1981 ANNUAL REPORT OF THE OMBUDSMAN

TO THE LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

British Columbia. Office of the Ombudsman.
Annual Report of the Ombudsman to the Legislative Assembly of British Columbia — 1981–

Continues: Annual report of the Ombudsman to the Legislature of British Columbia. ISSN 0226-8930
ISSN 0713-2921 = Annual report of the Ombudsman to the Legislative Assembly of British Columbia

1. British Columbia. Office of the Ombudsman.
II. Title.

JL429.5.04B75 354'.711'0091

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May, 1982

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 in accordance with section 30 (1) of the *Ombudsman Act*, R.S.B.C. 1979, c. 306. This Third Annual Report covers the period of January to December 1981.

Respectfully yours,

Karl A. Friedmann
Ombudsman

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HIGHLIGHTS OF THE 1981 ANNUAL REPORT

- This is my Third Annual Report, about my second full year of operation: January to December 1981.
- Complaining was up again in 1981. A total of 4,935 new complaints reached my office in the past year, an increase of 28% over 1980.
- My office closed 4,765 complaints in 1981 of which 2,757 (58%) were within jurisdiction, a significant increase of jurisdictional case closings over 1980 when 1,888 (45%) of closed complaints were within jurisdiction.
- In 1981 I found it necessary to address three Special Reports to the Legislative Assembly and outstanding issues from those reports are raised in this Third Annual Report. (*See* "Not Rectified" and "Expropriation Procedures and Practices")
- In October 1981 I published the first Public Report. The subject was East Kootenay Range Issues. One issue outstanding from that matter is also discussed in this Annual Report. (*See* "Wildlife Damage")
- Several changes in procedures and practices were brought about as a result of my recommendations to Ministries, Boards and Commissions. (*See* Part IV and Table 7 in Part VI)
- The B.C. Development Corporation challenged in court the Ombudsman's right to investigate their actions and procedures. The B.C. Supreme Court decided in B.C.D.C.'s favour. The decision is under appeal.
- The Commission on Electoral Reform challenged my jurisdiction to investigate the Commission's procedures and practices. I asked the B.C. Supreme Court for a declaration on the matter of jurisdiction. The case was scheduled for hearing in January 1982 but was postponed at my request pending the outcome of the B.C.D.C. appeal.
- A number of issues are singled out in this Report for the Legislature's attention: expropriation, land use and disposal practices, maintenance orders, protection of personal information, and police complaints.
- Some 170 complaint summaries are presented in Part III. All are equally interesting. For the reader in a hurry, I recommend the following: "The case of the missing transcript"—CS 81-007; "Liquor impropriety"—CS 81-024; "Regulation on probationary teachers unfair"—CS 81-038; "Garbage in, garbage out"—CS 81-046; "Inspecting pesticide permits"—CS 81-047; "Double tax is hardship, Cabinet agrees"—CS 81-048; "Appeal information revisited"—CS 81-077; "Hearing on hearing-ear dog"—CS 81-086; "The battle of Buckley Bay"—CS 81-091; "One head lopped from many-headed Hydro"—CS 81-092; and "Driver can rebut claim he's unfit"—CS 81-116; "It's not a farm if it doesn't sell produce"—CS 81-124; "Unfair procedures cause blow to captain's honour"—CS 81-129; "Taxed patience"—CS 81-138; "Speed shows compassion"—CS 81-166.
- The Attorney General's Ministry has significantly improved working relations with my office. Unfortunately a few issues remain.
- The Ministry of Human Resources responded in exemplary fashion to recommendations about the child abuse registry. Significant improvements in fairness and effectiveness of child protection activities may be expected for the future. (*See* "The Child Abuse Registry" in Part I.)
- The Ministry of Forests developed a model public involvement policy and actually practises it successfully. Full marks to Forestry for openness and fairness. Now, if only Lands, Parks and Housing followed the lead . . . (*See* respective Ministry comments in Part III and "Land Use Decisions and Land Use Practices" in Part I.)
- The Ministry of Health agreed to significant improvements in procedures and practices (*See* Part IV). One disappointment during 1981: The Ministry collects a lot of personal and private information about all of us. But the Ministry refused my request that it study carefully its procedures and practices for protecting the safety of this personal information against unauthorized use or release. (*See* "Protection of Personal Information" in Part I.)
- ICBC has in typically bureaucratic fashion attempted to contain or control the Ombudsman by instructing field staff "under no circumstances" to answer enquiries by the Ombudsman. Instead they are supposed to give the Ombudsman the run-around by referring him to

the I.C.B.C. Public Inquiries Department. What could I.C.B.C. possibly wish to hide? Isn't everybody happy with I.C.B.C. practices? (For the sorry details, *see* comments on page 85.)

- Kudos to the Motor Vehicle Branch of the Ministry of Transportation and Highways: good solid work and reasonable improvements. Could be a bit more open-minded on bilingualism. (*See* "L'examen en français"—CS 81-114.)

- W.C.B.: a long hard slog. We are inching closer to mutual understanding. Personnel changes helped, too.

- Sections 3 to 11 of the Schedule to the Ombudsman Act remain unproclaimed. While I am certainly not under-employed the public keeps requesting proclamation. I am ready to implement further sections of the Schedule should the Government and the Legislature decide to proclaim. But as always: it will cost more.

PART I

GENERAL COMMENTS

A. DEVELOPING A CODE OF ADMINISTRATIVE JUSTICE

The *Ombudsman Act* outlines in Section 22 (1) a range of opinions and judgements I may arrive at on completing complaint investigations. My opinions must be based on sound reasons, to facilitate acceptance and compliance with recommendations. I rely on the persuasiveness of my reasons and reasoning and on the authorities' sharing the values underlying these reasons and opinions.

I do not ask for or expect blind acceptance of my recommendations by authorities but I hope for reasoned argument and informed consent. It is essential for me to make these reasons explicit to allow intelligent debate and to banish suspicions that my judgements are based on arbitrary or purely ideosyncratic considerations. I believe I articulate general community standards of fairness in citizen-government relations as seen by the Legislative Assembly and the public. I emphasize the citizen's perception of that relationship so as to redress the imbalance of power between the individual and the collective authority of government.

I believe most public officials share these basic beliefs in fair administrative practices. Members of the Legislative Assembly (in whose name I investigate) and the general public may wish to be informed of how I interpret administrative justice, and members of the public service need to be familiar with these standards.

Section 22 (1) provides as follows:

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."

A number of these terms have been the subject of interpretation by the courts for the purposes of judicial review of administrative action. I find those judicial interpretations most interesting and very useful, but my mandate as Ombudsman is, I believe, broader: the Ombudsman was intended to assist the public where judicial review of administrative action was not available. Through Section 22 the Legislature has imposed on me a duty to formulate my own interpretations. The following is therefore not intended as an explication of administrative law principles (for which reference should be made to the many texts available), but as a short guide to an Ombudsman code of administrative justice.

Contrary to Law

A public servant acts contrary to law when he makes a decision or does an act which he is not authorized by statute to make or do. He also may act contrary to law where he continues a practice or procedure which the courts have found to be unlawful. (*See*, for example, CS 80-075 on pp. 57–58 in my 1980 Annual Report, in which the Ministry had ignored an earlier Supreme Court decision and continued to interpret the statute in its own way.) In my opinion, if a public servant disagrees with a judicial interpretation of a statute, he is nonetheless bound by that interpretation until the statute is changed or the judicial decision is overruled. This approach is essential to the maintenance of the rule of law, a fundamental principle of democratic government.

Unjust

There are at least two kinds of injustice. The first occurs where a particular rule of law is applied inequitably or unfairly, so that its burden or benefit does not reach all those to whom it was intended to apply. The second kind of injustice occurs where the rule or law itself is unjust or inequitable. The former type of injustice is the primary concern of the courts in their interpretation and application of legal rules. It is also my concern. However, I may also look at the substance of the rule and determine whether it is a fair one or not. In such cases I may request that a statutory provision or regulation, practice or procedure be reconsidered in order to eliminate the injustice. I may also recommend that an administrator use his discretion to come to a different decision, where such is permitted by law, if I believe that the original decision was unjust.

Oppressive

An act or decision is oppressive which is intended to bully a citizen or which has the effect of overburdening him in the pursuit of his legal entitlement. For example, an authority may require compliance with preconditions that are only marginally related to the service being provided; or the citizen may be required to produce evidence which is beyond his reasonable capacity to obtain. If an authority uses its superior position or knowledge to place the citizen at an unreasonable disadvantage or to obtain compliance with its wishes in respect of an otherwise unrelated matter, it acts oppressively.

Improperly Discriminatory

Discrimination is simply differential treatment. Not every discrimination is improper. An act of discrimination is improper if it is not reasonably required for the attainment of the overall purpose or objective of the administrative or legislative scheme which ostensibly governs the decision or act.

Mistake of Law or Fact, or Irrelevant Grounds or Consideration

The complexity of modern legislation makes it inevitable that members of the public service make mistakes from time to time in ascertaining or interpreting the law. If an official has a question in his mind as to the existence of, or proper interpretation of, a rule of law, he should seek legal advice before making a decision. There is also a more general duty on senior officials to ensure that their staff are properly apprised of the law. (*See* "Deciphering the governing statute" at p. 68 of my 1980 Annual Report.)

Mistakes of fact can usually be avoided by a full and fair investigation of the situation before a decision is made.

Sometimes I have found that government files contain irrelevant remarks about a citizen, such as his personal habits and character traits. For example a comment made early in a file that a person "seems to have an alcohol problem" can translate itself, as the file progresses, into an assertion that the person is an alcoholic. The treatment the citizen receives from the agency may be slanted by such remarks. Public servants should take care that irrelevant remarks do not enter official files and do not affect their attitude towards or decisions on individuals.

The application of arbitrary, unreasonable, or unfair procedures

An arbitrary procedure is one which fails to permit the views of those who have a legitimate interest in the ultimate decision to be heard before the decision is made. The degree of formality required for such a hearing will vary with the degree of impact the decision may have on the citizen. The greater the impact on a citizen, or group of citizens, the greater the need for a hearing and formality of the hearing.

The determination of whether a procedure is unreasonable requires an examination of the purpose for which the procedure was established. I have found a procedure for storing information to be unreasonable because the safeguards for confidentiality of that information were less than adequate.

Procedural unfairness manifests itself in many ways, and it encompasses an arbitrary procedure. I have, however, gone beyond the criterion of arbitrariness and found that a procedure was unfair which failed to provide for an appeal mechanism. (*See*, for example, "Grazing permits: the right to be 'herd'"—CS 81-063 below.) The Public Service Commission also engaged in an unfair procedure by collecting secret information about former employees which was kept on their personnel files and used later. (*See* "No more secret ratings"—CS 81-149 below.)

Otherwise Wrong

This heading covers a wide variety of unacceptable and inappropriate acts and conduct not covered by the other headings in this code. In my opinion it refers to generally accepted standards of civil behaviour in modern society, sensitivity to the needs of people served by public officials, intellectual integrity, good judgement, etc. Examples of acts or decisions that would be "otherwise wrong" are: failure to live up to commitments; the use of an inappropriate manner in dealing with the public; rudeness; knowingly sending a member of the public on a fruitless enquiry; failure to return telephone calls or failure to respond to enquiries or requests from the public.

Improper Purpose

When the authority or an official is motivated by favouritism or personal animosity towards those who are directly affected, or when there is an intention to promote an object other than that for which a power has been conferred, I may find that the act or decision has been done or made for an improper purpose.

Adequate and Appropriate Reasons

In my view, giving reasons enhances public understanding of the administration of public policy, thereby affording an opportunity for critical scrutiny, as well as providing a rational focus for public debate, judicial review, and Ombudsman investigation. Moreover, the giving of reasons promotes public acceptance of the legitimacy of administrative action; failure to give reasons leaves the administration open to suspicion of arbitrariness and unfairness. I have developed the following criteria for assessing the adequacy and appropriateness of reasons:

a. Whether the citizen's concerns are addressed directly and completely;
b. Whether assertions of fact are supported by appropriate sources or documentation;
c. Whether statements of law are supported by statutory or judicial authority;
d. Whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached;
e. Whether the reasons are comprehensible to the recipient; and
f. Whether the reasons are consistent with reasons given in other cases dealing with the same or similar issues.

Negligent

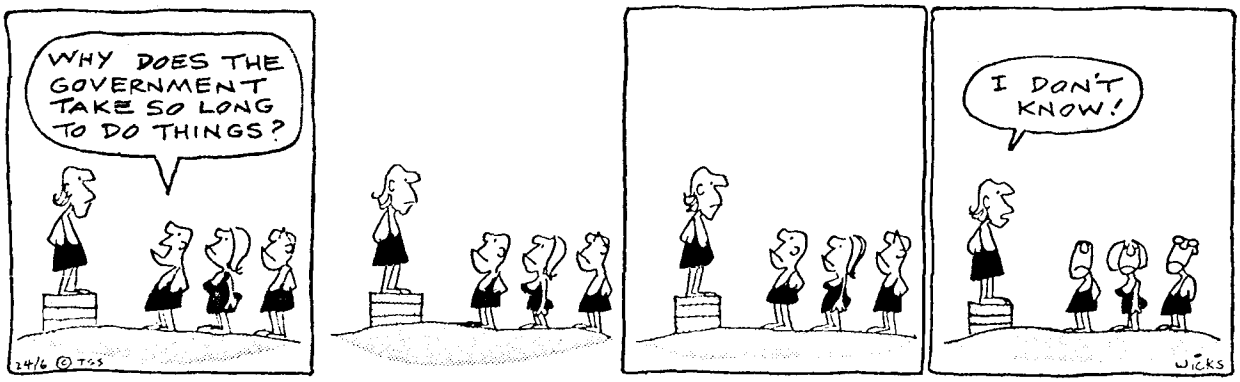
Negligence in administration may be defined as failure to exercise proper care or attention in the performance of a public duty. This is not identical with judicial concepts of negligence. The Ombudsman may expect a level of care not currently enforceable in the courts. I may find there has been negligence, for example, where a decision-maker fails to advise a citizen of his appeal rights concerning the decision, or where a public servant gives out wrong information relating to procedures for pursuing a claim or entitlement.

Acted Improperly

This phrase implies an intention to bring about adverse consequences, or a reckless disregard for adverse consequences which the authority ought to have known would arise from this act. It is closely related to acting for an "improper purpose". An example would be using access to confidential information in order to embarrass or otherwise adversely affect the person about whom the information was kept.

Unreasonable Delay

Delay is often inherent in the decision-making process. Whether delay is unreasonable or not will depend upon the particular circumstances of each case. It is difficult to lay down fixed rules. However, I have found unreasonable delay in the following situations: where a member of an appeal



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board had left his employment with the provincial government after a hearing and one year late efforts had been made by the authority to obtain his signature on the order that was made by the panel. In my 1980 Annual Report (p. 46) I also said this about unreasonable delay:

> *"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 governmeAltent 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."*

B. ESTABLISHING THE OMBUDSMAN'S EFFECTIVENESS

The present report covers the second full year of operation of the Ombudsman. Last year I reported ". . . an extraordinary amount of goodwill and cooperation from ministry officials . . ." (p. 12). This year (1981) I had to work hard to maintain that cooperation and I must report several instances of failure to achieve administrative justice. Yet I believe, taking an overview, my office has increased its effectiveness for the public and increased its impact on the public service over that achieved in 1980.

More complaints reached my office and more problems were attended to during 1981. While we must work hard, frequently in the face of something less than enthusiastic support, to convince officials to change procedures, practices and decisions, our results as reported in Part II to IV of this Report I believe demonstrate not only continuing but increased effectiveness.

I have pointed out in my 1980 Annual Report (p. 12) that in order to be effective, I must look beyond individual errors and seek changes in procedures, practices and regulations that repeatedly generate errors and injustice. Such general improvements help the public more efficiently by removing ongoing causes of friction or annoyance and also help public authorities to improve their own efficiency and effectiveness. I have maintained this goal in 1981 as shown in Part III and IV of this Report, even though I have to expend a great deal more effort and persuasion to get authorities to accept the more far-reaching changes.

Authorities must, of course, look at all aspects of changes I seek, including costs. While my initiation of such changes is originally motivated by the desire to get administrative justice I will also take other considerations, such as cost and efficiency into account. After all, inefficiency is also a form of injustice.

As Ombudsman I must rely mostly on moral suasion to achieve administrative justice for complainants. It is inherent in this that in order to be effective the Ombudsman must be prepared to live up to those same standards of conduct stipulated for the public service in the Administrative Justice Code.

I do, for example, risk my moral right to criticize officials for unreasonable delay if my own organi-

zation is fraught with unreasonable delay in handling the public's complaints. To be sure, there are always explanations for delays, but the public and officials might easily and with justification think of the explanations as excuses. Similarly, as I demand that officials hear people affected by their decisions I must be sure to hear out officials before I reach conclusions critical of their conduct. In short, I believe that I as Ombudsman must set an example in living up to the code of administrative fairness in order to be effective in achieving administrative justice for the public.

The controversial case and the "not rectified" complaint are likely to draw more public attention than the quiet and efficient changes in procedures that we bring about in cooperation with public officials. I will, though, highlight one such effort next.

