1980 ANNUAL REPORT OF THE OMBUDSMAN

TO THE LEGISLATURE OF BRITISH COLUMBIA

British Columbia. Office of the Ombudsman.
Annual report of the Ombudsman to the Legislature of British Columbia. —1st (1979)-

Cover title: 1979, Annual report of the British Columbia Ombudsman.
ISSN 0226-8930 - Annual report of the Ombudsman to the Legislature of British Columbia.

1. British Columbia. Office of the Ombudsman.
I. Title. II. Title: Annual report of the British Columbia Ombudsman.

JL429.5.04B74 354'.711'0091

Legislative Assembly of British Columbia

Office of the Ombudsman

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone: (604) 387-5855
Zenith 2221

May, 1981

The Honourable H. W. Schroeder
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, British Columbia

Mr. Speaker:

I have the honour and duty to submit to you my Annual Report to the Legislative Assembly in accordance with section 30(1) of the **Ombudsman Act**, R.S.B.C., 1979, c. 306. This Second Annual Report covers the period of January to December, 1980.

Respectfully yours,

Karl A. Friedmann
Ombudsman.

TABLE OF CONTENTS

HIGHLIGHTS OF 1980 ANNUAL REPORT

- This is my second annual report but the first to cover a full year of operation from January to December 1980.
- I received 3,840 new complaints in 1980 which represents a much larger volume of complaints than had been expected. My assistants and I investigated and closed 3,941 complaints in 1980 bringing the total since inception of the Ombudsman Office in October 1979 to 4,197 closed complaints.
- My hard pressed staff received valuable assistance from summer students, student interns and volunteers who helped me cope with the large and unexpected load of complaints. I requested and Treasury Board approved an increase in staff bringing the combined total to 34 staff members for the two Ombudsman offices in Victoria and Vancouver. Watch out Jack Webster: a new army of bureaucrats.
- The Honourable Evan Wolfe, Provincial Secretary, successfully met the Ombudsman's difficult challenge to overcome the rigidity of bureaucratic rules and remedied a long standing injustice suffered by a former public servant (Complaint Summary 80-065).
- A number of administrative practices and procedures were changed as a result of my investigations and recommendations. Information provided by authorities to their clients about application and appeal procedures was made more readily available. (See Part IV).
- Established good and efficient working relationship with the great majority of government authorities. There are a few hold-outs, the Attorney General, the Public Trustee and the Workers' Compensation Board.
- Games lawyers play: the "jurisdiction game" played by a handful of lawyers in the Attorney General's Civil Law Division. Aim: slow down the Ombudsman. Have they never heard of "Justice delayed is justice denied"? For details move to Part III: use the fast lane.
- For the reader in a hurry: the "must read" complaint summaries: CS80-029, CS80-036, CS80-064, CS80-065, CS80-066, CS80-073, CS80-075, CS80-111
- I am bringing several specific concerns to the Legislative Assembly's attention in which I have not been able to achieve satisfactory results: see "Age Discrimination in Social Assistance" (Part I) and "The right to be heard—boundary extension of the Village of Sayward" (Part III. Complaint Summary CS80-064).
- While the workload of the office is still very heavy, present improvements allow me to take on additional authorities in the Schedule of Authorities to the **Ombudsman Act** should the Government and Legislative Assembly decide to proclaim additional sections of the Schedule. In terms of popular demand for proclamation, sections 4 to 7 might be next, although I have received many recommendations for section 11 also.

PART I

GENERAL COMMENTS

A. ADMINISTRATIVE JUSTICE

Justice is a universally accepted value of most human societies. Administrative justice is a recent variant and addition to our norms; it focusses attention on the ever increasing interactions between the individual and government bureaucracy. Administrative justice is no more and no less than our continuing search for ways and means of ensuring justice for the citizen in his many and inevitable dealings with public authority. Justice and administrative justice are important. One political philosopher recently proposed that the measure of our cultural achievement be the degree to which we offer protection against arbitrary authority:

> *"No institutional order can be perfect, and least of all, can it stay or seem perfect to those who must live under it. On that account there is always a need for protection against arbitrary authority, an arbitrariness whose specific content and definition change with changing historical circumstances. Essential to this protection is the possibility of effective criticism and complaint. Indeed, this possibility may be the best criterion with which to judge human societies".*[1]

The Ombudsman is one among several institutions developed to get our society closer to the ideal of administrative justice. The other foundation for the Ombudsman idea is our democratic tradition. Together with other institutions of our democratic system, the Ombudsman works for the creation and maintenance of a political and bureaucratic environment that conforms to the democratic ideal and enhances our democratic political culture. Our "democratic vision" was aptly described by Professor William Riker:

> *"Democracy is self-respect for everybody. Within this simple phrase is all that is and ought to be the democratic ideal. Man's self-respect is an understanding of his dignity. It is the value he sets on his own full development, the condition and result of his self-realization. It is his recognition, with neither pride nor groveling, of his indispensability to society and his insignificance in the universe. Most of all, within the limits society allows, it is a function of his self-direction and self-control, of the choice and living of the life he thinks best.*
>
> *If self-respect is the democratic good, then all things that prevent its attainment are democratic evils. Servility, which is the essence of self-contempt, and the subordination which engenders it are, therefore, the ultimate evils in the democratic scheme. Servility and pride—for pride feeds on the servility of the humble and is naught but servility expressed in the person who exacts it from others—are the antithesis of democratic self-respect. By them men devalue their persons and disfigure their souls".*[2]

Ideal and reality are often far apart. Together with others, it is the Ombudsman's task to bring the citizen's bureaucratic experience closer to the ideal of democracy. That means that the Ombudsman watches that public authorities act on the basis of law and within the law. The Ombudsman is neither the only nor the main controller of legality of official action. The Courts play that role. However, the Ombudsman looks at a large number of official acts and probes that public authorities act as a minimum within the law. In addition, the Ombudsman reminds officials that in the pursuit of public policies, authorities must give affected individuals fair consideration and treat them correctly and with tact. Judge Kirchheiner, a Dutch observer, had this to say about the standards applied by the Swedish Ombudsman to actions of public officials:

> *"The rule to be applied by the Justitieombudsman in such occasions demands from the official a serious and profound consideration of the actual situation of his fellow citizen, a permanent consciousness of his fellow men. And this may be typical of Swedish culture: a consistent attempt is made to approach every problem from the human angle. The strict legal rule to which officials and members of the judiciary are required to conform embodies a considerable measure of civics: a characteristic question of mentality. The objective rule of behaviour for judges and officials has developed into a requirement concerning mentality; measures designed to influence behaviour have developed into measures influencing mentality and even to an appeal to one's sense of humanity in dealings with one's fellow men. In this way the Justitieombudsman has acquired a reconciliatory task: frustration is relieved, situations of conflict are re-*

1. Barrington Moore, Jr., Reflections on the Causes of Human Misery and upon Certain Proposals to Eliminate Them, Boston, 1972, p. 114.

2. Riker, W.H., Democracy in the United States, 1965, p. 17.

solved, breakdowns of communication are made good, the individual's trust in his fellow man is restored".[3]

The British Columbia Legislative Assembly has expressed such a code of administrative justice in section 22 of the **Ombudsman Act** and it provides:

A decision, recommendation, act or omission of an authority

(1) is expected to be in accordance with the law;

(2) must not be unjust, oppressive, or improperly discriminatory;

(3) must not be based on a mistake of law or fact and may not be based on irrelevant grounds or considerations;

(4) must not be based on procedures that are arbitrary, unreasonable or unfair;

(5) must not be based on a statutory provision or other rule of law or a practice that is unjust, oppressive or improperly discriminatory;

(6) should occur only for a proper purpose;

(7) must be accompanied by adequate and appropriate reasons to the citizen;

(8) must not be negligent or improper;

(9) must not be unreasonably delayed.

It is not an easy task to translate these statutory provisions and the ideals underlying them into reality. Just declaring right and wrong does not achieve a lasting solution. As Ombudsman I try to bring the public official and the complainant closer together so that each will better appreciate the other's position. I expect reason and reasonableness on both sides and most often I find such reasonableness which is reflected in the large proportion of complaints that are resolved before I need to resort to pronouncing formally on any administrative wrongdoing. Resolution of conflict and reconciliation between citizen and official are part of the search for administrative justice.

3. Kirchheiner, H. H., **Ombudsman en Democratie**, 1971, p. 302 (Summary in English).

B. ESTABLISHING THE OMBUDSMAN'S EFFECTIVENESS

The Office of the Ombudsman is relatively new to British Columbia. Because of this, the Ombudsman is bound to encounter some skepticism and opposition among those whose conduct he must investigate and question. I am reminded of Machiavelli's observation on the fate of new systems:

"It must be remembered that there is nothing more difficult to plan, more doubtful of success, nor more dangerous to manage than the creation of a new system. For the initiator has the enmity of all who would profit by the preservation of the old institution and merely lukewarm defenders in those who would gain by the new ones."

Machiavelli "The Prince" (1513)

In the face of such dire expectations I believe I have received an extraordinary amount of goodwill and cooperation from ministry officials and other agencies, as can be seen from comments on ministries, from complaint summaries presented in this report, and from the number and proportion of complaints that are resolved before an investigation reaches the point where a formal finding must be made.

In any large or complex organization such as government ministries errors are bound to occur, but if they are quietly corrected no more needs to be said or done. Should the errors recur or should a pattern of erroneous decision emerge, something more is called for: some rule, practice or procedure must be changed to prevent the recurrence of the error. In my view, the identification of such patterns or trends is an extremely important function of my Office. Not only can this help the public by removing ongoing causes of friction or annoyance, but it can help ministries and other authorities to improve their efficiency and effectiveness.

Accordingly, I have paid attention to such changes and I report separately on them in Part IV of this Annual Report. Most of these changes are probably minor in themselves. I hope that over time the cumulative effect will be noticeable.

C. RECURRING GENERAL PROBLEMS

I wish to draw attention to a number of general problems which have emerged repeatedly as concerns in complaint investigations.

Holding public officials to their commitments

Public officials must by law or regulation make many decisions. They also have discretionary powers to promise specific action or undertake other commitments. I received many complaints from citizens who felt that commitments were not kept. I will not comment on the merits of each of these complaints in this Annual Report but I wish to clarify by citing some examples, how I, as Ombudsman, approach such complaints.

Complainants in the East Kootenays came to me with a tape recording of a Minister's speech made more than 10 years ago, in which the Minister made a solemn commitment that all those farmers and ranchers who were about to be displaced by the Libby pondage would get replacement land and would be no worse off after the flooding of their valley than before. Some claims were still outstanding many years after the commitment had been made. In this instance I assisted complainants in moving government officials towards a settlement. The Minister's commitments were broad and difficult, and some feelings of having been betrayed linger on.

A Cabinet Minister signed a letter making a commitment for financial support of a non-profit organization. The Ministry later reneged on the commitment and when questioned by the Ombudsman, used the following excuse: all such commitments are, of course, subject to funding in the budget; since the Ministry did not ask for or get such funds, it is not bound by the Minister's letter of commitment. I believe that written commitments made by a Minister do indeed commit the Ministry. (I refrain from mentioning details of this case as it was still open at year-end.)

Two government agencies negotiated for a number of years with a private citizen and his company over a joint development project. Implementation of the project was delayed for a long time, through no fault of the complainant. The individual negotiated in good faith, never received any written commitments, and relied mostly on the word and integrity of government officials. Not only has he spent considerable sums of money in the planning process, but he also missed alternative business opportunities while waiting for the various government agencies to get their program together. Now the agencies tell him he is "out of luck" and they don't consider that the government has any obligations towards him. (This case, too, is still under consideration.)

Ministers often are called upon to make commitments for the government. When Ministers change portfolios or leave government, their successors often are unaware of previous commitments or do not feel morally bound by them. From the viewpoint of the public, the commitment has been made in the name of the Province of British Columbia, and it makes no difference to them which individual signed or made the commitment. In a case summarized below in Part III under CS80-064 the complainants had received written assurances over more than a decade from previous Ministers in the Municipal Affairs portfolio that they would be consulted before the Ministry would make a decision on whether a neighbouring municipality's boundaries could be extended to annex the area where my complainants resided. I would like to believe that Ministers will do their best to honour commitments of their predecessors in office and that public servants will bring such commitments to the attention of newly appointed Ministers. There are general political or electoral promises which I, of course, do not include here. The latter are honoured or changed in the political process. My concern here is with specific administrative commitments.

A last case illustrating this recurring problem is summarized in Part III under CS80-073. A public-spirited couple in the Interior negotiated in good faith an agreement with the Ministry of Transportation and Highways in 1966. To save the Ministry money, they were willing to sell some 19 acres of land to the Ministry under two conditions which the Ministry negotiator accepted in writing: (1) the land would not be sold to the public and (2) the land would be used as a roadside park or campsite. Over several years, the couple experienced considerable distress as they observed the Ministry's apparent attempts to circumvent the terms of the agreement. I will not detail all attempts made; they are summarized elsewhere. I was even more amazed when Ministry officials refused, for a long time, to accept or acknowledge that they had done anything wrong. In the end an apology was offered after the Deputy Minister had intervened, and a way was found in 1980 to keep the commitment by transferring the land to the Ministry of Lands, Parks and Housing.

As Ombudsman, I must do my utmost to hold public officials to their commitments so that the government's word is not devalued and debased in the eyes of the citizen. The government expects, and will enforce when necessary, the citizen's compliance with the law. Voluntary compliance depends to

a considerable degree on the citizen's perceiving that those in power and office also comply with the law, and honour official commitments. There are, of course, legally enforceable contracts. The commitments I have in mind here are either not formal contracts or are too cumbersome or too costly to enforce through the legal process. Should a government agency or official have to withdraw from a commitment for a valid reason, the agency should explain its dilemma and seek a new arrangement with the consent of the persons affected. That is the only honourable way out of a commitment.

Information about appeals

A frequently observed weakness in the administrative practices of ministries, boards and commissions is the failure to provide the public with adequate information about rights, in particular rights to challenge, question or appeal a decision to a higher authority. I have specifically mentioned in this report the cases of the Ministry of Human Resources (CS80-050) and the Workers' Compensation Board (at page 65). Both have accepted at least some of my recommendations and have thus improved the flow of information and their service to their clientele. Some officials desire to keep appeal information a secret for fear that the public will increasingly challenge their rulings. That is the wrong attitude. If there is merit to a challenge, the decision ought to be reconsidered. If a challenge is without merit that will become apparent during the appeal. While any appeal mechanism costs money and other public resources, there are at least two benefits worth emphasizing: the citizen will have his "day in court" (and sometimes won't have to call on the Ombudsman) and a Ministry will have an opportunity to review the operation of its decision-making procedure.

Expropriation of land

Owning a piece of land is the British Columbian's pride and joy. It is his share of "paradise" or "lotus land", as other Canadians call it with a good-natured combination of derision and envy. A government that expropriates private property does so at considerable risk. An owner feels strongly about his piece of land. Expropriation procedures and associated practices in British Columbia are clearly in need of reform. I am not in a position to make specific recommendations at this stage. Several reports are in the government's hands that outline problems in detail. From the complaints I have received and from the administrative practices I have observed, I conclude that something needs to be done soon about our expropriation laws, procedures and practices as well as other forms of land acquisition and disposition.

Reasons for decisions

Decisions from public authorities often reach the public without being adequately explained. As Ombudsman, I must point out to public officials that it is good public administrative practice to give reasons for decisions to persons affected by such decisions. It also is good common sense. An unexplained order is offensive to an intelligent person. A variation of this problem is the decision that is offered with only some of the reasons; this practice may arise through a misplaced concern for the well-being of the recipient decision ("It would upset him too much to know the truth") or as an attempt to conceal the real reasons behind a decision because those real reasons cannot stand up to scrutiny. Reasons offered for a decision should be adequate and complete, and stated so as to assist the recipient in understanding the statutory authority upon which they are based, the necessity of or justification for the decision, and the facts as seen by the authority. Many complaints to the Ombudsman would not have been necessary if adequate, appropriate and complete reasons had been given with decisions.

Public participation in governmental decision-making

The public's demand for participation in the government's decision-making process has swept across all ministries. Some laws and policies of the Province formalize participation rights in the process of making decisions on public issues. The courts have developed and enforced the concept of fairness, which requires that public authorities exercising judicial and quasi-judicial functions must observe the rules of natural justice. Recently the courts have extended this concept to include **administrative** decisions affecting a person or groups of persons.

De Smith in his book **Judicial Review of Administrative Action** has commented:

> *"That the donee of a power must 'act fairly' is a long-settled principle governing the exercise of discretion, though its meaning is inevitably imprecise. Since 1967 the concept of a duty to act fairly has often been used by judges to denote an implied procedural obligation. In general it means a duty to observe the rudiments of natural justice for a limited purpose in the exercise of functions that are not analytically judicial but administrative."*

The courts in a number of cases have said that the duty of fairness requires that administrators disclose the substance of the information to be relied on and give an opportunity to the parties affected to make representations before a final decision is made.

Many complainants appeal to the Ombudsman in their attempts to be heard **before** a decision is made. Some authorities welcome the public's imput. I believe the Ministry of Forests is in the process of expanding public consultation as mentioned on page 36). Other ministries, however, are more defensive. As Ombudsman, I try to persuade authorities that they should hear what the public has to say. The public is often more knowledgeable than it is given credit for; at the very least, members of the public usually know how a prospective decision will

affect them as individuals. Acceptance of public policies increases, in my view, with the degree to which a fair hearing is granted to members of the public who may be affected by such policies. Beyond utilitarian arguments, I support the principle that public participation in the decision-making process is the one approach most consistent with the democratic ideal.

Public access to government documents

I have received many complaints about denial of the public's right to information on government business in general, or specifically on matters affecting them as individuals. A few such cases are reported under specific Ministries, such as CS80-004, CS80-011, CS80-035, and CS80-068.

I am reminded of a comment offered by Judge Bexelius, who was the Swedish Ombudsman in the 1960s. Mr. Bexelius, while writing about the Swedish Ombudsman, said that, in his opinion, the Swedish law providing public access to all government documents was more important and significant than the Ombudsman institution itself.

Taking the long-term view, I agree with Mr. Bexelius. Our ideal of the democratic society is based on the concept of the informed citizen. Any impediment to the citizen informing himself about public business is, then, undesirable.

As Ombudsman I have access to government files and information, and citizens often ask me to assist them in gaining access to information they need. Though British Columbia does not have freedom of information legislation, I usually try to persuade officials to share information with the public unless there are very good reasons for withholding it. However, I still think the citizen should be entitled as of right to such information; he should not have to beg for it. I would like to urge the Government and Legislative Assembly of British Columbia to give consideration to a Freedom of Information Bill, to recognize such basic rights. Many complaints to the Ombudsman would not be necessary if the complainant had had access to information held by government officials.

Plain language and communication

A recurring problem the public encounters in dealing with the provincial public service revolves around communication difficulties. Some officials resort to technical jargon, safe legal terms, and generally complicated ways of saying things. I can understand the reasons for using such forms of communication. They are safe, and they protect the official against being held liable for misinformation. On the other hand, the basic purpose of such a transaction is to communicate a message to a member of the public. If the message cannot be deciphered, the attempt at communicating has failed. Public bureaucracies as well as others have been reminded in the last few years that it is important to pay more attention to ensuring that their messages are understood by the recipients. The B.C. Government's Deregulation Code, for example, required that:

> *"All communications, instructions, and notices concerning the application of a regulation will be in plain language."*

I understand that Legislative Counsel has already made a commitment to plain language in the development of statutes and regulations. I would like to broaden this requirement by requesting that **all** communications from public officials to the public be in plain language. In my view, officials must ensure that their communications are actually understood by the public to whom they are addressed. No doubt this general statement will have to be qualified in specific situations; however, at this stage I would just like to state that I will generally expect public authorities and individual public officials to ensure that the recipients of official communications have understood the messages. True communication occurs only when such understanding is assured.

D. SPECIFIC ISSUES FOR THE ATTENTION OF THE LEGISLATIVE ASSEMBLY

On occasion I will not be able to persuade authorities to change an administrative practice, procedure or regulation that I must question. I can bring such situations to the attention of the Legislative Assembly in my Annual Report or through Special Reports.

One such problem I have encountered with the Ministry of Human Resources and I summarize the problem below. Another perhaps more serious divergence of opinion emerged through my investigation of a complaint against the Ministry of Municipal Affairs. (Sayward complaint; Part III CS 80-064) I must also draw attention to my dissatisfaction with the Ministry of Attorney General, discussed in Part III in my introductory remarks about the Ministry of Attorney General in connection with a complaint investigation in the Ministry of the Provincial Secretary (Part III CS 80-066)

Age Discrimination in Social Assistance

I wish to bring to the attention of the Legislative Assembly one specific issue in which I have been unable to persuade a Minister to change a regulation

which I concluded was improperly discriminatory. This was under consideration throughout 1980. Some of the discussion referred to below took place in the first few months of 1981.

Early in 1980 I received a complaint that the Ministry of Human Resources improperly discriminated against persons aged 30 and under, in payment of income assistance under the **Guaranteed Available Income for Need Act**. The Ministry, by regulation, pays persons in that age bracket $55 less per month for support than it pays those aged 31 and older. The provision does not apply to single persons with dependents, or couples with dependent children.

My investigation did not turn on a factual dispute in a specific case but on the interpretation of the **GAIN Act**. I first reviewed the statutory provisions and determined that the Ministry could establish separate classes of income assistance, and that age could be used as a criterion for establishing those classes and levels. However, it was my view that if age was to be used as a criterion for giving less financial assistance, there ought to be a good reason for such a distinction. I felt that discrimination without a good rationale would be improper discrimination.

I invited the Ministry of Human Resources to provide its rationale for isolating those persons under age 31 as having less need for support monies. I was concerned because this portion of income assistance is applied to food costs, and by adopting this regulation the Ministry appeared to imply that persons under 31 years of age needed less food than those over that age.

The Ministry of Human Resources gave several responses to my inquiries, none of which I found adequate. The Ministry suggested that the public of British Columbia wanted this age group to get less support monies. In particular, the Ministry persisted in the theory that the young are more mobile and spend less time on income assistance and that their demonstrated need is less.

In my opinion, the Ministry failed to give adequate reasons for isolating this age group as one with less need for support monies, and I found that the regulation in question was improperly discriminatory. I believe the theory of mobility misses the real question: does a 30-year-old need less money for food than a 31-year-old when both are on income assistance?

When the Ministry has already determined, by its own policy and procedure, that a person is in need of income assistance, that person has the same needs for food and other support as any other person on income assistance: I am neither advocating income assistance nor do I, as Ombudsman, have any comments at all on programs designed to get recipients of income assistance back into the work force. These matters are not relevant to the discussion of the propriety of this form of discrimination.

Under the **Ombudsman Act** I may recommend that an authority reconsider a statutory provision which I believe is unjust, oppressive or improperly discriminatory. I asked the Ministry to 'reconsider' the regulation. The Ministry informed me that the enactment had been reconsidered and the regulation, as it stands, reflects government policy. Formally speaking my recommendation has been accepted. However, I am not satisfied that a proper reconsideration has taken place. In any case, no new arguments were brought forward in defense of the discriminatory practice and nothing the Ministry or the Minister have said convinced me that the discrimination is indeed a proper one.

The Minister of Human Resources asked for time to consider the implications of my recommendation with Cabinet colleagues and Treasury Board because it involved a "significant expenditure." The Minister then assured me "that the current policy accurately reflects this government's position." I sought an opportunity to discuss my opinion and recommendation with the Minister of Human Resources. I suggested that a formal internal Ministry review of this problem be initiated. The Minister would not entertain that suggestion.

I have not changed my opinion that this regulation is improperly discriminatory. What the Ministry has said in defense of the present regulation only increases my apprehension about the discriminatory nature of the regulation. However, as the Minister assures me that the regulation accurately reflects government policy, I have decided to close the matter as far as my office is concerned. I now inform the Legislative Assembly of this remaining difference of opinion as the Minister has in essence told me that the Government will take responsibility for this provision in the Legislative Assembly.

PART II

COMPLAINTS: THE WORK OF THE OMBUDSMAN OFFICE IN 1980

Complainants and Complaints

Part VI of this Report contains seven tables with statistical information about the work of the Ombudsman office with complaints and complainants. These tables will be referred to and interpreted in this part of the Report.

During 1980 a total of 3840 new complaints were registered with my office which amounts to approximately 320 complaints per month. In the last three months of 1979 I had received 924 complaints, most of which were still pending or under investigation at the end of 1979 when my first reporting period ended.

On receipt of a communication from a complainant my office opens a file in that complainant's name. Occasionally a complainant will have more than one complaint. The complaint **closing** statistics reflect these additional separate and distinct complaints. I estimate that an average 100 complainants have approximately 115 complaints.

The first Annual Report (for 1979) tabulated incoming complaints for each Ministry and other agencies. While such a table is interesting it is not the most informative or reliable statement about a Ministry's performance on complaints. This year my statistical information is based on the closed cases, that is all complaints for which a final disposition was made before December 31, 1980. To give a more complete picture of all complaint dispositions I have included in these tables the 256 cases reported as closed in my 1979 Annual Report (Table 1). Thus I report 4197 complaints closed during the 15 months from October 1979 to December 1980. In the calendar year to which this Report refers there were 3941 complaints closed. Together with the 1979 closings of 256 cases this amounts to the combined 1979 and 1980 total of 4197 closed complaints.

Another distinction that should be emphasized is that I use the following three broad categories in discussing all complaints:

(1) I first look at all jurisdictional complaints, referred to in the tables as the complaints about "Proclaimed Authorities" (meaning authorities listed in section 1 and 2 of the Schedule of Authorities in the **Ombudsman Act**, proclaimed in force on October 1, 1979). Table 3 lists those authorities and the disposition of all complaints about them.

(2) I next look at "Unproclaimed Authorities" (Table 4). These are authorities listed in section 3-11 of the Schedule to the **Ombudsman Act** which have not yet been proclaimed in force by the Lieutenant Governor in Council.

(3) Thirdly, there are the non-jurisdictional complaints (Table 5).

I do not have the authority to investigate the "Unproclaimed Authorities" and the "non-jurisdictional" complaints. I therefore cannot report on the merits of these complaints. I do, however, provide a service to these complainants and Tables 4 and 5 assess in broad categories how much of a service my office can provide to these complainants.

Table 1 gives some general information about complainants. Table 2 shows that complaints are fairly representative of the population distribution over the various regions of the Province. I believe that our free Zenith telephone line (2221) has made it easier for residents of outlying areas to reach the office.

Table 3 lists in four broad categories the final disposition of all jurisdictional complaints. I will first explain these broad disposition categories.

(1) The first column lists those complaints that were not investigated or that were discontinued after initial inquiries.

(2) The second column lists those complaints that were resolved to the complainant's and my satisfaction by the Ministry involved while an investigation had not been finalized to the point where formal recommendations had to be made.

(3) The third column lists complaints for which a correction could only be obtained after a formal finding on the merits had to be pressed.

(4) The fourth column lists those complaints that had been fully investigated but that were not substantiated.

Some 46 percent of the jurisdictional complaints were withdrawn or an investigation was declined or discontinued (for a further comment see below). About 30 percent were corrected during or after an investigation and 24 percent of the jurisdictional complaints were not substantiated. If we disregard those complaints that were withdrawn, declined or discontinued we are left with 1,024 jurisdictional complaints: 565 or 55 percent warranted some correction while 459 or 45 percent were not substantiated.

Tables 4 and 5 list the extent of service given in cases of complaints about unproclaimed authorities and on non-jurisdictional matters. As neither type of complaint is within my jurisdiction I do not conduct an investigation nor do I make a finding on their merits, as stated above. The tables (4 and 5 combined) show that in 18 percent of these complaints no assistance was necessary or possible. Most of the time, that is in 65 percent of the cases, we supplied information on how the complainant could pursue the complaint on his own or we put him in the hands of an agency that agreed to assist. In 17 percent of the cases we went further, actively pursuing an urgent or apparently justified complaint by presenting facts and possible resolutions to non-jurisdictional agencies or officials.

Discontinued Complaint Investigations

There are several statutory and discretionary rea-

sons that lead me to discontinue an investigation that had been started. In a very small number of cases (8) it was discovered after the start of an investigation that the complaint was not against one of the proclaimed authorities currently within my jurisdiction. Some 39 percent of the investigations were discontinued passively or actively by the complainant himself. Some complainants phone in a complaint but then do not confirm it in writing (required by section 12(2) of the **Ombudsman Act**) or an essential document or piece of evidence requested by my office is not supplied. A number of complainants write or phone to inform me that they wish to withdraw their complaint. Quite a few of these have settled their differences with the authority on their own and a continuation of our investigation is not necessary.

Some 12 percent of these investigations were declined or discontinued when it was discovered that the complainant had under a statute a right of review on the merits of his complaint to a court or tribunal and he had not exercised that right.

A final group of investigations were discontinued by me on various discretionary grounds possible under section 13 of the **Ombudsman Act**. The largest proportion of these are discontinued when my staff ascertain that a reasonable administrative review or redress through the courts is available that was not known to the complainant and that he agreed could and should be tried first.

It is difficult to assess with any precision what kind of impact my office has on authorities. However, in line with my views that the Ombudsman should seek appropriate changes in practices and procedures where a pattern of malfunctioning appears, I have in a number of cases suggested, recommended and negotiated specific changes in practices and procedures, rules and regulations. Table 7 shows that in 84 percent of all cases where a correction is required only an individual is affected; but in about 16 percent of the cases a practice or procedure was changed or a regulatory or statutory change was proposed. A few of the changes are summarized in Part IV of this Report.

Complaints still under investigation at year end

Approximately 870 complaints were still under investigation at the end of the reporting year (December 31, 1980). Some 750 of these were within my jurisdiction, while the remaining 120 concerned non-jurisdictional complaints. Unfortunately, my office is still labouring under a backlog of complaints. This backlog is severe in the case of Workers' Compensation Board complaints. I am, however, satisfied with the progress made in dealing with the great majority of complaints in a timely fashion.

Initially, the worst of our workload problems were alleviated when the Honourable Hugh Curtis assisted me in getting a number of students through the Work-in-Government program, from May to August, 1980. Treasury Board subsequently approved a staff increase I had requested. Finally, my office benefited greatly from an arrangement made with three universities in B.C. Under this arrangement, several students, enrolled in a variety of programs, serve a form of student internship in my office (at no charge to the public), usually for three months. While the students learned a lot about government, my office benefited from their enthusiasm and energetic work.

Table 8 shows the present, enlarged office organization which up-dates the information presented on page 5 of my 1979 Annual Report. Major changes are that my Vancouver office now has a specialist in administrative law. Two investigators were added to the staff of each office and our clerical support staff was strengthened.

