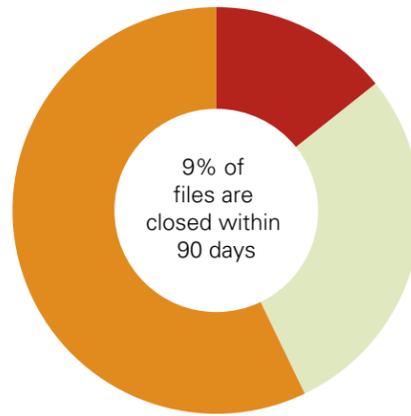
## Complaints

No official complaints (in writing) were received in 2014

Seven unofficial complaints were received:

- three about the length of time to complete an investigation. We are working to address timelines to complete investigations by implementing our new ECR procedure for *Ombudsman Act* complaints
- one about the findings of an investigation. The complainant was not satisfied with our finding that the complaint was unsubstantiated
- two about the decision to discontinue an investigation. After lengthy involvement investigating these complaints, one was settled and the other subject to an appeal process better suited to address the complaint
- one about a decision not to open an investigation. The passage of time from the actions complained about and the decision by the complainant not to address the matter in another forum prior led to the decision not to investigate

## File management goals



## Settlement files

- Closed within 90 days
- Closed in over 90 days
- Still open – under 90 days

## Investigation files

- Closed within one year
- Still open – under one year

## Files opened in 2014 by authority

Authority	Early Case Resolution	Investigation	Total	*Formal recommendations	Outstanding
Community Services		2	2		
Economic Development					
Education				1	0
Energy, Mines and Resources					
Environment					
Finance					
Health and Social Services	1	2	3	1	0
Highways and Public Works		1	1		
Justice	1	1	2		
Public Service Commission		1	2		
Tourism & Culture					
Women's Directorate					
Yukon College					
Yukon Hospital Corporation					
Yukon Housing, Liquor and Lotteries				1	0
Yukon Workers' Compensation					
Health and Safety Board					
Child and Youth Advocate					
Yukon Energy Corporation					
Yukon Human Rights Commission	1	1	1		
<b>Total</b>	<b>3</b>	<b>8</b>	<b>11</b>	<b>3</b>	<b>0</b>

\*Formal recommendations are those made by the Ombudsman in a formal Investigation Report issued in 2014.

## Budget summary

This budget summary is for the fiscal year for the Office of the Ombudsman, which runs from April 1, 2014 to March 31, 2015. The prior fiscal year is shown for comparison purposes. I have modified the way we report our budget to align with how budget is allocated. Budget is allocated for operational expenses which include personnel and other. The "other" category includes things like rent, contract services, supplies, travel, and advertising. Budget is also allocated for capital expenses which include things like technology and furniture. Personnel and capital are reported jointly for both the Office of the Ombudsman and Information and Privacy Commissioner (IPC). The "other" category is the budget allocated specifically for the operations of

the Ombudsman's Office and the IPC's Office. The increase in capital budget for 2014 was allocated in order for the Offices to obtain a case management system to help us better manage our case files and perform our work more efficiently. The process to acquire a case management system has taken longer than expected. Therefore, we were unable to purchase a case management system in 2014 and did not spend the money allocated, which was \$100,000. This money has been added to our 2015/16 budget as we anticipate being able to purchase the case management system in the next fiscal year. The small increase to the personnel budget was a cost-of-living increase for staff.

2013/14	
Personnel (combined)	\$628,000
Other (Ombudsman's office)	\$97,000
Other (IPC's office)	\$99,000
Capital (combined)	\$2,000
<b>Total</b>	<b>\$826,000</b>

2014/15	
Personnel (combined)	\$645,000
Other (Ombudsman's office)	\$81,000
Other (IPC's office)	\$134,000
Capital (combined)	\$112,000
<b>Total</b>	<b>\$972,000</b>

## Early Case Resolution (ECR) Procedure

1. After a written complaint is received by the Office of the Ombudsman and a decision is made to open a file to address the complaint, the file is assigned to an Investigator/Mediator who is part of the ECR Team.

2. The Investigator/Mediator will notify the authority about the complaint and will also notify the complainant that the complaint is being addressed through the ECR procedure.

3. A meeting will be arranged with the authority to determine if there is any unfairness associated with the complaint. If unfairness is found, an agreement will be sought with the authority on how to remedy the unfairness. During this process, the complainant will be kept informed about any unfairness found and what remedy is being considered.

4. If agreement is reached with the authority, the Investigator/Mediator

will set out the agreement in a letter and forward it to the authority for confirmation. Once confirmed, the Investigator/Mediator will communicate the agreement reached with the complainant and follow up with the authority to ensure the terms agreed to are met.

Our goal is to resolve all ECRs within 90 days from receipt of a complaint.

All written complaints received by the Office of the Ombudsman will be managed using the ECR procedure unless the Ombudsman decides there are exceptional circumstances that would warrant a full investigation. A full investigation may occur if a complaint does not lend itself to early resolution due to the seriousness of the complaint, the complexity such as a systemic complaint involving multiple complainants, or a complaint could not be resolved through the ECR procedure in a timely manner or at all.

## Ombudsman Act – 2014 activity

Resolved at intake – no file opened	
Non-jurisdiction	20
Referred-back	50
Requests for information	42
Informal complaint resolution	9
<b>Total</b>	<b>121</b>
ECR files opened	7
Investigation files opened	3
Other files opened (legislation comments)	1
<b>Total files opened in 2014</b>	<b>11</b>
Files carried forward from prior years	51
Files closed	35
<b>Files to be carried forward</b>	<b>27</b>