1. The Child Abuse Registry

In the last year and a half, I have received several complaints from parents, some referred to me by the B.C. Civil Liberties Association, about their inability to have their names removed (expunged) from the Central Registry of Protection Complaints at the Ministry of Human Resources in Victoria. These parents thought it was unreasonable for the Ministry to retain their names on the Registry because the Ministry had investigated the allegations of child abuse and had determined the allegations were unfounded.

The Central Registry of Protection Complaints, commonly called the Child Abuse Registry, is a central listing for child abuse allegations, investigative reports, and abusers' names. Its purpose is to assist the Ministry in its difficult task of protecting powerless children from the abuses of adults.

When any person suspects child abuse or neglect, according to the *Family and Child Service Act*, that person must report the matter to the Superintendent of Child Welfare. Usually, the Superintendent's representatives in the Ministry's district offices, or the social workers responding to the Ministry's Zenith Help Line for Children, record child abuse allegations. These are investigated immediately, and the complaint and follow-up report must be sent to the Registry within 30 days.

During my investigation, I found several major problems with the administration of the Registry:

a. Information stored on the Registry was often incomplete. Also, it was not clear who had access to this sensitive and confidential information.

b. Some social workers had difficulty in classifying child abuse investigations because the categories were not effectively defined. This led to inconsistencies in classifying the allegations as substantiated, unsubstantiated with reservations, and unfounded.

c. Some social workers forwarded to the Registry information only on the more serious child abuse complaints. It became clear that the interpretation of administrative procedures varied among the Ministry's district offices.

d. And finally, the Registry did not have an administrative procedure for the removal of parents' names even when an allegation was positively identified as unfounded. Parents' names were retained on the Registry indefinitely, and parents were often not aware that their names were registered.

After long and careful investigation I brought my concerns about these problems to the Ministry's attention, and the Deputy Minister agreed to appoint a committee of administrative and field staff to review the administrative procedures associated with the Registry.

As a result of the committee's work, the Ministry proposed excellent modifications to the administration of the Registry, including a mechanism for removal of names inappropriately placed on the Registry.

Now, once a complaint of child abuse is investigated, if the allegation is substantiated, the Ministry will register the parents' names on the Registry. The Ministry will also notify the parents in writing of this, and outline the review procedure, in case the parents want to challenge the Ministry's classification of the child abuse investigation.

In those cases where the allegation is unfounded, the parents' names will not be registered. And for those in-between cases, where the complaint is not substantiated but the social worker can identify some risk, the parents' names will be registered. Again, the Ministry will notify the parents in writing, and outline the review procedure. After three years, if the Ministry does not receive any subsequent allegations and determines that the child is not in need of protection, the Ministry will review the matter with a view to expunging the parents' names from the Registry.

Besides these significant changes in administrative procedures, the Ministry has hired a social worker to work for the Central Registry of Protection Complaints in Victoria. This social worker will be responsible for dealing directly with field staff about enquiries pertaining to child abuse allegations, for interpreting and implementing Registry policy, and for reviewing and recommending policy changes.

I am satisfied that these measures will improve the value of the Registry as an administrative mechanism for "tracking" children who are at risk, and for protecting these children from abuse or neglect. At the same time, I consider the Ministry's new procedures for expunction, written notification, and review will help protect the rights of adults, especially parents, accused of child abuse. While protecting the best interests of children, I think it is necessary for the Ministry to be administratively fair to parents.

2. "Not Rectified"

With great regret I must introduce a new concept to my Annual Report: "Not Rectified" now appears in my accounts and my statistical tables. That requires an explanation.

Occasionally it happens that an injustice identified by my investigation cannot be rectified. All help may come too late or it may not be possible to undo the damage done. I must then with regret, close that case. "Ministry remedy too late"—CS 81-078 illustrates such a case.

Some substantiated complaints cannot be rectified. Financial compensation might offer a measure of relief. I have, however, experienced difficulties getting compensation recommendations accepted (discussed below under the heading "*Ex gratia* payments"). Because of these difficulties I have on a few occasions closed cases as "not rectified" rather than persisting with a futile recommendation for financial compensation. Examples can be found in the following complaint summaries: "Ministry and Land Commission"—CS 81-001, and "Liquor impropriety"—CS 81-024.

I am disturbed by abandoning a substantiated complaint but until the problem identified below (*ex gratia* payments) has been resolved my hands are tied.

Other substantiated complaints cannot be rectified, and financial compensation would not be appropriate. I have to close them simply as "not rectified". I brought one such case to the Assembly's attention in my 1980 Annual Report (pp. 49–51). Another case, also in the Ministry of Municipal Affairs, is summarized in "Delaying inspection amounts to inaction"—CS 81-105 of this Report. Finally there are five such cases with the Ministry of Education: as "Regulation on probationary teachers unfair"—CS 81-038 details, the only rectification possible would be a change in Regulations and even if those Regulations were changed they could not remedy these particular injustices retroactively.

I have to report several occasions in which I have been unable to persuade officials, Ministers and Cabinet to accept measures to rectify injustices determined after thorough investigations. In some of these cases I have not received a well-reasoned answer whose logic I could accept even though I hold a different view. Where a case warrants it I bring those injustices to the attention of the Legislative Assembly. But when that does not lead to corrective action I must with regret close that case as "not rectified".

Garibaldi

Perhaps the most important case investigated during 1981 concerned the complaints I received from residents and owners of property in the Garibaldi area north of Vancouver. What was once a modest village is now a virtual wasteland; almost all of the houses have been moved or destroyed and signs along the highway note the hazard posed by the Barrier, a high rock cliff lying three kilometres to the east of Garibaldi. Following an extensive study, the Government decided to halt all further development of property in the area and to offer to purchase most existing private property. The Ministry of Environment was authorized to administer this program.

Following the receipt of about 150 complaints from owners of property in the Garibaldi area, I concluded that many of the terms of the Ministry of Environment's acquisition program were unjust. While on the one hand, the Ministry insisted that no one was required to leave the area, the terms of the Ministry's acquisition program were such that people were effectively forced out. For example, residents of the area were told that they must sell their property to the Ministry by June 30, 1981, or they would never be permitted to sell their property to anyone without the approval of the Minister of Environment and the Minister of Municipal Affairs. There was no assurance that these approvals would ever be given.

I concluded that this was unjust and recommended that the Ministry be willing to purchase the properties at any time in the future when the owner wished to leave the area. The Minister refused to accept this recommendation but eventually agreed to extend the deadline for sale to the Ministry until September 30, 1981 when the Legislative Assembly considered my First Special Report. Most people have now sold their properties to the Government.

Another injustice concerned people who owned unimproved and undeveloped property. While the development or sale of all property had been prohibited, the Ministry refused to buy unimproved property. Persons who had purchased a lot with the intention of building a house were left holding property upon which they were not allowed to build. Nor could they sell or lease it. I recommended that the Ministry offer to purchase these properties. This recommendation was eventually accepted, as communicated by the Minister to

the Legislative Assembly in June 1981 in response to my Special Report.

However, the Ministry refused to accept my recommendation that the prices offered for properties be based upon fair market value at the time of the sale. Instead the Ministry arbitrarily selected May 28, 1980, as the date upon which the properties would be valued.

Consequently, people who sold their property later did not receive the current market value for their property. Even worse, the Ministry refused to buy unimproved properties until June 1981, yet refused to pay any more than what those properties had been worth on May 28, 1980.

A nearby subdivision was developed by the Ministry of Lands, Parks and Housing to permit persons who had been displaced from the Garibaldi area to acquire a lot in the new subdivision. Yet again, this subdivision was restricted to people who had owned improved properties. Recently I wrote to the Ministry of Environment and suggested that lots in the subdivision also be made available to persons who had owned unimproved property in Garibaldi. I hope the Ministry will see fit to adopt this suggestion because I think that this may rectify some of the injustices created when fair compensation was not paid for Garibaldi properties.

When the Honourable Stephen Rogers, Minister of the Environment, announced the Government's final disposition of my recommendations I was able to close many of the complaints as rectified but a very substantial number, 59 to be precise, had to be closed as "not rectified".

3. Litigation

The Ombudsman's jurisdiction was the subject of an application to the Supreme Court of British Columbia for the first time in 1981. At issue was whether the Ombudsman has the authority to investigate a complaint against the British Columbia Development Corporation. The complainant had alleged that the Corporation had failed to bargain in good faith concerning possible participation in a development project.

The Supreme Court ruled that the Ombudsman did not have jurisdiction because the particular act complained of was not "a matter of administration" within the meaning of the *Ombudsman Act.* An appeal to the British Columbia Court of Appeal was initiated, and a decision is expected in 1982.

1981 also saw applications by the Ombudsman and the authority to the Supreme Court of British Columbia for declaratory orders concerning the Ombudsman's jurisdiction to investigate a complaint against a Royal Commission of Inquiry. Since a number of the issues will be dealt with in the B.C.D.C. appeal, the applications have been adjourned pending a decision in that case.

4. Resources and Productivity

Up to 1981 Treasury Board has authorized adequate staff resources for my office and had put forward in my Estimates to the Legislative Assembly adequate proposals for funding the Ombudsman office. I very much appreciated the willingness of the Honourable Hugh Curtis, Minister of Finance, to discuss the needs of my office openly and fairly and I believe he in turn appreciated my readiness to allow his staff full access to my office to assess those needs on their own. Nevertheless I have had to rely also on some additional labour from student interns to assist me with the timely investigation of the large and unexpected number of complaints. In the past year I have also found myself more frequently in the position of having to refuse investigations that were beyond my current resources. One case that troubled me is described below under the heading "Protection of Personal Information".

The work of my office is very much subject to fluctuations in popular demand. As I cannot expect unlimited resources for the functions performed by my office a great deal of energy was spent in 1981 on increasing our efficiency and productivity. I was anxious to achieve such increased efficiency and productivity without serious loss in the quality of investigations. I have more frequently than in the past referred complainants to other available appeal channels and declined requests for investigations. My office is now also reaping the benefits of experience. My investigators specialize in a limited number of authorities. Their familiarity with their Ministries' policies, procedures and personnel greatly increases our efficient handling of complaints and incidentally also decreases our time demands on Ministries relative to the number of complaints investigated.

I had not asked for a staff increase for fiscal 1981/82 (other than a change in the status of four auxiliary staff who became permanant). With complaints increasing by nearly 30 percent in 1981 I must state, however, that my resources are now severely taxed and it is beginning to show in the large number of complaints that were open at year end. I have requested a small staff increase for fiscal 1982/83.

5. Access to the Ombudsman for the Public

I have continued a small number of regional visits in 1981, and asked my staff visiting specific areas on investigations to make themselves available to the public for interviews. In a small way these visits help in making British Columbians familiar with the Ombudsman and our proper jurisdiction.

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My office has started specialized efforts to assist two groups of citizens that appear to be in greater need of attention. One staff member specializes in the needs of senior citizens, another in those of children and youths. Both groups appear often much more dependent on public services and also appear more helpless than the average citizen in coping with red tape.

6. Reports and Public Statements

During 1981 I had occasion to submit three Special Reports to the Legislative Assembly in addition to my Annual Report. As will be readily apparent I will make such Special Reports to the Assembly when in my opinion the Government's response to a grievance is inadequate.

Section 30 (2) of the *Ombudsman Act* also allows me, in the public interest, to comment publicly on my functions or on specific cases. Occasionally a short release to the news media will be sufficient on matters that are of public concern, often publicized by my complainant or by the authority involved. I have decided to release more lengthy statements in the form of Public Reports. The first Public Report was released in October 1981 and dealt with my lengthy and complex investigation of East Kootenay Range Issues.

C. SPECIFIC ISSUES FOR THE ATTENTION OF THE LEGISLATIVE ASSEMBLY

As in last year's Annual Report I feel again the need to draw a few specific issues to the attention of Members of the Legislative Assembly for their information.

1. Expropriation Procedures and Practices

I have expressed my concern about existing expropriation procedures and practices in my 1980 Annual Report. Two of my three Special Reports in 1981 dealt with the consequences of what I can only describe as an inadequate legislative framework for expropriation action. To ensure greater procedural and substantive justice for those citizens whose property the government must take away by force of law for the common good, a statutory framework establishing basic and common standards, procedures and appeals would be welcomed by all those affected by expropriation.

My Third Special Report dealt with a complaint I received from Roy and Maureen Cuthbert. The Cuthberts owned a half-acre of land which was expropriated by the British Columbia Harbours Board in 1968 for purposes of the Roberts Bank Superport. In total, four thousand acres of prime farmland were expropriated. Most of this property is currently leased back to the original owners as farmland.

The Cuthberts had, over the years, consistently refused to accept compensation for their property, and instead petitioned government for the return of their property. Their complaint was substantiated. Since the Harbours Board has never used the property and has no need for it in the forseeable future, I recommended that it be returned to the Cuthberts.

My Special Report was tabled in the Legislative Assembly shortly before the House adjourned last summer. Since then the Harbours Board reinstated arbitration proceedings against the Cuthberts, but in the early part of 1982, the appointed arbitrator resigned his position for health reasons. The proceedings have remained adjourned. I now renew my appeal to the Legislative Assembly to resolve this long-standing grievance. My complainants, Roy and Maureen Cuthbert, anxiously await the Legislative Assembly's response.

Another complaint involving an expropriation by the Ministry of Transportation and Highways may come to the attention of the Legislative Assembly in 1982. In this case the Ministry expropriated a right-of-way through the complainant's property for the simple reason that her neighbour required such a right-of-way in order to subdivide his property. I concluded that the expropriation was done for an improper purpose. I do not think that the *Highway Act* authorizes the Ministry to use its expropriation powers unless the expropriation is clearly in the public interest.

British Columbia Hydro and the Ministry of Transportation and Highways probably require the most land from private owners of all government agencies in the Province. Ordinarily, property is purchased, rather than expropriated, by Hydro and Highways. I am concerned, however, that these acquisition procedures are fair, that the property owners are made aware of their right to refuse to sell and that the threat of expropriation is not abused to stampede owners into selling under conditions of duress. Sometimes people may not be informed of their rights and instead are led to believe that they must sell their property to the government: the power of expropriation can too easily be used as a big stick.

2. Wildlife Damage

I find it necessary to draw to the attention of the Legislative Assembly a matter which I feel requires correction, and on which I have been able to make little progress. The problem is one of a myriad of complaints which I received from ranchers in the East Kootenays shortly after my office opened in the fall of 1979.

In the East Kootenays, as in many other areas of the Province, officials of the various resource Ministries work cooperatively with one another and with the various resource user groups to plan the development of Crown and private lands so as to improve and coordinate use for ranching, wildlife, forestry and recreational needs. This cooperative effort is called Coordinated Resource Management Planning (CRMP) and in theory is an efficient approach to the management of scarce resources in an area where there are competing demands for these resources.

In practice, however, there was a good deal of discontent among both resource users and resource managers about the administration of the Plans. I received complaints about wildlife/cattle conflict, about the rejection, cancellation and length of grazing permits, about crops damaged by wildlife, about overgrowth of the range by timber, about alienation of grazing ranges, and about arbitrary and unfair treatment of ranchers on the part of government officials. Many of the complaints reflected a fear on the part of ranchers that various government officials were combining forces in an effort to squeeze the ranching industry out of the East Kootenays and to preserve the area for wildlife.

My staff and I have spent a great deal of time on these very complex issues. I provided the Ministries involved with a report of my preliminary findings in December 1980, and with a report of my final conclusions and recommendations in July 1981. Many of the problems are such that solutions will require a great deal of time to materialize. However, the response to my recommendations has generally been quite good. Already, Ministries have initiated a number of steps which will improve the situation over time. In October 1981 I released my first Public Report, in which I detailed the problems of the East Kootenay ranchers, and outlined the changes which had been made, or were being planned, to resolve these problems.

On one of those problems, however, I am not satisfied with the progress that has been made. This is the issue of wildlife damage. I had received a number of complaints from ranchers who had suffered significant losses from elk and deer foraging on standing and stored crops and trampling both fences and crops. I was advised that this problem had become particularly acute in recent years, and many attributed the increase to the importation of elk from National Parks and the winter feeding of elk near ranches by the Ministry of Environment's Fish and Wildlife Branch. It appears that many of the elk and deer have become accustomed to consuming agricultural crops and have now developed "homesteading" patterns near the ranches rather than following their normal migratory patterns. There are certain wildlife management methods which can help to discourage homesteader elk, although it seems clear that in some cases management efforts alone may not be sufficient to control the problem. I recommended that the Ministry of Environment attempt to improve the situation through increased and improved management efforts, or through a program of financial assistance for affected ranchers, or through a combination of the two approaches.

The Ministry of Environment's response has been one of general agreement with respect to management efforts, and considerable disagreement with respect to a compensation program. The Ministry has undertaken an internal review in an effort to quantify the damage caused by wildlife throughout the Province; that review recommends against a compensation program. Environment officials have also had some discussion of the matter with officials of the Ministry of Agriculture and Food, and as a result a document has been prepared for submission to Cabinet on the matter.

However, 2½ years after I received the initial complaints, I see little evidence of any concrete action

on this matter. If there have been any increases or improvements in management efforts, they do not appear to be effective, for I have been receiving reports of increased numbers of elk and deer foraging on an increasing number of East Kootenay ranches. I have received similar complaints from Vancouver Island.