Central Agencies

Throughout the year, my office received satisfactory services from various central agencies in government.

My dealings with Treasury Board were quite satisfactory. In June of 1980, I requested ten additional staff to deal with our larger-than-anticipated workload. After a careful analysis of my request, Treasury Board provided my office with the necessary funds to hire the ten additional staff members and to provide for additional office space and furnishings.

Treasury Board continued to be supportive and cooperative in proposing to the Legislative Assembly estimates for my office with an adequate operating budget for the 1981-82 fiscal year.

The B.C. Buildings Corporation provided satisfactory assistance to my office in leasing and preparing additional office space to accommodate the increased staff. With the help of the Purchasing Commission, additional furniture and equipment was purchased. The Purchasing Commission deserves particular thanks for responding promptly to requests for furniture loans.

The Public Service Commission provided me with valuable assistance in the process of filling vacant positions.

The B.C. Systems Corporation has helped my office become familiar with its new word processing system and has provided expertise in capturing statistical data.

My office relies on the Queen's Printer for the provision of stationery and office supplies as well as its printing requirements. At all times our needs were met promptly and efficiently.

Media contacts

The news media have expressed a strong interest in the complaints that reach my office. Occasionally, a complainant will inform the media about his problems. Government officials have also commented to the press on on-going investigations. Invariably, media representatives will then ask for my comments.

There is often a need, under such circumstances, to set the facts straight before things get too distorted, but generally, I am unwilling to comment on cases that are still under investigation. However, on completion of investigations I will recognize the legitimate information needs of the media and the public. I plan to review appropriate arrangements after the tabling of this Annual Report.

I am considering an arrangement whereby accredited media representatives will be apprised, from time to time, of a number of completed cases that may be of general interest. If the complainant's consent can be obtained, I will then consider releasing case information to journalists. Authority for such releases is established by section 30(2) of the **Ombudsman Act.**

PART III

COMMENTS ON MINISTRIES AND COMPLAINT SUMMARIES

MINISTRIES

MINISTRY OF AGRICULTURE AND FOOD

Few complaints were registered against the Ministry of Agriculture and Food. The majority were still under investigation at year-end. Of the complaints concluded in 1980, about half were not substantiated and in the other half, a resolution was found that was acceptable to complainants and the Ministry. It was not necessary for me to make findings on the merits of these resolved complaints. Cooperation from the Ministry was excellent.

CS 80-001

Lost cheque —closure of loan account

A farmer who had a loan from the Ministry of Agriculture and Food under the Agricultural Land Development Act had received a request for payment of an amount of money on April 11, 1980. On April 18, 1980, he wrote to the Ministry and forwarded a certified cheque in the required amount. The cheque never reached its destination and in spite of several efforts on the complainant's part to clarify the matter, his loan account was closed for nonpayment of the required installment, and the total amount of his loan was added on to his tax bill. He then complained to my office.

My assistant obtained from the complainant a photocopy of the certified cheque he had mailed to the Ministry. In addition, the complainant was able to forward a letter from his bank stating that the certified cheque had not been cashed.

Based on these documents, the Ministry of Agriculture and Food was willing to reinstate the complainant's account and to accept, through my office, a bank draft to replace the lost certified cheque. As the complaint was now resolved by the Ministry, no further action or recommendation was required.

CS 80-002

Keeping the cows at home

A Native Indian Band complained that a fencing project had not been completed according to plan and that approximately three-quarters of a mile of fence still needed to be constructed in order to prevent a neighbour's cattle from grazing on Band land. The Band further complained that without this additional fencing, the money already spent on the project was wasted.

In 1976 the Band developed a Coordindated Resource Management Plan for their reserve which included a fencing project for the control of grazing. Most of the funds for the fencing project were obtained through the Federal-Provincial Agriculture and Rural Development Subsidiary Agreement (ARDSA) and the project itself was administered by provincial government personnel employed through the Ministries of Agriculture and Food and Forests. Ministry personnel thought the fencing had been completed. There was also some disagreement among the participants as to whether or not the additional fencing was in fact proposed in the original plan. In any event, a Ministry representative claimed that there were no funds available for additional work on the project.

My investigator discussed this problem with Ministry personnel and suggested that he visit the reserve to confirm the length and location of the fencing required. Ministry staff responsible for administering ARDSA funds agreed to review the situation and to make an inspection. On the basis of this review, they decided to make available the necessary additional funds to complete the project. The complaint was resolved to the satisfaction of the Band. No formal findings or recommendations were required.

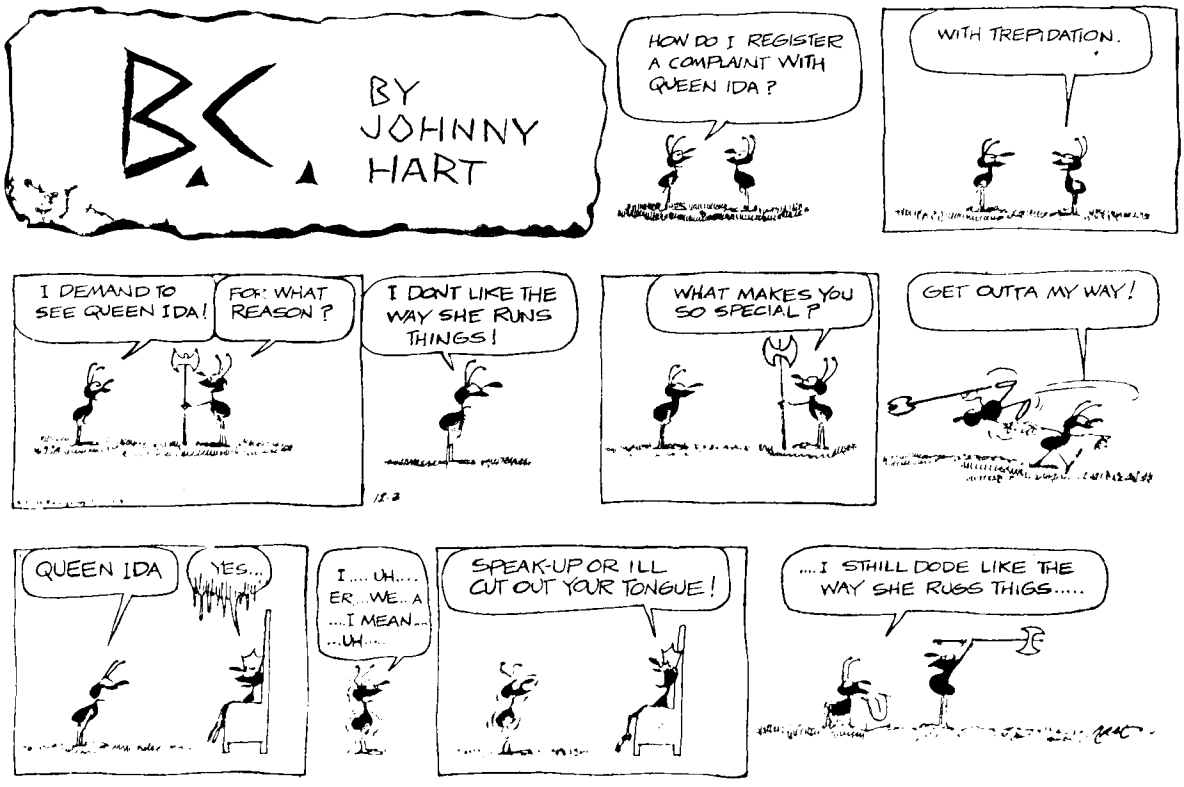
THE MINISTRY OF ATTORNEY GENERAL

The Attorney General's Ministry has many and varied responsibilities which deeply affect citizens' legal rights. It must be expected that the Ministry would attract many complaints.

My staff and I received good cooperation from several branches of this Ministry: Criminal Justice Division, Court Services, Land Titles and Corrections. Others were somewhat less than helpful: Civil Law Division and the Public Trustee.

A. Criminal Justice Division

A case summarized below under the title "Abduction charges" which reached me in 1979 focussed some significant jurisdictional issues for me in relation to the Attorney General's prosecuting function. When my assistant made inquiries with Crown Counsel's office in this particular case our right of access to policy statements of the Criminal Justice Division of the Attorney General's Ministry was questioned. I felt it necessary to have access to



by permission of Johnny Hart and Field Enterprises, Inc.

policy statements in order to understand the Crown position on prosecution of offences and to be able to explain to the complainant why no prosecution was initiated. I expressed my concerns over access to policy statements to the Deputy Attorney General.

The Criminal Justice Division now does afford my office access to policy statements on request and headquarters staff are now available for consultations. Further, this case among others precipitated a meeting between my solicitor and a representative of the Criminal Justice Division which resulted in a memorandum of understanding delineating the areas of my jurisdiction in the criminal justice system, and areas which I recognize (and which have been recognized by courts in this country) as matters in which the Attorney General and counsel instructed by him have **absolute discretion**. Examples of some areas in which I will not assert my jurisdiction are as follows:

(1) the position of the Crown on bail hearings;

(2) the decision of Crown Counsel to make application for a psychiatric remand;

(3) the exercise of discretion in relation to the carrying out of a prosecution including:
(a) approval of charges prior to their swearing,
(b) stays of proceedings,
(c) withdrawals,
(d) diversion;

(4) the exercise of Crown Counsel's discretion in deciding whether or not to release circumstances to defence counsel;

(5) the Crown's right of election on dual offences;

(6) the exercise of Crown Counsel's discretion during the trial including:
(a) the decision to call or not to call particular witnesses,
(b) Crown Counsel's position on matters of law and evidence;

(7) the Crown's position on sentence.

Complaints concerning the following do fall within my jurisdiction and are clearly matters of administration that I will investigate:

(1) the failure to notify or cancel witnesses;

(2) the failure to make explanations to witnesses or victims on request;

(3) the failure to advise victims of the procedure in making application for restitution;

(4) the failure to respond to correspondence from witnesses or complainants;

(5) questions of lengthy delay not related to the time required to exercise a discretion.

Furthermore, the Attorney General's Ministry administers a number of statutes which do not necessarily relate to the exercise of absolute discretion by the Attorney General, and I may investigate complaints concerning the firearms provisions under the **Criminal Code**, the **Private Investigators Licensing Act**, and the **Police Act**.

I appreciate the action of the Criminal Justice Division of the Ministry in advising its staff of the role of the Ombudsman as it relates to them, and of the need for cooperation between the two offices.

B. Civil Law Division

This Division provides legal advice to other ministries. While a few of the lawyers made a personal effort to assist my staff I have had more problems with this Division than any other branch of government. The following comments can be understood only in the context of the case summarized under the title "Reduction of Superannuation" and presented below under the Ministry of the Provincial Secretary. As explained in that summary there can be little doubt as to the complainant's identity because of the publicity that surrounded this case.

In the Loffmark case, the Attorney General has refused to permit one of his solicitors to respond to my investigator's questions. This solicitor had provided the Superannuation Branch with the legal opinion which formed the basis for the decision to reduce Mr. Loffmark's pension, but the questions put to him were obviously intended to ascertain whether he had been subjected to any improper pressure or suggestions. (Allegations of political interference had been widely publicized by the media.)

Faced with similar written questions, an official in the Superannuation Branch had no hesitation in responding. However, the Attorney General has taken the position that, because of the solicitor-client relationship that exists between his official and the Superannuation Branch, I am prevented by section 11(1)(b) of the **Ombudsman Act** from questioning the solicitor. Indeed, the very inquiry is described as striking at his integrity as a solicitor, and even to suggest that there could have been improper interference or attempted interference "is offensive in the extreme", according to a senior official of that Ministry.

I have taken the view that my inquiry in this instance is valid and proper, and is in the public interest. Unlike the Attorney General, I can see a clear distinction between confidential solicitor-client matters in which I have no interest, and any improper **external** attempt to influence those matters, which in turn could affect the decision I am investigating. Furthermore, although I expect my staff to observe the basic standards of common courtesy and decency, my office is no place for an investigator who refrains from asking relevant questions for fear of hurting tender public service feelings. Complainants have a right to expect thorough investigations, and they, too, may be offended in the extreme by what they perceive as unfairness or injustice.

Because Mr. Loffmark's pension has been restored, and because of my findings concerning the Superannuation Branch, I have now closed the case with respect to that Branch. However, in view of the principle involved, I have not ended my investigation, and after exchanging several letters of argument with the Attorney General over 10 months in 1980 on the one outstanding point, I continue to find his position unacceptable. Since this particular Ministry has unique kinds of responsibilities, it was inevitable that, sooner or later, various jurisdictional questions would arise with respect to my investigations. In such situations, I had expected to find in the Attorney General's Ministry a recognition of the spirit and intent of the **Ombudsman Act,** reflected in a willingness to find permissible ways of allowing my investigations to proceed out of respect for the interests of complainants, or the public interest generally. Instead, I have often encountered a self-protective, narrow, legalistic approach, and one could almost believe that finding jurisdictional or procedural fine points to block or endlessly delay my investigations presents a more exhilarating challenge than cooperating for the resolution of citizens' difficulties. This case is typical of several that have led to similar problems with this Ministry, and that must be resolved by one means or another during the coming months.

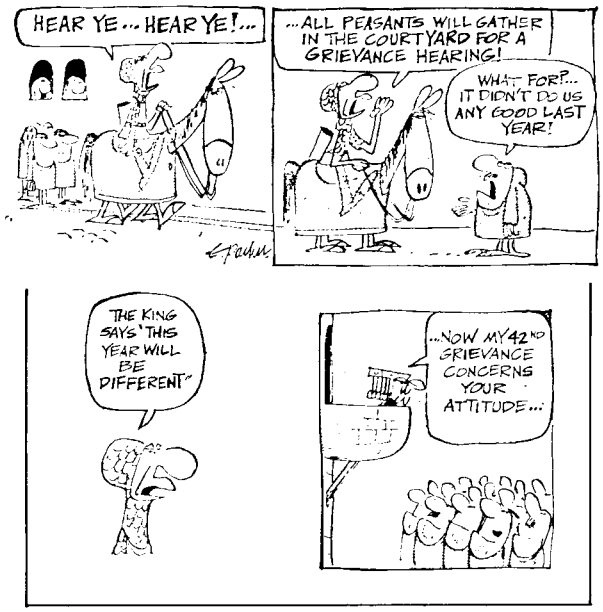
I am not requesting specific action by the Legislative Assembly at this time. The **Ombudsman Act** provides statutory powers for my lawful access to information and I will have to resort to those powers should my investigations be seriously hindered. I feel, however, that I must report to the Assembly when I receive something less than full cooperation from any government authority.

C. Public Trustee

The Public Trustee has taken a very rigid and bureaucratic approach to my office. He has attempted to limit my investigators' access to his staff. The Public Trustee also objected when an employee of a different government ministry brought a complaint to me about the Public Trustee, on behalf of a citizen. After receiving no response from the Public Trustee to his direct requests for help over a period of one year, the complainant came to my office for assistance. The problem was quickly acknowledged by the Public Trustee and steps to rectify the situation were taken.

When the ministry employee approached my office with another complaint relating to the same person, the Public Trustee informed the complainant that complaints against him must be "funnelled" through "proper" inter-ministerial channels and not through the Ombudsman. The Public Trustee also asked me to inform him of the exact day on which I received the complaint. I refused and explained to the Public Trustee that the services of my office are available to everyone in the Province, and that it certainly appeared that the complainant had very good reasons for seeking my assistance.

THE WIZARD OF ID
by permission of Johnny Hart and Field Enterprises, Inc.



I suspected there was more to his action than an eagerness to enforce the bureaucratic notion of "following channels": the irateness of the Public Trustee made me think he had retribution against my public service complainant on his mind. I shall be watching very closely.

D. Corrections Branch

In 1980, my staff visited the Lower Mainland Regional Correctional Centre, the Youth Detention Centre, Lakeside Women's Correctional Centre for Women, New Haven Correctional Centre, Kamloops, and Prince George Regional Correctional Centre in order to meet with inmates and staff. The volume of complaints in the corrections field has risen in 1980 as awareness of my office increased.

The complaints by inmates to my office fall into three general categories. Inmates complain that they have been denied something to which they feel entitled, or that the rules are not being followed. They also complain against the general standards or conditions in an institution. I often refer the latter complaints to the Inspection and Standards Branch for review and I monitor the Branch's review. Lastly, inmates will frequently request assistance in resolving problems outside the institution.

I also receive complaints from staff of correctional centres which usually relate to employment and personnel matters.

CS 80-003

Abduction charges

I received a letter from a mother distraught over the fact that no one would assist her in recovering her child who was taken by her husband from the matrimonial home. She was disheartened by the action of the Ministry of Human Resources, the Superintendent of Child Welfare, the police, prosecutors, lawyers and the courts.

Her main complaint was against prosecutors employed by the Ministry of Attorney General for refusing to lay abduction charges under section 250 of the **Criminal Code.** Section 250(1) states in essence that everyone who, with the intent to deprive a parent who has lawful care of a child under fourteen of the possession of that child, unlawfully takes the child and is guilty of an indictable offence.

It was found that the mother's custody order was made after the child was removed from the matrimonial home and as such, it was the Attorney General's interpretation of the **Criminal Code** that abduction charges could not be laid. My assistant received a copy of the policy statements of the Attorney General concerning abduction charges and I explained to the complainant that the prosecutors had acted in accordance with the law and policy. The complaint against the Attorney General, therefore, was not substantiated.

My assistant, however, sought help from the Superintendent of Child Welfare who had taken steps to locate the child in one province and had agreed to take similar action through child welfare offices in the other provinces. The Superintendent agreed that if the child was located and found to be in need of protection, the mother would immediately be notified. Under the circumstances, little could be done to assist the complainant other than to refer her to the courts and legal counsel.

CS 80-004

Access to public documents

A man complained that he had been unable to obtain a copy of a Judicial Council Record of Inquiry although the inquiry itself had been held in public. He had requested this transcript through the various officials and government departments involved but had been refused access.

During my investigation my solicitor found that the Judicial Council was unable to release the transcripts since it had delivered the Record of Proceedings to the Lieutenant Governor in Council, as required by law. Our complainant was then advised to contact the Provincial Secretary, who would normally have caretaking of documents submitted to the Lieutenant Governor in Council. The Deputy Provincial Secretary responded that he did not have a copy of the Record of Proceedings, but thought it would be available from the Attorney General's office.

My office then requested a copy of the transcripts from the Deputy Attorney General, who claimed that authorization for release would require a Minute of the Executive Council and that he was not prepared

to initiate such a Minute. I then approached the Attorney General directly and was happy to hear his response, namely that transcripts of a public hearing should be available to the public. He referred us again to the Provincial Secretary under whose care the documents would lie.

On contacting the Provincial Secretary's Office again, I was informed that they did not have the Record of Proceedings and we were again referred to the Attorney General's Office. After many more delays, telephone calls and letters, it appeared that the Record was lost. My solicitor contacted the Chief Judge (Chairman of Judicial Council) who agreed to send a copy of the transcript to the Provincial Secretary's Office. Thus one full year after he had made his first request, the complainant received the transcript.

This complaint was of particular interest to me since it illustrated the frustration a citizen may encounter when attempting to obtain access to a public document. Since free access to public documents is imperative for an informed public in a democracy I find the continuous roadblocks to access a cause for concern.

The Attorney General's intervention was much appreciated. It is important to set principle above expediency on issues that are basic to our free and democratic political system.

CS 80-005

Free and clear title: except that Highways may own your property!

Separate complaints were received from two individuals who had purchased properties during the past few years. After purchasing these properties, they discovered that portions of the properties had previously been acquired by the Ministry of Transportation and Highways for highways purposes. They complained that the fact that the Ministry owns parts of these properties was not on the Certificates of Title which they had obtained from the Land Titles Office at the time of their purchases.

Section 23 of the **Land Title Act** provides that a certificate of indefeasible title is subject to existing highways and other types of public property. Thus, even though the title of the Ministry to these areas was not on the Certificates of Title in these cases, as a question of law, these areas were in fact owned by the Ministry. What concerned me was that the Certificates of Title in both of these cases did not state that the Ministry owned a portion of these properties, and consequently purchasers of such properties could be misled with respect to the quantity and type of property they were buying.

My staff discovered that in about 1970 the Land Titles Office had begun inserting a notice on Certificates of Title which indicated that the Ministry of Transportation and Highways had purchased a portion of the property for highways purposes. However, Certificates of Title in prior years did not have such notifications. Further, there is, even now, no statutory obligation on either the Ministry of Transportation and Highways or the Land Titles Office to ensure that such notices are stamped on Certificates of Title of properties so affected. Thus, during the past ten years, while the Ministry and the Land Titles Office as a matter of practice have put such notices on titles affected, there is no obligation on them to do so.

I asked the Ministry of Attorney General for some assurance that such notifications would be placed on all titles affected whenever the Ministry of Transportation and Highways acquired a portion of a property for highways purposes. Both the Ministries of Transportation and Highways and Attorney General cooperated in this matter, and I received this assurance.

Unfortunately, the fact remains that properties, of which portions were acquired by the Ministry of Transportation and Highways prior to 1970, may not have this fact on the Certificates of Title. I did not recommend that the Land Titles Office undertake to amend each of the titles so affected during those years, because of the immense administrative costs involved and because few purchasers are unaware of the existence of a highway on a property prior to their purchase. The public can assume, however, that at the time of purchasing a property the Certificate of Title to the property will state whether a part of that property has been acquired for highways purposes since 1981, and probably will indicate such an acquisition since 1970.

If property owners suspect that a portion of their property may be Highways or Public Roads and their Certificates of Title do not reflect that, I urge them to contact their local Ministry of Transportation and Highways office for clarification and amendment of title if necessary.

CS 80-006

Double jeopardy

A property owner complained that he was forced to pay legal fees of $75 in order to have a lien discharged from his property. He tendered the total amount of the lien ($140) to the builder but in order to receive an executed discharge he was required to pay an additional $75 to the lawyer who had registered the lien against the property. He complained about that extra charge.

I referred him to the Law Society of B.C. concerning the conduct of the lawyer. In addition, the **Builders Lien Act** was reviewed. Section 27(d) of the **Builders Lien Act** provides that where the claim of the lien has been satisfied, the registrar, on being satisfied as to the facts, may cancel the claim of the lien accordingly. The intent of that section was to allow a summary procedure to discharge builders liens where appropriate. This procedure may have been

available to the complainant.

For clarification, my solicitor contacted a land registrar who felt that section 27(d) was not an appropriate mechanism to discharge builders liens. My solicitor then discussed the problem with the Director of Land Titles who agreed that the procedure was appropriate in some circumstances. He then issued a policy directive to all land registrars in the Province advising them of this procedure. He also undertook to include the policy directive in Volume 2 of the Policy and Procedures Manual for Land Registry Offices. The Director's actions were appreciated.

CS 80-007

The cheque is in the mail

A psychologist who had entered into an agreement for services with the Ministry (the Commissioner of Corrections) complained that she had not been fully paid. Payment was to be made for each session provided after submission of a completed invoice which was to be paid monthly by the Corrections Branch. After the agreement terminated the psychologist submitted her invoice for the month of March. As only a portion of the total amount was paid she contacted my office to complain that, despite repeated phone calls and assurances, two months later she had still not received the amount owed to her.

My staff contacted the Ministry and after discussion the problem was resolved promptly and a cheque issued.

CS 80-008

Correcting a committal warrant

An inmate on a temporary absence from a community correctional centre was apprehended and returned to a correctional centre by two sheriffs. The inmate wrote to me expressing several complaints involving this experience. He complained that there was no due process when he was apprehended while on temporary absence; that at the time of sentencing, the pre-sentence report was erroneous and inaccurate; that the warrant of committal was in error; and that the Legal Services Society would not support an appeal of his case.

Inquiries were made to determine the circumstances leading to the complaint of the inmate in each instance. While on temporary absence, he was ordered by the Community Centre Director to return. No additional or separate charge was required to escort him back to the Centre. Further discussion with the inmate and his lawyer established that the substance of the pre-sentence report was read and questioned in court and that essential parts of the report were based on material submitted to the Probation Officer by the inmate without the knowledge of his counsel. Inquiries were made of the Chairman of the Appeals Committee of the Legal Services Society. In making their decision they had considered submissions by the inmate's counsel and informed the inmate that their decision not to support the appeal did not limit him from appeal if he so desired. The warrant of committal was found to be in error as the inmate was charged with possession of stolen property over $200 but convicted of the lesser offense of possesion of stolen property under $200.

No administrative error or injustice was involved in returning the complainant to the Correctional Centre. The pre-sentence report had been questioned in court and the substance of the report had been agreed to in front of the Judge. At the initiative of my staff the error in the warrant of committal was corrected and the records held by the institution were corrected.

CS 80-009

A home to live in

The complainant alleged that she was unable to persuade a member of the staff of the Public Trustee to release funds from her severely handicapped daughter's $46,000 trust account to purchase a one-storey permanent home. At the time of complaint the family was about to lose their rental accommodation and the purchase would enable the daughter to continue her rehabilitation program in the same town.

The Public Trustee claimed he had never received a specific request from the complainant asking for an allocation of monies from the trust fund for purchase of a suitable home. The information contained in the complainant's request was sufficient for the Public Trustee to begin discussions with the complainant on the advisability of the purchase.

Shortly after I brought the matter to his attention the Public Trustee authorized disbursement of $40,000 towards the purchase of a home for the handicapped daughter and her parents. The complainant and her family were delighted with this resolution and no further action was required.

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

During 1980, more than half of the complaints against the Ministry of Consumer and Corporate Affairs were directed against the Rentalsman and the Rent Review Commission. Nearly half of the complaints against the Rentalsman and the Rent Review Commission related to the accessibility of Rentalsman services and delays in the handling of files. Many complainants had difficulty reaching the

Rentalsman's office by telephone and some complained that Rentalsman Officers were not prompt in returning calls or sending letters as promised. It appears that these problems were caused directly by inadequate staffing to meet the increased workload brought about by the extremely low vacancy rate for rental accommodation in urban areas of the province. The addition of new staff during the latter part of 1980 in that office appears to have had some effect in alleviating the pressure although at the time of writing, I am still receiving complaints of delay and poor telephone access.

Throughout 1980, the Rentalsman and his staff have given my office a high degree of cooperation and assistance. Senior staff at the Rentalsman's office have readily reviewed cases at my request and have acknowledged and corrected errors when they were brought to their attention. Explanations and apologies were offered when warranted.

Given the volume of complaints received against the Rentalsman during the year, I have focussed on the most expeditious resolution of individual complaints. During 1981, I expect to be placing more emphasis on the practices and procedures within the Office of the Rentalsman which may be responsible for some of these grievances.

The remaining complaints were directed against other branches of the Ministry including Consumer Affairs, Corporate Affairs, the Liquor Control and Licensing Branch, and the Liquor Distribution Branch.

CS 80-010

The personal touch — an imposition

A person considering the purchase of a used car phoned the office of the Central Registry in Victoria (Ministry of Consumer & Corporate Affairs) to ascertain whether any liens were registered against that car. Central Registry officials told him that while inquiries from outside of Victoria could be handled by telephone, residents of Victoria were required to appear at the Central Registry offices in person. The complainant felt that all residents of British Columbia should receive equal treatment, particularly since the facilities at the Central Registry were better suited to provide information over the telephone than in person.

After inquiries by my assistant, I found that since April 1, 1978, the Central Registry has maintained a practice of immediately meeting all search requests over the telephone at the time the call was received, regardless of its place of origin. However, over time, this practice was no longer fully understood and followed by individual staff members.

The Central Registry once more outlined its existing policy to each employee, namely of meeting all search requests over the telephone regardless of the place of origin of the call.

CS 80-011

The Superintendent and the Real Estate Council

A woman complained to my office about the way in which the Superintendent of Brokers, Insurance and Real Estate handled her complaint. She had written to the Real Estate Council about the actions of a real estate agent. She claimed that the agent had misinformed her about the state of a water well which in her opinion was inadequate. She had to spend over a thousand dollars on the well. The Real Estate Council found no wrongdoing on the part of the agent. The Superintendent of Brokers, Insurance and Real Estate agreed with the Council that there was no wrongdoing on the part of the agent. The woman's complaint to me was that the Superintendent did not provide sufficient reasons for his decision. Also, the Superintendent refused a subsequent request for copies of the material on which the decision was based. He advised the woman instead that the file was available for inspection in Vancouver.

Section 43 of the **Real Estate Act** provides that all decisions of the Superintendent refusing, suspending or cancelling a license and all reports of the Real Estate Council shall, subject to section 8, be open to public inspection. This section stipulates that all communication to the Superintendent or a member or officer of the Council with respect to a licensee are privileged.

On inquiring at the Superintendent's Office concerning which files were considered open to public inspection, my assistant was initially advised that the files were available. However, when she went to the Superintendent's Office, no public access to any material was allowed. After further consultation, the information that was considered to be open to public inspection, was provided. It was essentially the same material already in the complainant's possession.

After discussion the Superintendent recognized the need for more explicitly and completely reasoned decisions. To this end new procedures were being tested to provide reasons in any case where there was a finding after an inquiry that no wrongdoing had occurred. Also, henceforth, the response of a licensee with respect to an inquiry would be available for inspection and copies would be provided.

My office will continue to monitor access to information about Council decisions until the new procedures are fully in place.

CS 80-012

Can the government dictate when a piano may be played at home?

A tenant complained that the Rentalsman had ordered her to vacate her apartment for playing the piano outside of hours specified by the Rentalsman.

Playing the piano was very important to the complainant's family. However, the unappreciative neighbour upstairs complained to the Rentalsman about the exuberant piano playing. The Rentalsman then issued an Order restricting piano playing to the hours of 2 to 4 p.m. and never on a Sunday. The tenant tried to comply, but inevitably, a Termination Notice was served citing two specific instances where the Order was breached. The complainant protested that in one instance, specific permission from the neighbour's daughter had been obtained before playing while the neighbour was not home at the time. In the other instance the piano tuner attended outside the prescribed hours. Nevertheless, after a hearing, the Termination Notice was upheld by the Rentalsman.

The law provides that a tenant has 15 days to apply to the Court for a judicial review of an Order of the Rentalsman. I advised the complainant of her right to appeal as I was unable to investigate until she exercised that right or the time to appeal had expired. The complainant was successful in court and the Termination Notice was set aside. The Court ruled that the Rentalsman did not have authority to issue such a restrictive Order concerning piano playing times. The neighbour moved away, and the complainant's family played the piano happily ever after.

THE MINISTRY OF EDUCATION

CS 80-013

Improper termination of services

A teacher holding a first class permanent teaching certificate had been working for the Correspondence Branch of the Ministry of Education as a part-time instructor for approximately 25 years. In the summer of 1980 she was informed that her services were no longer required because the Branch now had a new policy including preference for teachers with recent classroom experience. The complainant was unwilling to accept this and the other reasons given. She felt that she had provided adequate services for many years and that she should be offered a new contract covering the 1980/81 school year.

The Ministry of Education believed that its new policy was indeed appropriate for the Correspondence Branch. However, the Ministry agreed with me that the policy should have been phased in, particularly as it applied to instructors who had served the Branch for many years. The Ministry also expressed concern with its own procedures used in terminating this contract.

I informed Ministry officials that I believed this teacher had been treated unfairly and I recommended that her contract be renewed.

The Ministry accepted the recommendation and the complainant has, in the meantime, received an offer for a new contract.

MINISTRY OF ENVIRONMENT

This Ministry has a wide range of responsibilities. In addition to those matters which the word "environment" normally brings to mind, such as pollution control or fish and wildlife management, it also administers the **Water Act**, and the Provincial Emergency Program. This wide range was reflected in the diversity of complaints which involved the Ministry, either alone or in conjunction with other Ministries.

Despite the diversity of complaints, two specific areas were clearly the centres of considerable public concern: pesticide-related problems, involving the issuing of pesticide use permits or decisions of the Pesticide Control Appeal Board, and questions involving government assistance to victims of flooding. In both these areas I perceive a need for greater dissemination of information to the public or the re-evaluation of procedures.

For the most part, I found the staff of this Ministry, and particularly those in the regional offices, to be knowledgeable and cooperative. In many cases, and especially where a problem arose from a misunderstanding of legislation or policy, they were able to resolve matters quite rapidly.

CS 80-014

A matter of discretion

The complainants attempted to expropriate a very small parcel of land under the **Water Act**. The owner of the land would not agree to offers of compensation. The complainants asked the Comptroller of Water Rights to determine the amount of compensation that should be paid. The complainants asked the Ombudsman to intervene when the Comptroller refused to exercise his discretion under the **Water Act** to determine whether the cost of arbitrating the dispute exceeded the value of the land subject to expropriation.

At issue was whether the Comptroller of Water Rights had acted properly in refusing to determine the compensation payable by the complainants. The **Water Act** requires that the Comptroller form an opinion about the value of the property subject to expropriation. Once this preliminary opinion is formed, the Comptroller may determine the sum of compensation himself or appoint arbitrators to reach this decision. Where the cost of an arbitrator exceeds the likely amount of compensation, the Comptroller may, and in my opinion should, determine the amount of compensation himself instead of forcing the parties to resort to costly arbitration proceedings. The Comptroller had not exercised his

discretion properly as he had never formed an opinion about the value of land involved. He simply did not want to get involved in private disputes.

After reviewing an opinion submitted by my office, the Comptroller of Water Rights agreed that the value of land was disproportionate to the cost of arbitrating the amount of compensation. He then proceeded to determine the amount to be paid.

CS 80-015

Delaying dam and damning delay

A farmer wishing to construct an earth-fill dam on his property wrote to the Water Rights Branch in 1975 to request the Branch's approval for his dam. Such approval is required under the **Water Act.** It was not until some four years later, in 1979, that the plans were returned with a short note stating that they had been rejected. The farmer complained about unreasonable delay.

After thorough investigation, I was unable to find any valid reasons why it had taken the Branch four years to determine that the plans were unacceptable and to that extent the complaint was substantiated. However, I also found that the farmer had not been adversely affected by the delay.

The complainant had not intended to construct the dam during the four-year period and hence had not been inconvenienced. The factors considered in rejecting the plans had not changed over the four-year period, and the plans would have been rejected in 1975 had the decision been made at that time. The farmer had argued that had the plans been rejected in 1975, he could have gone back to the drafting engineer and requested that the required changes be made without additional expense. However, after my assistant reviewed this matter with the engineer, it appeared that the changes would have been billed to the complainant whether done in 1975 or 1979. It thus appeared to me that the complainant had suffered, at most, minor inconvenience as a result of the delay.

In my opinion the complainant had suffered no losses, and while the delay was unreasonable it had resulted from a nonrecurring error rather than a faulty administrative system. I decided, therefore, not to make any recommendations in this case.

CS 80-016

Paying the government for a year off

A man who had been a big game guide and outfitter for over 20 years wanted to take a year off from his guiding business. The Ministry representative advised him, however, that even though he would not be working he would still be required to pay an insurance premium of $250 in addition to his annual guiding licence fee of $50 or he would lose his territory. He complained that it was unfair and unnecessary for the Ministry to require that he purchase public liability insurance during this period.

My staff discussed the problem with the Guiding Administrator who was in the process of writing a new policy and procedure manual for Conservation Officers which would include a clarification of this issue. Unfortunately, the Regional Conservation Officer in question appeared to have been operating from a partly outdated 1973 policy statement.

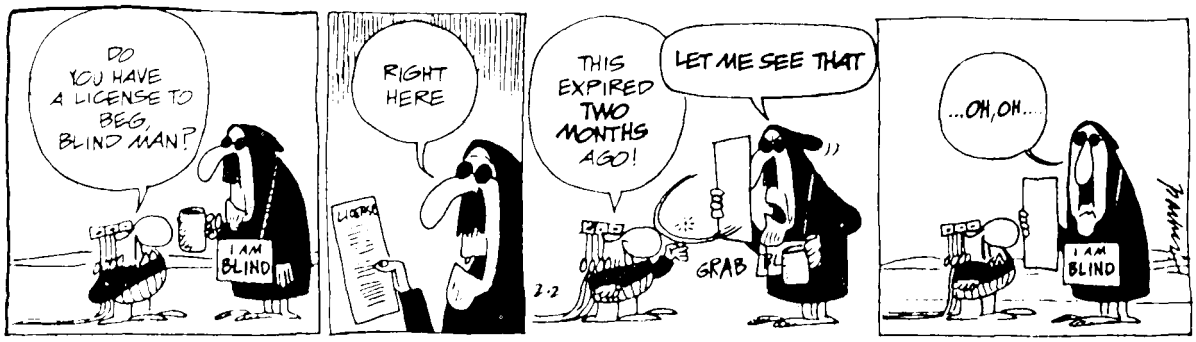
The Guiding Administrator recognized that the guide had a valid complaint, and immediately advised the Regional Conservation Officer that the complainant should be given a permit to discontinue the use of his territory for one year without having to buy either a licence or insurance. In order to prevent similar complaints from arising pending completion of the new policy manual, the Guilding Administrator issued a directive to all regional conservation officers outlining the correct approach regarding applications to take time off from the guiding business.

CS 80-017

Bear facts: the grizzly that got away

The Ministry refused to issue a new grizzly hunting tag to a bear hunter on the grounds that he already had shot and killed a grizzly within the region. In

THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.



accordance with the regulations, he would be ineligible to obtain another tag for five years. The hunter disputed the fact that he had killed the bear in question, and claimed that he should be eligible for a renewed grizzly tag.

While hunting along a road in the bush at dusk the hunter shot and wounded a grizzly but it got away. Early the next day, he found and shot a small wounded grizzly. He reported both episodes to the local Conservation Officer, insisting that he could tell from the relative size and colour of the two animals that they were two different bears. The Conservation Officer believed the same animal was involved in both incidents. A ballistics test, necessary to remove any doubt, was never performed since the complainant's partner was leaving for another job within a month and did not want to give up his rifle for months of testing. The complainant later received the skin of the animal he had shot from the Conservation Officer who discarded the carcass. He had voluntarily cancelled his hunting tag in the belief that the Ministry would perform additional tests that would exonerate him. The Ministry decided that it was highly likely that the complainant had merely finished off the bear he had wounded the day before, and it therefore refused to issue the complainant another tag. Ten months later the hunter complained to my office. Since the carcass was destroyed, definitive tests could not be performed. The complainant only saw the bear briefly, in poor light; he expected to find a wounded bear after the first shooting; there was no evidence of other bear tracks from the hypothetical "first bear" in the vicinity of the first shooting, or reports from other hunters of another wounded bear. Hunters are often surprised by the discrepancy between what they thought they were shooting at and what they actually bagged. The complainant appeared to have accepted the possibility that there was only one bear when he cancelled his tag. The Conservation Officer could have done more to establish the truth of the complainant's claim that there were two bears.

However, once the complainant cancelled his old tag, the Conservation Officer had no obligation to continue the investigation. All available evidence pointed to the one bear theory. The Ministry considered the evidence and testimony fairly in reaching its decision that there was only one bear. No additional evidence was available.

The Ministry had reviewed the case through an internal appeal procedure, and I concluded that this mechanism was sufficient. The complaint was not substantiated.

CS80-018

Do gold miners have a right to privacy?

A lawyer complained on behalf of a mining company that two employees of the Ministry had entered onto his client's gold mining site without announcing themselves or the purpose of their visit. The complainant felt that his client was justifiably concerned about the presence of unidentified persons on the property in view of the risk of vandalism or theft of equipment and gold on the mine property.

My staff learned that the original explanation for the officials' visit was that photographs were required for a slide presentation on placer mining operations. A second explanation was that the visit was a follow-up inspection to **Pollution Control Act** charges which had been laid against the company six months earlier. Although regional staff are encouraged to contact management upon an initial visit to a site, subsequent visits may be unannounced, particularly where the objective of an inspection is to witness alleged violations.

The lawyer had a valid complaint. On the basis of the facts in this case, I notified the Ministry of my findings and recommended that a letter of explanation and apology be sent to the complainant. This apology satisfied the mine owner and his lawyer and the complaint was thus rectified.

MINISTRY OF FINANCE

The majority of complaints about the Ministry of Finance were divided between those involving the Consumer Taxation Branch and those involving the Real Property Taxation Branch. Complaints concerning the Consumer Taxation Branch were mainly about the application of Social Service Tax and the qualification for the various exemptions under the **Social Service Tax Act**. Issues involving the Real Property Taxation Branch predominantly concerned complaints about penalties for the late payment of property taxes and the eligibility for homeowner grants.

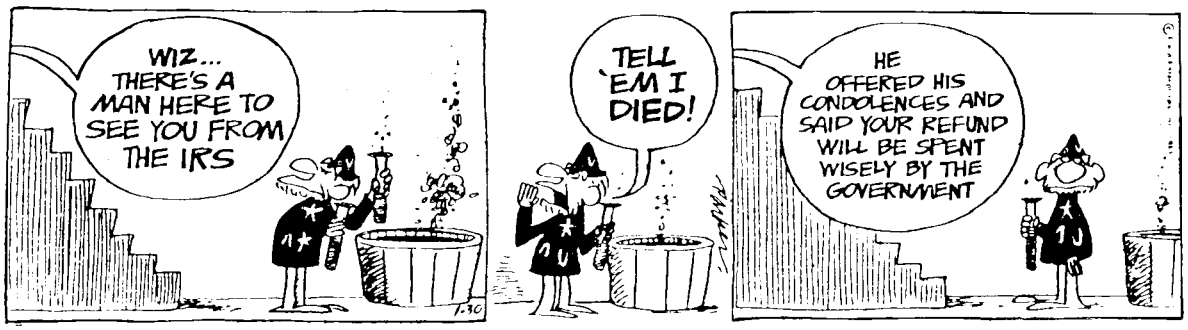
The Ministry staff has been extremely helpful and cooperated fully with my investigators. We received immediate access to information requested, and many complaints were resolved.

CS 80-019

An accountant requests help with his taxes

A chartered accountant, now living in Alberta, wrote to me with a complaint that his application for a Social Service Tax refund had been refused.

The accountant had been offered a position with a firm in northern Alberta. As part of the employment benefits, his new employer was willing to provide him with a new automobile. On checking the cost of the vehicle he wanted, the accountant discovered that the cost was $1,000 cheaper in Vancouver than in northern Alberta. As a result he purchased the vehicle in B.C. with the intention of moving to his new job in Alberta. He then drove the truck from Vancou-



THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.

ver to Alberta and turned it over to his employer thirteen days after its purchase. The complainant realized that the regulations allowed for a refund of sales tax where a motor vehicle is resold within seven days of its purchase to someone outside British Columbia. He felt that he had been unreasonably denied the refund since he had purchased it on behalf of a nonresident company and had transferred it to his employer immediately on arrival in Alberta.

Further details on the resale in Alberta were obtained from the company that eventually purchased it. The complainant was, in effect, purchasing the vehicle as an agent for the Alberta company. The purchase was made in the complainant's name as a matter of convenience, and at no time was the complainant to retain ownership of the vehicle. The car dealer who had sold the vehicle to the complainant was contacted. It appeared that the salesman had indicated to the complainant that there would be no problem in claiming the tax refund.

I supplied the Social Services Tax Commissioner with the additional information obtained from the Alberta company and from the dealer. The Commissioner, after obtaining a legal opinion on the situation, decided to refund to the complainant the full amount of the tax he had paid. The complainant wrote to state that he particularly appreciated my intervention as he felt that a point of principle was involved.

CS 80-020

An illegal tax?

An Ontario law firm complained that the Ministry of Finance was acting without authority in levying succession duties with respect to an employee's pension plan benefit.

The matter had been under dispute for several years. The estate assessed was that of an employee member of a pension plan who had died while domiciled in B.C. in 1974. The designated beneficiary was a former wife, resident and domiciled in Alberta. The position of the Ministry was that the plan was a B.C. asset for the purposes of the **B.C. Succession Duty Act.** The position of the complainant was that the plan was not a B.C. asset.

My staff reviewed the relevant files and did not find adequate support for the Ministry's position. I concluded that the Ministry of Finance did not have the authority to levy the succession duties in this particular case. The Ministry reconsidered its position and then agreed. A refund was sent to the trustees of the plan.

CS 80-021

Tax sale: property owner's nightmare

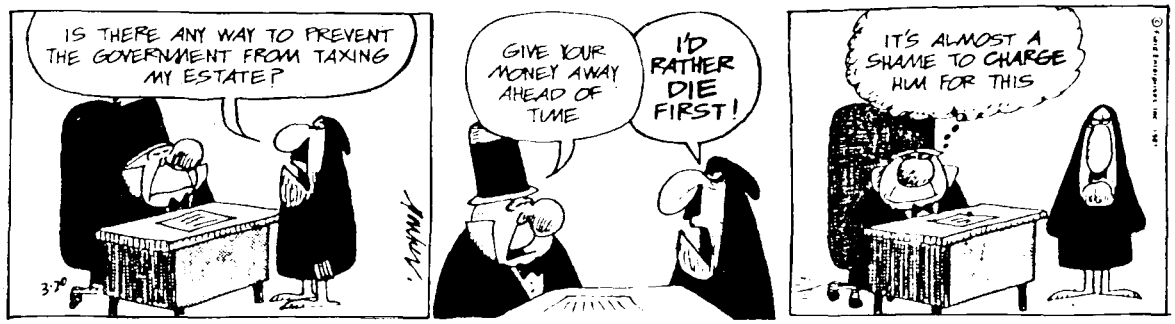
The complainant lost land in a tax sale. He told me that this loss of land was a result of his reliance on misinformation provided by the Ministry of Finance. He also said that several of the required procedures for a tax sale were not properly followed.

The complainant stated that in September 1970, he phoned the Office of the Surveyor of Taxes in Victoria to check if there were any arrears in his taxes. The complainant's recollection was that an office clerk informed him that the current taxes had been paid and that this conversation was confirmed in a subsequent letter. The current taxes had, in fact, been paid with the proceeds of a tax sale. At the time of the complainant's inquiry 1½ months remained to redeem the property, but according to the complainant, because no information was provided about the tax sale, an attempt to redeem the property was not made.

A letter or other objective confirmation of the information conveyed in 1970 could not be found during my staff's investigation. It appeared possible after reviewing tax records of the time that, due to a clerical oversight, only the fact that current taxes were owing might have been mentioned and not the additional fact that a tax sale had provided payment. However, the legislative provisions for advertising and notice to the registered owner concerning the tax sale and redemption period had been followed. The filings and notations of the tax sale in the relevant Land Registry Office had also been made.

The complainant raised a number of additional points concerning the tax sale itself. These were for the most part either dealt with and dismissed by the judge who considered an action for indemnification in 1972, or were not supported by the legislative requirements laid out for tax sales.

I concluded that I could not recommend that compensation be paid by the Ministry. In the absence of the letter described by the complainant, and without



THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.

some objective indication of what information was conveyed or what source was used to provide it, I found that what actually occurred and whether the Ministry was responsible for the loss remained unclear.

Given the fact that a taxpayer is responsible for the payment of taxes every year, the fact that a formal system of notices had been complied with and no objective indication of the alleged misinformation of 1970 was available, I decided that the complaint could not be substantiated.

CS 80-022

Proper receipts

The Ministry of Finance would not authorize a refund of Social Services Tax paid by a nonresident purchaser of a car without a copy of the bill of sale showing the amount of tax paid. The purchaser had forwarded the proof of his eligibility for a refund, as requested by the Ministry. Although he could give other indications of the tax having been paid, he was unable to provide an itemized bill of sale. As a resident of Saskatchewan, the purchaser had paid tax on the purchase of the car there, and was referred to me by the Saskatchewan Ombudsman.

On the basis of the information presented by my assistant the Ministry made further inquiries and authorized the refund.

CS 80-023

Fairness in the courts

A landowner had appealed the assessment of her property by the Assessment Authority of British Columbia to the Court of Revision. She claimed that the Court had adjourned its first hearing of her case and had failed to notify her of the time and place of the second hearing. Although her concern about the assessment of her property was eventually resolved by the Assessment Appeal Board, she complained to me that members of the Courts of Revision were not properly informed respecting matters of procedure.

The procedures which must be followed by administrative tribunals are not ordinarily matters of policy, but rather matters of statutory interpretation and common law. The superior Courts have developed procedural guidelines for such tribunals to follow, and these are commonly known as the rules of natural justice. While the rules which must be followed vary, depending upon the function of the tribunal, it appeared to me that the Courts of Revision performed a role closely analogous to that of a court of law; hence, the standard of procedural conduct which must be met by the Courts of Revision is very high.

After reviewing the instructions provided to the Courts of Revision by the Ministry of Finance, it appeared to me that members of the Courts should be provided with further information about matters of procedure. Subsequent to my investigation, the Ministry substantially revised and expanded these instructional materials. Although I recorded this complaint as resolved by the Ministry, procedural issues continue to arise in complaints which involve the Courts of Revision, and it may be that further action is required.

MINISTRY OF FORESTS

If one considers the importance of forests to British Columbia and the size and influence of the Ministry of Forests, it will probably come as a pleasant surprise, to Ministry officials at least, that there are not all that many complaints lodged against this Ministry. The Ministry is in the process of developing an approach to planning and management that includes public input, and this initiative may account, in part, for the relatively small number of complaints I have received. There are four general areas of concern for those who have complained:

1. Opposition to logging plans

There are usually residents of an area who oppose plans for logging, or plans to clear-cut an area, or plans to use a particular mode of transportation to remove timber. Recently there has been a fair amount of opposition expressed to proposals to log a central B.C. area. I have received several complaints to date but I am not proceeding with an investigation at this time because the Ministry is receiving public input on the matter and has not as yet finalized its plans.

2. Dissatisfaction with Forestry management practices

These complaints are similar to the above in that they express dissatisfaction with the manner in which the Ministry is managing timber resources. They focus on poor and inadequate replanting practices, and on practices whereby Ministry staff permit logging operations to leave six- to eight-foot stumps, or to leave a significant volume of felled timber on the site.

3. Discriminatory enforcement of regulations and policy:

A common theme running through a number of the complaints is the image of the "little guy" pitted against a "big guy", and the allegation that the Ministry is taking the side of the "big guy" — big industry. It takes the form of complaints that the Ministry gives preference in the awarding of various types of licences to the large timber operators over the small business operator, or complaints that affected parties are not provided with an adequate means of involvement in forestry decisions.

These general complaints about discrimination against small operators are difficult to investigate. My assistants try to focus the complaints on some specific action that is felt to be unfair and that can be properly investigated.

4. Range management

The Ministry is also responsible for administering the Crown Range and I have a number of complaints from the East Kootenays under investigation since November 1979 that deal with specific and general problems of range management.

CS 80-024

Controlling a fire by discussion

The complainant stated that the Ministry of Forests had improperly charged him for costs it had incurred in "controlling a fire on his property". The fire was, in reality, a small fire built by the complainant to dispose of his garbage.

The Forest Act permits the Crown to bill individuals for costs incurred in attempts to control or extinguish a fire on private land. The Ministry had charged the complainant $110 for its alleged attempt to control the fire on the complainant's property. My investigator discussed the circumstances of the case with Ministry staff involved in the efforts to control that fire. It turned out that the Ministry staff had merely paid two visits to the property to instruct the complainant to extinguish the fire. On no occasion did the Ministry "attempt to control or extinguish" the fire, other than to tell him to put it out.

As there was no evidence that the Ministry had billed the complainant in accordance with the Forest Act, it appeared that the costs incurred by the Crown could not properly be charged to the complainant.

The Ministry agreed to withdraw the billing. Although this was a valid complaint it was not necessary to make any formal recommendations since the Ministry agreed to cancel the charge.

CS 80-025

Lost creek

A farmer who owns agricultural property adjoining a Ministry of Forests' nursery stated that some 30 years ago the Ministry added about 2000 truckloads of soil to the nursery site, and in doing so, had also replaced a small natural creek with a subterranean drain line. Within recent years his land has been increasingly subject to flooding and consequently is less useful for agricultural purposes. The complainant believed that the drain line had become blocked, and the resulting poor drainage was responsible for the flooding on his property.

A search of numerous old maps of the area failed to confirm the existence of a creek on the site. However, a map was obtained which showed the location of the drainage tile line. At my request the Ministry of Forests agreed to break into the drain line and to conduct tests to determine if it was blocked. The tests showed that the drain line was working properly, although there were some indications that a portion of it may have been partially blocked at the beginning of the tests. The complainant agreed that he would be satisfied if the results of the test showed the line was functioning properly.

I concluded that the drain line had not been blocked as a result of the Ministry of Forests' activities, and that the Ministry was not responsible for the flooding of the complainant's property.

CS 80-026

Conflicting use of Crown land

The Ministry of Forests added new conditions to the complainant's Special Use Permit after it had been renewed. The permit allowed the complainant to construct a cabin on Crown land. The new clauses indicated that there were mineral stakings on the same site, and that the holder of the mineral stakings

had the right to unobstructed use and occupation of the site. The complainant believed the added conditions exposed his cabin to possible damage by the holder of the mineral stakings.

There is no specific legislation pertaining to such situations. However, in cases of conflicting uses of Crown land, it is the policy of the Ministry of Forests to give priority to the party having the longer established interest in the area. My assistant determined that the Special Use Permit was first issued to the complainant in 1948, and that it had been renewed each year since then. The mineral stakings were filed in 1976.

When my findings were brought to the Ministry's attention, their staff accepted that the Ministry had been in error in adding the new conditions to the Special Use Permit. To rectify the situation, the Ministry issued a new permit without the offending conditions.

MINISTRY OF HEALTH

A substantial number of complaints were received against the Ministry of Health in 1980. Complaints against the Medical Services Commission focussed on two areas — eligibility of persons for medical coverage where they did not meet normal statutory requirements such as residence, and eligibility for coverage both in and out of the Province for unusual or unorthodox medical treatment.

A number of cases concerning the coverage of unusual medical treatments have been carried over to 1981 and I expect to make a general review of the procedures used by the Commission in assessing these claims.

A considerable number of complaints against the Division of Vital Statistics concern the discriminatory impact of the **Name Act** and the **Vital Statistics Act** on women. The Ministry has agreed to put some of these problems before its Legislation Review Committee for reconsideration. There may be other issues I have to raise during 1981. The two statutes probably could use a good general checkup to ensure that these provisions are more in tune with today's concerns with equality between men and women.

In general the Ministry of Health's staff has given my office a high degree of cooperation and assistance. The Ministry's efforts at resolving complaints are encouraging.

CS 80-027

Air ambulances

In February, 1980 my office received a complaint that Emergency Health Services would not pay for a medical evacuation from a remote camp in the Queen Charlotte Islands.

The complainant had not followed the correct procedures, yet circumstances justified calling for evacuation. My office then contacted Queen Charlotte General Hospital who supported the complainant by writing to Emergency Health Services.

As a result the bill was paid and the complaint was resolved.

CS 80-028

SIN?

The complainant objected to a request that he provide his social insurance number for use in his employer's group health plan.

When contacted by my office, the Ministry advised that it would be possible to use another identifying number instead. I referred the complainant to the Director of Plan Operations to devise a different number. As this was one of several complaints I received about the use of social insurance numbers I also referred the complainant to the Privacy Commissioner of Canada who was then conducting a nation-wide study on the use of these numbers.

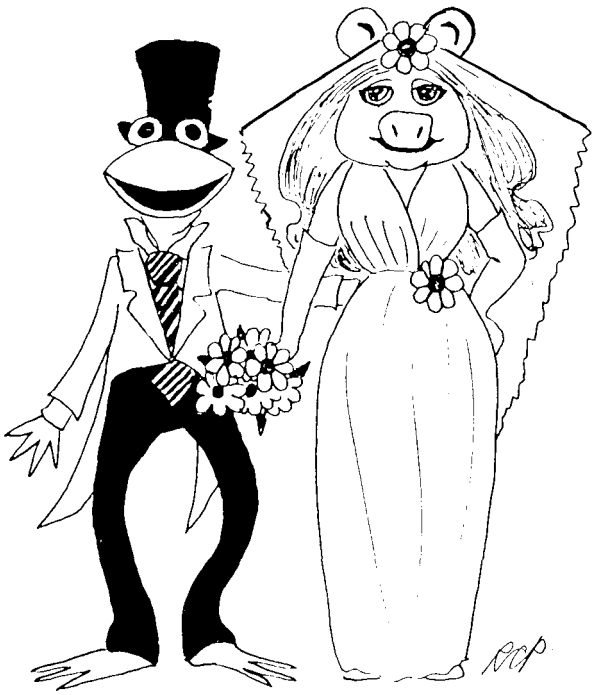
CS 80-029

A solemn affair?

A Marriage Commissioner refused to perform a marriage ceremony for a man and a woman who declared their intention to appear before him on October 31st attired in Muppet costumes. The betrothed believed they had a right to be married in the costume of their choice. When they were refused, they complained to my office. The man intended to appear as Miss Piggy, the woman as Kermit the Frog.

The **Marriage Act** section 17 sets out the form which the Marriage Commissioner observes to solemnize a marriage contract. Does the Marriage Commissioner have the authority to decline to solemnize a marriage on grounds of improper dress? The weight of Canadian practice supports the view that he does, since first the phrase "the marriage **may** be contracted" extends to all acts of the Marriage Commissioner, including the performance of the marriage ceremony, and second, the particular costumes chosen by the complainants would make it impossible for the Marriage Commissioner to **solemnize** the occasion in any ordinary sense of the word. There are no written guidelines on norms of solemnizing a marriage, and the Marriage Commissioner's judgment usually determines the matter.

I concluded that the Marriage Commissioner had not acted improperly in refusing to solemnize the marriage. I advised the betrothed to seek out another Marriage Commissioner in the vicinity who might have less conventional views of what is "solemn", or



a clergyman who might be willing to solemnize the marriage. The unhappy couple was not able to find an authorized person willing to assist them if they appeared attired in their Muppet costumes. They decided to get married in jeans. The Commissioner solemnized the marriage on October 31, 1980.

CS 80-030

Hair and health

A young woman suffered from profuse hair growth on her face. She applied to the Medical Services Plan for payment of electrolysis treatment but her request was rejected. She complained that this decision was unfair.

My staff found that the Medical Services Plan does cover electrolysis surgery in extreme cases, provided the treatment is administered in a physician's office. The Plan had earlier received and approved an identical request for coverage. On request a Plan official re-examined the complainant's request, realized the error and promptly wrote a letter to her doctor authorizing treatment with coverage under the Plan.

As the Ministry resolved the matter, I discontinued my investigation.

CS 80-031

Getting into medical coverage from down under

The complainants had arrived in B.C. in the first week of October 1980. They could not obtain Medical Services Plan coverage until January 1, 1981. They were expecting the birth of their second child in mid-December. The complainants thought they would be granted coverage from December 1, 1980, because they had intended returning to B.C. from Australia prior to October 1, 1980. These plans had been disrupted by an Air New Zealand labour dispute. When they were refused coverage, they complained to my office.

Under the **Medical Services Act** regulations, a resident of the Province is not eligible to become a subscriber to the MSP until he has lived in the Province for a waiting period which ends two months following the month in which he became a resident. As the complainants had arrived in the first week of October, they were not eligible for Plan coverage until January 1, 1981. By regulation, a person can appeal to the Medical Services Commission where he or she has an unresolved difficulty with the Plan. The Commission is given authority to decide whether the person is qualified as a subscriber.

On being informed of our investigation results, the Chairman of the Medical Services Commission agreed to exercise his discretion in this case and approved coverage for the complainant from December 1, 1980, provided they could demonstrate their prior intention to return to the Province before October 1, 1980. Two factors peculiar to this situation were instrumental in the Chairman's decision to assist the complainants — they were unable to obtain extended coverage from Australia, and they could not obtain private insurance to cover pregnancy-related illnesses.

The complaint was resolved by the Ministry. Medical coverage became effective December 1, 1980.

CS 80-032

Seeing through M.S.P.

A woman had a serious eye problem. She had a type of eye surgery performed in the U.S. which is not available in Canada. An alternative type of surgery is available in B.C. for the same condition, but the complainant felt that the surgery available in the U.S. would produce better results in her case. She applied to the Medical Services Commission to have it cover the insurable portion of the cost of the surgery, but her claim was rejected on the grounds that alternative surgery was available in B.C. She complained about this decision.

On receiving notification of my intention to investigate, the Medical Services Commission reconsidered its decision and decided to pay for the insurable portion of the surgery costs. Its reason for changing the decision was that the complainant was advised by medical practitioners and really believed that the type of surgery she obtained in the U.S. would produce better results in her case.

The complaint was resolved when the Medical Services Commission reconsidered and altered its decision.

CS 80-033

Hospital coverage beyond the mountains

A woman was unable to get the Ministry of Health (Hospital Programs) to cover her hospital expenses. She was a former B.C. resident who had moved to Calgary and subsequently had given birth to a child in a Calgary hospital.

Hospital insurance in B.C. is based on a residency requirement. When a person leaves B.C., his/her coverage under B.C. Hospital Programs continues until the first day of the third month following the move from B.C. to another province. My investigation revealed that our complainant had incurred her hospital expenses within this period, and that Hospital Programs had therefore rejected her claim in error. When I brought this error to the attention of the Ministry, Hospital Programs promptly agreed to cover the woman's expenses.

CS 80-034

Birth certifiable?

The Division of Vital Statistics had refused to supply a copy of the complainant's daughter's birth certificate because he was unable to provide the Division with his former wife's maiden name. The father complained that the Division was being unreasonable.