Recently, the owner of an East Kootenay ranch, Diversified Holdings, initiated legal action against the Ministry of Environment because of damage caused by elk. The *Wildlife Act* includes a clause which states that no right of compensation exists against the Crown for property damage caused by wildlife. In deciding the case, Mr. Justice Wallace found:

> *"With considerable sympathy for his position and with some regret, I find there is no basis in law to award compensation." (p. 24)*

Mr. Justice Wallace also stated:

> *"In the interest of developing the range lands for the cooperative use of wildlife and cattle, I would expect the Ministry would financially and otherwise, assist those ranchers particularly exposed to loss as a result of ministerial policy to conserve and manage the herd, so that one rancher would not be bearing the greater than average portion of the cost of the loss incurred as a result of such policy." (pp. 23-4)*

As these statements imply, there may not be a legal requirement under present legislation to award compensation for damage caused by wildlife, but there is a responsibility on the part of government to assist ranchers ". . . financially and otherwise . . ." when the burden of damage reaches disproportionate levels. I have no quarrel with the Ministry of Environment's goal of improving wildlife herds, for this is surely consistent with their mandate. It may even be that wildlife numbers could be increased without untoward effects on ranching operations, if proper wildlife management methods were followed. However, with the current management approach any increases or improvements in the herd are likely to have increasingly detrimental effects on ranching.

I consider it imperative that the government recognize that a number of ranchers, very much against their will and very much to their financial detriment, are feeding the Crown's elk and deer very expensive and nutritious meals. Where the government cannot manage its elk and deer so as to discourage this foraging it is incumbent upon the government to provide financial assistance to help ranchers protect their crops and to compensate for losses that could not be prevented.

I recognize that there is resistance to a compensation program. There are fears that it would be too expensive, or too difficult to administer. However such programs are active in other provinces, and can operate efficiently without undue expense. I should note that the Ministry of Agriculture and Food has recognized the problem and has supported the need for a compensation program.

In my view, the situation is one in which one program of government—the improvement of wildlife herds—is having a significantly detrimental effect on a selected number of ranchers, and I consider it unfair that these selected few should bear a disproportionately heavy burden resulting from this government program. In some instances the increasing depredation over recent years is bringing ranching operations to the brink of financial disaster, and in such instances compensation is the **only** measure which can bring relief at this point.

I am recommending that a three-part program be used to improve the current situation:

a. improved and intensified wildlife management techniques;

b. a program of financial assistance to help ranchers protect their stored crops; and

c. a compensation program to offset losses due to damage to standing crops.

The decision as to whether or not a Wildlife Damage Fund will be introduced in B.C. will ultimately be a political decision, made by elected representatives answerable to various interests and the electorate. But I want to ensure that Members of the Legislative Assembly responsible for making that decision are aware of the background of the problem, and for that reason I would urge Members to give consideration to the points I have raised when this matter is decided.

3. Land Use Decisions and Land Disposal Practices

Publications of the Ministry of Lands, Parks and Housing on the allocation of Crown land assert to a receptive public that fifty percent of the Province is unreserved Crown land belonging to every present and future citizen of British Columbia, which will be managed and allocated for the individual and collective public benefit. However, where individual citizens have accepted the Ministry's invitation to seek out and apply for this land, or have attempted to influence the Ministry's decisions on sensitive land use decisions which are of concern to them, they have at times experienced frustration, bewilderment and disillusion.

a. Land Disposition Practices

The Ministry of Lands, Parks and Housing has a primary role in the allocation of Crown land in British Columbia, and in 1981 received over 5,000 new applications for land tenures of different types. The commodity dispensed by this Ministry

is a valuable and finite resource. The decisions the Ministry makes are often complex and have profound effects on the lives and aspirations of individuals and groups. These decisions must therefore be made in a manner that stands up to public scrutiny. I have been presented with increasing evidence that administrative fairness is lacking in certain of the Ministry's land disposition policies, procedures and practices.

Three major areas of concern have been identified by my office. The first and most common complaint concerns the frequent changes in Ministry policies; second, the arbitrary and inconsistent manner in which these policies are sometimes implemented; the third is the inadequacy of the Ministry's commitment to providing appropriate mechanisms and opportunities for public input into sensitive land use decisions, at the request of affected groups and individuals.

The Ministry of Lands, Parks and Housing employs two different systems of disposing of Crown land. Disposition may be made either as a result of pre-planned marketing initiated by the Ministry or after a favourable adjudication of an ad hoc application for a parcel of Crown land sought out and identified by the applicant. Increasingly, problems have become apparent with respect to the second, traditional method of disposition, as a result of complaints from would-be landowners, their opponents or competitors.

Many of these complaints allege unfairness in specific Ministry decisions and/or the method of disposition chosen for a parcel of Crown land, where an ad hoc land application has received a favourable adjudication. Investigation of a number of complaints has demonstrated that these decisions are not always manifestly just or consistent.

Land application decisions are normally made by eight Regional Directors in the Ministry's Regional Operations Division, although an appeal is available to a central Ministry committee in Victoria which advises the Minister. Legislation governing the disposition of Crown land is very broadly phrased, leaving a great deal of discretion to the administrators in formulating and implementing policies. Ministry policies, land application procedures and disposition methods are centrally established but applied by Regional and District officials to individual cases.

These policies are frequently revised. Inconsistencies between decisions are then explained as the unavoidable consequence of such policy changes. I am sure such rationalizations appear eminently reasonable to officials but the public ends up confused, angry, disillusioned and suspicious. The rules for Crown land disposal ought to be clear, ought to follow publicly acceptable principles and ought to be applied equitably and consistently. Otherwise the Ministry fails in its public trust.

In adjudicating an ad hoc land application, several parallel processes must take place. Referral approvals must be obtained from other agencies, a status clearance must be obtained and a field examination must be carried out before a land application can be approved. The status clearance obtained by the Ministry contains information on any claims, reserves, or previous applications over the land.

Criteria used in arriving at a method of disposition have included whether the land had previously been held under reserve; whether there was considerable public interest in acquiring land in the area; or if there had been previously disallowed applications. However, there do not appear to be any consistently applied guidelines in this area. The following individual cases illustrate the problem:

i. An unsuccessful applicant for Crown land was advised that the lot which he had applied for would ultimately be made available by public competition and that he would be notified when arrangements were finalized. Similar letters of disallowance were sent to other applicants for lots in the same area. The applicant later learned, without being notified by the Ministry, that the lot had been committed to another individual without any public notice or competition. This decision was apparently based on a new Ministry policy that applications be considered on a first come, first served basis and be disposed of directly to the first qualifying applicant. Information with respect to previous applications and possible conflicts was available to the Ministry from a status clearance report, but did not seem to affect the Ministry's decision in this case. (For more details refer to "He lost a lot when they broke their promise"—CS 81-095 in this Report.)

ii. A family man sought a homesite and small agricultural operation in the Queen Charlotte Islands and had advertised his intention to acquire the property, at the request of the Ministry. His application was disallowed at the District level on the ground that the land was not arable. He appealed this decision to the Regional Director, who upheld the finding of non-arability and added that the land could not in any event be made available without a public competition, as it had been previously held under reserve.

The complainant next appealed to the Land Application Appeal Committee, which found in his favour on the question of arability, but upheld the requirement of a public

competition. After further arguments presented by the complainant against the stipulation of a public competition, the Minister compromised by publishing a further advertisement and announcing the Ministry's intention to dispose of the property. Respondents who were able to establish to the satisfaction of the Ministry that they had previously expressed an interest in purchasing property in the vicinity were entitled to participate in a closed auction.

The second advertisement was peculiar to this case: the only advertisement normally required is one of the applicant's intention to apply for a disposition of Crown land. Individuals responding to this new Ministry advertisement claimed that they had ignored the complainant's earlier advertisement in the belief that his application would be unsuccessful as their own previous efforts had been. (Complaint summary "Crown land:with elusive rules"—CS 81-093 below.)

iii. On the understanding that their land application would be allowed if they met the requisite eligibility requirements and resolved outstanding conflicts, a couple had altered the size of their parcel and successfully persuaded several government agencies to whom the application had been referred to withdraw objections. They were later advised that the land could not in any event be disposed of without a public competition, because of a previous reserve.

As a resolution to this complaint, the Ministry offered to give the complainants first choice of a lot within any subdivision that might ultimately be developed in the area by the Ministry. (For more details refer to complaint summary "Land is available—until you try to buy"—CS 81-094.)

iv. In a recent case still under consideration by my office, the Ministry decided to invite two previously disallowed agricultural lease applicants who had long since abandoned their attempts to obtain a disposition of Crown land to participate in a closed competition with an individual who had tenaciously pursued and amended his various agricultural lease applications, until his proposed plan complied with all existing Ministry policies. This complainant maintained that his considerable effort was based upon his understanding that a favourable adjudication of his application would result in a direct disposition to him. My staff was able to confirm that land dispositions with respect to ad hoc applications are most frequently made in this manner. This case is also noteworthy in that a complaint in respect of the same intended disposition was received from another individual who had unsuccessfully applied for a residential disposition of part of the larger agricultural parcel. My second complainant felt that he was being unfairly excluded from participating in the limited auction for the larger agricultural parcel.

The Ministry's response to the problems created by conflicting claimants for agricultural land, in May 1981, was to change its policy on certain agricultural lease dispositions by eliminating the discretionary requirement for advertising or auctions and deciding to dispose of land directly to the first qualifying applicant. I have advised the Ministry of my serious concerns about the merit of this policy, both on general principles of public accountability in the disposition of public assets and with respect to its possible unfairness to previously disallowed applicants who had received Ministry promises and commitments and other interested individuals. It would also appear from current investigations that the "first come, first served" method of agricultural lease disposition has not been consistently employed by the Ministry since its introduction.

It is incumbent upon me as Ombudsman to emphasize the apparent lack of an equitable and consistent method of dealing with the disposition of land as a result of ad hoc applications. Rational and fair criteria to determine the method of disposition of Crown land should be developed, made clear to all Ministry staff and to the public, and consistently applied.

While the Ministry has often suggested or agreed to equitable resolutions in individual cases it is my view that underlying deficiencies and inconsistencies remain, which are likely to generate further complaints. I hope that these recurring problems will be recognized and fully addressed by the Ministry soon.

b. Public Involvement in Land Use Decisions

The Ministry has broad powers to affect land use decisions in B.C. Groups and individual citizens invariably demand opportunities from Lands, Parks and Housing to present information and advice **before** land use decisions are finalized. The public essentially does not accept that the public interest is adequately served if only the land use applicant and the Ministry bureaucracy have input into the decision-making process. Individuals and groups are also likely to be deeply affected by such land use decisions and administrative fairness requires that they be heard, and heard before a decision has been made. Two lengthy and complex investigations on such issues are briefly summarized in "The battle of Buckley Bay"—CS 81-091 and "One head lop-

ped from many-headed Hydro"—CS 81-092 below.

A number of issues have continued to emerge in complaints where affected or interested members of the public have demanded an opportunity to challenge the advisability of land use decisions made by the Ministry of Lands, Parks and Housing. One of the first problems which has been encountered by complainants is the failure of the Ministry to mandate public advertising of land use applications that may cause adverse effects to the environment, before authorization to commence work on Crown land is granted. Complainants have also objected to the difficulty they have experienced in obtaining full disclosure from the Ministry of relevant information and documentation.

It can be safely predicted that if the Ministry does not adopt adequate procedures to provide an effective opportunity for the public to scrutinize and criticize sensitive land use applications, complaints that the Ministry is wrongly precluding or unduly restricting public participation in its decision-making process can be expected to recur.

4. Enforcement of Maintenance Orders

I have received several complaints affecting initially only the policies and practices of the Ministry of Human Resources and the Workers' Compensation Board. Closer examination reveals that underlying these agency-related problems is a broader concern with the adequacy or rather the inadequacy of the Province's system for enforcement of maintenance orders.

Courts order individuals to pay certain sums of money to maintain their former spouses and children. The enforcement of these court orders is left to the usual civil procedures. Information obtained by my office suggests that half or more of these orders are not or cannot be enforced for a variety of reasons. The court system does not or cannot respond quickly to enforce orders that have fallen in arrears.

For the party, usually a woman, who must rely on receiving regular payments to meet monthly expenses, the failure to enforce court orders quite often results in serious financial hardship. The Government, in the form of the Ministry of Human Resources, often picks up the tab as the victim must rely on social assistance to survive. The defaulting ex-spouse is allowed to scoff at the courts and to unload his obligations onto the provincial taxpayer.

My concern is principally with what happens to the victim when she must rely on Human Resources or Workers' Compensation to get by. The court-ordered maintenance is usually not enough and women in this situation often receive income assistance benefits. Their hardship is compounded by the present policy of the Ministry of Human Resources of refusing to prorate backpayment. If, for example, a woman receives maintenance payments of $100 per month and she receives that sum every month, present rules permit her to keep the $100 without deduction from her monthly income assistance benefits. Thus over a six-month period she would receive and keep $600 in maintenance payments on top of her income assistance benefits. If, however, the former spouse defaults for six months and then suddenly pays up the arrears as a lump sum of $600, the Ministry will deduct $500 from the woman's income benefits in that month, as it counts the $600 as income in that one month and does not make allowance for the woman's inability to control the regular flow of her maintenance order.

The Workers' Compensation Board practices a similar policy. When a worker is injured or killed in an industrial accident the Board will only pay that worker's dependents those amounts of maintenance payments that the dependents actually received from the worker before the accident, instead of the full amount ordered by a court. If the worker was successful in evading his court-imposed responsibilities the Workers' Compensation Board, like the Ministry of Human Resources in the above case, ends up being the beneficiary of the irresponsible conduct of the former spouse and the beneficiary of our inadequate system of enforcing maintenance payments. Women and children end up shortchanged.

In both cases the respective authorities have agreed that there is a problem but, although each problem could be resolved by the authority agreeing to alter their policy on the consideration of maintenance (in the case of M.H.R. by prorating maintenance payments and in the case of W.C.B. by considering maintenance entitlement as the amount awarded by the courts) they have chosen not to do so. Rather, each has suggested that the problem lies in the inadequacies of the Ministry of the Attorney General's system of enforcing maintenance, not with their system of calculating maintenance.

Ministry of Attorney General officials have run hot and cold on this issue. They alternate between assuring me that a resolution to the whole problem of maintenance enforcement is imminent and telling me that they are not pursuing the question at all, referring me back to M.H.R. and/or W.C.B. for a resolution.

In essence, everyone seems willing to recognize the problem, but no one appears prepared to resolve it. This is simply not good enough. In my view, a problem that raises the issue of unclear jurisdiction (a problem that tends to "fall through the cracks") should be considered the problem of all, not the problem of none. Identifying the prob-

lem is an empty gesture if such identification does not lead to resolution of the problem.

This problem can be resolved. Both the Ministry of Human Resources and the Ministry of the Attorney General have studied the problem extensively and are fully aware of a range of approaches that have been implemented, both across Canada and in the United States, to address the problem. What is needed now is commitment to a resolution, not excuses for perpetuating the problem.

The scope of the problem is enormous; thousands of women in this province are affected and hundreds of thousands of dollars are at stake. Which Ministry will take the lead in presenting a resolution?

5. Protection of Personal Information

During 1981, a complaint was brought to my attention which I was not able to handle in a satisfactory manner. It involved a matter of privacy and unauthorized access to information held by a government agency.

A young woman complained that the Medical Services Plan had released personal information about herself to a credit agency. She had received a collection notice six days after informing the Plan of her change of address. Several months later the complainant again received a collection notice, this time five days after the Plan was informed of a second change of address. The complainant alleged that the Plan personnel had released her change of address to a credit agency. I informed the Medical Services Commission about this complaint and the Chairman agreed to look into it immediately. He found, to his consternation, that address information pertaining to subscribers of the Plan could probably be obtained by unauthorized persons or agencies. He then circulated a memo to all staff, Medical Services Commission and Medical Services Plan, stating in part:

> *"The Office of the Ombudsman has brought to the attention of the Medical Services Commission an instance in which it would appear highly probable that address information pertaining to a subscriber has somehow been obtained from the Plan's files."*

The Chairman went on to remind staff of the oath of secrecy sworn on entering the Public Service and of the extremely sensitive nature of the information contained in the Medical Services files. I appreciate the forthrightness and speed with which the Chairman of the Medical Services Commission handled this matter. However, I was not yet completely satisfied that the problem was resolved, either in relation to this specific case or on the broader issue of privacy.

On the specific complaint, the responses of the credit agencies were so immediate, that it suggested to me that a member or members of the Plan's staff might have been **initiating** release of personal information. If this were the case, a reminder of the oath of secrecy might not be sufficient to deter further abuses.

I considered then, and I continue to believe, that allegations of violations of privacy interests on the part of government agencies are extremely serious. Allegations of improper use of information would, if left unresolved, undermine the public's confidence in the probity of our institutions and officials. Many government agencies collect extensive information on citizens. As I said in my **Public Report No. 2:**

> *"Communications technologies have become very sophisticated further enhancing the opportunities for unauthorized and improper use of the information collected by the government about all of us." . . .*
>
> *"I feel a special responsibility to work with government agencies to minimize the potential for error or abuse and to check existing information practices to ensure that they do not conflict with generally accepted social values supporting the privacy interest of our citizenry" (p. 3).*

For these reasons, I decided to ask the Ministry of Health if it would conduct an internal investigation into procedures and possible abuses relating to the question of the confidentiality of the Medical Services Plan and Medical Services Commission files.

Unfortunately, the Ministry declined to undertake this internal investigation stating:

> *"it is the position of the Medical Services Commission that all reasonable steps have been taken to prevent the possibility of leakage of confidential information from the Medical Services Plan files and that since there is no evidence of a recurrence of the alleged breach of confidentiality, no further action is required by the Medical Services Commission."*

Clearly, my option under the circumstances was to conduct my own investigation into the matter. I considered this possibility, as allegations of unauthorized release of personal information are serious and strike at the heart of many people's concerns about increasing loss of privacy.

However, I had to decide to postpone such an investigation as, at that time, my staff were fully occupied on other investigations and I had insufficient financial resources to hire additional staff to conduct this investigation.

I would like to emphasize, nonetheless, my continuing interest in the question of access to Medical Services Plan information and to state that I may decide to investigate this matter further on my own initiative when I have the resources to do so.

6. Police Complaints

In 1981, I received and considered complaints from 66 people about municipal police officers and members of the Royal Canadian Mounted Police. In each case, I was required by the *Ombudsman Act* to refer the complainant to the complaint procedures set out in the *Police Act*.

It is my opinion that the complaint procedures in the *Police Act* are unsatisfactory in that they do not ensure that complaints about the police are dealt with fairly. Fairness in this case includes three basic elements: efficiency, accuracy and objectivity. Procedures which result in a decision which affects a person or persons must be efficient in that the decision is made as quickly as accuracy and objectivity permit. Accuracy simply means that the procedures should result in the correct decision being made in each case. Finally, objectivity requires that observers of the process will agree that all of the facts have been considered, all of the parties have had a chance to be heard, and that each of the parties' interests have been properly weighed and considered.

I do not think that the procedures for resolving citizens' complaints about the police as found in the *Police Act* can be said to satisfy these elements of fairness. The Act requires that a person with a grievance about either a municipal police constable or a member of the R.C.M.P. first contact the Chief Constable or the local R.C.M.P. detachment who will attempt to resolve the complaint informally. This is fine; in complaints about authorities over which I have jurisdiction, I have instructed my investigators to attempt to resolve the complaint informally in the early stages of an investigation. This permits the authority to review its position and to resolve the complaint without further investment of resources by my office.

The next stage in the police complaint process is for the complainant to submit his complaint in writing to the Chief Constable of a municipal force or the Commissioner responsible for the R.C.M.P. in British Columbia. At this point the *Police Act* requires the responsible authority to "promptly" investigate the complaint, and to inform the complainant of the results of the investigation. The authority must also inform the complainant at the time of his right to request an inquiry.

Upon receipt of the results of the police investigation, the complainant may, in the case of complaints involving municipal police, request a public inquiry by the municipal police board and such an inquiry must be held. In the case of complaints involving the R.C.M.P., the complainant may request that the Attorney General order an inquiry. The Attorney General has ordered very few such inquiries. Last December, a decision of the Supreme Court of Canada concluded that the provisions of the *Police Act*, authorizing inquiries by the Police Commission into complaints about the R.C.M.P., were constitutionally invalid and were therefore without legal authority. There is therefore no current procedure for an investigation of a complaint concerning the R.C.M.P. by any agency other than the R.C.M.P.

I have five basic concerns about this process, which I outline below:

a. The procedures are complicated and perhaps unnecessarily so. For example, when a person requested (prior to the Supreme Court decision) that an inquiry be held into his complaint about the R.C.M.P., the *Police Act* required that he submit his request in writing to the R.C.M.P. Commissioner in Victoria. The R.C.M.P. Commissioner was then required to send the request to the Attorney General and to the B.C. Police Comission. In practice, the Attorney General would then refer it to one of his staff lawyers for consideration. Following this, if the Attorney General decided to hold an inquiry, he could either ask the Commission to conduct the inquiry or he could designate a different committee to hold the inquiry. After this, the body chosen to conduct the inquiry had to send a notice to the complainant informing him of when the inquiry would be held. I am at a loss to understand why all of this shuffling about of the request is necessary. One of the reasons the B.C. Police Commission was created was to deal with citizens' complaints; why not have the complainant send his request directly to the Police Commission?

b. The process takes far too long. Each transfer of the complainant's request for an inquiry as outlined in the paragraph above can take months. Of greater concern, however, is that the formal investigation of complaints by the police can take many months. In one case which came to my attention in 1980, the R.C.M.P. spent 15 months completing an investigation; the actual investigation was completed within the first eight months; the remaining time was spent while R.C.M.P. headquarters in Victoria reviewed the file.

c. No reasons are given to the complainant at the end of the formal police investigation. Rather a form letter is sent to the complainant which in most cases states as follows: "Pursuant to section 39 (4) of the *Police Act*, and the regulations made thereunder, this matter was fully investigated, and a decision was made to take no further action having regard to all the

circumstances of the case." Not only do I doubt that this complies with the requirement of the *Police Act* (that complainants be informed of the "results of the investigation"), but it is completely unsatisfactory. Complainants should have both the right to know the decision and the reasons for it, and especially where the complaint is found unjustified.

d. The formal investigation should be conducted by an independent agency. Of course, where there are allegations of criminal conduct, the police may also wish to investigate, but this should not prevent or impede an investigation of the complaint by an independent agency. In suggesting that investigations should not be conducted by the police, I do not mean to impugn the integrity of the police officers who currently investigate citizens' complaints. However, it is a fact of human nature that members of any organization are disinclined to criticize the actions of other members of the same organization. This fact may result in investigations being less than thorough and unbiased, which they must be if the truth is to be found. Similarly, public confidence in the complaint procedures will be undermined unless the process itself not only is fair but is manifestly seen to be fair.

e. Under the current procedures, in which the police are required to investigate themselves, sometimes the complainant's allegations find their way into the hands of police constables being complained about. In one case, the police constables threatened to sue the complainants for libel if the allegations were not withdrawn. For details see complaint summary CS 81-009 below. Obviously, people will be discouraged from complaining if they feel that their complaints may result in legal action against them. This, then, is another reason why complaints should be made to an independent agency that should be required to keep all such allegations confidential except to the extent necessary to conduct an investigation.

In making these comments I am not suggesting that I, as Ombudsman, am anxious to be given the authority to investigate complaints about the police. These complaints are typically difficult to investigate in that they frequently involve incidents which are not documented, but rather depend upon the reliability and credibility of witnesses to the incident. Nevertheless, persons with grievances about the police should be able to have their complaints thoroughly and expeditiously investigated by an unbiased agency, to have a fair and reasoned decision made on the validity of their complaints, and to be informed of the decision and the reasons for it. Where such complaints are found justified, complainants have the right to expect that corrective action will be taken.

It seems to me that the current police complaint procedure as outlined above does not assure us that investigations will be handled expeditiously, or that the correct decision will be made in each case. Neither do these procedures strike me as ensuring that all of the relevant facts will be discovered, and that a fair and proper decision will be made in each case. In short, they do not meet our expectations of fairness.

7. *Ex gratia* payments

A problem which arose early on in my operations continues to cause trouble to me and complainants. It involves the payments of funds by the government in cases where I recommend that compensation be paid. I have found a number of complaints substantiated in which the only resolution is the payment of money to the complainant. In some instances, compensation has been paid. However, in a number of cases, even though the Ministries involved may be in agreement with my conclusion that the complaint is substantiated, they have not paid compensation because they argue that they do not have "statutory authority" to make such payments. Where such payments have been made in the past they were called *ex gratia* payments. The Ministries point to the *Financial Administration Act* which states that no money shall be paid out of the consolidated revenue fund without the authority of an appropriation. I cannot, of course, recommend that Ministries breach the law.

There are a number of mechanisms through which a person who has suffered loss because of bureaucratic error may receive compensation. A claimant may sue the government under the provisions of the *Crown Proceeding Act* and, if successful, may be awarded damages by the courts. He may make a claim against the Crown and the Attorney General may settle the claim pursuant to Section 14 of the *Crown Proceeding Act* if the Attorney General is of the opinion that, if pursued in court, the claim could result in judgement against the Crown and if he considers it to be in the public interest to settle the claim.

There is also a provision for special warrants by Order in Council when the Legislature is not in Session, authorizing unforeseen expenditures required for the public good. I do not make use of such a recommendation lightly because it is important to retain legislative control over spending. My suggestion to utilize this procedure in some cases has met with little success. There is also a

provision in appropriate situations for remission of taxes, fees, penalties and the like under the *Financial Administration Act* to minimize public inconvenience, injustice or great hardship.

All of these mechanisms have serious limitations and will not assist in resolving many of the complaints I find substantiated. One encouraging development has been the proclamation of Section 67 of the *Financial Administration Act* which allows a person who received public money erroneously through no fault of his own to argue in a court of law his right to retain the money. I appreciated the opportunity to express my views to the Minister of Finance on this provision (which had been recommended by the B.C. Law Reform Commission) prior to its being proposed to the Assembly for consideration.

I believe the Legislature intended in Section 22 (2) (h) of the *Ombudsman Act* that I have the authority to make recommendations for compensation in order to resolve a complaint, and I had hoped that the government would respond to such recommendations. As the government has taken the position that *ex gratia* payments are contrary to law, I propose the following resolutions for consideration:

a. Amendment to the *Financial Administration Act* allowing for *ex gratia* payments on recommendation of the Ombudsman, or

b. An appropriation provision under the *Supply Act* giving the Minister of Finance a vote designated for *ex gratia* payments. The *Supply Act* has the force of law and a vote approved pursuant to the *Supply Act* would be sufficient authority for an *ex gratia* payment.

The problem of *ex gratia* payments has also arisen with respect to interest payments. For example, if the government owes money to a citizen and does not pay for a considerable length of time or if the government retains funds of a citizen when it has no statutory right to do so, I believe the money should be returned **with interest**. The government can legally make interest payments in very limited circumstances where an Act or Regulation allows it. But even in circumstances where it can be shown that the government invested a citizen's funds and reaped the benefit of interest, the government will not pay interest except with explicit statutory authority. The wish to stick closely to statutory authorization is laudable but members of the public always end up being shortchanged.

One of my complainants paid $435 to the Ministry of Lands, Parks and Housing on the request of a Ministry official. This money represented the first rent payment on Crown land she had applied for and wished to lease. She was later notified that the land was not available. She then asked for her $435 back, with interest, and after receiving no response contacted my office. After being notified of the complaint, the Ministry quickly issued a cheque for $435 but refused the payment of interest as "there is no legal authority for us to pay her interest". The Ministry had the complainant's money from May 1978 to February 1981. It is likely that the funds were taken in as part of the consolidated revenue and invested.

I do not see the fairness of the government's position in this matter. If there is a statutory impediment preventing payment, it should be overcome. The Legislative Assembly should be asked to consider appropriate changes.

PART II

COMPLAINTS: THE WORK OF THE OMBUDSMAN OFFICE IN 1981

A. COMPLAINANTS AND COMPLAINTS

In reporting on my office's work in 1981 I will follow the same format as in my 1980 Report. Tables with detailed statistical information are presented separately in Part VI.

Below are figures that show the overall workload of my office in terms of active and closed complaints.

1979/80 complaints carried into 1981*	963
New complaints received in 1981	4,935
Total active complaints in 1981	5,898
Complaints closed in 1981	4,765
Complaints still under investigation at year end	1,133

* My 1980 Report records 870 complaints under investigation at year end. Another 93 complaint files were opened when it became necessary as some of the 870 complainants had more than one separate and distinct complaint.

During 1981 my office received 4,935 new complaints; that represents 411 complaints per month and a 28 percent increase over 1980 when I received 3,840 complaints per year or 320 per month. In addition my office responded to some 500 other requests for which no file was opened, and which are not included in the above total of 4,935 complaints.

The results reported in the statistical tables are based on all cases **closed** in 1981. A total of 4,765 complaints were investigated or otherwise disposed of during 1981.

Fewer non-jurisdictional complaints were closed in 1981 than before: 2,008 as opposed to 2,309 in 1979/80. Relatively speaking this change is even more significant: the share of non-jurisdictional case closings went down from 55 percent in 1980 to 42 percent in 1981 and, of course jurisdictional closings increased in proportion: now 2,757 complaints or 58 percent of all closed cases are within jurisdiction, compared to 45 percent in 1979/80. It seems that the public now has a better appreciation of what I as Ombudsman can investigate.

Complaints Closed by Jurisdiction and Year

		Number Closed	Percent
1979/80 (15 months)	Within Jurisdiction	1,888	45
	Outside Jurisdiction	2,309	55
	Total	4,197	100
1981 (12 months)	Within Jurisdiction	2,757	58
	Outside Jurisdiction	2,008	42
	Total	4,765	100

Jurisdictional complaints, of course, require considerably more time and attention. The 46 percent increase in jurisdictional case closings (an increase from 1,888 (1980) to 2,757 (1981) represents a major quantitative and qualitative improvement in the work of my office.

Despite all the effort and productivity increases my office was not able to stay completely ahead of complaints. There are now almost 20 percent more open files in the office at any time, and, of course, registered at the end of the year compared to 1980. I must view this increase in open files and ongoing investigations with serious concern. This situation has several undesirable consequences:

1. The time it takes to complete the investigation of a complaint is likely to be longer when an investigator has to divide his time among 80 complainants compared to 64 previously.
2. More time is wasted when an investigator juggles an impossible caseload (through activities like explaining delays to impatient complainants). A case overload generates it own inefficiencies.
3. My office may not have the time to analyze the root causes of complaints. In other words we risk being or becoming less than thorough, and superficial.

Being aware of the potential problems that are generated by a work overload my staff and I make special efforts to avoid becoming "bureaucratic" ourselves. We have, for example, cut down on our own red tape by persuading Ministries and other agencies of government to accept telephone notification of investigations instead of formal written notification. We need to be more inventive yet in 1982.

B. JURISDICTIONAL COMPLAINTS

As in 1980 we found again that a large proportion of complaints do not need to be fully investigated to the point where a finding on the merits of the complaint is made. Some 1,220 complaints or 44 percent of all jurisdictional complaints were either not investigated or an investigation was discontinued before a conclusion was reached. Table 7 gives a breakdown of the reasons for discontinuation. Of the remaining 1,537 jurisdictional complaints 855 complaints (55.6 percent) were substantiated and/or warranted a correction of a decision, practice or procedure, although in 74 of these cases rectification was not possible or refused. In 682 cases or 44 percent of the fully investigated complaints I found no substance to the complaint and no action on the part of the authorities was required. These figures are very close to my findings in 1980 as shown in the summary of results below.

Jurisdictional Complaint Dispositions

		Discontinued	Resolved	Rectified	Not Rectified	Not Substantiated	Totals
1979 /80	Number	864	506	59	0	459	1,888
	Percent	45.8	26.8	3.1	0	24.3	100
1981	Number	1,220	601	180	74	682	2,757
	Percent	44.3	21.8	6.5	2.7	24.7	100

C. NON-JURISDICTIONAL COMPLAINTS

Tables 4 and 5 show that 70 percent of people with non-jurisdictional complaints received at least some basic assistance from my office, usually to put them on the right track in pursuing their complaint with appropriate helping agencies. Some 18 percent of those with non-jurisdictional complaints were assisted in a more detailed manner as warranted by the circumstances. Depending on the urgency of the matter or the helplessness and desperation of the complainant my staff intervened to facilitate a resolution of the complaint. A great deal of this help was possible because of my staff's accumulated experience and could be offered fairly efficiently thus freeing more staff time for work on jurisdictional complaints. It remains an important principle of operation in my office that no citizen in need of help is turned away merely because his complaint is non-jurisdictional.

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D. IMPACT

My main goal must always be to resolve individual complaints where that is warranted by the merits of that complaint. In 70 percent of resolved and rectified complaints (546) only my individual complainant was affected by the change in decision, but in 30 percent of all resolved and rectified complaints (that is 235 cases) some change in practices or procedures was warranted and agreed to by the authorities. Table 7 shows a breakdown.

PART III

COMMENTS ON MINISTRIES AND COMPLAINT SUMMARIES

MINISTRIES

MINISTRY OF AGRICULTURE AND FOOD

Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	3
Substantiated: corrected after recommend.	18
Substantiated but not rectified	1
Not substantiated	4
CLOSED—TOTAL	33
Number of cases open Dec. 31, 1981	11

The large number of substantiated complaints in this Ministry can be explained by the fact that 21 cases were received concerning raw milk policy. These complaints are summarized below.

The Ministry's assistance and cooperation in my lengthy investigation of the East Kootenay range issues must also be acknowledged. I found Ministry personnel in the field and at headquarters in Victoria most helpful (see Public Report No. 1).