The Director of the Division of Vital Statistics has the discretion to issue a birth certificate even when some information which is normally required is not available. When my assistant brought the problem to his attention, the Director accepted that the complainant had made considerable efforts to obtain the missing information, and agreed to issue the birth certificate.

CS 80-035

Getting some vital statistics information on death

A woman wrote to the Director of Vital Statistics requesting a copy of her mother's death certificate and information concerning the cause of her mother's death. Two weeks later she received a response stating that the **Vital Statistics Act** restricts the information which may be released and that cause of death information falls under such restrictions. She was not given the information she requested, nor was she given any advice on exceptions or alternative methods to obtain the information. In frustration, the woman hired a lawyer who was able to get the information. She then complained to my office about the fact that she was forced to retain a lawyer and spend money to obtain information that should have been made available to her when she first made her request.

My investigation revealed that the information provided to the complainant by the Division of Vital Statistics was incomplete, and therefore misleading. The **Vital Statistics Act** provides exceptions which would allow information on cause of death to be given. The Act states that the information can be released a) upon the authority in writing of the Deputy Minister or, b) upon the order of a judge of the court.

I found that the Division of Vital Statistics followed the practice of not giving this information immediately to persons requesting cause of death information. This appeared to me to be inappropriate and I requested that the Division change its practice: individuals seeking information should be advised that the Deputy Minister may authorize release of the information concerning the cause of death. In addition, I suggested that my complainant be reimbursed for the legal costs she had incurred in getting that information. The Division agreed to both recommendations. Our complainant was compensated for her legal expenses and the practice of the Division was changed.

MINISTRY OF HUMAN RESOURCES

Human Resources attracted a large number of complaints. A large portion of those cases closed were due to my decision to decline or discontinue investigations where a suitable untried administrative review mechanism was available to the complainant. The Ministry has a reasonable appeal system in place that permits a review of a Ministry decision on social assistance by a tribunal; the appellant may nominate one person of his choice to the three-member tribunal, and the tribunal's decision is honoured by the Ministry.

An investigation of the Ministry's practice of informing those who had an application denied or a benefit curtailed, showed serious shortcomings as discussed below in complaint summary "Steering recipients of assistance through the bureaucracy". The Ministry agreed to improve its information flow to those affected by Ministry decisions.

Complaints against the Ministry of Human Resources fall into four broad categories:

1. Income assistance programs

Approximately two-thirds of the complaints received against the Ministry of Human Resources deal with one of the Ministry's income assistance programs (GAIN, HPIA, SAFER or Pharmacare). These complaints generally are about delay in processing applications, denial of assistance for reasons the complainant feels are unfair, or the inadequacy of a benefit (for example, rates for shelter costs that do not realistically reflect actual costs).

2. Children-In-Care

About one-fifth of our complaints directed at this Ministry concern children-in-care. Individual foster parents and natural parents have presented several complaints. For example, the Ministry has refused to inform them where a former foster child was, or has removed a child from his natural home without cause. We have also had several complaints from adults who were adopted as children and are seeking access to information on their natural parents.

3. Treatment programs

Several complaints were received about the inadequacy of Ministry treatment programs, particularly programs for handicapped children. These ranged from concerns about staffing at Woodlands to the lack of facilities for autistic children.

4. Personnel

Several personnel-related complaints were received, both Ministry staff complaining about their working conditions, and complaints from the public about the treatment they received from Ministry staff.

A broad and recurring problem with income assistance complaints is that citizens often have a minimal understanding of the benefits the Ministry offers and/or their eligibility for those benefits. They often do not understand or trust the Ministry's appeal process. Thus, many individuals complain to the Ombudsman as a way of verifying whether they are indeed receiving the benefits they are entitled to by law.

It is worth noting that the Ministry, both executive and line staff, have been very cooperative and this has facilitated complaint resolution.

CS 80-036

One-stop total bureaucracy care

A woman on social assistance complained about the inadequate amount of money she was receiving from the Ministry of Human Resources.

She was not able to manage all her expenses on her limited income. She also said that because she had lost the "w" on her medical card, she would have to pay for her glasses and dentures herself. The woman's letter of complaint was not very clear about her situation or what action she requested. She had been separated from her husband for about a year, after a brief marriage.

To clarify the problem(s), one of my assistants contacted the complainant and the federal Old Age Security office. It emerged that if she had been separated for one full year when she reapplied in April for the Old Age Pension she would be considered single. That meant that the complainant had approximately four months to wait for an increase in her federal pension.

In the meantime, however, the woman was entitled to some supplement through GAIN for Seniors, to bring her up to the provincial minimum income. It was found that she had begun the procedure for application at one point, but had become somewhat confused. My assistant arranged for an appointment for her with the local Ministry of Human Resources office, where a worker helped her complete the necessary forms. My assistant later followed up to make sure she was in receipt of the monies.

Also, the complainant was advised that because of her marriage she had ceased to qualify for welfare assistance in obtaining glasses and dentures. (Hence the loss of the "w" on her medical card.) However, the complainant was again referred to the local Ministry of Human Resources office to check if the District Supervisor could authorize some assistance for such expenses, based on her low income. She was also given some direction regarding how to handle her name change during her current divorce proceedings, and was referred back to her lawyer with this information.

As a result of this assistance, the complainant's problem was alleviated to the extent that she was provided with provincial funds to supplement her income until she became eligible for the increased federal rate as a single person. The complaint was thus resolved through the Ministry's actions and no recommendation was required.

CS 80-037

Services to the handicapped

A woman complained that her epileptic daughter had not been given adequate financial assistance by the Ministry of Human Resources. The daughter had returned to school to upgrade skills and she had failed to qualify for U.I.C. benefits or Human Resources' Handicapped Persons' Income Allowance. The daughter's $2,000 savings had run out.

The Ministry of Human Resources acted in accordance with Handicapped Persons' Income Allowance guidelines in refusing benefits. However, as part of the investigation, my assistant approached Community Vocational Rehabilitation Services of the Ministry of Health. The Vocational Rehabilitation of Handicapped Adults Program, through the Community Vocational Rehabilitation Services, will pay for a person's tuition and books, and provide a maintenance allowance and transportation allowance, if needed. Each application from a handicapped adult is considered on its individual merits.

The Ministry of Health agreed to provide financial

assistance while the daughter is a student. She now receives financial assistance and is able to pursue her studies.

CS 80-038

A Christmas emergency

The complainant had her Income Assistance benefits terminated four days before Christmas. She appealed this decision and the Ministry district office refused to reinstate her benefits while her appeal was considered.

My investigator reviewed the provisions of the **Guaranteed Available Income for Need Act** and Regulations, and found that where a person appeals a decision to terminate or reduce income assistance benefits, those benefits shall be reinstated on the terms and at the rate existing prior to the decision being appealed, and until the appeal has been decided. My investigator contacted the Acting Supervisor and brought these provisions to his attention. The complainant's benefits were reinstated in accordance with the statutory regulation.

CS 80-039

Saving teeth

The complainant, an older woman on income assistance, had made two requests through her dentist to the Health Care Division of the Ministry of Human Resources, for special dental care and had been refused permission to have the work done. She was afraid she would lose some teeth if the work were not done soon. The complainant felt she may have been refused dental care because of her age.

My assistant found it was not clear exactly what work could be done under the heading of "special care". It appeared, from inquiries, that the extensive root canal work might not be successful and that the use of gold in crowns, as proposed by her dentist, was never approved, regardless of the age of the patient. The Health Care Division had wanted alternative plans or suggestions from the dentist. My office arranged for the dentist to provide these in a new application.

In the meantime, the complainant's Financial Assistance Worker recommended a local dental clinic, where it was later confirmed that the work would be carried out at little or no cost to the patient.

CS 80-040

Battling bureaucracy can be like pulling teeth

A man telephoned my office claiming to be in pain because he could not obtain the specialized dental treatment he felt he needed (through the Ministry of Human Resources G.A.I.N. program). He subsequently added other complaints about the Ministry, including a general complaint that his worker did not treat him properly.

The Ministry worker was unaware that a right of review existed against a rejection of this type of assistance. The worker promised to pursue the matter.

My staff followed up a few weeks later and the complainant was in a much happier frame of mind. His teeth had been fixed, his other problems had been attended to, and most important to him, he felt that the Ministry treated him like a human being.

CS 80-041

Straightening out the problem

A woman on G.A.I.N. handicapped assistance complained that the Ministry would not provide her with orthodontic treatment to correct a bothersome crossbite.

The complainant had previously appealed this decision to the "tribunal" level within the Ministry, but with no success. My investigation discovered that information presented to this tribunal by the Ministry had been erroneous. She had a valid complaint.

A new tribunal hearing was held and this time the decision was made in the woman's favour.

CS 80-042

Lost in the shuffle

A resident of the Lower Mainland complained that she had not been paid for services provided to the Ministry over a period of several months. She had been invited by Ministry workers to set up a bed subsidy operation in her home.

A contract was signed by the woman and witnessed by a social worker who dispatched it to the Regional Manager's office. There it mysteriously disappeared from sight only to resurface several months later when it was returned unsigned by regional officials to the witnessing social worker's office. In the meantime, the woman's home was utilized by the Ministry as a bed subsidy resource but she was not paid for this service. Then the Ministry decided that payment could not be made as the contract had never been signed.

The complaint was substantiated. My intervention convinced the Ministry that they had an obligation to the woman who had acted in good faith. Consequently, a sum acceptable to the woman was negotiated and payment made. The complainant was delighted with the result and stated that when she went into her "battle" with the Ministry she felt alone, but once the Ombudsman's Office entered the picture, "It made me feel not lost in the shuffle".

CS 80-043

Deregulation

A woman providing a service for the Ministry advised that payments had been delayed by three months.

The Ministry worker had submitted the claim for payment on the wrong form. A lengthy argument then ensued between the local office and the controller's office as to the appropriateness of the form. I pointed out that even the wrong form contained all the information that was necessary to make payment and that a party who was providing a service for the Ministry should not be made to suffer financially while the Ministry engaged in internal wrangling. The woman had a valid complaint. It was rectified when the Ministry paid up.

The Ministry accepted my view that it had a responsibility to ensure prompt payment even when its internal procedures had not been strictly followed by its own workers, and undertook to ensure that in future it would settle such problems internally without creating additional costs to the public.

CS 80-044

Pampering a complainant

A young single mother who was receiving income assistance, made a request in March, 1980 for an additional $60 per month to cover the cost of Pampers for her daughter who had dermatitis. First she contacted me to complain about the length of time it was taking the Ministry to come to a decision on whether she was eligible for this special allowance.

Two and a half months had elapsed since the request was initiated. The delay was caused by a failure to obtain an appropriate medical report from the doctor. The doctor had already sent two letters to the Ministry but it claimed that the letters did not contain sufficient information.

My staff recommended immediate action and the authorization for the additional benefits was granted upon receipt of a third letter from the doctor. The decision was to allow retroactive payment to the time of initial application, with a further review one month prior to the expiry date in September.

The complainant then approached my office a second time since the review did not take place as promised. The woman again had a valid complaint. My staff again contacted the Ministry which then granted a further three-month allowance.

I pointed out that this problem would recur at the expiry of each three-month period. The Ministry then promised that it would send a directive providing that the supply of Pampers continue for the time that the child continued to suffer from dermatitis.

CS 80-045

The file got buried

An elderly cancer patient complained that his social worker refused to meet with him, that some of his medical needs were not receiving proper attention, and that the Ministry was not paying some related medical bills.

The man's worker had become ill and somehow the complainant's problem had been placed in a file and overlooked. My staff brought this to the attention of the Ministry. Once the Ministry was made aware of the situation, another financial assistance worker met with the complainant and authorized the payment for a wheelchair, as well as travel costs related to treatments he required.

CS 80-046

No door, no assistance

A single mother living in the home of her parents complained to me when she was denied a shelter allowance by the Ministry.

It had been suggested by her worker that she was not eligible for such an allowance because she lacked a separate entrance to her portion of the house. My staff reviewed the policy manual and discovered that the woman was, in fact, entitled to a shelter allowance.

This mother had a valid complaint which was rectified quickly when I brought this information to the attention of the worker, and the shelter allowance was granted promptly.

CS 80-047

Communications gap

A recently unemployed worker complained that the Ministry had advised him wrongly and sent him on a runaround. He had sought assistance from the Ministry when the Unemployment Insurance Commission was unable to provide benefits to him because of employer delay. Although the Ministry supplied assistance, it insisted that the worker return to the local U.I.C. office and request a monitored payment cheque: an emergency cheque which could be issued by local U.I.C. managers within four hours of request. The complainant tried this and was advised by the federal agency that no such system existed.

Since income assistance had been granted, the only issue at stake was the accuracy of the Ministry Policy Manual which provided information about the U.I.C. monitored payment system to Human Resources staff members. After discussions with U.I.C., I brought this problem to the attention of the Ministry which ascertained that although such a system did in fact exist, the information in the policy manual as to how the system functioned was misleading.

The man had a valid complaint which was rectified when the Ministry undertook to correct its field instructions.

CS 80-048

The letter got lost

A former B.C. Government ward wrote from another province to complain about a lengthy delay. He had written to the Ministry to obtain information pertaining to his birth and upbringing in British Columbia. Three months later he still had received no reply or acknowledgement.

The complainant's letter to the Ministry was apparently misplaced prior to being acknowledged. It was several weeks before it found its way back to the unit which had the expertise to answer it.

The man had a valid complaint about unreasonable delay. It was rectified after discussion between my staff and the Ministry. The information was forwarded.

CS 80-049

Debt collection

An elderly widow was confronted with having to repay a large overpayment. The Ministry was recovering this at a rate of $50 a month from her income assistance.

My staff pointed out to the woman that she had the right to appeal the Ministry's action to a review tribunal, and arranged for her to obtain legal assistance.

The woman had not been aware of this opportunity. A tribunal was established and, on the basis of hardship, it reduced the repayment to $10 a month.

CS 80-050

Steering recipients of assistance through the bureaucracy

The complainant alleged that an allowance had been unfairly terminated after three years.

He had not appealed the decision as he was unaware of the appeal rights available to him. The Ministry had failed to advise the complainant of the right to appeal the decision although it was their stated policy that such advice should be given.

Investigation of this complaint showed that benefits had been terminated in accordance with Ministry policy, and that aspect of the complaint therefore was not substantiated.

A review of the Ministry's policy manual indicated that it was unclear whether appeal advice should be given orally or in writing. The Ministry did not have a clear policy regarding the process by which people would be advised of their rights to appeal a decision to deny or terminate benefits. My staff were advised that the policy of advising a recipient or applicant that they have a right to appeal was not uniformly applied and depended on the particular Ministry office involved. My staff contacted the Welfare Branches of several other provincial governments to ascertain their procedures in advising income assistance recipients of appeal rights. I then supplied the Ministry with precedents from other jurisdictions.

I made recommendations which were accepted by the Ministry. It agreed to develop a standard form "notification of appeal rights" to be included in all letters of discontinuance or rejection of income assistance. The Ministry also agreed to post a notice describing the right of appeal in the waiting room of all district offices. In addition the Ministry agreed to describe appeal rights in a revised pamphlet covering their rights to income assistance. Lastly, the Ministry was in the process of devising a new application form for income assistance and agreed to describe the right of appeal on that initial application form. At the time of my recommendation the Ministry was in the process of developing an appeal kit, and as a result, my recommendations were particularly timely in assisting the Ministry to revise its policy and procedures in this area. This case represents a good example of the concern which this Ministry has shown in ensuring that the concept of administrative fairness is applied as fully as possible to recipients of income assistance.

CS 80-051

The cheque went missing

An individual complained to my office on behalf of a fifteen-year-old child who had not received her income assistance for a period of two months. The situation was complicated by the recent death of her handicapped father.

After numerous calls to various district offices, my staff were able to trace the missing cheques. It turned out that the assistance for one month had been issued on the cheque of her late father, and that no assistance had been issued for the second month.

The child had a valid complaint which the Ministry remedied very quickly: it issued a cheque for the missing month. I greatly appreciated the Ministry's speedy resolution of the problem.

CS 80-052

Reuniting mother and daughter

The Legal Assistance Society in Saskatchewan contacted my office on behalf of one of their clients. They had unsuccessfully tried to help the complainant re-establish contact with her mother, so that she could assist in caring for her. The Society complained that it had contacted the Ministry in an attempt to locate the mother, but was refused information on the mother's whereabouts.

My office contacted the social worker in the Ministry and found that she had attempted to visit the complainant's mother in order to communicate the daughter's request, but because the mother was terrified of people, she would not answer the door.

The social worker agreed to try again to communicate with the mother and this time was successful.

Because the Ministry was legally required to maintain the confidentiality of records, the complaint was not substantiated. However as a result of the contact, the mother agreed to see her daughter, and this information was given to the Legal Assistance Society. It was arranged that the daughter in Saskatchewan would contact the representative of the Ministry directly. The cooperation of the Ministry in making the reunion possible was greatly appreciated by the complainant and my staff.

MINISTRY OF LABOUR

CS 80-053

Learning a trade

A woman wrote to me from Alberta to complain about a decision of the B.C. Apprenticeship Branch which refused to grant her a Certification.

While living in British Columbia, she had completed the academic requirements and three-quarters of the two-year time requirement to achieve certification as an auto painter. A move by her family took her to Alberta where she continued in a related trade apprenticeship. After completing sufficient apprenticeship time, she sought recognition of her Alberta experience to obtain British Columbia Certification towards which she had been working. She was even prepared to return to British Columbia for a short time and demonstrate her ability to an employer who could then recommend Certification. The Apprenticeship Branch, however, required that she return to this province for a six-month period.

After my staff discussed the matter with the Ministry, the complaint was resolved when the Ministry indicated that it would be possible for the woman to return to British Columbia for a short time to allow an employer to evaluate her work, and if it met their standards, they would provide the Certificate of qualification.

CS 80-054

Payment of wages

An employer complained that the Board of Industrial Relations had reached a decision which he believed to be unfair, without him having had the opportunity to be heard. He said he had received from the Ministry of Labour a certificate stating that he owed some of his employees certain sums of money as unpaid wages. Along with this certificate, he had also received a letter stating that he had eight days in which to present evidence and make representations to the Board of Industrial Relations. Upon receiving these documents, the employer's immediate reaction was that a decision that he owed these sums of money had already been made by the Board. He assumed this because the eight-day period had expired by the time he received the Board's letter.

My assistant discovered that the Board of Industrial Relations had not yet reached a decision on this matter, and that the employer would still have an opportunity to submit evidence and make representations to the Board. While this resolved the problem as far as the employer was concerned, I wrote to the Board expressing my concern over both the language used in the certificate sent to employers, and the fact that the eight-day period may, in some cases, be insufficient to enable the employer to submit evidence and make representations to the Board. In my view, the right to be heard is meaningful only where adequate and timely notice prior to the hearing is assured, and where these rights are adequately explained to the recipient of such notices. I gave the Ministry eight days from date of mailing to respond to my criticism. The Ministry could not keep up the pace!

The Ministry replied that the certificate forms and the covering letters would be revised in order to avoid any possible misunderstandings such as had arisen in this case. The Ministry also advised that new legislation was being prepared which, if accepted, would substantially ameliorate the current provisions of the statute with respect to the period during which an employer could submit evidence and make representations.

MINISTRY OF LANDS, PARKS AND HOUSING

A substantial proportion of the complaints received about the Ministry of Lands, Parks and Housing fell into two categories. The first concerned the disposition of Crown land. A number of these complaints involved the apparent inconsistencies and changes in Crown land programs and policies, and delay in the processing of applications. The second major area of complaints concerned the eligibility under the Home Purchase Assistance Program.

Other complaints received covered a wide assortment of issues, ranging from the delay in dealing with private land holdings in Part III of the Pacific Rim National Park, to questions about the Mobile Home Registry requirements. Ministry staff cooperated fully during my investigations, and a significant number of complaints were resolved through the assistance of the Ministry.

CS 80-055

Unreasonable delay

After waiting for four and a half years to have the Ministry of Lands, Parks & Housing decide on his application for a parcel of Crown land, a man complained to my office about unreasonable delay in processing his application.

The complainant had applied for the land in October of 1976. In May, 1977, the Director of Land Management wrote to him, stating that a decision on his application was anticipated within the next month. Four months later the area Land Manager wrote stating that there were some delays but that he would be offered a site. My staff was informed by the Ministry that further delays had been experienced, and that the complainant would not be offered a site until 1981.

Ministry officials claimed that much of the delay was caused by changing organizational structures and policy revisions with respect to the disposition of Crown land. I believe that a delay might be considered unreasonable whenever service to a member of the public is postponed improperly, and unnecessarily, or for some irrelevant reason. Hence, lengthy delays caused by a shortage of staff, administrative reorganization, or policy revision are unreasonable. If Government requires that an individual seek its approval in particular circumstances, it must ensure that sufficient resources are allocated to administer such procedures expeditiously. If ministries wish to reorganize their personnel, they must ensure that such reorganization does not unnecessarily impede service to the public. And, if policies are to be reexamined and revised, such changes should be made quickly, or alternatively, the previous policy ought to remain in effect until replaced. After reviewing the relevant events in this case I concluded that, of the expected four and a half year delay before the complainant would be able to occupy the land, almost two years amounted to unreasonable delay.

One of the particularly difficult issues in complaints of this nature is to find a remedy appropriate in the circumstances. However, the common law provided some guidance. In successful civil cases, the Courts attempt, usually by way of pecuniary damages, to return the plaintiff to the position he would have been in, had the unlawful act not occurred. In this case, while it was impossible to roll back the 22 months of unreasonable delay, it was possible to prevent the complainant from suffering any direct pecuniary loss as a result of such delay.

I recommended that the complainant be charged the 1979 price when he finally received his lot in 1981. This complaint was substantiated and the Ministry accepted my recommendation.

CS 80-056

Improper conduct of a civil servant?

A man complained that more than ten years ago a civil servant had used his position improperly to acquire Crown land for himself and a relative and had thus deprived our complainant of an opportunity to acquire this land.

My assistant carried out an extensive investigation and review of the material available at the Ministry of Finance and the Ministry of Lands, Parks and Housing concerning the lease applications in question. Since these events occurred more than a decade ago, I was unable to find conclusive evidence to support such a serious allegation. Where the allegation borders on questions of criminal behaviour, a high standard of proof is required. Since continued investigation appeared unlikely to provide further clarification, the investigation was discontinued.

CS 80-057

Squatters' rights

A family living in northern British Columbia complained that the Ministry had been acting unreasonably and unfairly by not allowing them to obtain title to Crown land which they had occupied for the previous 10 years. A number of others had also squatted in the area and, for several years the Ministry had been attempting to legalize their residence by establishing a subdivision and selling the lots on a Crown grant basis. The complainant's dispute with the Ministry concerned the exact location of the homesite.

The family had constructed a log house next to a creek and wanted the Ministry to survey a lot for their purchase around the existing residence. However, since it was against the Ministry's policy to grant Crown land or allow subdivisions in areas which have a potential for flooding, the Ministry wanted the family to re-establish their residence on higher ground. Since the family did not want to relocate, the Ministry's last and "final" offer was a Licence of Occupation for their existing residence to be renewed annually at the Ministry's discretion. The family was worried that this proposal did not provide them with adequate security of tenure.

My staff interviewed the complainants and the Ministry officials separately to clarify the contentious issues and then brought them together in an attempt to resolve their differences. The mediation was successful and an agreement was reached with both parties making compromises. The Ministry offered the complainants a five-year licence to occupy their current residence in exchange for the complainants' agreement to purchase a nearby parcel of Crown land and to relocate there by the end of the five-year period. This satisfied the complainants' desire to secure tenure to a piece of land in the area without having to vacate their present house on short notice, and also met the Ministry's need to bring the family's occupation of the land into conformity with the law.

CS 80-058

Fair consideration under aggravation

A rancher living in northern British Columbia alleged that the Ministry had improperly denied her application for an agricultural lease over a parcel of Crown land adjacent to her present ranch. This complaint was referred to me by the Deregulation Branch of the Ministry of Finance which had unsuccessfully attempted to resolve it prior to my taking office.

Over a period of 10 years my complainant had alienated government officials by ignoring many rules intended to control ranching in the area. She had made numerous applications for agricultural leases. The land for the present application had been inspected by a government agrologist on several occasions, but the Ministry rejected the application on the basis that the parcel did not contain at least 50 percent arable land.

I retained a professional agrologist to inspect the land and examine earlier reports on the land's agricultural quality. He advised that the land was sufficiently arable to meet the Ministry's minimum arability requirements. Under the Canada Land Inventory System the parcel was rated as predominantly class 5, but improvable to class 4 with irrigation. (Land of class 4 rating is considered arable and in this case more than 50 percent of the land was improvable to class 4.) There was, however, some question whether there would be sufficient water available to irrigate the land.

I recommended to the Ministry that it grant the complainant an agricultural lease for the Crown land in question, but that the lease be commensurate in area with the amount of irrigation water available. The Ministry accepted my recommendation on the condition that the complainant obtain a water licence for irrigation purposes and purchase a small piece of land on which she had built her house, in order to legalize her occupation of it.

CS 80-059

A long wait for a rejection

A man complained that the Ministry unfairly denied his application for an agricultural lease. The complainant, in addition to his concerns about the denial of his application, alleged that there was excessive delay on the part of the Ministry in its handling of his application. The land in question had been the subject of an agricultural lease issued in 1967 to another individual; however, that lease had been repossessed by the Crown because of default in payments. Present Ministry policy requires that land be more than 50 percent arable to be subject to an agricultural lease, and that applications for such leases be referred to other Crown agencies for possible objections. The land applied for did not meet the Ministry's present minimum arability requirements. When the 1967 agricultural lease had been issued the minimum requirements were less stringent. In addition the Parks Branch had recently assessed the land as having a high recreation potential and had placed it within a park reserve with the intention of developing it as funds became available in the future. Assessment of the land's agricultural potential by the Ministry and the assessment of its recreation potential by the Parks Branch were verified and this aspect of the complaint was not substantiated.

There had been a delay of 11 months by the Ministry in adjudicating this application; however, the Ministry assured me that it now attempts to process applications within 120 days. While the complaint about the delay in the processing of the application was substantiated, the Ministry had already taken steps to correct this deficiency. I decided not to make any further recommendations concerning the delay in view of the Ministry's assurance regarding its speedier adjudication of applications.

CS 80-060

Waiting while the rules change

A resident of the Province complained that the Ministry would not honour his request to be allowed to lease a particular lot in a district subdivision. He further protested the Ministry's delay in processing his application.

Originally the lot in question was part of a residential subdivision, and the lots were made available on a lease to purchase basis. At the time of the complainant's application the Ministry was rethinking its policy on leasing land, and this resulted in a lengthy delay. It was ultimately decided to sell the lots instead of leasing them. Several expressions of interest on the available lots had been received by the Ministry. In fact one request for the particular lot in which the complainant had expressed interest had been received prior to the complainant's submission.

Where there are several requests for specific properties, Ministry policy is to award the right to obtain the land on a lottery basis. The lottery on the lots in this subdivision was limited to those who had expressed prior interest. Happily for the complainant, his name was the first drawn in the lottery and he acquired the property he had long sought.

CS 80-061

Underground communication

The president of a federation of caving groups complained that the Ministry was discriminating in favour of other caving interests while developing a provincial policy respecting caves and caving. He alleged that his group had been excluded from full and equal participation.

In 1979 the Outdoor Recreation Branch undertook to coordinate an inter-ministerial project to develop

recommendations for a government policy on the conservation and recreational use of caves. During the first stage of the project, government agencies and non-governmental organizations concerned with spelunking in the Province were invited to submit briefs which would be used to develop a "discussion paper". Although the Ministry needed the participation of the federation to complete its work, a communication impasse had developed which brought the project to a standstill as far as the complainant was concerned.

In an effort to bring the parties to a point of agreement, my investigator discussed the matter with each party separately over a period of weeks, and then arranged a face-to-face mediation session at my office where they were finally able to come to terms with their differences. As a result of this process, the parties subsequently exchanged letters of understanding in which they committed themselves to working together in a cooperative spirit.

CS 80-062

Family First Home Grant

A man complained that his application for a Family First Home Grant was refused. The Ministry of Lands, Parks and Housing rejected the application on the grounds that the applicant had previously owned an unregistered mobile home which, they asserted, was a first home for the purposes of the Home Purchase Assistance Act.

The **Home Purchase Assistance Act,** section 13 states that an applicant qualifies where he "has never owned or purchased by way of an agreement for sale, a residence other than the residence in respect of which the application is made".

Close examination of the statute and regulations clearly showed that the applicant's unregistered mobile home resting upon a trailer pad in a mobile park is not a "residence" as defined in section 1: "a self-contained dwelling unit of a kind referred to in section 7 or of a kind prescribed by regulations". Second 20(2) of the regulations prescribes as residences only mobile homes registered in the Mobile Home Registry, and only for the purpose of loans, not grants.

Since the applicant's mobile home was not a residence as defined by regulation and since his application met the requirements of the Act in all other respects, I recommended to the Ministry that the Ministry's Eligibility Committee review the application, keeping in mind these considerations. Ten days later the Committee accepted my interpretation and approved the application.

I also enquired into the feasibility of the Ministry re-evaluating other applications from former owners of unregistered mobile homes which had been rejected on the same erroneous grounds. The Ministry produced convincing evidence that it would be administratively impractical to check manually the 18,841 applications received to July 1, 1980 to determine whether past mobile home ownership was the sole ground for rejection. The Ministry did provide assurances that henceforth the Eligibility Committee would not reject grant applications on the basis of this former erroneous interpretation.

Any member of the public whose application for a Home Purchase Assistance Grant was turned down because of prior ownership of an unregistered mobile home, and who did not obtain other benefits under the program, may now wish to resubmit an application for the grant.

CS 80-063

Home Purchase Grant

The Eligibility Committee of the Ministry of Lands, Parks and Housing rejected a $1,000.00 Home Purchase Assistance Grant application for the purchase of a condominium by a former B.C. apartment dweller returning to the Province after a four-year absence abroad, on the grounds that the applicant failed to meet the program residence requirements.

The **Home Purchase Assistance Act** restricts grants to persons continuously resident in the Province at least two years immediately prior to purchase; to Canadian citizens who are native British Columbians, or to Canadian citizens who at any time ordinarily resided in B.C. for five consecutive years.

The applicant took the view that in his case the interpretation and application of the residency requirements by the Ministry were contrary to the true intent of the Act. Further, he felt that the **Home Purchase Assistance Act** residency requirement of actual physical residence in the Province is far more stringent than that contained in other provincial statutes, and that Canadian case law recognized secondary factors which suggest residence and a clear intent to resume residence as tantamount to physical residence for entitlement purposes.