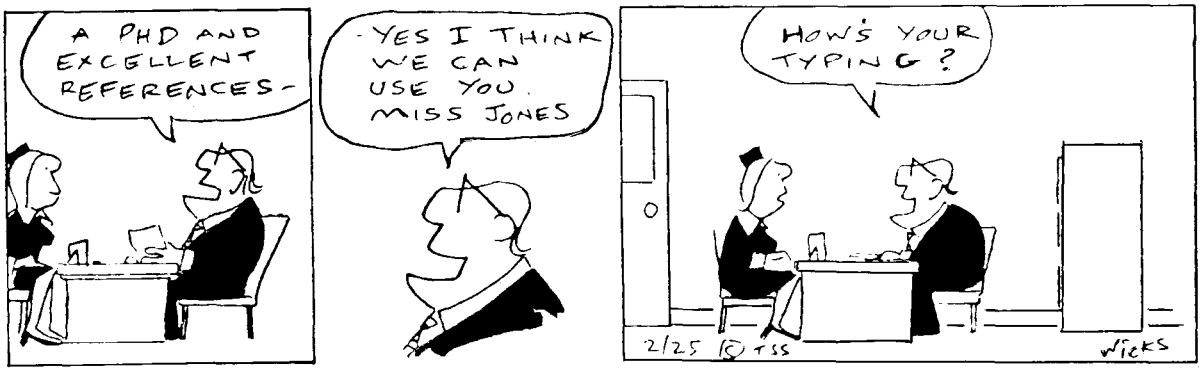
CS 81-001

Ministry and Land Commission

A woman complained to me because she felt that she had been discriminated against in her efforts to find employment with the Agricultural Land Commission. Referred through the Public Service Commission, she applied for a position as an Office Assistant with the Commission. She was interviewed, and a job offer was made by the Agricultural Land Commission. Three days later, the Public Service Commission withdrew the job offer. The complainant felt that she might have been discriminated against for political reasons.

After I concluded my investigation, it appeared that the complainant's suspicions of political interference were unfounded. Instead, the following had happened.

An Office Assistant had resigned from the Agricultural Land Commission. The Commission, at this point, decided that it wanted to restructure its clerical workload. The Commission wrote a new job description for the vacant position and wanted to fill the vacancy with a person who had a good background in agriculture; typing skills were less important. The Agricultural Land Commission phoned the Public Service Commission, attempting to fill the vacancy on the basis of the new job duties. Subsequently, my complainant, a woman who holds a degree in agriculture, was selected for the position. However, it appeared that the Agricultural Land Commission was closely tied to the administration of the Ministry of Agriculture and Food. The Ministry Personnel Office was un-



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willing to appoint the complainant to the position because her typing skills were weak. The Ministry was unaware of the new job duties and made its decision on the basis of an old job description. The Ministry Personnel Office insisted that new interviews be held, and a different candidate with better typing skills was selected for the position.

My office was unable to be of help to the complainant: when my investigation was completed, another person had been appointed to the position; she, too, had applied in good faith, and her services were satisfactory. I could not see my way clear to recommending that her services be terminated so that the position might be freed for the complainant.

However, a larger question arose: is the Agricultural Land Commission an independent body and as such responsible for its own personnel decisions? Or is the Agricultural Land Commission merely a Branch of the Ministry of Agriculture and Food, having to avail itself of personnel services provided by that Ministry? I met with the Deputy Minister of Agriculture and Food to discuss this question and it was agreed that both the Ministry of Agriculture and Food and my office would obtain legal opinions on the matter. Both legal opinions arrived at the same conclusion; the Agricultural Land Commission, pursuant to the provisions of the *Agricultural Land Commission Act*, is a body independent from the Ministry of Agriculture and Food. The Deputy Minister of Agriculture and Food wrote to me as follows:

"I accept the fact that the A.L.C. has powers of autonomy that places almost all matters within their purview beyond administrative guidance or control of the Ministry of Agriculture and Food. Whether or not to pursue an administrative accommodation that better serves the taxpayers cannot be answered at this point in time. Clearly, the matter will be of interest to The Honourable The Minister of Agriculture and Food. I shall look to him for future direction in the matter."

I informed the Chairman of the Agricultural Land Commission of the contents of the legal opinion I had received and of the Deputy Minister's letter. Because this jurisdictional question exceeded the complaint I had originally received, I did not pursue the matter further.

CS 81-002

A raw deal

In late 1980 and early 1981 my office received 21 complaints, two from farmers and 19 from their customers, about action taken by the Ministry of Agriculture and Food to prevent further sales to the public from raw milk dairy farms on Vancouver Island. The two dairy farms affected had been selling raw milk to the public for many years without Ministry intervention.

The issue considered by my office was whether the Ministry was acting in an arbitrary or improperly discriminatory manner with respect to the enforcement of provincial regulations restricting the sale of raw milk. Investigation showed that under similar circumstances an exception to Ministry policy to phase out all raw milk sales had been granted to a dairy farmer on one of the Gulf Islands. The M.L.A. for the Gulf Islands had intervened. As a result, the Gulf Islands farmer was given a chance to state his case. Cabinet later passed an Order in Council as permitted by the *Milk Industry Act*; the farmer was able to continue his operation.

I could find no reason for distinguishing between that case and the present one. I therefore advised the Ministry of Agriculture and Food that administrative fairness required that the complainant farmers be given a hearing to present their arguments to the Ministry. The Minister of Agriculture and Food agreed to hear both complainants. I provided all complainants with a thorough report of my investigation. Though the farmers had the hearing fairness demanded, they did not succeed in persuading the Ministry that they should be permitted to sell the raw milk.

CS 81-003

Source of hog disease unknown

In 1978, a hog farmer bought a number of breed sows, including one known as 68K, from a farm operated by the Ministry of Agriculture and Food. He suspected that this sow had introduced a disease called atrophic rhinitis to his herd. He complained to my office, seeking compensation for the considerable losses he suffered. My investigation of this case was extensive and included interviews with a veterinarian, officials of the Ministry of Agriculture and Food, the herdsman of the Government farm in question, and the complainant's M.L.A. One of my investigators travelled to the complainant's farm to get a better understanding of the situation. Furthermore, we examined the Ministry's files.

It appeared that the farmer had purchased 68K in October 1978. The animal farrowed on December 17, 1978. Shortly thereafter, the herd began to show symptoms of atrophic rhinitis.

On May 9, 1979, 68K was butchered. Her head was the subject of a report prepared by the veterinary laboratory in Abbotsford on May 9, 1979. The report states that ". . .there is slight atrophy of the right ventril turbinate." It concludes that ". . .there is no evidence of atrophic rhinitis in this specimen." Still, there was room for doubt. The slight atrophy of the right ventril turbinate may indeed have been an indication of atrophic rhinitis. On the other hand, it may just as well have been caused by other factors.

In April 1979, the complainant butchered a piglet which, according to the complainant, was part of 68K's litter. The laboratory report on this piglet states that ". . .the appearance of the nares alone would suggest a diagnosis of atrophic rhinitis." However, the report states that the piglet under consideration was three months old. 68K's piglets, at the date of the report, would not have been three months but rather over four months old.

Even if the piglet was part of 68K's litter, and even if it had atrophic rhinitis, there would have still been no conclusive evidence that the piglet contracted the disease from its mother. Apparently, 68K and her litter were housed in the same facilities as the other members of the herd. Any one of the other animals could have been a carrier of atrophic rhinitis and the source of the outbreak.

I was also informed by several sources that probably there is no swine herd in the province that is not at least the carrier of atrophic rhinitis. Apparently, while established herds tend to develop an internal immunity against the disease, introduction of new animals into a herd quite often triggers an outbreak.

After my investigation, I had to conclude that 68K may or may not have been a carrier of atrophic rhinitis; the outbreak of the disease in the herd may or may not have been attributable to the animal purchased from the Government farm. Based on the lack of any conclusive evidence, I found myself unable to make a finding or a recommendation regarding this complaint.

CS 81-004

Happy ever pasture

A rural resident of the Cariboo Regional District complained to my office that the ARDA (Agriculture and Rural Development Act) Branch of the Ministry had unreasonably denied him information regarding a community pasture. The complainant required this information in order to apply to the Agricultural Land Commission for a subdivision. He requested a cost benefit analysis of a community pasture and a breakdown of the development costs.

Our investigation soon showed that the Branch did not have the type of cost benefit analysis requested. After many discussions with members of the ARDA Branch and staff members from the Agricultural Land Commission, the Director of ARDA agreed to write to the complainant. The letter provided what information ARDA did have on the development cost of the pasture and explained the Branch's involvement.

As I stated in my annual report last year, citizens often request my assistance in gaining access to information. When I receive requests of this nature, I attempt to persuade officials to share information unless there are good reasons for withholding it, as I believe that many complaints to me would not be necessary if the complainant had had access to the information held by government officials.

CS 81-005

Procedures beefed up

A beef rancher was denied participation in the Farm Income Insurance Program. A prerequisite to receiving benefits from the Program was that the producer had to be a member in good standing of the B.C. Cattlemen's Association. The complainant had missed the deadline for annual payment for membership fees, not having received his bill for the fees.

I informed the rancher of the appeal mechanism provided under the *Farm Income Insurance Act*. The appeal board consists of a Ministry official, a representative of the B.C. Federation of Agriculture and a chairman mutually agreed upon.

The complainant had simply needed information about his right to appeal, and once he had this information he followed the procedure; no further investigation was needed.

Providing information about a right to appeal is an important principle of administrative fairness. I

recommended to the Ministry that it change its procedure. The Ministry accepted my recommendation, so that now all individuals adversely affected by a decision under the insurance scheme are informed at the time of the decision of their right to appeal.

CS 81-006

Dropping of fine fine with farmer

An orchardist complained that he had not been aware of the existence of the Ministry's Farm Income Insurance Program. When he became aware and applied to participate, he was told he would be penalized for not having applied when he first became eligible. The Program is designed to compensate farmers when the market price for a crop is lower than it is possible to produce the crop for.

We discussed the problem with Ministry officials who said it was possible that the complainant had thought the program was another name for a separate Crop Insurance Program that already covered his operation. This might have been the reason he had not applied. Because this was a reasonable mistake, the Ministry used its discretion to drop the penalty. The complainant was satisfied with the Ministry's resolution of the complaint.

MINISTRY OF THE ATTORNEY GENERAL

Declined, withdrawn, discontinued	157
Resolved: corrected during investigation	86
Substantiated: corrected after recommend.	9
Substantiated but not rectified	0
Not substantiated	106
CLOSED—TOTAL	358
Number of cases open Dec. 31, 1981	113

The responsibilities of the Ministry of the Attorney General include corrections, providing services to courts and providing legal advice to the Government. The Ministry also administers the Film Classification Board, and regulates the registration of land in the province, the horse racing industry, and the licensing of private investigators and security employees.

Complaints about the Ministry which my office investigated and closed in 1981 were more than two and one half times the 1980 figures. A substantial number of the complaints closed—approximately two-thirds—were with respect to provincial correctional institutions. The remaining complaints mostly concerned court services and the land registration system.

A. Court and Support Services

These two areas of the Ministry include court administration, the Court Reporting Services, sheriffs' services, the Public Trustee, the Land Title Office and the Film Classification Board.

Complaints about court services ranged from delays and difficulties in obtaining transcripts of court proceedings, to criticism of sheriffs' actions in serving process. Complaints involving the Land Title Office often required extensive searches of title documents and land surveys. My staff and I continue to receive good cooperation in investigating these latter complaints.

A large percentage of the complaints against the Public Trustee concern delays either in the handling of the estates of persons who are deceased or incapable of managing their affairs, or in responding to requests for information on the part of their heirs or relatives or the patients themselves. In "The Long Distance Solution" the Public Trustee's failure to provide a timely response to written communication cost the complainant long distance telephone charges. However, most complaints of delay were resolved when the Public Trustee agreed to our proposals for action. There are certain built-in delays which cannot be avoided in estate matters, but simple requests for information from me, patients or interested relatives and heirs, should be handled expeditiously.

Of the four complaints alleging improper management of an estate, one was substantiated. It was a relatively minor matter and was rectified by the payment of compensation to the complainant.

I have received no evidence which would suggest that the Public Trustee has persecuted the public servant whose complaint was reported in my annual report for 1980 (pp.27–28).

B. Criminal Justice Division

The guidelines set out in my last annual report continue to be followed and the cooperation received from the Criminal Justice Division remains high.

C. Legal Services to the government

In my last annual report, I commented on the attitude which the Civil Law Section had exhibited towards my investigations and requests for information. Soon after I submitted my report in May 1981, efforts were made by the Ministry to improve matters. A senior staff counsel was assigned to concentrate on overcoming the delays in Ministry responses and to work with my office in resolving the major outstanding cases which stood at stalemate.

As a result, personnel in the various branches of the Ministry were charged with the responsibility of receiving and expediting communications concerning investigations of complaints about the Ministry. With the agreement of the Ministry, the procedures used by my office for notifying the Ministry of complaints were simplified. In addition, individual solicitors were identified as responsible for expediting requests by other Ministries of the Government for legal advice and consultation with respect to Ombudsman investigations involving those Ministries. It was also agreed that where there was no prejudice to the Crown or public interest, solicitor-client privilege could be waived so that any legal opinions prepared by Ministry of the Attorney General solicitors for their client Ministries could be released to my office.

The general level of responsiveness and cooperation within the Ministry and among its solicitors has been greatly improved by these efforts. Several of the outstanding contentious cases from 1980 have been resolved. However, a year later, others remain in dispute.

D. Corrections Branch

The Corrections Branch has responsibility for all provincial correctional institutions and programs, as well as probation services, and family court counsellors. The institutional services component of the Branch's operation consists of the youth containment program (a short term custody program for juveniles) and adult facilities (maximum and medium security facilities and forestry camps for adults whose sentences are less than two years in length). Only a minimal number of complaints that come to me have to do with the Corrections Branch's community-related programs such as probation services; most of the complaints come from persons in institutions.

In 1981, my office received almost 300 complaints involving the Corrections Branch. This is approximately five times the number received the previous year, and suggests that inmates are becoming more aware of my office.

During the year, my staff visited a number of provincial penal institutions in order to investigate complaints and discuss new complaints with inmates. The largest number of complaints this year came from inmates in two maximum security institutions: the Lower Mainland Regional Correctional Centre and the Prince George Regional Correctional Centre. My staff also visited the minimum security centres at Alouette River, Twin Maples and the Chilliwack Forest Camps.

When a complaint is received from an inmate, my first step is to ascertain whether the inmate has attempted to resolve the problem on a local level. The next step is to consider whether the issue involves the type of complaint that I might wish to refer to the Corrections Branch's internal investigative body, the Inspections and Standards Division. If such is the case, and the complainant agrees, I make such a referral and then monitor the result. Sometimes, however, the complainant may not wish the matter referred in this manner, and sometimes I may have reasons for proceeding with the complaint investigation directly.

The level of cooperation I have received from the Corrections Branch in the last year has been high. I feel that good communication has been maintained between my office and the Branch largely through a number of formal and informal meetings with personnel from the Inspection and Standards Division.

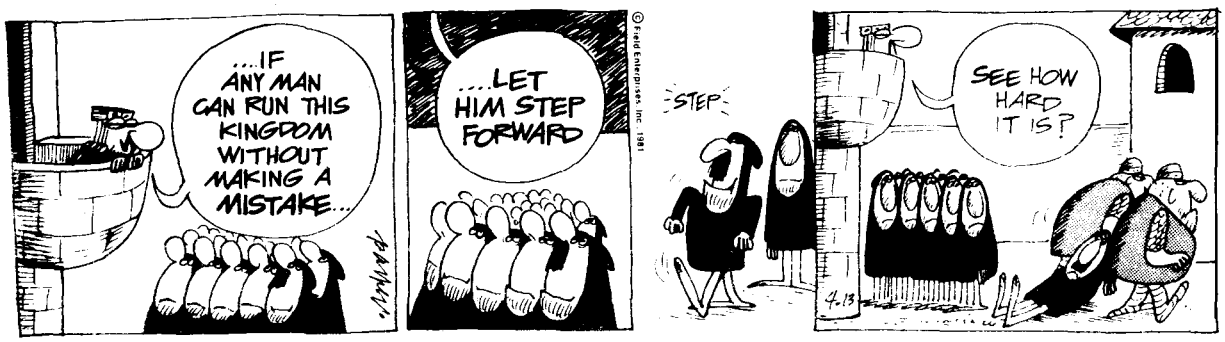
More than one quarter of the corrections complaints I received were resolved during the investigation stage or rectified after investigation. A number of general areas of concern resulting from individual complaints have been raised with the Corrections Branch and are outstanding at this report. I anticipate a resolution of these issues over the coming year. These include: the general standard of dental care within provincial penal institutions, the policy which governs the giving of reasons for an inmate transfer, the accessibility of a Justice of the Peace to inmates, the standard of natural justice required in the conduct of internal disciplinary panels, and the special needs of inmates who require protection from other inmates.

Loffmark complaint—the latest word

My last Annual Report provided details of my investigation of Mr. Ralph Loffmark's complaint against the Superannuation Commissioner, and the impasse reached with the Attorney General's Ministry on this matter. Reproduced below are excerpts from two letters which provide the latest word on this case.

It will be recalled that the problem arose as I was investigating allegations of political influence in the reduction of Mr. Loffmark's pension, and the Attorney General refused to permit one of his staff to answer my questions. In a letter to the Attorney General dated 18 December 1981, I reiterated the background to the problem, and continued:

> "The past correspondence on this issue has covered many aspects, such as my authority to question Mr. Ferne, whether formulating a legal opinion is an administrative procedure, and whether the posing of such questions impugns Mr. Ferne's professional integrity. I felt, therefore, that I should make one more attempt to resolve the impasse by identifying precisely the information I am seeking, lest the problem be caused by a misunderstanding over the significance of words used.
>
> "The administrative action I am investigating is the decision, taken by the office of the Superannuation Commissioner about May



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1979, to reduce the amount of Mr. Loffmark's pension. It is **not** the legal opinion given by Mr. Ferne. This legal opinion, however, appears to have been the major factor in the decision taken by the Superannuation Commissioner or his staff, and it is conceivable that a person wishing to influence that decision might have attempted to do so indirectly, by bringing pressure to bear on Mr. Ferne. Such pressure might have been in the form of a hint or subtle suggestion as to the result desired, or of a direct order or instruction; it might have come directly from a Member of the Legislative Assembly, or indirectly, from a Member's staff or party supporter. There are many possibilities and I shall not attempt to describe them all, though I hope that by now the essence of my interest will be clear.

"I am seeking an **unequivocal** answer as to whether Mr. Ferne, prior to his giving the Superannuation Branch a legal opinion on Mr. Loffmark's pension eligibility, received from any person a hint, suggestion or instruction, that could be construed as an attempt at 'political intervention'.

"If such an attempt had been made, I would not propose to pursue the further question of whether Mr. Ferne's legal opinion was influenced by such intervention. However, in investigating the administrative action I mentioned, it is relevant for me to know whether or not any attempt had been made to influence this action by either direct or indirect means.

"I hope that this letter has clarified matters. I would appreciate your informing me whether I may expect to receive, before the end of the year, the information I seek from Mr. Ferne. Since I reported on this matter to the Legislative Assembly through my Annual Report for 1980, I feel an obligation to inform the Assembly of any new developments, or lack of progress, in my 1981 report."

It would be difficult for me to express more clearly the focus of my investigation, or to give greater assurance that this focus was **outside** the solicitor-client relationship (between Mr. Ferne and the Superannuation Commissioner) that the Attorney General has been so anxious to protect and which I did not propose to investigate. However, in a letter dated 22 January 1982, the Attorney General responded:

> "The portion of the August 27th letter received by you from my staff dealing with the Loffmark matter was written in accordance with my instructions. I have taken the time to review this whole matter again, and I am satisfied that the course of action set out in Mr. Hughes' letter of August 27th, 1981 will fully meet the requirements of any proper inquiry which you may undertake.
>
> "I suggest that you reconsider the matter and acknowledge the impropriety of your unwarranted attack on Mr. Ferne and this Ministry. If on the other hand you intend to persist on the present course of your inquiry, I will have no alternative but to challenge your right to do so."

It should be explained that the letter of 27 August 1981, to which the Attorney General refers, suggests that if certain conditions are met Mr. Ferne might "detail in writing to you the entire process adopted by him in formulating the subject legal opinion". Although this offer and its implications are surprising, unfortunately it is of no interest to me whatsoever. I have no doubt that any intelligent person who knows of this case must by now be well aware of the information I am seeking, and it does not concern the adequacy of Mr. Ferne's professional training or work habits. It was described in my last Annual Report, and it is set out again in the third paragraph of the excerpt of my letter quoted above. I had hoped it would be crystal-clear from my letter that Mr. Ferne is involved because he may have relevant information, and not because he stands accused of anything.

At this point, it being obvious that the Attorney General and I will continue to move endlessly in unrelated dimensions in a sort of verbal Escher print, I feel I must end my investigation with this further report to the Legislative Assembly on the matter. The frustration I have felt with the Ministry's

responses in this case compares with James I's criticism of John Donne's poetry: "Dr. Donne's verses are like the peace of God; they pass all understanding."

CS 81-007

The case of the missing transcript

An individual complained that he could not obtain a transcript of a trial in which he had been involved. He needed the transcript in order to obtain a legal opinion on the possibility of a civil action arising from the conduct of the trial. He had been told by the Ministry that the transcript would not be produced because the court reporter who had acted was no longer employed with the Ministry.

We contacted Ministry staff and were informed that the shorthand notes taken by the reporter at the trial were available but that the notes were indecipherable. The Ministry also had the tape recordings which the court reporter had routinely made of the court actions he reported. With the assistance of a tape recording, the notes, it seemed, could be transcribed. However, we were told that staff at the local court registry had spent hours listening to these tapes but they could not find a tape of the trial in question.

I was concerned that every effort be made to produce the transcript for the individual who had complained to me. I was also concerned that such a situation be avoided in the future. In investigating the complaint I learned that court reporting in British Columbia is done by taking shorthand notes, or by using a machine or tape recorder. It is only with the first method of reporting that a problem of deciphering the record made could arise. I also learned that in 1979 the Ministry had established a policy that shorthand notes had to remain with the Ministry when a reporter left the job. However, the Ministry did not require that reporters taking shorthand notes make backup tape recordings.

In March the Ministry agreed to implement a policy of supplying tapes to court reporters using shorthand and to require that these tapes remain with the Ministry. By this point the Ministry had also managed to contact the former court reporter and ask for his assistance in transcribing his notes. He was willing to assist but he required that the cost of travelling to the local court registry be covered. It seemed at first the Ministry expected the individual requesting the transcript to pay these costs. The Ministry had taken the position that this transcript had been requested an unreasonably long period of time after the trial. Requests for transcripts were usually for the purpose of appeal and were, therefore, made within a few months of the trial.

I recognized that the passage of time might have made the production of the transcript more difficult. However, as was true in this case, a transcript could be required for purposes other than appeal. I felt that it was the Ministry's responsibility to ensure that court hearings are accurately reported and that transcripts are produced on request. It seemed reasonable to expect the Ministry to keep adequate records to do this. If the Ministry had had procedures sufficient to guarantee that transcripts could be produced when a particular court reporter was unavailable or unable to assist, the extra expense in this case would not have been necessary. I did not think the individual requesting the transcript should pay more than the normal fees for its production. After further negotiations, the Ministry agreed to cover the travel costs.

At about that time, the Minister assigned a senior staff member to investigate the reasons for some other delays and difficulties which had forced me to make adverse comment, in my 1980 annual report, on the Ministry of the Attorney General. This staff member asked the local court registry to pack up all the tapes and notes made by the former reporter and to send them to Court Services headquarters in Victoria; there he could make one last search. When, after a week, the local court registry had not sent the tapes, the senior staffer flew to the local registry and, in a disturbingly short time, found the tape himself. The complainant got his transcript without cost.

I was informed that the Ministry was as concerned as I was by the course of events. The Deputy Attorney General reviewed the matter and found no evidence of deliberate intent to mislead. He stated that the case did, however, reveal ineptitude on the part of managerial staff. I have been told that steps will be taken with respect to staff responsibility and managerial techniques to prevent such an incident's recurring.

At that point I closed the case. However, in preparing for this annual report, I learned that the policy change implemented by Court Services was not what I had assumed had been agreed upon in March, 1981. The Deputy Attorney General had said that a "new policy will provide for tapes to be supplied to the Court Reporters to use as a backup to their notes and will be the property of Court Services to be left with the Court Services along with the shorthand notes". The policy circulated by Court Services merely stated that if a backup recording system is used by a court reporter, the tapes as well as the shorthand notes must remain with Court Services.

I raised the issue again with the Deputy Attorney General. He has responded saying that the policy implemented was as he intended and was meant only to affect court reporters who choose to use a tape as a backup system.

The problem presented by this case was how could a transcript be produced if the court reporter is unavailable, the shorthand notes are indecipherable and backup tapes either don't exist or can't be found. It appears to me that the problem has not been fully addressed. Therefore, I may have to pursue the issue with the Ministry again in 1982.

CS 81-008

Benches and battering rams

A prisoner complained about the lack of amenities in the Victoria Courthouse cell used to hold individuals who are in custody, charged with offences and appearing in court. The cell, which holds from 10 to 20 people, had no chairs or benches and no cups, towels or toilet tissue.

I was told by the Ministry that at one time the cell had benches and a table. Two years ago, however, there had been an incident in which the benches and table had been broken and used as battering rams. To prevent a repetition of the event, the furniture had not been replaced by the Ministry.

In reviewing the matter during the course of my investigation the Ministry decided to have metal benches installed and to ensure that cups, toilet paper and towels be supplied as required.

CS 81-009

Complaint against police

Parents who had criticized the R.C.M.P. complained that their critical letter should never have found its way into the hands of the constables involved. Their letter, written to the Deputy Attorney General, had criticized R.C.M.P. handling of their son during an arrest, and the offended constables then demanded an apology. They threatened a libel suit if no apology came.

The Attorney General had, I found, investigated, and although he concluded that neither his office nor the B.C. Police Commission was responsible for turning the letter over to the constables, procedures concerning critical letters were as a result changed. Under the new procedure, the local police detachment is given only a summary of the complaint. In my judgement this is appropriate. The complainant is protected, but the local detachment has the information needed to do the first-stage investigation required by the *Police Act*.

Since the complainant had suffered no damage (no libel suit was launched) and the procedures had been tightened, I discontinued my investigation into this complaint. However, I remain concerned about one feature of the complaint; it took almost a year and a half to complete the investigation called for under the *Police Act*. The Act does not require speedy resolution of complaints. I may in the future recommend changes in the *Police Act*.

CS 81-010

Surveying the surveyors

The complainants, owners of a 19-acre hobby farm, had their property surveyed by a number of land surveyors. They wanted a correct plan filed at the Land Title Office as the latest filed plan was not correct. I discovered that the problem lay with the original survey plan which had been incorrect and that the simplest way of correcting this error was to contact the original surveyor and have him make a statutory declaration to that effect; this was done, and the plan in the Land Title Office was corrected to reflect the true boundaries of the complainant's property.

CS 81-011

Land Title Office: a lawyer's lament

A law firm complained that each time it consulted the Land Title Office concerning registration of a subdivision plan, it was told about extra requirements. Sometimes the requirements contradicted each other. When the firm wrote to the responsible registrar and to the Director of Land Titles, an investigation was made. When I became involved, I reviewed the investigation.

The problem appeared to have arisen as a result of a substantial increase in the number of subdivision plans being presented to the Land Title Office. In order to deal with this problem, inexperienced clerks were seconded from the general office and in some cases failed to note defects in applications; the applications were subsequently rejected by more experienced staff. The registrar had therefore instructed staff that henceforth there would be no preliminary inspection of plans, and that all plans would be dealt with once only by an experienced plan examiner. He further stated that an applicant disagreeing with any requirement should discuss his concerns with senior Land Title officials.

I told the law firm that the Land Title Office appeared to have dealt with the problem, but that I would investigate if there were similar problems in the future.

CS 81-012

Time's up

A driver complained that he had been denied his right to appeal a traffic violation report because the court registry would not accept his notice of dispute initiating the appeal. The registry received the notice after the appeal period had expired. The driver had mailed the notice on the last day of

the time period. He argued that the delay was caused by the post office and the notice of dispute should be accepted.

I learned that the limitation period is established by law and that the appeal period is clearly printed on the ticket given to a driver at the time of the alleged violation. I also learned that court registries use the date on the postmark to determine whether the notice was in time and that the postmark in this case was not within the appeal period. I recognized that this was a reliable and objective method of establishing the timeliness of an appeal and found the complaint not substantiated.

CS 81-013

Small Claims and self help

A Small Claim Registry had refused to grant default judgment to a complainant, saying that proper service of the summons had not been made on the defendant company. The complainant had served the summons by double registered mail and receipt had been acknowledged. However, it was the Registry's position that under the provisions of the *Small Claim Act*, a plaintiff could not serve a summons, even by registered mail, and the summons should have been mailed by either the Sheriff's Office or the plaintiff's solicitor. The complainant objected to this interpretation and felt that it was unreasonable and contrary to the self-help spirit of Small Claim proceedings that he should be obliged to retain a solicitor or wait for the Sheriff's Office to mail the summons.

In my judgment, this was correct. The restrictions in the *Small Claim Act* on the service of a summons by a plaintiff appeared to relate only to personal service and not to service by registered mail. A Ministry solicitor agreed with this position and sent a memo to the appropriate officials to correct the misapprehension, which appeared to exist in more than one Registry.

The complainant had since obtained a court judgment for part of his claim, but he felt that he should be entitled to the full amount which he would have obtained if default judgment had been granted. A default judgment may be set aside on the application of a defendant who appears to have a valid defence and provides an acceptable explanation for failing to file a defence. It was therefore impossible to speculate on what the outcome would have been, if default judgment had been entered for the complainant.

Therefore while I was unable to get the equivalent of default judgment for the complainant, I was able to establish that his interpretation of the *Small Claims Act* was correct; this interpretation will make it simpler and cheaper for future plaintiffs to use the Small Claim Registry system.

CS 81-014

Sheriff rides shotgun

A man called in distress over information he had just received from the local Sheriff's office. He had taken a Small Claims Action against a paving company in order to recover the costs of an inadequate driveway repair job. A judge had awarded him the claim, but later a Sheriff informed him that he would have to pay to have the paving company's assets, such as a vehicle, seized and stored. Since the man was on a fixed income, he did not have the money to do this. He was distressed to learn that he would have to pay more money to collect his award.

I called the local Sheriff's office to discuss the problem. The Deputy Sheriff informed me that the man could claim the costs of seizure and storage in addition to his small claims award; however, the Deputy Sheriff cautioned that the assets might have liens against them and might therefore not be worth seizing. He said he would do a brief search of the company's assets and would advise the man about the procedures available to him for collecting his money.

CS 81-015

The long distance solution

The complainant, a Winnipeg resident, was the sole heir of his father who died in B.C. without a will. The Public Trustee, who was responsible for administering the estate, asked the complainant what should be done with his father's belongings, which included a television set and some tools. The complainant told the Public Trustee to send these items to him because of their sentimental value. Instead, by accident, these items were sold at auction and the proceeds added to the estate. The complainant spent more than $100 for long distance charges in trying unsuccessfully to get recompense and in objecting to certain fees charged by the Public Trustee. He then complained that it was unfair that he should pay for attempting to sort out a problem created by the Trustee.

I found the complaint substantiated and recommended that the Public Trustee pay the complainant $100 as compensation for his loss of the estate items. I also found that the complainant's use of the long distance telephone to contact the Public Trustee was partly justified because of the Public Trustee's lack of a timely response to written communications. Where a complainant reasonably incurs expenses in an unsuccessful attempt to resolve his complaint on his own and the complaint is later substantiated either in whole or in part, the authority should reimburse the complainant in an amount reasonably attributable to

the authority's failure to resolve the complaint. I therefore recommended that the Public Trustee pay $50 as partial compensation for the complainant's telephone expenses. The Public Trustee agreed to my recommendations.

CS 81-016

"Caligula" not banned in Boston . . . or Vancouver

The decision by the Film Classification Branch of the Ministry of the Attorney General to permit the showing of the controversial film "Caligula" resulted in public reaction consisting of the picketing of the theatre by concerned citizens, editorial comment, hot line show discussions, and eventually a complaint to the Ombudsman.

Upon investigation of this complaint, I was impressed with the amount of research that went into the decision of the Branch to permit the showing. The Branch's staff followed the progress of the film through the United States, where, in a Boston court case, the film was ruled "not legally obscene". Branch staff conferred with their colleagues in Quebec, the first Canadian jurisdiction in which the film was shown, in order to ascertain both that film board's rationale for passing the film and the public's response to its showing in Quebec. Several members of the Branch consulted with academics on the subject of pornography. They then attempted to relate the information they had collected to their perception of changing community standards. The Branch considered cutting some shocking sections, but concluded that cutting the film would remove the impact of the film maker's statement that absolute power corrupts absolutely. Instead, they required theatre managers to enclose a very strong warning in their advertisements.

The Film Classification Branch kept a record of complaints and comments received concerning "Caligula". A telling comment came from one individual who stated that he did not intend to see the film but supported the right of those who were inclined to see it.

In investigating this complaint against the Film Classification Branch, I was not attempting to set myself up as a "super-censor". I had to make certain that the process which led to the decision to allow the film to be shown was comprehensive and objective and gave fair consideration to all points of view. If the Film Classification Branch had not done its work in such a thorough fashion, it might have left itself open to my finding that the decision was arbitrary, and therefore subject to a recommendation by the Ombudsman.

I concluded that the complaint was not substantiated.

CS 81-017

A duty to be fair: even in jails!

An inmate of a Regional Correctional Centre complained that the disciplinary panel of his institution used unfair procedures in investigating breaches of the rules of conduct. He had been charged with fighting another inmate. He told me that the charge was quite valid, but that the methods of proof were unfair. He had not been notified of the charge within 24 hours. He had not been given time to prepare his case for the disciplinary panel. And the panel, instead of looking only at the incident in question, had judged him guilty after considering other infractions of the rules of conduct, unrelated to the incident.

My investigation showed that he was right, and that the prison in fact had rules that should have ensured fairness in disciplinary hearings. However, the disciplinary hearing had followed old printed forms, which contributed to unsuitable and unfair procedures. The Corrections Branch agreed with my findings, and Inspection and Standards are now preparing a disciplinary procedures review, and new printed forms which will serve to guide fairer hearings.

In my opinion, both staff and future inmates will benefit when hearings are held fairly, using consistent procedures and improved forms. As for the complainant, he was given an apology by the Director of the Institution.