The discussions of the Legislative Assembly relating to this statute (**Hansard** of June 15, 1976) did not clarify the legislative intent of the residency requirement beyond the statutory provisions. Residency requirements under different provincial statutes raise separate issues. Different statutes use varying conditions of residence for a variety of programs. While greater uniformity might be desirable to avoid confusion and inconsistencies, the administration of one program cannot be faulted for failing to adhere to residency requirements of another provincial program. Finally, Canadian case law stresses that physical presence in a territory and the maintenance of a house or lodgings available for occupation are the key tests of residency. "Ordinary residence" means that the person has his ordinary or usual place of living in that province, and that he lives within the Province more than he does elsewhere.

I concluded that the applicant met none of the eligibility tests for residency under this program, and the tests themselves were reasonable. The Ministry acted correctly in denying the application and the complaint was not substantiated.

However, in the course of my investigation other administrative shortcomings were identified. I recommended that eligibility conditions for Home Purchase Assistance Grants be enumerated for the Eligibility Committee to consider and that they be included in official brochures describing the program.

MINISTRY OF MUNICIPAL AFFAIRS

In 1980 I received a number of complaints involving the Office of the Inspector of Municipalities. The complaints were about delay and incomplete investigations on the part of the Inspector. I think it is important to note that during 1980, an Inspector of Municipalities was appointed and, for the first time, it was a separate appointment to that of the Deputy Minister of Municipal Affairs. Until now, the Deputy Minister has also been the Inspector of Municipalities. I would hope that with this new appointment, more time and resources will be available to the Inspector to investigate complaints about municipalities and regional districts.

My office has also received complaints relating to municipal boundary extensions. The Sayward case, reviewed below, is one noteworthy example.

CS 80-064

The right to be heard—boundary extension of the Village of Sayward

(**Note:** Although my final actions on this complaint took place in 1981, I have decided to include the case summary and comment in the present report because the investigation had been completed in 1980, and because of the importance of the principle involved.)

In December 1979 I received a complaint from a group of citizens living in and around the village of Sayward, near the northern end of Vancouver Island. A few weeks earlier, as a result of Order in Council #2864, the area of the village had been increased to more than three times its former size. Of the citizens who had lived within the village boundaries **prior** to the extension, none had opposed the change. However, fifty-one persons who had resided in the former fringe area were now included within the new boundaries, and for various reasons most of them had been strongly opposed to being absorbed into the village. (Any mention of "residents" in this summary refers to this group.) These residents complained of unfair treatment by the Minister of Municipal Affairs.

My investigation revealed that the village council had originally applied to the Ministry for a boundary extension in a letter dated April 18, 1979, mentioning very briefly four reasons for the request, all involving the village's financial difficulties and the need for a broader tax base. The Ministry advised the council of the procedures to follow, including advertising of the proposal in a local newspaper as required by s. 21(2) of the **Municipal Act**, R.S.B.C. 1960, c.255 (now R.S.B.C. 1979, c.290, s.22(2)). The advertisements, which appeared in July 1979 in the "Upper Islander", described the proposed boundary extension, but did not discuss the reasons for it. They invited the residents in the extension area to inform the Minister if they objected to the inclusion of their properties within the municipality. (Note that residents who were tenants therefore appeared to be excluded from this invitation to object, and that there was no opportunity to learn of the reasons for the proposed extension, or for the presentation of arguments in support of objections.)

Most of the resident property owners objected by writing individual letters, or through a petition to the Minister, and their letters were acknowledged. (In one case, a letter of objection was acknowledged as though it were a letter supporting the boundary extension.) The residents were aware of s.22(4) of the **Municipal Act**, which states:

> "If the minister is of the opinion that there is substantial opposition to the proposed extension by the residents in the area proposed to be included, he may direct that the question of including the area sought to be included in the municipality be submitted in the form prescribed by him to the residents of the area for assent."

Having demonstrated what they felt was overwhelming opposition to the proposal, these residents fully expected that the Minister would exercise his discretion so as to provide them with an opportunity to vote on the matter. The Minister, however, although he recognized that there was "substantial opposition" to the proposal, decided not to order a vote. In line with his policy of encouraging such boundary extensions, he made a recommendation to the Cabinet, and the Order in Council was passed on November 9, 1979. **The residents of the affected area were not informed of any of these decisions.**

In considering all my findings, I was disturbed by several aspects of the procedures used by the Ministry. For instance, the reasons favouring the boundary extension had not been thoroughly documented and verified, and the method of calculating opposition to the proposal appeared to be unrelated to the wording of the Act, as quoted above. However, the heart of the problem was, in my opinion, the lack of administrative fairness towards the objectors. On November 5, 1980, after the exchange of much cor-

respondence on my findings, I advised the Minister:

"Having now considered the matter carefully, **I have concluded that the manner in which you exercised your discretion was arbitrary and unfair and contrary to the spirit of s.21(4) of the Municipal Act.** Since you have agreed that there was "substantial opposition", I believe the residents of the affected area were entitled to expect either:

a) an opportunity to vote on the proposal, or

b) at the very least, to be informed, **before** any final action was taken, of your decision not to hold a vote, and of the substance of the information you relied upon in arriving at that decision, so that they could, if they wished, rebut the accuracy of that information.

"My conclusion is that neither of these expectations was fulfilled . . ."

In accordance with this conclusion, I recommended, ". . . that you take appropriate steps to remedy the effects of your action. You will note that I am not recommending a very specific remedy. I expect that you or your office will be in a good position to assess alternative remedies open to you, and that we will then be able to discuss these with you."

The Minister has refused to accept either my conclusions or my recommendation, and in fact denies that I have any jurisdiction in the matter because, he says, his decision was made as a result of his general policy on boundary extensions, and was not, therefore, a "matter of administration". He has, however, agreed to modify certain procedures used in his Ministry, to ensure that future requests for boundary extensions are better documented and evaluated.

While these modifications are commendable, they do not address the basic problem which I believe exists, and which the Minister has decided to ignore. Following the exchange of further correspondence and a personal meeting with the Minister, I found no change in his basic position. I therefore visited the community early in April 1981, to inform the complainants of the results of my investigation, and to advise them of their remaining options through the courts.

COMMENT

I am including a summary and comment on the Sayward complaint in this report because it illustrates two kinds of problems which are beginning to recur frequently.

First, the authority (specifically, the Minister in this case) has taken the position that the complaint involves a matter of policy, not of administration, and that it is therefore beyond my jurisdiction. He contends that his decisions — not to hold a vote in the proposed extension area, and to recommend the boundary extension to Cabinet — were political ones, arising out of the government's policy of encouraging municipal boundary expansions so as to include, whenever possible, the residents of "fringe areas" within existing municipalities.

I have repeatedly attempted to make it clear to the Minister — apparently without success — that I have not been investigating his policy, nor have I any comment or recommendation to make on it. There may well be excellent reasons for or against the encouragement of municipal boundary expansions throughout the Province, but these have not been the subject of my investigation. Clearly, any policy is implemented by means of administrative decisions and actions, and indeed it would be difficult to conceive of a legitimate administrative action which did not flow from a policy. This connection, then, cannot be held out as a reason for preventing my investigation of an administrative action or decision. A policy of itself may be acceptable or even laudable, but if it is implemented arbitrarily, unreasonably, or unfairly, there will undoubtedly exist administrative actions which are liable to investigation and criticism. In the Sayward case, I informed the Minister of my conclusion that "the **manner** in which you exercised your discretion" was arbitrary and unfair. This conclusion referred not to the policy, but to decisions made in implementing it in a specific case. I trust that this kind of distinction will be considered and duly noted by all the authorities involved in my investigations.

The second problem concerns the observance of procedural fairness. In general, I believe it is extremely important that the principles of natural justice and administrative fairness be observed by all persons responsible for making or implementing decisions, whenever individuals or groups of citizens will be adversely affected by such decisions. The **Ombudsman Act**, for example, not only implies, but expressly requires that such principles be followed by the Ombudsman himself: before making a report or recommendation that may adversely affect an authority, the Ombudsman must inform the authority of the grounds, and give the authority the opportunity to make representations **before** he decides the matter. Administrative fairness requires that a similar course be followed by an authority with respect to citizens. In some cases, this may imply a need for a hearing.

In the Sayward case, I concluded that the Minister's actions amounted to a denial of procedural fairness towards the complainants. One of the complainants put the problem in a nutshell in a letter to the Premier: "He (the Minister of Municipal Affairs) appears to have turned a blind eye and a deaf ear to repeated pleas from our people for him to at least hear **both** sides before making his decision. He chose to deny us this opportunity." For my part, I believe that the very existence of (what is now) subsection 22(4) of the **Municipal Act** implies that if enough people are concerned about a boundary

extension, they should have the opportunity to vote on the proposal. It is true that the statute provides for the exercise of ministerial discretion, but the provision of such a discretion carries with it a duty and an obligation to act fairly, and I cannot accept that it may be exercised in an arbitrary manner, to silence the potential opposition. Many recent cases in common law support the proposition that a Minister must act fairly in such matters.

In my opinion, when the Minister decided not to hold a vote in the extension area, he should at least have **informed the affected residents of this decision,** and of the **reasons favouring the boundary extension,** and **heard their arguments** against the proposal, before making a final decision. Since the Minister does not recognize any unfairness in his actions, since the Cabinet acted on his recommendation by passing the Order in Council, and since there are statutory difficulties with reversing the boundary extension even if this were desired, I have decided not to submit a report to the Lieutenant Governor in Council under s.24(1) of the **Ombudsman Act**, and have closed my investigation.

The Minister, in his correspondence with me, has indicated that boundary extensions were "forced without a vote" in several other municipalities during the past decade. Since I did not investigate those events, I do not know whether procedural fairness was observed on other occasions, but even if it were not, that does not constitute a valid reason for perpetuation of the practice. I am at present pursuing an investigation on my own initiative into various problems connected with municipal restructures and boundary extensions, and this may result in recommendations on, amongst other things, the observance of procedural fairness in the future.

MINISTRY OF THE PROVINCIAL SECRETARY: SUPERANNUATION BRANCH

During 1980, my office dealt with a relatively small number of complaints against the Superannuation Branch. The Branch administers 7 major pension and benefits statutes, including, for example, the **Pension (Public Service) Act**, the **Pension (Teachers) Act**, and the **Pension (Municipal) Act**. This entails the administration of approximately 160,000 contributors' accounts and looking after total pension funds amounting to approximately $3,000,000,000.

Branch staff deserve credit for providing my investigators with information and documentation in a prompt and efficient manner.

CS 80-065

Pension eligibility

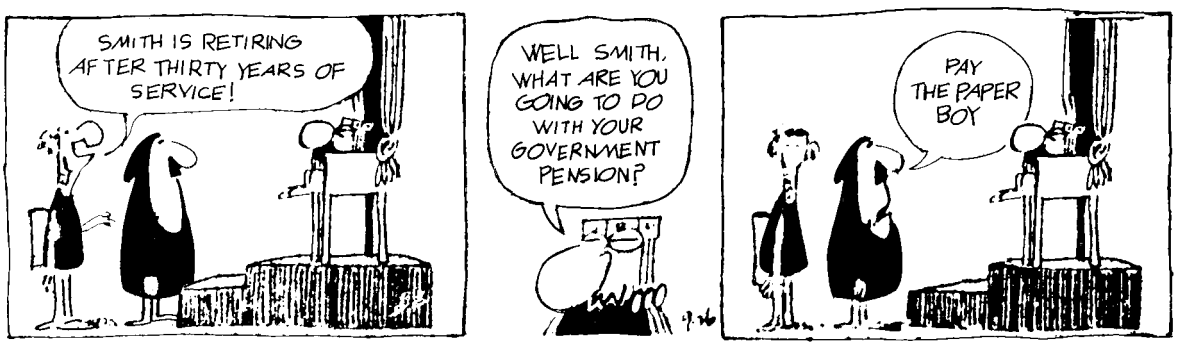
A woman who had worked for the Provincial Government for a total of 27 years was told she was not eligible for a pension. She felt this decision was unjust and asked me to investigate.

The complainant had been employed as a public servant intermittently between 1936 and 1973. On several occasions she had withdrawn her contributions to the superannuation fund. At the time of retirement, at age 63, the complainant found herself without a pension because she was five months short of the required minimum of 10 continuous years of service.

In 1969, during her last period of continuous service, the complainant inquired whether her earlier service could be reinstated for pension purposes after her completing the ten-year minimum consecutive service for a pension. Over several years she was unable to obtain an unambiguous answer and ultimately resigned in frustration after having completed only 9 years and 7 months of the required minimum of 10 years' service that would have made her eligible for a pension and for reinstatement of her earlier service. Several weeks **after** her resignation in May 1973, the Superannuation Branch held out definite prospects to her that she could reinstate her earlier service for pension purposes as early as November 1973, provided she served a minimum of 10 years.

In 1975, the Supreme Court of British Columbia considered the complainant's motion for an Order of Mandamus directed to the Superannuation Commissioner requiring him to reinstate her account and to allow her to repay to the fund the contributions which had been refunded to her. The Court concluded that the Superannuation Commissioner was within his jurisdiction in refusing the complainant's request. In considering the case, the Court had assumed that the complainant had not made contributions during the last years of her service. Yet the complainant had indeed been contributing for 9 years and 7 months before her retirement and her superannuation account showed a balance in her favour. C.B.C Ombudsman host Robert Cooper took up the case in 1975 but was unable to persuade authorities to change their decision.

In my discussions with the Ministry, I was able to point to a sequence of events that had not been considered earlier. In 1945 the complainant, a nurse, had applied for a leave of absence, without pay, from the public service to serve in Britain as part of the war effort. Her application had been refused without adequate reason (the reason given was that the St. John's Ambulance Society was not part of His Majesty's Forces). She also had never been notified of this decision. Had her application been approved, she would have returned to the public service in 1946 and subsequent events might have taken a different turn. I also pointed out that the failure of the Superannuation Commissioner's Office



THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.

to give adequate and timely information as well as a number of other administrative shortcomings had contributed to the complainant's early resignation in 1973.

I recommended to the Superannuation Commissioner that an Order in Council be issued recognizing a sufficient period of the complainant's service as pensionable service in order to qualify her for a minimum pension.

At first, the Superannuation Commissioner claimed that there was no authority for such a procedure. When I pointed to a statutory provision that gave Cabinet exactly that authority, the Superannuation Commissioner claimed next that, although statutory provision did exist, it had never been used — as though that settled the issue. As it turned out, there was indeed a precedent: the Government, some years back, wanted to hire a senior official who was prepared to join the public service provided that earlier years of employment were recognized by the public service pension system. They were.

I asked whether there was one law for the high and mighty and quite another law for the lowly officials? No, they would not put it that way, but neither was the Superannuation Commissioner prepared to extend equal consideration to everybody. What concerned him most was that there might be a flood of others also asking for an exception. I suggested that every applicant had a right to expect that his or her case be considered on its own merits.

After many months of consultations with the Superannuation Commissioner, I called on the Provincial Secretary, and on his recommendation, an Order in Council was issued recognizing five months of the complainant's service and making her eligible to receive a pension. I was particularly pleased about the Provincial Secretary's decision to recognize the 1945 period as pensionable service, as it established to my satisfaction that a woman's contribution to the war effort could be given recognition like that of a man, at least for pension purposes.

The woman now receives a pension for 10 years of her service with the Provincial Government.

I would like to add that, in spite of the difference of opinion between the Superannuation Commissioner and myself, the Superannuation Branch, at all stages of my investigation, was very cooperative in providing information and access to files and other materials.

CS 80-066

Reduction of superannuation

(**Note**: Because of the wide publicity this complaint received, there can be little doubt as to the complainant's identity. I have therefore referred to Mr. Loffmark by name in this summary.)

Within a few days of the opening of my office in October 1979, I received a complaint from Mr. Ralph Loffmark, concerning the recent reduction of his M.L.A. pension to approximately 20% of its former level, following a decision by the Superannuation Commissioner.

Mr. Loffmark was a Member of the B.C. Legislature and a Cabinet Minister for nearly nine years, up to September 1972. At that time he returned to his former position as a professor at the University of British Columbia, and in March 1975 he was granted a superannuation allowance under the **Members of the Legislative Assembly Superannuation Act**.

In December 1976, he completed and returned a "re-employment form", indicating that he was employed by U.B.C. Such forms are routinely sent by the Superannuation Branch every two or three years, for completion by all persons in various groups whose pensions are administered by the Branch. The Branch took no action following Mr. Loffmark's 1976 return.

In June 1979 Mr. Loffmark received, completed, and returned another such form, but was then advised, through a letter dated 1 August 1979, that:

> "The **Members of the Legislative Assembly Superannuation Act**, under which your allowance has been granted, provides that the employer-paid portion of an allowance shall be suspended during the period that a pensioner is in paid employment with a corporation established under an Act of the Legislature."

The letter indicated that his cheque for July had

been reduced to less than $100, and requested details of his employment history since 1975 so that the total overpayment of pension could be calculated.

Mr. Loffmark was unable to persuade the Branch that he was entitled to the full allowance, and so brought his complaint to me.

Simultaneously, the matter received considerable attention in the news media. Allegations were made, on one hand, that Mr. Loffmark's pension had been granted remarkably rapidly when he first applied for it in 1975, and on the other hand, that the reduction of his pension was related to his political activities against the governing party during the provincial election of May 1979. In my investigation, therefore, I thought it proper to probe these allegations as well as the basic question concerning the reduction of the pension.

In January 1980 Mr. Loffmark decided to petition for judicial review of the decision to reduce his pension, and the following month the Court's interpretation of the statute resulted in the restoration of his pension to its former level. The Court decision was not appealed, and did not affect the pensions of any other persons.

Meanwhile, as my investigation continued, I was able to conclude that some of the allegations which had been made were not substantiated. For instance, there was no undue speed in granting Mr. Loffmark his pension in 1975, since all the necessary calculations and arrangements had been made earlier, in anticipation of his formal request. In June 1979 the Branch had, as planned five months earlier, mailed a batch of re-employment forms to over 7,000 persons, including Mr. Loffmark, whose receipt of a form at that time was therefore clearly unrelated to his recent political activities. A check made of decisions relating to the pensions of 48 other ex-M.L.A.s showed that the pensions of others had also been reduced at various times under the same provisions of the Act, although in the other cases the employers were not universities, but corporations or boards which were, for practical purposes, government agencies.

After several of the Ministry's staff had been questioned, I concluded that if, as alleged, any political pressure had been exerted during this episode, it would most likely have been directed at a particular senior official of the Branch, or at the Ministry's solicitor (in the Attorney General's Ministry) who had provided the legal opinion upon which the decision was based. The Branch official has unhesitatingly provided written replies to my questions. Taking these in conjunction with all the other information gathered, I have found no evidence of improper conduct or political influence with respect to public servants in the Superannuation Branch, although it is clear that administrative errors were made.

The solicitor involved was also requested to respond in writing to two questions. These questions did not concern the legal opinion itself, but were intended to determine whether anyone attempted to bring improper pressure on the solicitor. However, the solicitor's superiors in the Attorney General's Ministry have refused to permit answers to these questions, on the grounds that I have no jurisdiction. Thus, after more than a year, this aspect of the investigation remains incomplete and I have been unable to arrive at any conclusions as to whether the Superannuation Commissioner's decision might have been improperly affected by this route.

THE MINISTRY OF TOURISM

CS 80-067

Just a matter of time

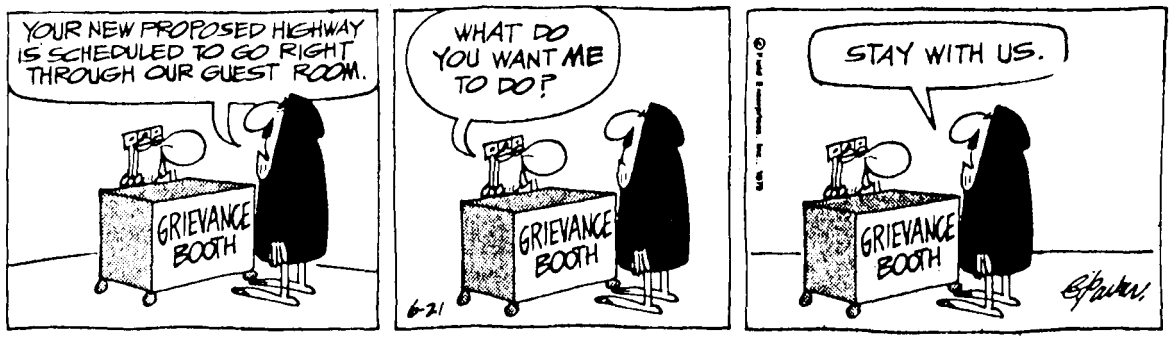
A former employee, now retired, of the Ministry of Tourism complained that the Ministry owed him money. After his retirement, he had been re-hired on a short-term contract basis to work on a special project. Five months after the termination of that contract he had still not received payment for his services.

On investigation I found that a complicated contractual arrangement had been entered into, but had never been officially approved by Treasury Board. Consequently, the request for payment approval was held up by the Ministry of Finance (Office of the Comptroller General) since it lacked the usual documentation.

The complainant received his cheque shortly after the Ministry received notice of my intention to investigate. While this complaint was resolved by the Ministry's action, I found that there had been unreasonable delay on the Ministry's part.

MINISTRY OF TRANSPORTATION AND HIGHWAYS

The Ministry of Transportation and Highways was one of the authorities most often complained about in 1980. Complaints which were investigated were divided almost equally between those involving the Motor Vehicle Branch and those involving the Highways Division of the Ministry. All sectors of the Ministry offered good cooperation, although officials of the Motor Vehicle Branch deserve my particular appreciation for their exemplary efforts in assisting



THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.

my staff during the course of complaint investigations.

Common subjects of complaint concerning the Motor Vehicle Branch were the assessment of penalty points, suspension of drivers' licences, the refusal to issue licences, and restrictions placed upon drivers' licences. Roughly a third of these complaints were found to be not substantiated, while another third were resolved by the Motor Vehicle Branch, subsequent to my involvement.

Investigations into most of the remainder of these complaints were discontinued because the complainant had not exercised an available administrative review procedure.

Complaints involving the Highways Division of the Ministry most often concerned highway maintenance, the approval and disapproval of subdivision plans, and the acquisition of property for highways purposes by the Ministry. Within the last category, an issue which commonly arose was the extent to which the Ministry should compensate for the adverse effects to private property owners caused by the establishment or realignment of a highway.

CS 80-068

Access to information: a real barrier?

The Chairman of a Regional District complained about the refusal of the Ministry of Transportation & Highways to release a 1978 study on the stability of the Garibaldi Barrier. The Ministry's refusal to release it "pending formulation of government policy" on the matter caused increasing administrative difficulties to the Regional District.

Several days after receiving notice of my intention to investigate, the Government released the report to the public.

CS 80-069

Pasture or gravel pit?

A rancher in the East Kootenays complained that the Ministry expropriated 15 acres of her grazing land for use as a gravel pit. Compensation had been offered to her but not accepted, as she disputed the right of the Ministry to take over the land at all.

Subsequent to my intervention, it was discovered by the Ministry that it had no further use for the gravel pit. My staff assisted in arranging a settlement whereby the land would be resloped and seeded so as to make it suitable for grazing once again. Compensation in excess of $4,000 was paid as rent for the Government's use of the land. This result was satisfactory to the complainant, especially as she also recovered the land.

CS 80-070

Contract work: Hired Equipment Policy

A contractor complained to my office that a Highways District foreman had improperly discriminated against him. He had taken out a loan to buy a dump truck in the belief that, under the Ministry's Hired Equipment Policy, he would be first for work on the district foreman's eligibility list for the town in which he resided. However, he was ranked eighth on the list. The contractor claimed that he had been improperly discriminated against and consequently had received only two months' work, far less business than he was entitled to under a fair application of the policy.

The Hired Equipment Policy aims to establish and maintain an optimum supply of local equipment operators available for hire with each local Highways district. The policy requires district foremen to give priority in contracting to local residents over residents of other areas and districts. If a shortage of dump trucks exists in one area, units can be hired on the same priority basis from adjacent areas. On the other hand, in many areas, there are too many trucks available and to try to spread the available work to all trucks would result in none making enough to maintain a healthy local industry.

Since the policy required that local residents receive first priority, and since the complainant was the only local resident who had registered for work, I recommended that the complainant be moved to first position on the area eligibility list. The Ministry squirmed: strict application of the Hired Equipment Policy in other areas of the Province had adversely affected established equipment owners. The Hired Equipment Policy was therefore being amended to recognize the seniority of established owners in areas

adjoining an area in which a major project was taking place. Therefore, my initial recommendation was not accepted.

After meetings between my investigative staff and Ministry officials, a compromise was reached balancing the interests of the complainant and other dump truck owners in the neighbouring area. It was agreed that the complainant would be placed third on the primary hiring list for dump trucks in the district in which he lived. Two months later, the complainant called to say that he was not placed third, as per the agreement. Further communication between my staff and Ministry representatives was necessary to ensure implementation of the agreed compromise.

I remain concerned about all aspects of this case, and I have notified the Ministry that I will continue to monitor the situation:

(1) When the Ministry formalizes and publishes such policies as the Hired Equipment Policy, it must adhere to its own policy guidelines and cannot vary the policy to suit its convenience.

(2) I remain concerned that amendments to the Hired Equipment Policy will vest too much discretion in the hands of foremen, leaving too much room for irrelevant considerations. I recognize a legitimate need for discretionary powers to consider seniority, geographical location and reliability of equipment and operators.

(3) Equipment owners have a right to be informed of the reasons for their priority placement on a hiring list in the same way that applicants for government positions have a right to know why they were or were not hired.

CS 80-071

Road maintenance

An individual who resides in a rural area complained that the Ministry of Transportation and Highways had not properly maintained the two roads which provided access to his property and that these roads were now in an unsafe condition for motor vehicle traffic.

My assistant discussed this matter with the District Highways Manager and was informed that while one of the roads intersected with a third road in a manner that was potentially hazardous, the Ministry regularly sanded and graded the road to ensure that it was safe for public travel. He explained that the other road, which provided access to the complainant's property, was subject to erosion but was regularly maintained by the Ministry and would continue to be maintained.

This information was conveyed to the complainant who was satisfied with the assurances of continued safe access to his property. The complaint was resolved by the Ministry.

CS 80-072

Access to private property

A property owner complained about the refusal of the Ministry of Transportation and Highways to provide him with legal access to his property. The complainant had purchased a small parcel of land some years ago in the hope of being able to retire on the property. Unfortunatey, the property had no legal access road.

My assistant reviewed the Ministry's policy which is that individuals who wish to subdivide land, thereby creating new parcels, are required to construct, at their own expense, access roads to all newly created properties. The Ministry will ordinarily undertake to maintain such roads after their construction. In this case, my assistant discovered that a right-of-way upon which to build an access road was shown on the subdivision plan. Because of an error in drafting the plan, certain portions of this right-of-way simply did not exist and it was, therefore, impossible to construct an access road along this alignment.

During the course of the investigation, however, it was discovered that the complainant was aware of this problem when he purchased the property and fully appreciated that there was no existing right-of-way upon which to construct an access road. I concluded that the responsibility for purchasing and constructing an access road did not lie with the Ministry of Transportation and Highways and the complaint was therefore not substantiated.

Had the complainant not been aware of the lack of an existing right-of-way, and had he been misled by the incorrectly drawn subdivision plan, I could have argued that the Ministry was responsible for the approval of a subdivision plan which incorrectly indicated a right-of-way upon which an access road might be constructed. The Legislature has given the Ministry's approving officers the right, and indeed the responsibility, of rejecting a subdivision plan where proper access is not provided and the Ministry might therefore be held accountable where the subdivision plan had been approved without provision for legal access to the properties. However, in a case such as this, where the complainant purchased the property with prior knowledge of the lack of legal access, I concluded that the responsibility for providing access to the property passes to the new owner, given that the lack of legal access was a factor in determining the price paid for the property.

CS 80-073

Keeping your commitments

Mr. and Mrs. Anderson complained that the Ministry of Transportation and Highways acted improperly in failing to respect the terms of a 1966 agreement to buy a portion of their land. They were frustrated and embittered over the way they had been treated by the Highways Ministry.

In 1966, the Ministry had purchased from the Andersons approximately 19 acres of land which was severed from their farm as a result of the development of a highway. The Ministry wished to purchase this parcel primarily to save the expense of having to build an underpass and fencing for the Andersons' cattle. However, the Andersons would only sell the severed property on the condition that "... the property remain as Crown land and not be sold to the public and that the property be developed as a roadside park or campsite". The Ministry's representative agreed to incorporate these terms into the sale agreement.

The Andersons believed that the signing of the agreement by both parties guaranteed that the property would only be used for park purposes. The Ministry paid for the property but did not convey it as specified in the agreement. To convey the parcel properly to the Government, the Andersons should have been asked to sign a deed of conveyance containing the terms of the sale agreement which would then have been registered as a covenant against the land in the Land Titles Office.

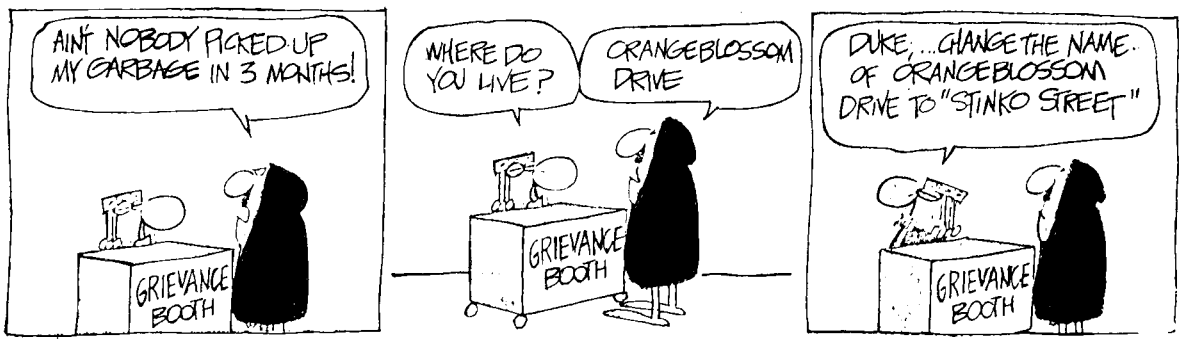
In 1971 a representative of the Ministry visited the Andersons and attempted to have them sign a deed granting the land to the Ministry, but without the conditions contained in the 1966 agreement. The complainants refused to sign without the conditions. Had they done so the restrictive covenants contained in the agreement would have been extinguished. Also in 1971 the Ministry permitted a local municipality to build a road through the property to facilitate the construction of a sewage treatment plant on adjoining Crown land leased by the city. The Ministry did this while the Andersons still held title to the property, without consulting them and in violation of the terms of the 1966 agreement.

In 1978, a representative of the neighbouring municipality asked the Andersons to release a small portion of the property for a municipal incinerator site, but they refused. The Ministry then proceeded to obtain title to the property by way of a notice in the B.C. Gazette establishing the entire 19 acres as a highway. I concluded from the sequence of these events that the Ministry's intention in establishing title by publication in the Gazette was to clear the way for a portion of the property to be used by the municipality as an incinerator site. Since the property could not have been used for such a purpose had the terms of the 1966 agreement been properly registered under a deed, the use of this procedure to acquire title appears to have been a means of circumventing the Ministry's obligation.

In the end, the residents of the local municipality defeated the proposed incinerator bylaw in a plebiscite, and it appeared that the property would no longer be required for that purpose. In the months that followed, and prior to my involvement, the Ministry committed itself to transferring the property to the Ministry of Lands, Parks and Housing for use as a park. However, the complainants were concerned about an "easement" through the property which the Ministry of Transportation and Highways was preparing to register in favour of the local municipality. Representatives of the Ministry of Lands, Parks & Housing also indicated that the registration of an easement would affect their ability to manage the property as a park and would make it more difficult for them to relocate the road at a later date in the interest of park development. At the same time, the Ministry of Lands, Parks & Housing acknowledged that the city should continue to have access through the property to their sewage treatment plant and were proposing that this be accomplished by a Park Use Permit. Requests to this effect from the Parks Branch were rejected by the Ministry of Highways.

At the commencement of my investigation the Ministry had taken the position that a Park Use Permit was not secure enough and that a registered easement was the best option for the city. After a meeting between my staff and representatives of the two Ministries involved it was agreed that a representative of the Ministry of Lands, Parks & Housing would approach the city with a Park Use Permit proposal. This proposal was readily accepted by the city. The Ministry of Transportation and Highways then transferred the property to the Ministry of Lands, Parks & Housing without any registered easement. The transaction was completed in 1980, some 14 years after the original agreement had been signed.

THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.



I concluded that the actions of the Ministry of Transportation and Highways in dealing with the Andersons were unjust and improper.

While the transfer of the property to the Ministry of Lands, Parks & Housing resolved the Anderson's main complaint, I felt that the Ministry of Transportation and Highways owed them an apology. The complainants had been caused a considerable amount of stress over the years and the Ministry, on my recommendation, apologized to the complainants.

The Ministry of Lands, Parks & Housing has now arranged for the designation of the property as a Provincial Park to be officially opened sometime in 1981. Although the Parks Branch has decided to give the Park a rather dry name for historical reasons, to me it will always be the Anderson Provincial Park.

CS 80-074

A matter of interest

The developer of a small subdivision complained that the Ministry of Transportation and Highways had unfairly refused to pay him the interest it had collected on a performance bond he had posted with the Ministry.

In January of 1979, the developer was required to post a bond with the Ministry to ensure that a road through the subdivision would be properly constructed. The road was constructed as required, and the bond was returned to the developer almost one year after it had been posted. As it happened, at the time of posting the bond, the developer had found it necessary to borrow a sum of money from a bank in order to provide the Ministry with the bond. When the bond was returned, the Government paid back only the principal and did not repay to the complainant any of the interest which had accrued over the year. Consequently, the developer found himself out of pocket the amount of interest which had been charged by his bank for the necessary loan.

The Ministry maintained that it had not paid the interest because it did not have statutory authority to pay interest. I reasoned that the purpose of the bond was to ensure compliance with a commitment rather than to raise revenue for the Government and I suggested to the Minister of Finance that the Regulations to the **Financial Control Act** be amended to provide for the repayment of interest in such cases. I also suggested to the Ministry of Transportation and Highways, in the meantime, while Finance considered the change, that Highways staff inform individuals posting bonds, that the bonds could be posted in the form of a security, the interest on which would accrue in the name of the individual rather than the Ministry.

The Ministry of Finance replied that, while individuals should be advised that no interest would be paid on cash deposits, since it was the individual's choice to post cash rather than securities, it was not prepared to amend the regulations to provide for the payment of interest on cash deposits. Given that the Ministry of Transportation and Highways agreed to instruct its staff to advise all individuals of the disadvantage of posting cash deposits, I decided not to pursue my concern that the Regulations be amended at this time. Should further complaints arise, I will raise the issue again with the Ministry of Finance.

CS 80-075

Catch 22 running amok!

(**Note**: Because this complaint has received some publicity, the complainant has agreed that we may use his name in this summary.)

A homeowner with medical problems had been trying for 36 months to obtain Ministry, regional district and municipal approval to subdivide his lot. This would enable him to sell the front portion of his property and move into a one-storey house he had built on the back half of the property. (Both halves accessed onto separate roads.) He had lived on the site for 23 years.

The complainant was one of the most frustrated individuals I have encountered to date. He had borrowed money to build his new house, had retained a lawyer and had met and resolved many earlier roadblocks to his plans before he came to see me. The complainant had proceeded to build his new house in the mistaken belief that he would not have any trouble obtaining subdivision approval from the municipality. Although he recognized this was a serious error it did not lessen his frustration at finding himself in a complicated legal and financial box.

Mr. Taylor's property was approximately one acre. Neighbouring parcels varied in size, with several being approximately one-half acre. The regional plan

provided for a five-acre minimum lot size in the area. Despite repeated requests from the complainant, the regional district refused to grant an exemption to the minimum lot size requirement. In view of what the complainant had originally been led to believe, his present situation, and the character of the neighbourhood, I felt the fairest solution would be to permit the parcel to be split into two half-acre lots, each of which already had a house located on it.

Although I was not able to investigate the complaint against the regional district (as that part of the authority schedule in the **Ombudsman Act** is not yet proclaimed in force), I was able to assist him in two ways. First, I wrote to the regional district and outlined my opinion on the merits of the complaint. Secondly, I referred him to a provision of the **Municipal Act** which provides for inquiries into decisions of regional districts by the B.C. Inspector of Municipalities. As a result, a hearing under that provision was carried out and the regional plan was amended to allow the subdivision.

The second complaint in this complicated problem was directed against the Ministry of Transportation and Highways. Normally, subdivision of land within a municipality requires only municipal approval. In this case the land had frontage on a "Controlled Access Highway"; therefore the complainant had to receive prior approval from the Ministry of Transportation and Highways. This approval was limited to access considerations as stated under a particular statute. The Ministry refused to give this approval, not because of any access concerns, but on the basis that the regional plan for the area called for a five-acre minimum lot size. When it was pointed out to the Ministry that it was usurping the statutory function of the municipal approving officer, and was doing so without any statutory authority, it acknowledged that fact but refused to change the decision.

I investigated this complaint over a period of several months and, since the Ministry was acting without legal authority, decided that the complaint was substantiated. The complaint was rectified after I provided my findings to the Ministry. It agreed to approve the subdivision as to access. The complainant was then able to obtain the necessary municipal approval, have his subdivision registered, and obtain an occupancy permit for his new one-level home. I recommended to the Ministry that it alter its policy and practice in future for the benefit of others and the Ministry agreed to do so.

This case was one of several examples of the lack of a unified planning process in the Province at the present time. I also referred the facts of this case to the Ministry of Municipal Affairs.

BOARDS, COMMISSIONS, ETC.

THE AGRICULTURAL LAND COMMISSION

The Agricultural Land Commission has extended valuable cooperation to my office over the past year and was always ready to discuss the justice of its policies and procedures.

Most of the complaints against the Agricultural Land Commission involved the denial of an application by a small land holder to subdivide. In most cases, after investigation, it was found that the Commission had correctly and fairly followed its legislation, policies, and procedures. In one instance when I had doubt about the correctness of the Commission's decision not to approve the subdivision application, I suggested to the complainant that he approach the Commission directly. At the request of the complainant the Commission reviewed its decision and reversed it. In another case, after investigation, I advised the complainant to retain a professional agrologist. The examination by the agrologist produced results which encouraged the applicant to seek, on his own initiative, exclusion from the Agricultural Land Reserve.

CS 80-076

Subdivision of ALR land

The complainant alleged that the Commission had unfairly denied his application to subdivide a parcel of property.

The Commission uses several criteria when assessing applications to subdivide. These criteria include the agricultural potential of the parcel of land, the effect of the proposed use on the local agricultural industry, the compatibility of the proposal with local development objectives, and whether there are alternative sites for the proposed use. The Commission relies on the Canada Land Inventory System for its information concerning the arability of land. The complainant felt the land was too stony for cultivation, but according to the Canada Land Inventory System rating it had substantial agricultural value. The Commission denied the application because it was of the opinion that subdivision would seriously reduce the land's agricultural potential and negatively affect neighbouring agricultural operations. In addition it would have the effect, in the Commission's opinion, of setting a precedent for future subdivision of good farm land within that area. Subdivision of this property would also violate the applicable municipal zoning bylaw.

I concluded that the evidence supported the Commission's decision, that it had applied its usual criteria and procedures, and that those criteria and procedures were in accordance with the **Agricultural Land Commission Act**. There was no apparent unfairness or mistake on the part of the Commission. The complaint was not substantiated.

B.C. ASSESSMENT AUTHORITY

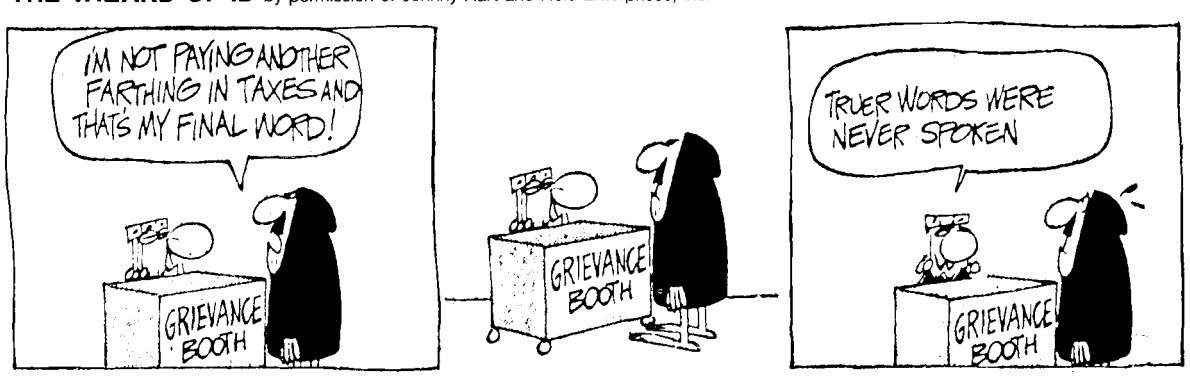
CS 80-077

Explaining a new way of taxation

The M.L.A. for Coquitlam-Moody referred a complaint to me concerning a woman who alleged that her assessment was unfair. She had been taxed for two lots of land in 1980 whereas for 26 years previously her property was taxed as one lot. She felt that one lot was too rocky to be built on and she was concerned that her existing house might straddle both lots.

My staff held a preliminary meeting with Authority representatives which had recently taken over the assessing responsibility from the Municipality. The

THE WIZARD OF ID by permission of Johnny Hart and Field Enterprises, Inc.



Assessment Act allows the assessor to give consideration to the price that the land and improvements might reasonably be expected to bring if offered for sale on the open market. For the previous 26 years the woman's land had been taxed by the Municipality as one lot. Since the woman's two lots could be sold separately, the Authority assessed the lots separately.

I first directed the property-owner to the procedures available to appeal her assessment through the normal appeal process. When this proved unsuccessful I investigated the complaint. The authority had properly assessed the lot and I found the complaint to be not substantiated. The owner, however, remained unconvinced. I then arranged for my staff to meet with her at the site together with municipal officials and representatives of the authority. Measurements were made of where the house was located on the property, and it was explained that a reduction in the assessment for blasting of rock had recently been made. As a result of the meeting the complainant was able to understand the reasons for the change in her assessment.

CS 80-078

Assessing the arability of farmland for taxation purposes

A woman complained that the Authority had erred in assessing the arability of her farmland. As a result of the error she feared she would lose her farm classification and would have to pay higher taxes.

The Authority advised the owner that in order to classify her land as "farm" for assessment purposes, she would be required to sell in excess of $2,000 worth of produce. However, she could only provide receipts totalling $1,600. The complainant felt that the Authority should not have calculated her production requirements on the full 31 acres of her farm since only 7 acres could be considered arable.

My investigator discussed the problem with the Deputy Assessor who agreed to inspect the complainant's property and to reconsider its classification. The Deputy Assessor was able to confirm to his satisfaction that less than 10 acres of her property was arable. He therefore reclassified the remaining part of the property which resulted in the lowering of her assessment for tax purposes. The woman had a valid complaint which was quickly resolved by the Authority when the problem was identified.

CS 80-079

Taxes: too much or too little?

A property owner complained that her property assessments of earlier years were far too high, and that she had therefore paid too much in taxes in those years. She found the Area Assessor's explanation of the changing values to be beyond comprehension and sought a tax rebate.

The "actual value" assessment of the property in question rose by 10 percent in 1979, then fell by nearly 34 percent in 1980. The Area Assessor provided me with full details of the year-to-year changes of "actual values" in the vicinity of the property, and the reasons for these changes. He also revealed that the unusual fall in value for 1980 in this particular case was due in part to a calculation error, and that the owner had thus, in fact, benefitted by paying less tax in 1980 since the error would not be corrected until the 1981 assessments were made. Upon being provided with a detailed explanation, the complainant withdrew the complaint.

BRITISH COLUMBIA FERRY CORPORATION

CS 80-080

B.C. Ferries

I received several complaints from passengers about the refusal of the B.C. Ferry Corporation to provide compensation for damages to vehicles as a result of accidents aboard ferries. In one instance, a driver of a camper truck struck an overhead turnbuckle, causing over $200 damage. The complainant said that the turnbuckle he struck was in the path he had been directed to follow by a ferry employee and that no warning of the hazard was provided. In another case, a driver's trailer hitch hit the ramp apron and the vehicle required some $300 worth of repairs. The complainant had not been speeding; the ramp attendant should have lowered the ramp to avoid contact. The complainant maintained after he hit the apron, it was lowered for the unloading of the remaining vehicles.

In the course of investigating these and other complaints, the following important general question emerged: Are fair procedures used by the B.C. Ferry Corporation in dealing with passenger claims to compensation?

I found that existing procedures did not provide an opportunity for the claimants to present their claims effectively. I also found that the Corporation, in rejecting a claim, did not usually provide reasoned explanations to the claimant. For instance, in one case, a passenger with a claim for compensation was told to call a certain individual for information on how to proceed with the claim. When the claimant telephoned the person whose name he had been given, he was told to call the Corporation's appraiser, but was then asked to wait for a few days to give him time to review the report. Two days later, the claimant called the appraiser again but was told he was away for a few days. After further inquiry, the complainant was advised by a Corporation employee to file an insurance claim. But the complainant was denied a copy of the accident report on

the basis that it was for internal use only.

After discussion between B.C. Ferry staff and my investigators, new terms of reference were developed by the Corporation for dealing with passenger claims for compensation. These terms of reference include a guideline that once notification of a claim has been received, a claimant will be interviewed and where practical this will involve a face-to-face discussion with the claimant. In addition, the reasoning followed in reaching a conclusion about a claim will now be fully explained to the claimant and the facts upon which the decision was based will be made explicit.

I should note that during the course of the investigation the question of whether or not a passenger could sue B.C. Ferry Corporation in Small Claims Court was raised. After discussions between my staff and Court Administration staff, the matter was clarified and a directive was sent to all Small Claims Court Registries providing a legal opinion that the simplified procedures of the Small Claims Court are available in actions against the B.C. Ferry Corporation.

B.C. HYDRO

CS 80-081

Dodging the pole

A man complained that Hydro wanted him to pay for the relocation of a power pole which was blocking his driveway. He claimed that the pole was in the wrong location and that it was unfair to require that he pay $520 to move the pole.

My staff inspected the site with a representative of the Vancouver City Street Light and Utilities Control Branch and also discussed the matter with the Hydro Supervisor responsible for power poles in the area. The pole blocking the complainant's driveway had been installed in 1945 and was situated in the middle of the block in order to service the lot across the street. However, the complainant's double garage was constructed only about two years ago.

It was my opinion that Hydro was not to blame for the homeowner's current difficulties and it was reasonable to request payment if the pole were moved. Nevertheless, in view of the complainant's problem, Hydro agreed to move the pole at a reduced cost. The homeowner was delighted with Hydro's willingness to compromise, and is now enjoying easier access to his garage.

CS 80-082

Removing the secret memo

A construction labourer complained that he was refused access to his own personnel file at a subsidiary company of Hydro. He believed the file contained misleading and adverse information that led the company to refuse to provide him with work he expected on a construction job.

The subsidiary company had experienced a small number of fires deliberately set in company bunkhouses. These fires caused them to check with the R.C.M.P. who advised that the complainant had once turned in a false alarm. On the basis of that report, a supervisor had inserted a memo in the worker's file indicating that the company should be wary about rehiring him. The man who was dispatched through his union received no further employment from the company. My staff advised the company of the circumstances under which the false alarm had been turned in, and pointed out it had no connection with the setting of fires. The complainant stated he had witnessed sparks issuing from an apartment building incinerator.

In my opinion the worker had a valid complaint and I recommended that the incriminating memo be removed from the company's files and destroyed. The company complied. The worker's union has since secured his re-employment which has worked out successfully.

CS 80-083

Rural electrification

An individual living in a remote area of the Province complained that she was not able to get electricity to her home. She had applied to B.C. Hydro for electricity service. Hydro advised her that she would be required to have the necessary right-of-way cleared at her own expense before electricity service could be installed. She complained that the developer who had constructed the subdivision a number of years ago should have cleared the right-of-way. The Ministry of Transportation and Highways had released the developer's performance bond, and he had subse-

quently left the area.

My staff obtained a commitment from the District Highways Manager to have the right-of-way cleared at the Ministry's expense. Further, Hydro had failed to advise the complainant of the financial assistance she could receive under the Rural Electrification Assistance Program, and this assistance could also serve to resolve her problem.

I provided the complainant with information about the REA Program. With the commitment from Highways and the benefits of the Rural Electrification Assistance Program, the complainant was able to get electricity service at a reasonable cost.

CS 80-084

Proper notice

B.C. Hydro and Power Authority placed notice of application for a pesticide use permit in a publication not normally circulated among or read by residents of the area which would be affected. Residents were therefore unable to object before the deadline because they were unaware of the proposed pesticide use or of the deadline. They sent their objections to my office.

B.C. Hydro is under a regulatory obligation to advertise pesticide permit applications. The local B.C. Hydro supervisor believed, on the basis of newspaper circulation figures, that the advertisement he placed in April 1980 would reach most residents of the affected area. When I informed B.C. Hydro that such was not the case, they applied for an amendment to the permit to extend the limitation period on appeals to November 1980, and advertised the extension in a newspaper more widely circulated in the affected area.

Thus, my investigation revealed that proper notice of application for a pesticide use permit had not been adequately publicised by B.C. Hydro. When the authority took steps to ensure proper notice to the residents of the area, I considered the complaint resolved.

CS 80-085

A tragic death

A young farm hand was electrocuted when an irrigation pipe he had upended contacted a high voltage power line. The parents of the young man contacted me because they were concerned that B.C. Hydro had not taken steps to conform to the recommendations made by the coroner's jury which inquired into the death.

I found that the jury had recommended to B.C. Hydro:

1. that danger signs be erected on every second power pole;
2. that "Look Up and Live" stickers be mailed to all farmers; and,
3. that improved public safety programs be carried out.

With respect to the first recommendation, I found that B.C. Hydro could not comply as the erection of any type of sign on their power poles would contravene Workers' Compensation Board Safety Regulation, Articles 22-26, and would present a hazard to persons who work on the lines.

With respect to recommendations 2 and 3, I found that B.C. Hydro had distributed stickers and introduced some community education programs but that these initiatives could be strengthened. Accordingly, I recommended that every year, immediately prior to the start of the irrigation season, a warning letter and a supply of "Look Up and Live" stickers in two and three different sizes be supplied to all farmers who are B.C. Hydro customers, with the request that they be applied to fence posts, barns, and other structures in various areas of the farm, as well as to pipes, ladders, and farm machinery.

B.C. Hydro agreed with this recommendation and, several weeks later, forwarded to my office a sample of material now being circulated by Hydro. Further, the Vice-President of Electrical Operations contacted West Kootenay Power and Light Company Ltd. with details of its expanded safety campaign for farm workers and an offer of assistance should that company be interested in staging a similar safety campaign.

GOVERNMENT EMPLOYEES RELATIONS BUREAU

CS 80-086

Tender trap?

A man had a complaint against Occupational Health Services, Ministry of Health. My investigator found that the complainant was a British Columbia Government Employees Union (B.C.G.E.U.) member and was currently in the process of grieving his dismissal from the public service through his union.

The collective agreement between the B.C.G.E.U. and the Province of B.C. states that if an employee endeavours to pursue the same grievance through any channel other than the agreement procedure, then the union agrees that the grievance shall be deemed abandoned. I advised the complainant and the Ministry of Health (which had already been notified of the complaint) that I had discontinued the investigation of the case as the law or an existing administrative procedure provided the person with an adequate remedy.

When the Government Employee Relations Bureau (G.E.R.B.) learned of the grievor's request to my office, the Bureau quickly sought to have the arbitration dismissed. G.E.R.B.'s complaint was that the

grievor had sought an alternative remedy to his grievance, and was therefore precluded from pursuing his remedy under the collective agreement. The matter was heard by an arbitrator appointed under the **Public Service Adjudication Act** and he found that the complainant was precluded from utilizing his grievance remedies because he had contracted the Ombudsman.

The matter was appealed to the Public Service Adjudication Board by the complainant, with the support of his union. My solicitor was permitted to make representations as a "friend of the court" on interpretation of the **Ombudsman Act,** at the appeal. Although the appeal succeeded, the reason for the decision did little to prevent G.E.R.B. from arguing, in the future, that any B.C.G.E.U. member who approaches the Ombudsman automatically forfeits his right to grieve under the provisions of the collective agreement.

I find G.E.R.B.'s position disturbing. It appears to be contrary to the intent of the **Ombudsman Act,** section 32, which reads:

> "32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which
>
> (a) a remedy or right of appeal or objection is provided,
>
> or,
>
> (b) a procedure is provided for inquiry into or investigation of a matter,
>
> **and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.**" (my emphasis)

G.E.R.B.'s position in this case was quite unacceptable to me in view of the fact that I had declined to investigate my complainant's problem because of the supposed availability of his union grievance procedure.

INSURANCE CORPORATION OF BRITISH COLUMBIA

As the statistics contained in this report indicate, I have received a large volume of complaints against the Insurance Corporation of British Columbia. I have made a special effort not to duplicate the remedies provided by other institutions (the courts and avenues of appeal available within the Corporation). Consequently, I have refused to investigate many complaints pertaining to adjusters' liability assessments; in these cases, I refer complainants to their other remedies so that I can free staff time to investigate complaints concerning matters of administration not susceptible to scrutiny in another forum.

Most of the complaints fall into a few major areas. I have received many complaints pertaining to the need to delineate the roles of I.C.B.C. and the Motor Vehicle Branch; specifically, suspensions of drivers' licences for debt and the multiplicity of "penalties" imposed by the two agencies. These concerns have been the subject of recommendations by the Motor Vehicle Task Force, and I intend to forward additional recommendations during 1981.

Complaints regarding the Corporation's no-fault accident benefits program constitute a substantial proportion of the total. Although the legislation provides that claimants may sue for benefits, my practice is to investigate many of these complaints so that I can assess I.C.B.C.'s performance in this important area of automobile insurance. However, I have declined to investigate complaints of I.C.B.C.'s withholding of disability benefits where the claimant's counsel is currently negotiating a personal injuries claim and the issue in dispute is the sufficiency of the medical evidence. I refuse to pursue a complaint where I feel that an investigation by my office would be only an unnecessary intervention.

I.C.B.C.'s cancellation practices have been another subject of criticism. The Corporation caused some confusion in 1980 by failing to publish its short-rate cancellation table in the Regulations to the **Insurance (Motor Vehicle) Act** and in the 1980 Autoplan Motorists' Kit. The error is being corrected on I.C.B.C.'s initiative, but it did give rise to a number of complaints pertaining to misinformation given by the Corporation and its agents. These complaints raise the issue of the extent of I.C.B.C.'s responsibility to inform the public of its policies.

I am also aware of a sense of dissatisfaction with the quality of service provided by adjusters. Often complainants will raise the issue of staff rudeness while in the process of bringing another complaint to my attention.

The working relationship between our two offices has been good, as a result of the excellent cooperation received from I.C.B.C.'s Public Inquiries Department. Complaints are first drawn to the attention of this Department, which states the corporate position. If I am not satisfied with the Department's response, I pursue the investigation further.

The need of my staff to go beyond the Public Inquiries Department created a small misunderstanding earlier in the year. I.C.B.C. wished to limit access to the Corporation by requiring my office to deal exclusively with the Public Inquiries Department. It goes without saying that I was not prepared to accept this limitation. The present system of notifying I.C.B.C. initially and then carrying on with the investigation was been quite satisfactory.

The Corporation's public information and claim centres' staff have been most helpful. Over the past year, with the cooperation of I.C.B.C.'s Public Inquiries Officers, my investigators have accumulated a

considerable knowledge of automobile insurance law and corporate policies. I am grateful for the patience demonstrated by I.C.B.C. staff and for the useful, detailed information they have provided.

In conclusion, I am pleased with this system of handling complaints. I.C.B.C. has acted with goodwill toward my office and its objectives.

CS 80-087

Better he had an accident!

An employee disappeared with a company car, which he subsequently demolished in a highway accident. I.C.B.C. disallowed a claim by the company for compensation under the provisions which disallow theft claims with respect to an owner's employees, and the company complained to my office.

After my office notified the Corporation of the complaint it discovered that while the decision to disallow the claim was proper under the heading of "theft," it was not so under the heading of "collision." The company had a valid complaint which was rectified when I.C.B.C. paid for the value of the vehicle, less the deductible amount.

CS 80-088

Getting someone to listen

The complainant alleged that an agent's error involving his rate group classification resulted in an overcharge of $46 on his annual premium. The Corporation advised him that no insurance coverage would be provided during the year unless he paid the outstanding amount. Efforts by the complainant and his agent to iron out the matter with the Corporation proved futile.

After I notified the Corporation of the complaint and requested a review of the matter, the Corporation discovered the error. This person had a valid complaint which was rectified quickly when the Corporation adjusted the complainant's billing notice.

CS 80-089

It pays to be reasonable

A woman complained that the Corporation had offered to settle a claim at half of its value, and as a result she had proceeded to court. In presenting the case to court she had incurred expert witness fees in the amount of $110.

The complainant's car was hit as it stood parked by the side of the road. The Corporation offered $500 as indemnity for the loss of the vehicle but the complainant disputed the adequacy of this amount. She subsequently litigated the matter and the Small Claims Court awarded $955 for the car and court costs. This amount was paid by the Corporation; however, the expert witness fees were not reimbursed.

The Corporation was notified of my intention to investigate, and the problem was reviewed by I.C.B.C. This person's complaint was rectified when the Corporation decided that although the fees were not included in the judgement, it would accept responsibility for these additional costs. A cheque for the expenses was issued to the complainant.

CS 80-090

Finding a $1,500 error

A vehicle owned by the complainant was damaged in what was later determined to be arson, or an accidental fire started by someone in the process of siphoning gas. As a result of the fire, the complainant lost his fleet deferral. The complainant felt that the inclusion of Comprehensive losses in a fleet's loss ratio was unfair.

Upon receipt of notification from the Ombudsman, the Corporation reviewed the complainant's file and noted that, besides the subject of complaint, an error had been made in the calculation of the charge. As a result, the fleet deferral loss was reduced.

The Corporation advised the insured that no further penalty would be assessed for additional payments which were made for the loss. Furthermore, a non-retroactive regulatory amendment was to be made that Comprehensive losses would no longer be included in a fleet loss ratio, and this would apply to all motorists in the Province.

THE MOTOR CARRIER COMMISSION

The Motor Carrier Commission was the subject of relatively few complaints in 1980. In a number of complaints received against the Commission, applicants alleged delay in adjudication of applications. Complaints against the Commission generally consist of an allegation that it has unfairly denied an application for a commercial licence to haul goods of various kinds.

CS 80-091

Federal or Provincial Regulation?

A man who had moved his household goods from Vancouver Island to Ontario complained of an excessive ferry surcharge levied by the carrier, based on the weight of the shipment. He felt that inasmuch as the surcharge purported to relate to extra expenses incurred by the carrier as a result of the use

of the ferry, it should not be based on the weight of the shipment.

As the complainant's move was from one province to another, the Commission advised my office that it had no control over the rates charged by the moving company. However, the Commission agreed that in the complainant's case the ferry surcharge was excessive.

In order to resolve the problem of possible excessive charges, I suggested to the Commission that it adopt a maximum weight upon which ferry surcharges could be calculated. Using this method, a person in the complainant's position would not be penalized for moving an unusually large amount of goods. The Commission accepted my proposal and filed new tariffs which apply to household goods carriers. The tariffs provide for an 8,000-pound maximum upon which the surcharge may be levied.

In following up this complaint at the federal level, my investigator discovered that the Motor Carrier Commission has in fact been delegated the Federal Government's responsibility for regulating motor carriers between provinces. Although it is empowered to regulate extraprovincial carriers, the Commission does not do so, as agreement among all provinces would be required for such regulation to be practical. Thus the situation which was brought to my attention by the complainant has been rectified with respect to the movement of household goods within the Province, but the problem remains respecting interprovincial movements.

CS 80-092

A licence to deliver shampoo

A women in a rural area complained that the Commission refused to issue a temporary permit to operate a freight vehicle on the grounds that other carriers were available to perform the same service which she intended to provide. The complainant disputed the fact that she would be offering the same service and claimed that, unlike other carriers, she planned to offer a carrier service specifically for the beauty supply industry.

In accordance with the Commission's normal procedure, other carriers had been contacted and asked whether or not they could supply a service similar to the one proposed by the complainant. My staff contacted the carriers independently and obtained further details of the service which they could supply. Beauty supply houses were also contacted and it was found that although the existing carriers could deliver supplies from the warehouse to the beauty salons, this service was dependent upon the suppliers either paying for packaging of articles or repacking them at the warehouse. The suppliers further stated that they were very interested in the proposed service offered by the complainant as she would specialize in the delivery of beauty supplies and would not require additional packaging of the articles to be delivered.

The Commission provided my staff with details of its policy on the granting of temporary permits as well as its investigation report. Shortly after this material was received by my office, the complainant was contacted by the Motor Carrier Branch and informed that her application was being reinvestigated. A short time later, the complainant's application was granted by the Motor Carrier Branch. As this complaint was resolved by the Commission, investigation was discontinued.