CS 81-018

Music raises inmate's spirit

A young inmate complained that the Corrections Branch had refused his request to have a cassette brought into the institution. Inmates are permitted to have radios, but he wanted a cassette in order to listen to spiritual music.

The request was refused for security reasons. Security in prisons requires that many objects which are harmless on the street be forbidden. Prison officials thought security might be endangered if inmates could make tape recordings inside. Since the inmate's request was, however, only to play tapes and not to record them, security need not be endangered. A cassette player without a recording head was available in the prison. The Director agreed to allow the inmate use of this player, interpreting security rules in the most reasonable way possible.

On the other hand another inmate complained that he was not allowed to make a late night phone call to a radio station in order to request that his favourite tune be played on the radio. I found this complaint unsubstantiated as the officer had acted reasonably in refusing the request.

CS 81-019

You win some, you lose some

An inmate had two problems, one related to his loss of 138 days of earned remission built up during incarceration ("good time"), the second to the addition of nearly four months to his sentence.

The inmate had had his short-term parole revoked. Under prison rules, if a parole is revoked, "good time" earned for previous good behaviour is lost in most circumstances. However, sometimes the revoking of parole is not the inmate's fault. For example, if the inmate is granted a parole to take special training and the training school stops operating, the inmate is not at fault and should not lose "good time". My office and Inspection and Standards both worked on the case and succeeded in showing that this was not a situation in which "good time" should be lost.

Usually, an inmate is informed that if his parole is revoked he will lose "good time" credits. When this inmate accepted short-term parole, he was provided a too-early release date. This error may have led the inmate to believe that in accepting parole he was not placing his "good time" in jeopardy. The Parole Board decided on the basis of administrative fairness to recredit the "good time".

Parole Board later re-examined the process of granting short paroles, including the basis on which good time is lost if parole is revoked, and has clarified its rules.

The inmate's second claim, that concerning the extra four months' sentence, was not substantiated. The inmate had been convicted of escape and being unlawfully at large. The Corrections Branch had the right to add four months to his sentence.

CS 81-020

Inmate owns confiscated cash

An inmate complained that $20 was confiscated while he was in segregation, and the amount was not credited to his institutional account.

Inmates are prohibited from having cash on their persons within the prison, so the inmate was in violation of existing standards. His money was confiscated to be turned over to the Crown. The issue I investigated was whether the prison officials had the authority to confiscate such funds permanently. A review of the relevant regulations led me to the conclusion that they did not.

I therefore recommended the return of the inmate's $20 upon his release from the Correctional Centre, and suggested that the Corrections Branch make clearer guidelines to handle incidents of this sort.

CS 81-021

Chained to their error

While an inmate was being transferred between prisons, his gold chains, which had been in the prison safe, disappeared. The inmate took the problem to Inspection and Standards. After seven months, he wrote to me, complaining that Inspection and Standards had not resolved the complaint. I discovered that Inspection and Standards had investigated, but that because the inmate had signed for his personal effects at the time of transfer and because of some inconsistencies in his account, had concluded that the Corrections Branch was not responsible for his chains.

On examining their file I discovered that the form the inmate had signed referred only generally to the inmate's personal effects and did not prove the inmate had received the gold chains.

I concluded that the available evidence supported the inmate in his claim not to have received the chains. As a result, Inspection and Standards made further inquiry and met with the inmate, who accepted a settlement of $1200 for the lost property.

CS 81-022

Inmate buying time until court communications corrected

An inmate was facing several penalties involving a choice of fines or prison terms. If prison terms were chosen, they could be served concurrently, and the inmate applied in the ordinary way to do so. Because of a communications breakdown between the Corrections Branch and the Courts, the permission to serve concurrent time arrived just prior to his release date and he was faced with a fine of $644.89 before he was allowed to leave.

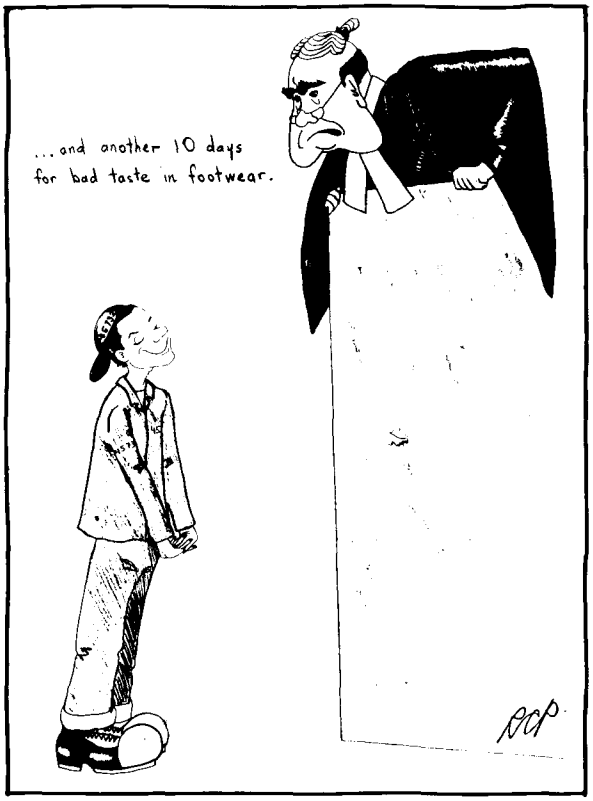
The problem came to my attention when a Correctional Centre guard asked me to help the inmate. I discovered that Inspection and Standards were already investigating. They recommended that the fine be refunded, solving the inmate's problem.

An examination of communication procedures between Corrections and the Courts may prevent similar problems in future.

CS 81-023

Director says pay; lost brogues reappear

An inmate claimed that at the time of his admission to an institution, he had been the proud owner of an expensive pair of brogue shoes. Indeed, he had worn these shoes to a number of subsequent court appearances. However, as he was preparing to leave the institution for yet another court appearance, it was discovered that the shoes were missing. A nondescript pair was provided in their place.



When the inmate wrote my office, he said that he had complained about the loss of the shoes to the Inspection and Standards Division of the Corrections Branch and that nothing had been done. My office discovered that Inspection and Standards had investigated and placed the matter in the hands of the institution's Director. The Director agreed to provide a voucher for $55 to the inmate. Before a voucher was issued, however, the shoes belonging to the inmate were found.

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

Declined, withdrawn, discontinued	119
Resolved: corrected during investigation	52
Substantiated: corrected after recommend.	3
Substantiated but not rectified	2
Not substantiated	36
CLOSED—TOTAL	212
Number of cases open Dec. 31, 1981	71

During 1981, my office dealt with 212 complaints directed against the Ministry of Consumer and Corporate Affairs; 143 of these were against the Rentalsman. As last year, many of these complaints dealt with the difficulty of access to the Rentalsman's services: people can't get in touch with the Rentalsman, and his phones are always busy.

Other complaints are about the long delays complainants encounter when dealing with the Rentalsman. In landlord-tenant disputes, delays are irritating and expensive. If immediate action is not taken, consequences often become increasingly serious. The dilemma in this situation is illustrated by the case "Justice delayed is justice denied"—CS 81-031.

Unless the Rentalsman provides better access and speedier service, landlords and tenants may have to resort to self-help. However, this is difficult because adequate information services are lacking, and because the *Residential Tenancy Act* is written in language that is difficult to understand.

The Rentalsman has assured me that he is making efforts to make his office more efficient. He may require more funds to accomplish this goal.

As was true last year, my working relationship with the Rentalsman is good.

My office had 69 complaints against other branches of the Ministry, namely Consumer Affairs, Corporate Affairs, the Liquor Control and Licensing Branch, and the Liquor Distribution Branch. Although there were some difficulties, the cooperation I received from the Ministry was satisfactory.

CS 81-024

Liquor impropriety

The complainant, a corporation, applied in 1977 to the Liquor Control and Licensing Branch for preclearance for a neighbourhood public house licence for a northern Vancouver Island community. The application was denied, and problems created by the denial were not cleared up until 1981.

The company reapplied in February 1979. It took the Branch until April 14, 1979, to acknowledge the application, and until July 10, 1979, to send an inspector to the community. The inspector met with a number of individuals, including my complainant's competitor; the applicant, my complainant, was not invited to the meeting.

Subsequently, the Branch invited the competitor to apply for preclearance for a neighbourhood public house. The competitor, following this invitation, filed an application on August 1, 1979. The complainant's application was denied on October 16, 1979. The competitor was ultimately granted preclearance.

The complainant then filed an appeal with the Minister of Consumer & Corporate Affairs. This appeal was heard by the Deputy Minister. The Deputy Minister came to the conclusion that the appeal should be allowed and that preclearance should be granted. However, one of the conditions he imposed was that an independent survey be held of the residents within half a mile of the pro-

posed site for the neighbourhood public house. The competitor, who had already been granted preclearance, had not been required to hold such a survey. The complainant prepared for the survey but finally did not complete it. He alleged that there had been a campaign in the community against him, and in any case he considered it unlikely that the local authorities would approve plans for a second neighbourhood public house in the small community.

After investigating, I found the company's complaint was indeed substantiated. The procedures used by the Liquor Control and Licensing Branch in dealing with the complainant's application had results that were unjust and improperly discriminatory; the Branch had acted improperly in informing a prospective competitor of the complainant's application; it acted quite improperly in inviting the complainant's competitor to make an application. In addition, there were unreasonable delays.

The complainant now no longer wished to establish a public house, but rather wanted a licence to serve liquor in a recreational facility furnished with sports equipment. The complainant felt that a minimum seating capacity of 65 was necessary to make this venture viable. The Liquor Control and Licensing Branch was not willing to approve the required seating capacity.

I recommended that the Liquor Control and Licensing Branch either approve the requested licence or compensate the applicant for losses suffered as a consequence of delays and unfair procedures used. The Branch did not accept either recommendation.

I then met with the Minister of Consumer & Corporate Affairs who undertook to review the issues personally. The Minister's involvement led to a very constructive meeting between the complainant and representatives of the Branch. The Branch now agreed to approve the application to serve liquor in the recreational facility; this had been one of my recommendations.

Unfortunately, because of the present economic situation affecting northern Vancouver Island communities and because of the high interest rates, the complainant is no longer able to proceed with his plans to establish a recreational facility.

CS 81-025

Statutory authority for wine policy?

I received a complaint about Liquor Control and Licensing Branch requirements that all licensed dining establishments carry a selection of British Columbia wines.

Stressing that I was not expressing an opinion on the desirability of such a policy, I asked the Branch about its statutory basis. The Branch informed me that it considered the issue a matter of policy, implying that "policy" was not a "matter of administration" and was therefore outside my jurisdiction.

I informed the Branch that my jurisdiction can indeed include matters of policy, and that in any case the issue was one of administration; a public servant, the General Manager of the Branch, was enforcing a policy which, on the surface, appeared to lack statutory authorization.

Further correspondence was exchanged between my office and the Ministry of Consumer and Corporate Affairs. The Ministry persisted in claiming that policy was outside my jurisdiction. The question became the subject of a discussion among Deputy Ministers. Side effects of this controversy began to be felt in other cases pending against various ministries. I felt that the time had come to have the limits of my jurisdiction clarified and confirmed by the Supreme Court of B.C.

However, at this point the Ministry saw fit to provide me with the information I had requested. Its Director of Legal Services informed me that the Ministry was unable to determine exactly how this particular policy had originated. He drew my attention to certain sections of the *Liquor Control and Licensing Act* which, together with the scheme of the Act and the *Liquor Distribution Act*, supposedly provided statutory authority for the policy in question.

I once more examined the provisions of the two above mentioned Acts and concluded that the Liquor Control and Licensing Branch, in requiring licensed dining establishments to carry a selection of British Columbia wines, is acting outside its jurisdiction, and its actions are based on a mistake of law. I recommended to the Branch that it not require licensed dining rooms to serve such wines unless and until statutory authority exists for such a requirement.

The Liquor Control and Licensing Branch then informed me that its own legal sources disagreed with my opinion.

I considered whether I should make the issue the subject of a report to Cabinet and/or to the Legislative Assembly. Considering the nature of the case and the nature of the policy involved, I decided not to devote any further resources to this matter and not to exercise the above mentioned options. However, I still feel that the Liquor Control and Licensing Branch may be acting without statutory authority.

CS 81-026

Liquor store properly sited

When the Branch relocated its liquor store in an interior community, it leased retail space for the new store. A local corporation expressed to me its

suspicion that political considerations at the municipal level had influenced the site selection.

My investigation revealed that the Branch had followed appropriate criteria in selecting the new location. The requirement for retail space had been advertised to the public. A Branch committee examined all offers received and made a recommendation to the General Manager of the Branch. The General Manager acted upon the committee recommendation received. The recommendation was based on appropriate site location, convenient service to residents and tourists, and lease costs. The site selected met all criteria.

I found that the Branch used proper procedures in arriving at its site selection decision and that the complaint was not substantiated.

CS 81-027

Limit on mark-up of liquor

I received a complaint against the Branch concerning the fact that licensed establishments cannot mark up wine by more than 100%.

A regulation made pursuant to the *Liquor Control and Licensing Act* requires that all licensed establishments make available to the public a price list. This list must be approved as to format and pricing formula by the General Manager or his authorized agent. I interpreted this to mean that the General Manager is indeed empowered to determine the price of liquor sold in licensed establishments and to impose a limit on mark-up. I therefore found this complaint unsubstantiated.

CS 81-028

A society's responsibility

A member of a society incorporated under the *Society Act*, having been denied a financial statement by the society, turned for help to the Ministry. Later he complained to me that the Ministry had not helped him.

I am not empowered to investigate societies, but I can investigate Ministries so I discussed the matter with Ministry staff. They informed the offending society that it is obliged by statute to send financial information to members. Further, they offered to provide my complainant with the financial statement he wanted from their own records.

CS 81-029

Long wait for payout

In 1966 the complainants invested approximately $1600 in certificates of a Mortgage Corporation. The funds of the Corporation were frozen by the Superintendent of Brokers in 1968. A Trustee was appointed but he failed to take the necessary steps to complete the payments to the investors. For many years nothing was done until the complainants brought this matter to my attention and I contacted the Superintendent of Brokers. Upon receipt of the complaint the Superintendent of Brokers met with the Trustee of the Company who agreed to make payouts to all the remaining investors. The Superintendent of Brokers undertook to supervise the payout to ensure that it would be completed.

CS 81-030

Promises, promises . . .

A landlord complained that a Rentalsman Officer had failed to keep a promise to send her a decision letter within a specified period of time.

The Rentalsman Officer acknowledged the omission and offered an adequate explanation. Nevertheless, the cause of the further delay should have been explained to the complainant when it became clear that a decision could not be made by the promised date.

I informed the Rentalsman that I had received several complaints about the failure of Rentalsman Officers to return phone calls and mail letters on the dates promised. While I had not investigated each of these complaints, I felt the problem was serious enough to warrant preventive action. I suggested that the Rentalsman issue a reminder to his staff in the hope that this problem would occur less often in the future. In response, a Deputy Rentalsman wrote a memorandum to his staff. This suggested that staff members generally avoid promising to do something by a specified date, but that if they had made such a promise and could not keep it, to let the landlord or tenant know why. The memo also told staff to make an effort to return telephone calls quickly. While this was probably well-intentioned I am not satisfied that this response will necessarily lead to appropriate service to the public.

CS 81-031

Justice delayed is justice denied

Two tenants from different parts of the province complained that delays in the handling of their respective landlords' applications for substantial additional rent increases could cause them financial hardship and considerable inconvenience. Staff at the Rentalsman's office had told the tenants that, because of Rentalsman backlog, a decision on the landlords' applications might not be made until after the effective date of the proposed rent increases. The tenants complained that if the landlords' applications were approved they could not afford to pay the rent and would have to seek other accommodation.

One of the tenants said that since she could not budget for the increase, she felt compelled to give her landlord a notice of termination without waiting for a decision from the Rentalsman's office. The

Rentalsman's office told me that the delays in handling this type of rent increase application could result in a tenant's receiving less than a one-month notice of the amount of rent increase. It was also confirmed that the Rentalsman's office currently had no guidelines with respect to the exercise of its discretion.

The Rentalsman agreed with me that tenants should not have to bear the cost of delays caused by his office's backlog of applications. He was prepared to issue a policy guideline to his staff to ensure that tenants have the proper amount of time to decide whether to stay or go. He also agreed that, for this policy to be effective, disputants and applicants should be fully informed of the policy and advised of the delay they can expect before a decision is made.

CS 81-032

Speedy inspection warming to tenant

A tenant complained that the Rentalsman had failed to respond to his requests for an inspection of his suite.

The tenant had found his suite cold and had been unable to convince his landlord to provide more heat. He applied to the Rentalsman to redirect his rent to pay for a portable heater. A Rentalsman Officer promised to have the premises inspected. After waiting more than four weeks, the tenant complained to me that his premises had not yet been inspected and that his phone calls had not been returned.

We inspected the Rentalsman's file and discussed the matter with a Deputy Rentalsman who explained that because of high caseloads and staff shortages, three-week inspection delays were not unusual. In this case, the file showed that the Rentalsman Officer had in fact requested the inspection of the complainant's suite but the request had not been properly communicated to the staff reponsible for inspections. It was apparent that this was an isolated incident and was not due to any deficiencies in the procedures used.