WORKERS' COMPENSATION BOARD

Complaints involving the Workers' Compensation Board required a major portion of my staff's time. Most of these complaints were initiated by workers whose claims for compensation were not accepted by the Board, or by workers who felt the benefits they received should be greater. I have also received complaints from employers, who feel that they were improperly assessed by the Board.

In many of the complaints workers have not exercised their right to appeal a decision on their claim to a board of review, the Commissioners, or a Medical Review Panel. In these situations, I am precluded by section 11(1)(a) of the **Ombudsman Act** from investigating, and I have referred complainants to other agencies for assistance with the appeal process. They were advised, however, that should they be dissatisfied with the manner in which their appeal was decided, they could contact my office again.

I was seriously concerned about W.C.B. claimants being unaware of and not being properly informed of their appeal rights and I initiated an investigation of this matter on my own motion. My staff surveyed information given to claimants by Workers' Compensation Boards in other jurisdictions, and prepared a report which I have presented to the Commissioners, with five possible recommendations which follow from it. As a result of my initial contact with the Board on this investigation, the Commissioners have begun to send out pamphlets containing appeal information along with decisions made by legal officers at the Board. The other possible recommendations deal with the publication of the pamphlets in other languages, the sufficiency of information given to claimants about their appeal rights in W.C.B. decision letters, and related issues.

I sincerely appreciated that during the year, the Board extended a considerable amount of time and effort apprising my staff of the complex policies and procedures it uses to administer applications. As my staff become more familiar with the policies and

procedures of the Board, I hope to become more effective in identifying and eliminating unfairness in the system. As the judicial system has almost no supervisory role or authority over the Board, I feel a special responsibility to ensure that individual grievances are given proper consideration, and that the system itself is administratively fair.

The Commissioners wear two hats. Not only are they responsible for the proper operation of their organization, but they also serve as a quasi-judicial appellate body to adjudicate appeals from an independent appeal board. When I have discovered an injustice in a decision following a complaint, the Commissioners have responded that they do not wish to consider the merits of the case unless the aggrieved worker appeals to them in their judicial function.

In refusing to take the responsibility for correcting injustices which are bound to occur in such a large organization, and for suggesting that workers should embark on the time-consuming process of instituting formal appeals so that the evidence can be presented in a different procedural format, the Board is taking a very bureaucratic approach. In my view the Board has the power and the duty to correct errors in the most expeditious manner and to use procedures appropriate to the problem.

On a positive note, I am pleased that the Commissioners have implemented several of my recommendations. Below, I have summarized both typical and unusual complaints concerning the Board, as well as cases where my recommendations have been implemented.

At a time when the public's attention is focussed on the injured and disabled, it is appropriate that my office play an active role in the International Year of Disabled Persons. In 1981 I hope to increase my involvement and impact upon the Board, both in rectifying unfair decisions in specific cases and in monitoring the functioning of the system. In the interest of justice and fairness I ask for the Board's full cooperation.

CS 80-093

Determining future loss of earnings

A major British Columbia union contacted my office on behalf of a worker and complained that although he was awarded a pension following the loss of one arm in an industrial accident, the amount of the pension was not based on his earnings at the time of his injury.

My staff obtained full details of the worker's employment history and discovered that although he had an irregular work history, there was reason to believe that he would have continued working at the job he held when injured.

Pursuant to the **Workers' Compensation Act**, the Board may choose among several methods in calculating a worker's average earnings for wage loss or pension purposes. The method used should be the one which best reflects the actual loss of earnings suffered by the worker. In this case, the Board concluded that the worker's average earnings should be calculated on the basis of his earnings over the three years prior to his injury. The worker, a young man in his twenties, had been incarcerated for several months during this three-year period, and had worked sporadically for the rest of the time.

On the basis of my findings, I decided that the complaint was substantiated. The Board's choice of method for calculating the complainant's average earnings was unjust. The Board had failed to apply a statutory provision properly which requires that the benefit of the doubt be given to the injured worker where the disputed possibilities are evenly balanced. In view of the worker's youth, and in the absence of any evidence that he would not have continued in his last job, I recommended that his pension be increased from the minimum pension to the maximum pension.

The Board implemented my recommendation, the complainant's pension has been reassessed, and he has been awarded a pension retroactive to the date of the injury.

CS 80-094

Roadblocks to obtaining a decision on the merits

A worker who had injured his leg in 1972 complained that his claim for compensation had been rejected. He alleged that the Commissioners unfairly denied his application for an extension of time in which to appeal to them.

Although the worker notified the Commissioners within the required 60 days of his intention to appeal the board of review decision, he was not a union member and had not obtained the support of a union as required. One month after the Board informed the complainant of this requirement, he retained a lawyer to assist him in appealing the board of review decision. During the next year, the complainant and his lawyer were unable to obtain the necessary union support. Eventually, the lawyer explained to the complainant that it was not part of his role as a lawyer to assist his client in obtaining a union's support for his appeal. Finally, the complainant approached the Compensation Consultant's office (Ministry of Labour) for assistance in appealing to the Commissioners. That office was able to obtain union support for the appeal and an application was made to the Commissioners for an extension of time for the appeal. The Commissioners denied this request on the basis that his delay was unreasonable. The requirement that a worker obtain union support when appealing a unanimous board of review decision has since been removed from the statute.

I found the complaint to be substantiated. Although the Board had granted the complainant one time extension which he was unable to meet, the complainant had not acted unreasonably in attempting to obtain union support. His actions in attempting to fulfill the statutory requirement were a more relevant consideration than the actual length of time which had elapsed. I recommended that the Commissioners grant the complainant's request for an extension of time. The Commissioners implemented my recommendation and agreed to hear the complainant's appeal on its merits.

CS 80-095

Better to have been hit by the next driver!

A truck driver complained that although his claim for compensation following a motor vehicle accident had been accepted by the Board, the amount of wage loss he was receiving was insufficient to cover his monthly expenses. He felt that since he had been injured by a driver of another motor vehicle who was subsequently convicted of a provincial motor vehicle offence, he should at least be compensated for the full amount of his lost wages.

Pursuant to the **Workers' Compensation Act**, a worker injured by another worker does not have the civil right to sue in court. This rule applies even though both parties have automobile insurance with I.C.B.C. The complainant was only entitled to "maximum wage loss payments" and not to the usual automobile insurance benefits. These payments were far below the amount he was earning on a monthly basis in his employment, as "maximum" wage loss is defined as only 75 percent of a specified dollar figure.

A few years ago in British Columbia, workers in the complainant's position were entitled either to sue the other worker for damages, or to claim compensation under the **Workers' Compensation Act**. However, the right to sue was removed by an amendment in 1974.

Regulations passed pursuant to the **Insurance (Motor Vehicle) Act** provide that I.C.B.C. is not obliged to pay accident benefits where the claimant is entitled to compensation under the **Workers' Compensation Act** and is receiving compensation above a minimum amount. For this reason, the complainant was also not entitled to benefits from I.C.B.C.

As the complainant received the amount of compensation he was entitled to under the **Workers' Compensation Act**, I reluctantly found his complaint to be not substantiated. I would, however, like to bring this matter to the Legislative Assembly's attention. Had the complainant been hit by a different driver who was not in the course of his employment the award would have been substantially higher. Although there are two comprehensive insurance schemes (W.C.B. and I.C.B.C.) the injured driver received benefits only from the W.C.B. which results in less compensation in some cases than would be received from I.C.B.C. During 1981 I intend to discuss this problem with representatives of both insurance plans in order to see whether this anomaly can be resolved.

CS 80-096

Natural degeneration or injury?

The Board refused to accept the complainant's compensation claim. The complainant alleged that her continuing back and shoulder problems related to a lifting incident at work.

There existed X-ray evidence of spinal disc degeneration and tendonitis in the right shoulder which predated the work injury by eight years. There was also the attending physician's evidence that over the previous eight years the complainant had consulted him on various occasions regarding back and shoulder complaints. The complainant did not see her physician regarding her back and shoulder condition until a week after the injury and she did not mention that the symptoms might be work-related until two months after the injury. The Board concluded that while the complainant may have had some immediate aggravation of pain at work, her continuing complaints were attributable to the degenerative conditions which were present before her work injury. The Board did not feel that she should be compensated for aggravation of her condition as she had continued to work one week after the injury.

I concluded that the Board's decision was arrived at in a fair manner as there was insufficient evidence that the complainant's continuing problems related to her work injury. I found the complaint not substantiated.

CS 80-097

Responsibility in the community

The Board refused to loan a piece of gas detection equipment to a specialist acting on behalf of a tenant who required scientific evidence of excess carbon monoxide levels in her apartment.

The tenant alleged that a faulty furnace in her unit emitted dangerous levels of carbon monoxide and that this had been compounded by the installation of a thick new carpet which reduced circulation of fresh air. She needed an ecolyzer to ascertain whether the concentration of carbon monoxide posed a health hazard. She also heard that ecolyzers are rare. A Simon Fraser University professor, who offered to operate the ecolyzer, requested that the Board permit him to carry out the test with their unit, the only one in the Province of which he was aware. The Board refused on the grounds that the Board exists to carry out the purposes of its governing statutes, and the statute does not confer on the Board any wide ranging authority to perform

any function it believes is beneficial to society.

The Board uses the ecolyzer for its own purposes and has received many requests to borrow it for private purposes which could conflict with its main purpose. A Board official would have to be present when the ecolyzer was used privately to ensure its proper use. The Board did not wish to become involved as an expert witness in any action by tenant against landlord, or in a negligence suit. The Board stated that this rationale extended to other rare equipment owned by the Board.

My staff located a private firm which owned an ecolyzer and was willing to perform the test and to supply an operator without charge. It turns out that ecolyzers are not as rare as the complainant originally believed. I am still of the opinion, however, that the Board has some public responsibility, if it possesses extremely rare equipment, to permit members of the public access to it in certain circumstances.

If the issue arises again in the future and I am not able to obtain an alternative source for a piece of rare scientific equipment, I intend to pursue the matter further.

CS 80-098

Deciphering the governing statute

The wife of a deceased worker complained that she had been unfairly denied widow's benefits by the Board.

The Board had failed to consider the appropriate sections of the Workers' Compensation Act in deciding the widow's claim for benefits.

Although the woman appeared to have a valid complaint, it was unnecessary for me to make a recommendation as the Board agreed with my staff that a particular provision of the Act had not been considered in deciding the widow's claim. The Board agreed to reinterpret the statute and reconsider her claim using the relevant section of the Act.

CS 80-099

Double coverage

An independent contractor complained that after he applied for temporary optional coverage from the Board, he did not receive confirmation that his application had been accepted and he concluded that coverage was not in effect. When he began receiving assessment notices approximately six months later, he tried to cancel his coverage by visiting the local Board office, and then by writing and phoning the Board with his request. Despite these efforts, his coverage was not cancelled until approximately 18 months after his original application.

After extensive investigation, it was found that in at least four instances of attempted communication there was no way of establishing whether it was the complainant or the Board who was at fault. The Board stated that once the complainant's application for coverage was received, his coverage could be cancelled only by a written request. Although the contractor stated that he had written a cancellation letter to the Board neither he nor the Board could verify this claim. The complainant swore an affidavit to the effect that he had visited a Board office in order to cancel his coverage six months after his original application.

In order to resolve this complaint I suggested that the complainant should be assessed payments for a period of six months only, and not for the entire 18-month period. The Board agreed to this recommendation and relieved the complainant of the assessments levied against him for the period after his visit to the local Board office.

CS 80-100

Piercing the corporate veil (sometimes)

The principal of a small company was involved in a serious accident while at work approximately one month after incorporation of the company. As a result of the accident the complainant lost an eye and claimed compensation. His claim was denied on the basis that his company had not registered as an employer with the Board, although the Board billed the company retroactively for unpaid assessments to the date of incorporation.

Another man complained to me that soon after his one-man firm incorporated, he was required by the Board to pay assessments. He objected to these payments on the grounds that he did not employ anyone in his business, and he preferred coverage under a private insurance scheme to the coverage offered by the Board.

To be eligible for compensation for a work-related injury the Workers' Compensation Act does not require that a worker's employer is registered with the Board nor that the employer's assessments are up-to-date. The Board explained that the first complainant had been refused compensation as he was essentially employed by himself, although legally the company was his employer and he was a worker. The Board decided that when a claimant is responsible for the nonpayment of assessments and failure to register, no compensation will be paid to him. An unincorporated independent operator may opt for coverage but such coverage is not mandatory (as it is in the case of a firm which employs staff).

In the case of the second complaint, the Board has taken the position that on incorporation the company becomes the employer, and anyone who is paid wages by the company is regarded as a worker. Thus, although the complainant's actual situation was no different after incorporation than before, he was required by the Board to pay assessments.

After analysing these two complaints (and several similar complaints) I concluded that the Board's policy with respect to its treatment of companies is inconsistent. On the one hand it ignores the fact of incorporation and adjudicates a claim on the actual setup of the business in order to deny compensation. On the other hand it refuses to acknowledge the actual setup, and relies on the legal distinction between a company and its employees, even where the same person is the company's sole principal and sole employee, in order to collect assessments. In my opinion the Board was making an arbitrary distinction in deciding when to "pierce the corporate veil". I felt that the Board should decide which policy it wished to follow but that it must be consistent.

I recommended that the Board review its treatment of companies in order to eliminate the inconsistency. The Commissioners agreed to reconsider their policy on companies. Acceptance of this recommendation normally would have concluded my involvement in this case. As yet, I have not been notified of the results of this review and I intend to monitor the response to see that a rational and consistent policy is developed.

CS 80-101

Industrial Disease

A man who had worked in grain elevators for 12 years complained that he had developed a condition similar to leukemia as a result of exposure to insecticides and fumigants used in grain. The Board refused to compensate him for this condition.

My staff reviewed literature which the complainant believed supported his compensation claim. The issue was also discussed with several physicians. Neither the literature nor the physicians could support the complainant's contention that the chemicals used on the grain led to his medical condition.

As there was no medical evidence to support the complainant's belief I found his complaint not substantiated.

CS 80-102

Buyer beware

A woman who had recently purchased a hairdressing business complained that the Board attempted to collect a debt from her which had been incurred by the former owner of the business.

The complainant had purchased the assets of a company whose assessment payments were in arrears at the time of the purchase. Pursuant to s.52(1) of the **Workers' Compensation Act**, the Board has a lien with respect to all property used by an employer in the business in respect of which the debt was incurred. In other words, the Board had the right in this case to seize the property which the complainant had purchased from the vendor in order to satisfy the vendor's debt.

This complaint was not substantiated but it was resolved after discussions with the Board's Collection Department which decided not to pursue the complainant for the debt.

CS 80-103

Towing or Trucking — that is the question

A businessman complained that his business had been incorrectly reclassified by the Board's Assessment Department. By reclassifying the company from "towing" to "trucking", the Board caused an 884 percent increase in his assessment costs.

The Assessment Department places businesses in established classes and subclasses which contain the same or similar businesses. The complainant's business had previously been classified as towing. The Board decided that it more closely resembled trucking, and the business was reclassified accordingly.

My assistant inquired into the classification of similar businesses by Workers' Compensation Boards in Alberta and Ontario and the classification of similar competing businesses in British Columbia. A number of other firms were contacted to determine how the Board applies the definition of the two classes.

I concluded that the Board had acted properly in reclassifying the business and found the complaint not substantiated.

CS 80-104

The appropriate route to appeal

The complainant disagreed with a recent decision of a claims adjudicator that his disability award for silicosis should commence only in 1980. He felt that it should be retroactive to the date when X-rays first showed he had signs of silicosis.

As the complainant still had available to him a right of appeal to the board of review I referred him to the Compensation Advisory Services. This is a branch of the Ministry of Labour and is independent of the Board. The branch assists workers who wish to appeal a Board decision. They will be assisting the complainant with an appeal to the board of review.

COMPLAINTS AGAINST UNPROCLAIMED AUTHORITIES AND NON-JURISDICTIONAL COMPLAINTS

Universal Press Syndicate

A substantial number of complaints have been made against individuals or authorities that I am not empowered to investigate. These grievances run the gamut from frivolous private concerns to instances of grave injustice. I have been asked to overturn court decisions, to ensure that brown eggs are not put in cartons clearly marked "white eggs", and to free people from legally binding contracts.

Over the past year I developed several approaches to dealing with non-jurisdictional complaints:

(1) My office is constantly working to accumulate information about referral sources that can provide the assistance required to resolve problems;

(2) A large number of complainants have been successfully referred to government agencies able to deal with the grievance (consumer transactions to the Ministry of Consumer & Corporate Affairs, landlord-tenant disputes to the Rentalsman's office, etc.). Others were referred for help to their M.L.A., M.P. or a community assistance group;

(3) I have attempted to resolve a number of complaints on an informal basis, in particular, where there does not appear to be any authority prepared to handle that problem, or those against an authority listed in the Schedule to the **Ombudsman Act** but not proclaimed, or where an emergency required immediate action;

(4) Many complaints received from the Native Indian population of British Columbia concern non-jurisdictional agencies, particularly the Federal Government. I am fortunate to have on my staff the only Native Indian investigator in a Canadian Ombudsman office, a former judge of the Citizenship Court, and I have made an effort to resolve those federal complaints where possible.

While some agencies have given my office considerable assistance, others have been uncooperative and unreasonable. I have received a number of complaints over the past year directed against authorities listed in the schedule to the **Ombudsman Act** but not yet proclaimed in force.

The following cases are just a small sample of the types of non-jurisdictional complaints I have received and the ways in which my staff and I have dealt with them. To save space and costs I have listed only a few such cases.

A. UNPROCLAIMED AUTHORITIES

CS 80-105

Municipalities

A property owner in a senior citizens' mobile home park complained that a municipality was interfering in the resale of the residents' property by demanding increased land value prices of the new owners.

Residents in the mobile home subdivision had granted the municipality a "right to repurchase" clause in the event of a resale. The residents stated that they were informed the municipality needed the control in order to ensure that the new owners were senior citizens. The municipality claimed that the purpose of the clause had been to allow for land value reappraisal, with any increase in value to be approved by the municipality. All attempts to resolve the deadlock, including meetings before council, had been fruitless.

I outlined my detailed understanding of the complaint and asked both the mayor and the Minister of Municipal Affairs for their cooperation and assistance in resolving the complaint. At the end of

1980, however, the problem remained unsolved. I continue to monitor the developments.

CS 80-106

Licensing Illegal Suites

The owner of a five-plex located in a municipality complained that upon sale of his building, he could not transfer a business licence he had been required to buy. Nor could he obtain a refund for the unused portion of the year.

The complainant had learned that three of his suites were illegal and that he would be required to buy a business licence to operate them under a recently enacted municipal bylaw. Two months after purchasing a one-year licence the complainant sold his five-plex. He was unable to obtain a refund for the remaining 10-month period and was unable to transfer the licence to the new owner. Then the new owner was also required to buy a new business licence to operate the suites. The municipality was being paid twice for licensing the same premises.

My assistant contacted officials of the municipality and the Minister of Municipal Affairs. As a result of these contacts three issues were examined:

(1) whether it is possible for new purchasers to pay a nominal transfer fee;

(2) whether it is possible for the municipality to make refunds upon such a transfer fee; and

(3) whether the municipality should be licensing illegal suites.

The business licence bylaw was amended so that a transfer of licences could be made for a minimal fee.

The Minister of Municipal Affairs decided to bring up the matter of refunds before the Municipal Act Review Committee, as there is presently no statutory power for such refunds.

The municipality explained that because of acute housing shortages and the lack of success by other municipalities in closing down illegal suites, council chose to legalize such suites on a temporary basis. Considerable emphasis was put on upgrading safety features.

CS 80-107

The Law Society of British Columbia

A client of a lawyer complained to the Law Society concerning his lawyer's actions. As a consequence, the lawyer included in his account a time charge for the extra work necessitated because of the complaint. The extra work was for the time required by the lawyer to respond to the Society. The client complained about this to me and also about the Society's conduct of the matter. The complainant did not wish to pursue his complaint with the Law Society for fear of incurring another billing from the lawyer.

My assistant confirmed with the Law Society that a lawyer should not charge for the time spent responding to a complaint and convinced the complainant to pursue his complaint directly with the Society.

B. NON-JURISDICTIONAL AUTHORITIES

CS 80-108

Unemployment Insurance Commission

An unemployed worker complained that she was not receiving benefits and considerable time had elapsed since her initial application for U.I.C. benefits when the complainant's employer went bankrupt. A separation slip could not be obtained from the bankrupt employer. Before the claim could be processed, the complainant became ill and applied to U.I.C. for the claim to be changed to sick benefits.

My office contacted the U.I.C. officer involved and discovered that Revenue Canada had yet to make a determination of insurable weeks. My office also contacted a lawyer at a community legal clinic and he agreed to help the complainant. The complainant later advised my office that the lawyer was able to help her successfully appeal an assessed disqualification period, and she received benefits.

CS 80-109

Federal Income Tax

A worker complained that the Federal Income Tax Department had recently advised him that if he did not produce his 1978 T-4 slip, he would have to pay again the income tax which had already been deducted from his wages. The complainant was not successful in obtaining his 1978 T-4 slip from a former employer, who had since declared bankruptcy.

After many phone calls my assistant was able to locate the trustee in bankruptcy, who had a copy of the complainant's T-4 slip.

CS 80-110

Canada Student Loans

A young woman who recently moved here from Alberta was unable to obtain a student loan. The B.C. division of Canada Student Loans rejected

her application because she did not meet residency requirements. Alberta would not grant a provincial loan unless she could demonstrate specific reasons why she was completing the program in B.C. The complainant needed the loan immediately. Some $1,800 was due the next day.

The complainant appeared to be caught in a Catch 22 situation between provincial and federal loan programs. My assistant made several phone calls to the agencies during the day and discovered that the Alberta agency could make a federal loan provided that it had proof that the school was certified in B.C. My assistant pointed out that the complainant had already furnished such proof.

At the request of my staff the Alberta agency processed the application that day and immediately issued an $1,800 cheque enabling the student to stay enrolled in school.

CS 80-111

Private Insurance Company

The complainant alleged that he had been unable to obtain the release of a cheque for fire damage to his home. The complainant had been caught in a circular web travelling between Legal Aid, his private insurance company, C.M.H.C., a private mortgage company and a firm of insurance adjusters, a lawyer, his M.L.A.'s constituency office and others.

The complainant had settled with an insurance company and signed a release after fire extensively damaged his home. He did not have the necessary repair work performed by a contractor and hoped to do it himself. His insurance company, however, sent the cheque to the mortgagee of the premises, who could not release the money without the approval of C.M.H.C., which would not approve the release of the funds until the work had been completed in a satisfactory fashion.

The complainant had settled for an amount insufficient to complete the work satisfactorily. As he was unemployed, he was unable to finance the repairs himself. The complainant spent more than a year in a frustrating attempt to find a way to resolve this dilemma before coming to my office. The only solution to the problem appeared to be to return the complainant to his original position when the fire occurred and to have the insurance company finance the cost of the repairs.

The private insurance company, Fireman's Fund, in an outstanding gesture of goodwill towards my office, agreed to tear up the original signed release and to negotiate a new settlement. Over a period of several months my staff were able to facilitate negotiations between all of the parties involved in this complex problem. In the end the insurance company paid a contractor to repair a substantial part of the premises and in addition advanced a sum of cash to the complainant. I greatly appreciated the assistance of the insurance company in resolving this complex complaint.

CS 80-112

Travel Agency

A foreign visitor, the victim of a scam, complained that his airplane ticket had been cancelled by the airline when it was discovered that the ticket was someone else's nontransferable charter class ticket. The complainant had made return flight arrangements through a local travel agent, but the agent had since sold the agency and quit the business. In addition Canada Immigration had already extended the complainant's visa once and he knew that a further visa extension required proof of confirmed passage on a return flight. As the extended visa had just lapsed, the complainant was concerned about deportation. Purchasing another ticket posed a significant financial difficulty.

My staff contacted the former agency owner as well as the present proprietor of the agency but neither would assume responsibility. The agent and agency were not members of the Travel Agents Association of B.C. The Association therefore could not help. Since the return trip ticket had been paid for out-of-province, the complainant could not claim against the Travel Assurance Fund. My staff requested the assistance of the Consumer Centre, a branch of the Ministry of Consumer and Corporate Affairs, and it agreed to help.

The complainant was then provided with a letter to confirm that I was assisting him on a priority basis. With the letter, he was able to obtain a few days' grace on his expired visa. Through the assistance of the Consumer Centre, the airline arranged for the complainant to return home on another flight.

CS 80-113

Housing problems

The complainant brought his problem to my attention during my visit to his community. He had bought a house on a reserve approximately three years ago, through Canada Mortgage and Housing Corporation (C.M.H.C.), but had discovered defects in the flooring almost immediately. The contractor had made cursory attempts to repair the floors, but the problem persisted and the complainant did not succeed in having it corrected by either the builder or C.M.H.C. He wanted me to investigate the matter.

The **Ombudsman Act** does not give me the authority to investigate federal Crown corporations

such as C.M.H.C. However, my assistant made some inquiries on behalf of the complainant and found that the contractor/builder was licensed with the New Home Warranty Program of B.C. The complainant was referred to that program.

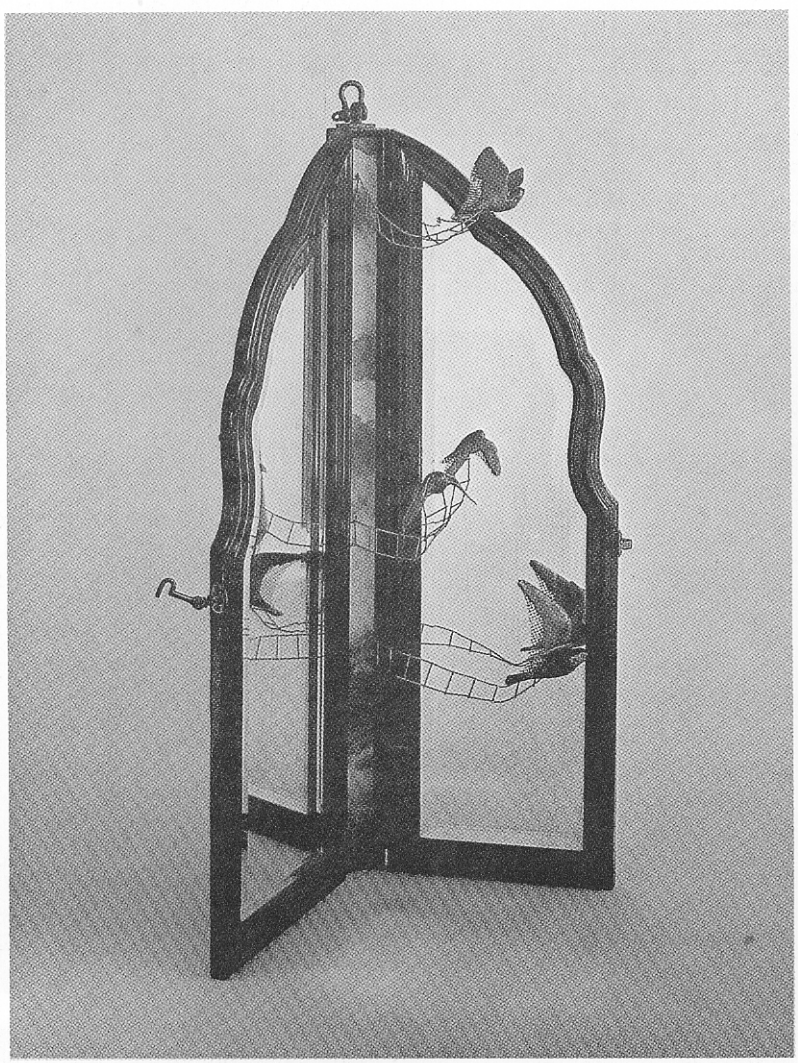
CS 80-114

Canada Customs

A municipal art gallery bringing in an item for a month-long exhibition encountered difficulty with Canada Customs. They ruled that the piece of art in question was in fact not an object of art. Customs would not allow the piece to be brought into Canada duty-free (as art) but insisted on levying an assessment of $800 on it as a mirror. An official of the art gallery complained to my office.

As the matter concerned the Federal Government I referred the gallery representative to the Member of Parliament in his area. The M.P. was successful in resolving the matter as the item was allowed into Canada on a temporary permit. However, the issue of what constitutes an object of art was not resolved. The temporary permit only circumvented the dispute.

Fortunately, through the M.P.'s involvement, the public will be able to judge for itself whether or not the item in question was an object of art during its month of exhibition at the Surrey Art Gallery.



BLUE BIRD, 1972 by Sherry Grauer **PHOTO** by Ambos Photo Design

PART IV

SUMMARY OF SOME CHANGES IN PRACTICES AND PROCEDURES ACCEPTED BY AUTHORITIES DURING 1980

1. The Ministry of Attorney General agreed to take additional steps to ensure that acquisitions of property by the Ministry of Transportation and Highways for highways purposes, are indicated on the titles of all lands affected. (CS 80-005)*
2. The Director of Land Titles, Ministry of Attorney General, agreed to issue a policy directive to all land registrars advising them that under section 27(d) of the **Builders Lien Act**, a summary procedure is available to registrars to discharge builders' liens where appropriate (i.e., where the registrar ascertains that the claim of the lien has been satisfied). (CS 80-006)
3. The Ministry of Attorney General agreed to review its policy of notifying parties to a Small Claims Court action of their right to appeal the court's decision. I was recently advised that the Ministry had completed its review and would post a notice outlining these rights and the requisite time limitations in all Small Claims Courts.
4. The Rentalsman was advised of a procedure which will assist, in future, the serving of Bench Warrants where parties to a dispute have ignored the Rentalsman's Order to repay a security deposit and failed to appear in Court. Tenants, or others, can supply the police directly with the landlord's address for personal service.
5. The Ministry of Environment issued a policy directive to its staff to clarify Ministry policy on guides who wish to take a leave of absence from guiding duties so that they would not have to pay for a licence or liability insurance. (CS 80-016)
6. The Ministry of Finance agreed to revise and expand the instructional materials used by members of the Courts of Revision in order to give them guidelines on matters of procedural fairness. (CS 80-023)
7. The Ministry of Finance agreed to add notice of the provision of appeal of Social Services Tax assessment to its new assessment notification forms.
8. The Medical Services Plan administrators agreed to drop the requirement that a Canadian citizen surrender his U.S. Alien Registration card to the U.S. authorities in order to qualify for coverage under the Plan.
9. The Director of Vital Statistics (Ministry of Health) agreed to revise procedures concerning cause of death information. The procedure was amended so that individuals seeking information concerning the cause of a death will be advised of the possibility of the Deputy Minister's authorization to release such information. (CS 80-035)
10. The Medical Services Commission, in cooperation with the Director of Government Agencies, agreed to institute a service which eliminates long-distance charges to persons who seek access to information concerning MSC and live outside the toll free areas of the Province. This information will be included in a revised Medical Services Plan brochure. Government Agents will contact the plan on behalf of insured persons.
11. Ministry of Human Resources agreed to monitor the statements of those recipients of Shelter Aid for Elderly Renters (SAFER) who experienced difficulties in understanding the policies and procedures of the SAFER program.
12. The Ministry of Human Resources undertook to correct payment delays when the correct information had been submitted albeit on the wrong form. (CS 80-043)
13. The Ministry of Human Resources agreed to clarify its policy concerning provision of orthodontic services for adults as there was confusion within the Ministry as to who was eligible.
14. The Ministry of Human Resources agreed to develop a standard notification of appeal rights to be given to all applicants or recipients. It also agreed to describe appeal rights in a pamphlet to be distributed. The Ministry further agreed to post a notice describing the right of appeal in all district office waiting rooms. (CS 80-050)
15. The Ministry of Labour agreed to change the forms and covering letters, sent pursuant to Part 9 of the **Employment Standards Act**, so that employers are properly advised of their legal position. Further, an amendment of the Act will be considered in order to provide employers with sufficient time to make representations to the Board of Industrial Relations. (CS 80-054)
16. The Ministry of Lands Parks & Housing agreed that applicants for the family first home grant who had previously owned an unregistered mobile home, not sitting on land held in fee simple by the applicant, should not be disqualified from receiving a grant under the **Home Purchase Assistance Act.** (CS 80-062)
17 The Ministry of Tourism issued a directive to its offices clarifying government policy on the transportation of firearms through the Province and recalled brochures containing misleading information.
18. The Ministry of Transportation and Highways agreed to inform individuals posting bonds with that Ministry of the disadvantage of interest loss on cash deposits in relation to other forms of security. (CS 80-074)
19 The Ministry of Transportation and Highways agreed to give information on appeal procedures to motor vehicle applicants who have been refused a licence on medical grounds.

*The numerical reference relates to the corresponding case summary reported in Part III of this Report.

20. The Ministry of Transportation and Highways agreed to reverse a policy of refusing subdivision applications on irrelevant grounds in cases where the planning function is supposed to be exercised by a municipal approving officer. (CS 80-075)
21. The Agricultural Land Commission agreed to amend its practice and to advise applicants for subdivisions of the manner in which they could support their application with additional information.
22. B.C. Ferry Corporation agreed to revise its procedures for investigating claims for compensation for damage to vehicles on B.C. Ferry Corporation vessels. The new procedures include an interview with the claimant, whenever practical, and the giving of reasons to the claimant following a decision on the compensation claim. (CS 80-080)
23. B.C. Hydro and Power Authority agreed to expand its safety campaign for farm workers. (CS 80-085)
24. B.C. Hydro agreed to amend and clarify advice given to applicants under the Rural Electrification Assistance Program in order to avoid the possibility that applicants would misconstrue general estimates of costs as binding agreements to install service at a set price.
25. The Motor Carrier Commission agreed to amend its policy and fixed new tariffs in order to set a maximum weight on which ferry surcharges can be levied for a person moving household goods within the province. (CS 80-091)
26. The Workers' Compensation Board agreed to amend its procedure of not advising workers of their right to appeal decisions of Board legal officers to the board of review. Future letters from legal officers to workers will advise them of this right and the procedure to follow.
27. The Workers' Compensation Board agreed to change its interpretation of a complicated statutory provision concerning benefits for widows and issued a directive to its staff for future applications.
28. The Victoria office of the Workers' Compensation Board agreed to inform persons who contacted the office for Medical Appeal Panel Review forms to write directly to the Board's Headquarters as the receipt of the request would be treated as complying with the limitation period to apply.

PART V

TALKBACK: CORRESPONDENCE FROM COMPLAINANTS

Some of the people who come to my office for assistance have been unhappy or frustrated with the results. One person wrote to me that complaining to the Ombudsman's office was like throwing eggs at a brick wall.

Many persons also wrote to express their appreciation for assistance rendered. The uncle of a person incarcerated wrote to thank me for helping a son obtain a temporary absence pass to attend his father's funeral. A member of the public service wrote to express thanks for helping to resolve a difficult problem with her superannuation and added she particularly appreciated my staff's "human approach and moral support at a time when I needed it very much".

Even when I am unable to be of assistance, citizens who complain to me occasionally express their gratitude that an independent examination of the policy and rules has been made. In one complaint which was not substantiated the complainant wrote:

> *"Your staff has done a very excellent and comprehensive job in researching and gathering together all the legal connections and bringing them to a logical conclusion in this matter. Furthermore, your efforts give a person confidence that the citizens of B.C. if they feel being imposed upon by government bureaucracy can get a fair and reasonable hearing of their concerns by your office."*

The following was a complainant's parting shot to the Ministry before he came to my office. We later found his letter on the Ministry file:

> *"I am enclosing my cheque for $418.22 which is the Home Owner Grant of $380.20 plus penalty interest.*
>
> *This payment is made under protest, and rather than argue with you obstinate bureaucrats any longer, I will take my case to the Ombudsman, and you can waste his time instead of mine."*

More fan mail... and some complaints about the Ombudsman.

> *"Thank you for your letter of March 10, 1980 which to a considerable extent has restored my faith in human nature, at least insofar as the public sector is concerned."*
>
> *"Thank you very much for your prompt reply to my request for assistance regarding my father. I was very pleased to find my letter produced such welcome results and I appreciated your looking into the situation of assistance benefits awarded him and the family. As of yet, the situation has not been completely resolved..."*
>
> *"You may get out your rubber stamps "File Closed" or "Successfully Completed" or whatever you use.*
>
> *I just received my cheque for last year's property tax grant. $380.00 plus a line of baloney from Vander Zalm.*
>
> *I believe it was your letterhead that caused the difference. The tax people reconsidered and allowed my application to go through when your correspondence showed that I wouldn't be bluffed.*
>
> *Thanking you and wishing you a wonderful summer."*
>
> *"I would like to take this opportunity to thank you and the members of your staff for the excellent service I received. You may recall that my mother has Alzheimer's Disease and was in need of a long term placement when I approached your office.*
>
> *I was treated with such care and sensitivity by a member of your staff that I immediately felt I could trust her. What a relief after dealing with red tape and bureaucracy for months. The information we received helped us make a very difficult decision. It was comforting to know we had all the information available. Your staff's concern and energy for the case exceeded all expectations. If our case is an example of the kind of work you do, then the Office of the Ombudsman provides an invaluable service."*
>
> *"Hi:*
>
> *Everyone thanks you for all your time and effort helping us with our access problem.*
>
> *The Passmore Logging Road has been plowed up to ¾ mile from our house, which is a real relief. The Highways Department says it will now keep the road open."*
>
> *"Thank you for the assistance afforded to me by your office and in particular the services of your assistant.*
>
> *I would like you to note that I found her to be professional and competent in dealing with my enquiry.*
>
> *The net results have been positive, attributable in the most part to your office."*
>
> *"In answer to the letter of Feb. 8 written by your Senior Investigator I would say he is a damn poor investigator sounds like a Lawyer that don't know what he is talking about. He is ridiculous. A neighbour sending the police and then sending the police and pound keeper out on false charges is not a private dispute between neighbours. For his information that is criminal. What about forcing people off a public road and then camouflaging that road as a private drive way. Is that private too? He recommends to speak to the local elected council. Those double crossers are not worth speaking to.*

If the Ombudsman Act does not empower you to deal with problems like this then the Ombudsman Act is unconscionable, discriminatory and useless. It protects the criminals. I protest against such an act. Just a waste of money...."

"I have your letter of July 3, 1980 which probably crossed my letter of June 23, 1980 to you.

The proposed refund is indeed a satisfactory resolution of the complaint, and once again on behalf of the beneficiaries of the estate I should like to thank you for your succesful endeavours in coping with bureaucratic intransigence."

From New Zealand:

"I have addressed this letter to you personally as I have received no communication from your office since April, 1980 when you advised that results might be expected from an enquiry in a few weeks. The urgency of the need to resolve my complaint of injustice in being dismissed as a teacher you sensed in your first communication to me.

A mistake has been make. Injustice has resulted. An Office has been created to remedy this type of occurrence. Yet nothing as far as I am aware happens. It would be helpful, since your office has examined the material, to know whether I am working with a organization that is supportive of me. And if not supportive, what the problems are. It would be helpful to have you reply to the last paragraph of my letter to you of November 26, 1980. You will appreciate that being at a distance, it was awkward for me if answers are not forthcoming to do anything about this, and that I may in last resort have to ask others to make enquiries of you on my behalf. I have a responsibility to my family in exile to push things to a resolution with all urgency. Your early reply would be appreciated."

My letter was in the mail and crossed paths with this, probably in Hawaii or Fiji!

"I enclose a couple of my early letters... for laughs if nothing else... its amazing how little reaction I've been able to stir up with about thirty letters such as these. I must admit that the likelihood (?) of any innocent motorist being charged with contravening the B.C.M.V.A. is remote... but the possibility should not even exist!!

Thanks for your (latent) interest!

P.S. You're in the same league as the post office!"

"Thank you for your January 28, 1980 letter.

My phone conversation with your staff communicated that they did not understand my objection to a system that is a monument to ignorance and infringes on basic rights beyond common sense.

You may be interested in our forthcoming book which will tell about so-called civil servants' robot like movements through their chores in a setting where the key words are, "Thou Shalt Not Think."

Abraham Lincoln is quoted as saying, "It is a sin to be silent when it is your duty to protest."

Many more comments came to my staff and myself in person or over the telephone. Some praise, some criticism, especially of the time it takes to investigate. The latter has to be acknowledged as a valid criticism in some cases. We sometimes get more credit than we deserve when a ministry alone and on its own corrected the situation and sometimes we get blamed for problems we are not responsible for. We get praise and criticism. Both are welcome. I carefully evaluate the critical comments to help me improve my service to the citizens of British Columbia.

PART VI

TABLES

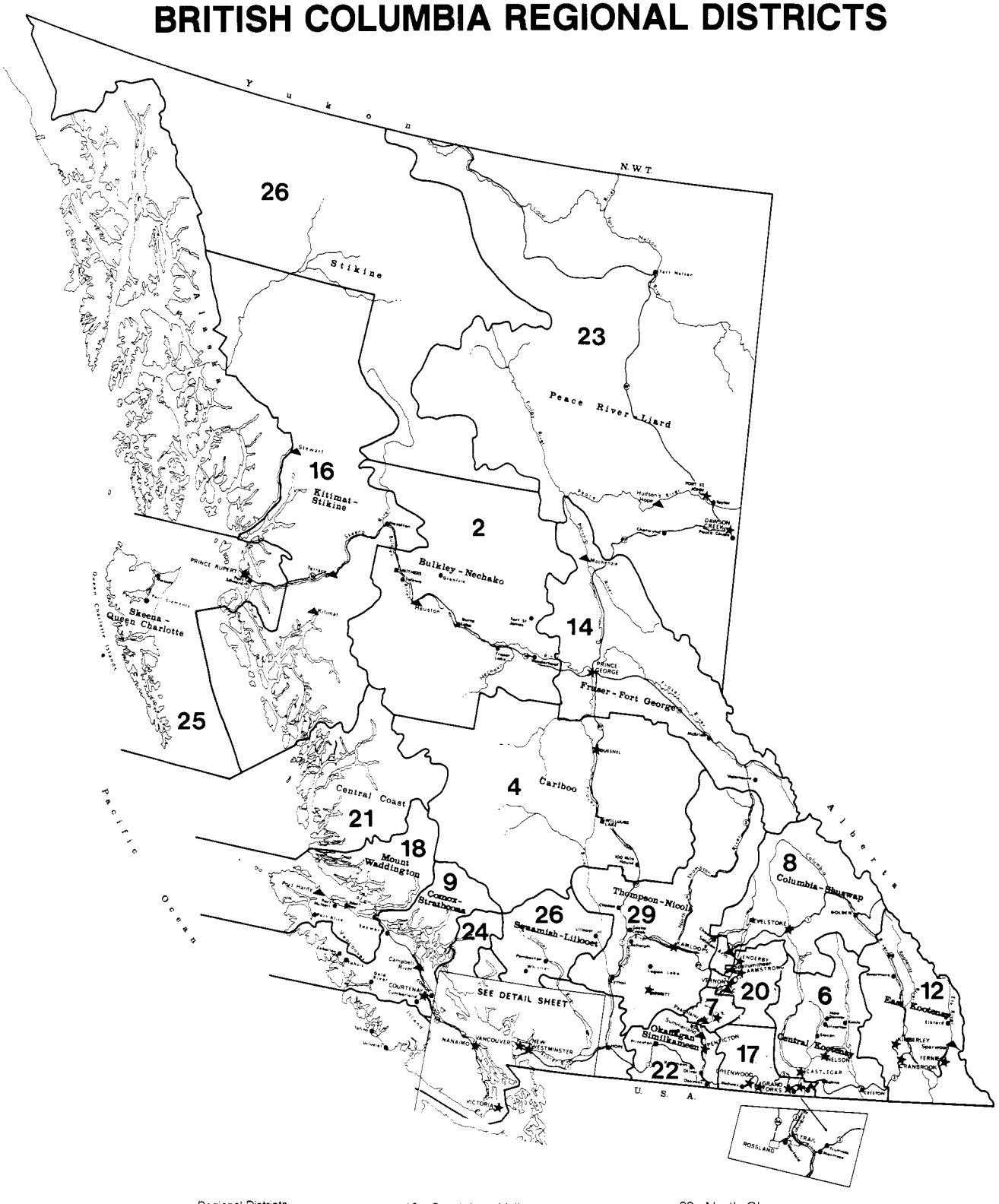
TABLE 1

Profile of Complainants, and Complaints Closed Between October 1979 and December 1980*

		Number	Percent
COMPLAINANT/ GROUP	Individual/Family	3,889	92.7
	Business	173	4.1
	Union	7	0.2
	Group	74	1.7
	Public Servant	24	0.6
	Others	30	0.7
	TOTAL	4,197	100.0
COMPLAINT INITIATOR	Aggrieved Party	3,758	89.6
	Relative/Friend	253	6.0
	M.L.A. & M.P.	41	1.0
	Professional	43	1.0
	Ombudsman	20	0.5
	Public Servant	27	0.6
	Others	55	1.3
	TOTAL	4,197	100.0
INITIATOR'S GENDER	Male	2,412	57.4
	Female	1,644	39.2
	Family	98	2.3
	Group/Other	45	1.1
	TOTAL	4,197	100.0
FIRST CONTACT	In Person	780	18.6
	Letter	1,080	25.7
	Telephone	2,317	55.2
	Not Applicable	20	0.5
	TOTAL	4,197	100.0
COMPLAINT INITIATED AT	Victoria Ombudsman Office	1,847	44.0
	Vancouver Ombudsman Office	2,165	51.6
	Local Visit	185	4.4
	TOTAL	4,197	100.0

* These tables include 256 complaints reported "closed" in the First Annual Report.

BRITISH COLUMBIA REGIONAL DISTRICTS



Regional Districts

1. Alberni-Clayoquot
2. Bulkley-Nechako
3. Capital Region
4. Cariboo
5. Central Fraser Valley
6. Central Kootenay
7. Central Okanagan
8. Columbia-Shuswap
9. Comox-Strathcona
10. Cowichan Valley
11. Dewdney-Alouette
12. East Kootenay
13. Fraser-Cheam
14. Fraser-Fort George
15. Greater Vancouver
16. Kitimat-Stikine
17. Kootenay-Boundary
18. Mount Waddington
19. Nanaimo
20. North Okanagan
21. Central Coast
22. Okanagan-Similkameen
23. Peace River-Liard
24. Powell River
25. Skeena-Queen Charlotte
26. Squamish-Lillooet
27. Stikine Region (unincorporated)
28. Sunshine Coast
29. Thompson-Nicola

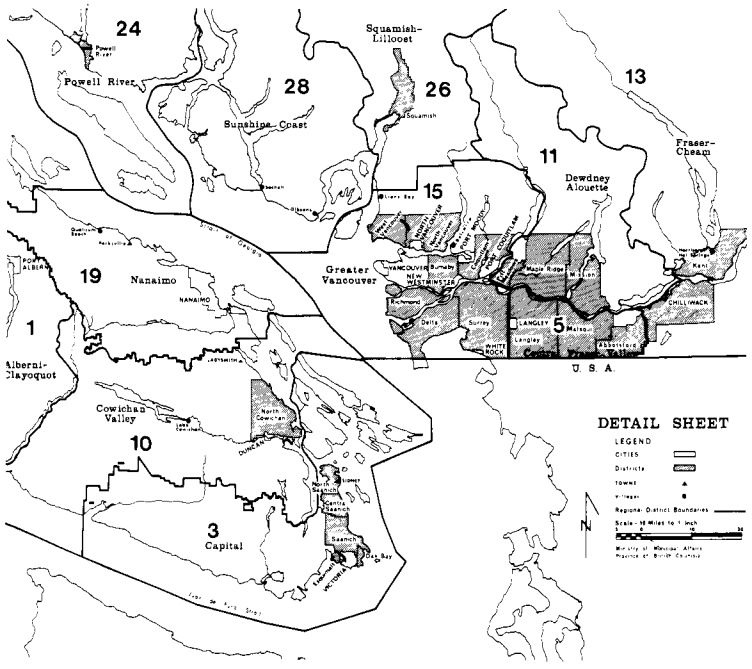


TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1980

Regional Districts	Percentage of Total B.C. Population* (Oct. 1980)	Percentage of Total Ombudsman Complaints Closed (as of Dec. 31, 1980)
1. Alberni-Clayoquot	1.2	.7
2. Bulkley-Nechako	1.4	1.5
3. Capital Region	9.2	15.4
4. Cariboo	2.2	.9
5. Central Fraser Valley	4.1	1.8
6. Central Kootenay	2.0	3.0
7. Central Okanagan	2.9	2.0
8. Columbia-Shuswap	1.4	.8
9. Comox-Strathcona	2.5	2.1
10. Cowichan Valley	1.9	1.3
11. Dewdney-Alouette	2.2	2.2
12. East Kootenay	2.0	3.7
13. Fraser-Cheam	2.0	1.5
14. Fraser-Fort George	3.3	2.5
15. Greater Vancouver	42.8	42.0
16. Kitimat-Stikine	1.4	2.2
17. Kootenay-Boundary	1.2	1.2
18. Mount Waddington	.6	.4
19. Nanaimo	2.7	2.1
20. North Okanagan	1.9	1.5
21. Central Coast	.2	.2
22. Okanagan-Similkameen	2.1	1.5
23. Peace River-Liard	2.1	2.0
24. Powell River	.7	.2
25. Skeena-Queen Charlotte	.9	.6
26. Squamish-Lillooet	.7	.6
27. Stikine Region (unincorporated)	.1	.1
28. Sunshine Coast	.6	.2
29. Thompson-Nicola	3.7	3.1
Out-of-Province		2.7
TOTAL	100%	100%

*Ministry of Industry and Small Business, Central Statistics Bureau, Oct. 1980

TABLE 3

Disposition of Complaints (Proclaimed Authorities) Closed Between October 1979 and December 1980*

	Declined Withdrawn Discontinued	Resolved Corrected during Investi-gation	Substan-tiated Corrected after Investi-gation	Not sub-stantiated	TOTAL
A. MINISTRIES					
Agriculture and Food	0	4	0	3	7
Attorney General	63	35	3	35	136
Consumer & Corporate Affairs	61	51	0	16	128
Education	8	6	1	5	20
Environment	37	14	4	10	65
Energy, Mines & Petro. Res.	2	1	0	0	3
Finance	17	16	4	15	52
Forests	9	7	1	10	27
Health	39	41	4	34	118
Human Resources	141	94	8	69	312
Industry & Sm. Bus. Dev.	0	0	0	6	6
Intergovernmental Relations	0	0	0	0	0
Labour	8	10	1	8	27
Lands, Parks & Housing	24	27	5	16	72
Municipal Affairs	5	6	2	17	30
Premier's Office	1	0	0	0	1
Provincial Secretary	6	3	0	8	17
Tourism	0	1	1	0	2
Transportation & Highways	51	40	9	36	136
Universities, Science & Tech.	0	0	0	0	0
SUB-TOTAL	472	356	43	288	1,159
PERCENT	40.7%	30.7%	3.7%	24.9%	100%

TABLE 3 (continued)

	Declined Withdrawn Discontinued	Resolved Corrected during Investi-gation	Substan-tiated Corrected after Investi-gation	Not sub-stantiated	TOTAL
B. BOARDS, COMMISSIONS, ETC.					
Agricultural Land Commission	8	3	1	7	19
Alcohol and Drug Commission	1	0	0	1	2
B.C. Assessment Authority	11	4	0	6	21
B.C. Assessment Appeal Brd.	0	0	0	1	1
B.C. Board of Parole	0	2	0	1	3
B.C. Buildings Corporation	1	6	0	3	10
B.C. Development Corporation	0	1	0	0	1
B.C. Energy Commission	1	0	0	0	1
B.C. Ferry Corporation	4	5	0	3	12
B.C. Housing Corporation	2	0	0	0	2
B.C. Hydro & Power Authority	22	17	1	10	50
B.C. Housing Management Comm.	10	4	0	4	18
B.C. Marketing Board	1	0	0	0	1
B.C. Police Commission	0	0	0	1	1
B.C. Railway	1	1	0	0	2
B.C. Systems Corporation	5	0	0	1	6
Corporate and Financial Services Commission	1	0	0	0	1
Credit Union Reserve Board	1	1	0	0	2
Government Employee· Relations Bureau	3	1	1	0	5
Insurance Corporation of B.C.	139	48	2	67	256
Labour Relations Board	8	4	1	7	20
Lieutenant Governor as University Visitor	1	0	0	0	1
Medical Services Commission	4	3	0	2	9
Motor Carrier Commission	6	1	0	0	7
Ocean Falls Corporation	5	0	0	0	5
Provincial Adult Care Facilities Licensing Brd.	0	0	0	1	1
Provincial Capital Commission	1	0	0	0	1
Provincial Child Care Facilities Licensing Brd.	1	0	0	0	1
Public Service Commission	15	4	4	14	37
Rent Review Commission	4	3	0	1	8
Superannuation Commission	5	6	3	14	28
Workers' Compensation Board	117	31	3	24	175
WCB Boards of Review	14	3	0	3	20
Other	0	2	0	0	2
SUB-TOTAL	392	150	16	171	729
PERCENT	53.7%	20.6%	2.2%	23.5%	100%
TOTALS A and B	864	506	59	459	1,888
PERCENT	45.8%	26.8%	3.1%	24.3%	100%

*This table includes 70 complaints reported "closed" in the First Annual Report.

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities (Sections 3-11 Schedule of the Ombudsman Act) Closed Between October 1979 and December 1980*

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Municipalities (Section 4)	34	96	40	170
Regional Districts (Section 5)	13	19	19	51
Public Schools (Section 7)	13	8	6	27
Universities (Section 8)	5	6	3	14
Colleges & Provincial Institutes (Section 9)	1	4	1	6
Hospitals and Hospital Boards (Section 10)	3	16	5	24
Professional and Occupational Associations (Section 11)	19	23	6	48
TOTAL	88	172	80	340
PERCENT	25.9%	50.6%	23.5%	100%

*This table includes 28 complaints reported "closed" in the First Annual Report.

TABLE 5

Extent of Service

Non-Jurisdictional Complaints Closed Between October 1979 and December 1980*

	Extent of Service			
	No Assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Federal, other provincial territorial and foreign governments	72	272	101	445
Marketplace matters—requests for personal assistance	133	632	116	881
Professionals' actions	112	358	79	549
Police matters	10	29	14	53
Miscellaneous	5	30	6	41
TOTAL	332	1,321	316	1,969
PERCENT	16.9%	67.1%	16%	100%

*This table includes 28 complaints reported "closed" in the First Annual Report.

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		8	.9
2. Abandoned by Complainant		207	24.0
3. Withdrawn by Complainant		128	14.8
4. Statutory Appeal (Section 11(1)(a))		105	12.2
5. Solicitor (Section 11(1)(b))		3	.3
6. Discontinued by Ombudsman (Discretionary)		413	47.8
a) Over 1 year old	7		
b) Insufficient personal interest	3		
c) Other available remedy	257		
d) Frivolous	3		
e) Investigation unnecessary	82		
f) Investigation not beneficial to complainant	61		
TOTAL		864	100%

TABLE 7

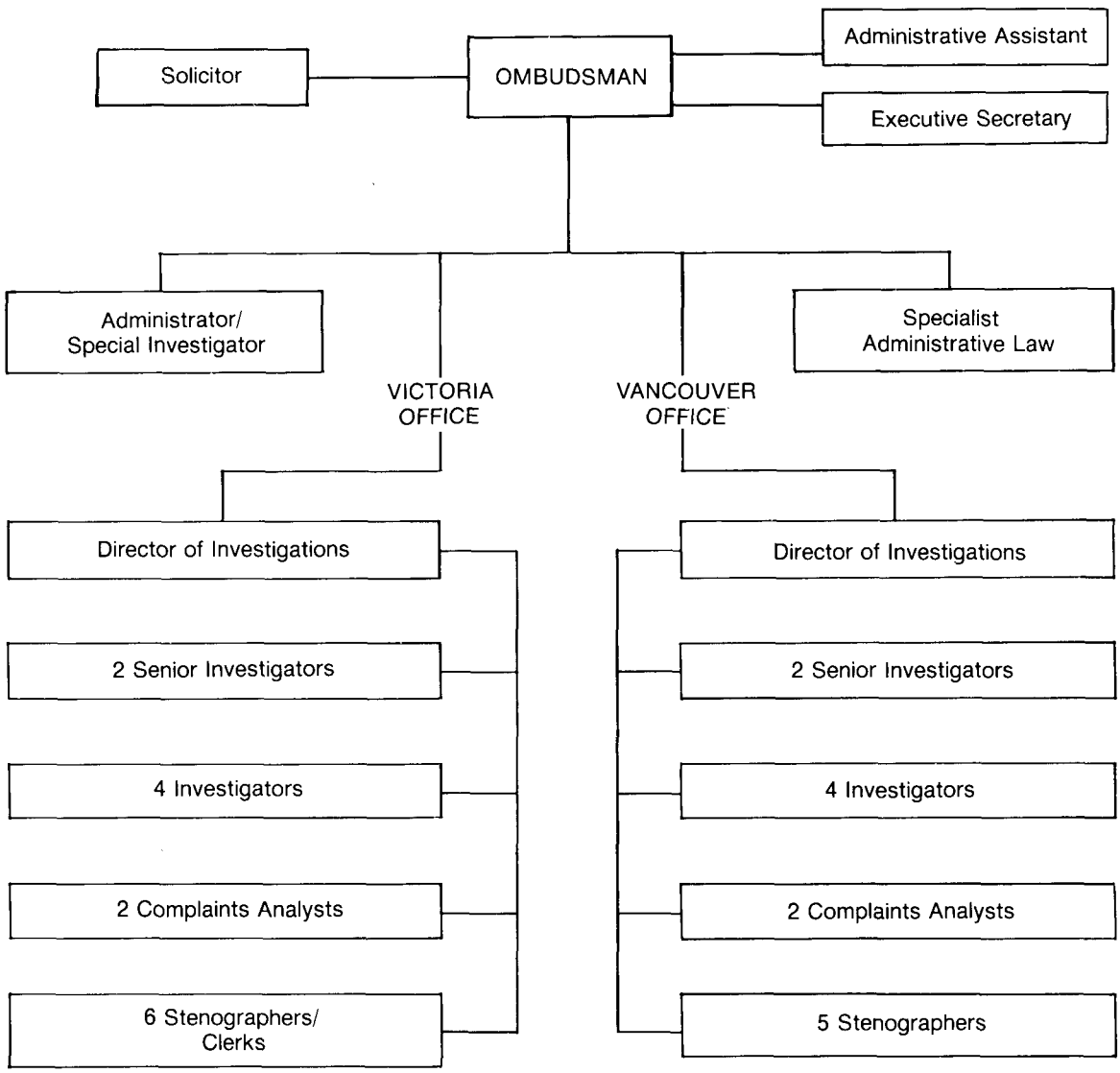
Level of Impact

Resolved & Rectified (Jurisdictional) Complaints
Closed Between October and December 1980

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	449	41	14	1	4	509
Rectified Complaints	27	5	17	5	2	56
TOTAL	476	46	31	6	6	565

TABLE 8

OFFICE ORGANIZATION



PART VII

ACKNOWLEDGEMENTS

The public service of the Province has been receptive and responsive to the ideas my office must get accepted. Without cooperation and help from members of the public service we cannot resolve complaints. The bureaucracy is often portrayed as the villain: sometimes they are but often they are not. We must learn to be specific and to differentiate.

Members of the Legislative Assembly have maintained their interest and continued their support for the new Ombudsman institution. The Assembly may wish to work closely with me by establishing a Committee that can scrutinize my reports.

My staff have kept up their devoted hard work and improved the Ombudsman's efficiency tremendously in one year. Their work is clearly recognized by the complainants, as is reflected in the comments presented in Part V.

My Canadian and United States Ombudsman colleagues were generous in passing on to me and my staff their collective experience in Ombudsmanship during a staff training conference in March 1980.

PART VIII

THE OMBUDSMAN ACT

OMBUDSMAN ACT

[Part of Schedule to be proclaimed]

CHAPTER 306

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1.

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2).

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4).

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary of a Supreme Court judge.

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6).

Pension

5. (1) Subject to subsections (2) to (5), the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section

(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service; and

(b) the number of years referred to in section 19 (1) (b) of the *Pension (Public Service) Act* shall be multiplied by 1.5.

1977-58-2(7 to 11).

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary; or

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until

(d) the appointment of a new Ombudsman under section 2;

(e) the end of the period of suspension of the Ombudsman;

(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or

(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or

(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) Employees necessary to enable the Ombudsman to perform his duties may be appointed in accordance with the *Public Service Act*.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) The Ombudsman may exercise any power, authority or duty of the Public Service Commission that the commission may delegate under section 75 (3) of the *Public Service Act*.

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Public Service Commission or the Government Employee Relations Bureau

are inadequate to enable him to fulfil his duties.

1977-58-5.

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;

(b) prosecute an offence under this Act; or

(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;

(b) no appeal lies in respect of it; or

(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and

(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or of objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11.

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest,

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force on proclamation.

1977-58-34.

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities and the universities council as defined in the *University Act*.

9. Corporations as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch; [*bracketed sections 3 to 11 to be proclaimed*].