The complainant's file was referred back to the Rentalsman Officer for completion and an inspection was conducted. A hydrograph machine was installed to measure the suite's temperature and humidity over a 48-hour period.

MINISTRY OF EDUCATION

Declined, withdrawn, discontinued	11
Resolved: corrected during investigation	6
Substantiated: corrected after recommend.	1
Substantiated but not rectified	5
Not substantiated	9
CLOSED—TOTAL	32
Number of cases open Dec. 31, 1981	3

The Ministry of Education has a wide range of responsibilities relating to education and special programs in the schools and institutions of British Columbia. Local school boards set policy and priorities within the framework established by Ministry of Education policy following the *School Act.*

I do not have the authority to investigate public schools, colleges, and boards of school trustees. However, I have found that the Ministry of Education has helped resolve some complaints and in other cases has furnished information which has helped the complainant to understand the problem better and seek a local solution. My staff and I have found the Ministry of Education personnel to be knowledgeable and cooperative.

I have attempted to arrange a meeting with the Minister of Education but unfortunately he has not found it possible to accede to my request. I have pursued with the Minister several complaints received from teachers on probationary appointment who were terminated without the benefit of an impartial review commission. These teachers were concerned that they had not been afforded natural justice and fairness. I have asked the Minister to consider a proposal for changing statutory provisions so that probationary teachers are given similar safeguards to teachers on permanent appointment. I believe, as the Minister does, that it is imperative that competent teachers be placed in the classroom. However, I believe it is regrettable that the Minister apparently has decided that a review commission not be mandatory. In my opinion, such a review procedure need not increase the possibility that an incompetent probationary teacher would be allowed to remain in his or her position.

CS 81-033

Parlez-vous immersion? Non, says school board

I received a number of complaints about education matters that arise where the Ministry creates a policy or guidelines within which programs operate in the schools. In some instances, it is a decision of the local school board whether or not to implement the program in the schools under its jurisdiction; other programs are mandatory. A good number of these complaints concerned French immersion classes for elementary school students.

Some parents aimed their complaints at the Ministry itself, arguing that since one fully French program, the Cadre de Francais, is available only to children of francophone parents, there is discrimination against anglophone children. It is provincial government policy that the French population have the right to be educated in their first language. Costs associated with the program are the

responsibility of the Ministry. It is my opinion that the policy regarding the Programme-Cadre de Francais is not improperly discriminatory as its existence is founded on the laudable principle that children from homes where parents use either of the two official languages of our country may be educated in that language.

Other parents aimed their complaints at local boards of trustees, saying that they had not considered the wishes of parents in deciding not to implement immersion programs.

Early French Immersion and Late French Immersion programs of the Ministry are available to children of any cultural origin but at this time, are implemented only if the local school board chooses to do so. Extra costs attributable to these immersion programs must be borne by the school district and therefore are phased in when an affirmative decision has been made at the local level. The Ministry has developed the curriculum within its policy and guidelines for French education of anglophone children and it is a local option whether that curriculum will be implemented.

At the moment, my jurisdiction extends only to government ministries, crown corporations, boards and agencies in which the majority of directors are appointed by Cabinet or a Minister, or are in some way responsible to government. While this enables me to inquire into decisions of the Ministry of Education, it does not allow me to comment on the actions and decisions made by a board of school trustees, nor on whether parents' wishes should be taken into account when decisions are made against the implementation of a French immersion program.

CS 81-034

Fairness for teachers

A teacher was disturbed about the decision by the Board of Trustees of his school district to transfer him from a senior secondary to a junior secondary school. He formally appealed his transfer to the Board of Trustees but was advised that the Board had resolved to proceed with his transfer; no reasons for this decision were given.

The *School Act* states that a teacher may appeal to the Minister of Education against a transfer, and the Minister may review the case and then make a decision which is final and binding. This teacher requested such an appeal. A representative of the Minister asked the teacher if he had any additional reasons why his transfer should not take place. A letter was also sent to the Board of Trustees and asking for reasons for the transfer. Less than a week later, the teacher was advised that the Minister had decided to sustain the transfer.

The focus of my investigation lay with the procedures used in the "reviewing" of the transfer. Impartiality and fairness should be observed in the process being undertaken by the Minister, who is acting more or less as a judge in a conflict vital to the complainant. Fairness often requires that each party in a dispute have a chance to hear the argument the other is making, and have a chance to rebut it. In this case, neither the teacher nor the Board of Trustees had the opportunity to be aware of the position presented by the other.

As a result of my intervention, the Minister agreed to review again the teacher's transfer and as a part of that process he agreed that both the Board of Trustees and the teacher will receive a copy of the submission by the other and each will then have the opportunity to refute, alter or agree with the points of the other submission. Following a full review by the Minister, a response with reasons for the final decision will be given to both parties. The Minister has agreed that this procedure will apply in all future transfer reviews carried out by him.

It is my opinion that the inclusion of these procedures will reflect the basic principles of natural justice and fairness in such situations.

CS 81-035

Parent-school conflict

One parent complained about administration and policies at her child's school, but it soon appeared that many other parents had similar concerns, and that the parents had been unsuccessful at starting discussions that might have resolved the problems.

A problem of special concern was that school administrators had, without informing parents, required some students to sign a 'contract' which stated rules for behaviour. Violation of the 'contract' had resulted in the expulsion of one pupil. Several others had dropped out as a result of dissatisfaction with methods used by teachers, principal, and School Board.

The parents wrote to the Minister of Education and asked for an inquiry. The Minister replied that he believed that parents and school had met and resolved the problem; the parents did not believe this had happened.

The Ombudsman does not have jurisdiction to investigate school boards and their employees. The section of the *Ombudsman Act* providing such authority remains unproclaimed. Therefore, my investigation focused on the actions of the Ministry. I encouraged Ministry personnel to keep watch on the situation. They discussed the matter on several occasions with the superintendent.

Eventually, a committee composed of parents, teachers, administrators and trustees was formed and dialogue began. It appears that the use of student contracts has now been stopped and other techniques for dealing with questionable behaviour, acceptable to parents and students, are being implemented by school administration.

The mediation role played by the Ministry has had the desired result of bringing about an improvement in communication and an attitude of trust.

CS 81-036

Does the federal hand know what the provincial hand is doing?

A young woman wished to take training which would help her in working with children. Early in 1981, she went to a Canada Employment Centre (CEC) counsellor and made application for sponsorship through CEC. Two months later, she was told by her counsellor that she was fourth on the list to be placed in the course of her choice. The woman understood this to mean that she was assured of a space. This was very attractive to her. Since her course was in a field where CEC predicted critical skill shortages, she would be given a small living allowance, have her tuition paid and be eligible for UIC benefits.

However, while she waited for her course to start the aid fell through. The Provincial Government, through the Ministry, has the right to set the fees to be paid by CEC. For the fall term in 1981, the Ministry substantially increased the fees in order to reflect the actual costs of educating each student. The Federal Government did not allocate CEC extra dollars. In order to meet these new constraints, CEC dropped its sponsorship for the course the complainant was planning to take. This gave rise to the complaint. My focus, because of the limits of my authority, was on the role of the provincial Ministry of Education.

I found that the actions taken by the Ministry were within the framework of the Federal-Provincial agreement. While the result was disappointing from the student's point of view, it did not come about through any breach by the Ministry of its contractual obligations.

CEC told us that no person should assume that a space is assured until final confirmation is given.

This example clearly points out how the decisions of one level of government can affect the services of another level. Unfortunately, the cumulative effect may adversely affect members of the public, who are often not informed of decisions.

CS 81-037

A marked improvement

A marker had been employed to grade papers written by students of the Correspondence Branch of the Ministry of Education. His pay was based on the number of papers marked. He was what is called a casual worker and as such was not a public servant covered by Public Service contracts.

At issue was whether the marker was entitled to holiday pay. If he was an "employee", legislation required that he receive holiday pay. The Ministry thought that the fee-for-service basis on which he was paid showed that he was not an employee but a self-employed individual. I was able to point out to the Ministry that it had deducted income tax and unemployment insurance premiums from the complainant's pay, and therefore, in my opinion, he was an employee and entitled to vacation pay.

The Ministry, upon obtaining legal advice, issued a cheque for $379.91 to the complainant and also volunteered to search its records and determine whether other course markers in similar circumstances should also receive vacation pay.

CS 81-038

Regulation on probationary teachers unfair

A teacher was appointed to the staff of an elementary school in September 1978, and in May 1979, received notification that he was to be placed on probationary appointment. In February 1980, his employment was terminated. The termination was based on assessments carried out by his supervisors but which the teacher believed were written in an unfair manner and based on incomplete information.

The teacher was granted an interview with the School Board, the employers of the supervisors who had made the allegedly unfair report on the teacher's conduct. The Board upheld the termination of the probationary teacher's employment with the school district.

Through the *School Act* and regulations, a teacher who is terminated while on probationary appointment does not have the right to request that an impartial review committee be established by the Minister of Education. There is no requirement that written reasons be given when a teacher is either placed on probationary appointment, or terminated, and therefore such a person would have little remedy.

Some teachers with excellent records from former school districts have been harshly treated by districts to which they move. A teacher hired with the expectation of a continuing appointment may be arbitrarily reclassified as a probationary teacher and then, later, terminated. The reclassification is used as a way of avoiding *School Act* requirements for hearings.

It is my belief that probationary teachers should be allowed the same statutory rights of review as teachers on a continuing contract so that probationary teachers' appointments cannot be arbitrarily terminated. However, the Ministry of Education has not effected changes which would ensure at least this minimum of natural justice and fairness and therefore the complaints which I have received could not be rectified.

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

Declined, withdrawn, discontinued	1
Resolved: corrected during investigation	5
Substantiated: corrected after recommend.	2
Substantiated but not rectified	0
Not substantiated	3
CLOSED—TOTAL	11
Number of cases open Dec. 31, 1981	9

CS 81-039

Holes in the seamless web of the law

A placer miner lodged a formal complaint with the Chief Gold Commissioner concerning two placer mining leases held by another miner, which he felt should be cancelled. The Commissioner set a date for a formal hearing on the matter under s.50 of the *Mineral Act*, but later cancelled the hearing and informed the miner that s.50 of the Act did not apply to matters involving placer leases. The miner did not understand the reason for the cancellation, and despite many contacts, was unable to obtain a comprehensible reason from the Ministry. Since a considerable period had elapsed since his original complaint, he was afraid that any further delay might legally preclude him from taking further action. He therefore brought his problem to me.

My investigation showed that placer leases were affected by two separate statutes, the *Mining (Placer) Act* and the *Mineral Act*. Until 1980 the Ministry had relied upon the hearing procedure in the *Mineral Act* to handle complaints involving placer leases, but a legal opinion had then been provided to the Chief Gold Commissioner that this was a misuse of the legislation. In effect there was no method provided by law for dealing with disputes concerning placer leases. The Ministry intended to rectify this situation by introducing appropriate amendments to the legislation as soon as possible. If the amendments were made retroactive, the complainant's objections could be heard at some time in the future.

Since the resolution of this matter must necessarily await the 1982 session of the Legislative Assembly, when the "seamless web of the law" will presumably be repaired, I have informed my complainant of my findings, and have ended my investigation.

CS 81-040

Major mistreatment of miner

The operator of a placer mine complained that his mine had been shut down unfairly. He was informed by the local inspector of mines that several complaints had been received regarding the muddiness of the creek running past his operation, and as a result he was informed that the operations could not be resumed until ponding and water clarification was adequate. He was also told that a reclamation bond would be required from him before he could reopen.

The complainant had been afforded no opportunity by the Ministry to answer the "complaints" against him. In fact, investigation showed that only one complaint had ever been received; a neighbour had stated that he had seen muddiness in the creek the previous fall. Regular inspections of the operation had been conducted by Ministry staff, and the fall inspection report had noted that the operation was going well and that no reclamation permit was required. The complaint that the Ministry had used unfair procedures was therefore substantiated.

The mine operator also was concerned about the length of time taken by the Ministry to approve his permit application. This aspect of the complaint was substantiated as well, as the mine operator had applied for a permit in May but did not receive his permit until July.

On the basis of my findings, I recommended that the Ministry apologize to the complainant for shutting down his operation without a Ministry-conducted inspection, and that where new forms or bonds are required for the first time, notice of these requirements be given to the party well before the start of the mining season. Lastly, I recommended a procedure to minimize the time required for obtaining permits during the mining season.

The Ministry fully implemented my recommendations and sent the complainant a letter of apology. As well, a directive was issued by the Chief Inspector of Mines to all inspectors and resident engineers in the Ministry, implementing my recommendations.

MINISTRY OF ENVIRONMENT

(The figures below include complaints against the Pollution Control and Pesticide Control Appeal Boards.)

Declined, withdrawn, discontinued	41
Resolved: corrected during investigation	18
Substantiated: corrected after recommend.	85
Substantiated but not rectified	60
Not substantiated	12
CLOSED—TOTAL	216
Number of cases open Dec. 31, 1981	46

The 1981 figures for complaints involving this Ministry are dominated by the large number related to "The Garibaldi Case" which was the subject of my first Special Report to the Legislative Assembly early in 1981. Because I closed that matter after finding that nearly all of these 153 Garibaldi complaints were substantiated, the bald statistics show that almost three-quarters of the complaints against the Ministry of Environment were substantiated.

However, in order to maintain some kind of perspective I feel I should provide a second list for this Ministry, **with the Garibaldi cases excluded**, and my comments below are based on this list:

Declined, withdrawn, discontinued	30
Resolved: corrected during investigation	16
Substantiated: corrected after recommend.	2
Substantiated but not rectified	1
Not substantiated	11
CLOSED—TOTAL	60
Number of cases open Dec. 31, 1981	46

It can be seen that much the same number of investigations was closed in 1981 and in 1980, with a slightly higher proportion of the 1981 closings being resolved by the Ministry (i.e., before I had reached any final conclusions) or being found "not substantiated".

Although I did not discern any trend of complaints directed towards one specific area of this Ministry's responsibilities, there is one word which probably arose in a considerable proportion of the complaints during 1981: flooding. Following disastrous floods in various parts of the Province in December 1980 and in 1981, people complained about the procedural guidelines, the delays, and the basic policy involved with flood relief (Provincial Emergency Program). Others complained about the inadequate funding of the River Protection Assistance Program (Water Management Branch), which offers government/citizen cost-sharing on preventive measures such as the building of dykes and strengthening of river banks. Yet other complainants were unhappy about the way the Ministry handled its responsibilities under s.82 (1) of the *Land Title Act*, by which a restrictive covenant may be required prior to subdivision approval of land in a flood plain.

Even without my elaborating on development patterns in flood plains, or on the climatic conditions which regularly bring enormous precipitation to some parts of the Province, I feel it is well known that many of our citizens live in the shadow of flood threats which are more severe than those facing most other Canadians. It is equally clear to me that under the present legislation people can—and frequently do—buy properties whose Certificates of Title give no indication that they lie in flood plains. Purchasers are often unaware either of the likelihood of flooding or of the possible need for restrictive covenants should they wish later to subdivide. Hence I receive complaints from people who are convinced (even if I cannot substantiate their complaints against administrative actions) that they are the innocent victims of traps and shortcomings in "the system". The key phrase seems to be "If only I'd known that before!".

I believe this situation provides much room for initiative on the part of this Ministry. Residents need to know how to prevent or minimize flooding. They also need to know what government help is available if a flood does occur. If residents had this information there might be several benefits; I would receive fewer complaints, government would need to pay less disaster compensation, and citizens would experience less despair, distress and financial hardship.

In my last Annual Report I mentioned some public concern about pesticide use permits and the decisions of the Pesticide Control Appeal Board. Individuals and groups contacted me again about these matters in 1981. In such cases, I often must explain that I cannot become involved in technological or scientific arguments. The use of a herbicide or other chemical substance on a large tract of land inevitably involves some risks or adverse effects alongside the anticipated benefits. The comparison of such risks and benefits is essentially a scientific exercise. I do not foresee circumstances in which my involvement would be useful in making an assessment of this kind. However, it is my role to investigate procedures and administrative methods. I might, for example, verify whether Ministry officials have considered all relevant information and insisted on necessary precautions before issuing a permit, or whether the Board has observed procedural fairness in hearing objections to a permit.

The complaints I received did lead me to feel that the Board's procedures could be improved. For instance, some complainants pointed out that the Board never gave reasons for its decisions, so that on the few occasions that objections were successful it was impossible to know what factor had been the crucial one. Others complained that since transcripts of the hearings were never made, it was impossible for them to demonstrate later their case that the procedures were slanted in favour of the permit holder.

Early in 1981 this Ministry was preparing the statute and the regulations for the *Environment Management Act*, under which an Environmental Appeal Board would be established to take over the functions of both the Pollution Control Board and the Pesticide Control Appeal Board. My staff

therefore met with a senior official of the Ministry and with the Ministry's solicitor, to go over all the procedural complaints that had arisen, and I was pleased to see that the recent Environmental Appeal Board Procedure Regulation had addressed some of the problems which were identified.

Finally, there remains the problem of the Garibaldi complaints. I believe my original investigation uncovered all the relevant facts, and these were included in my Special Report. Having gone the full distance permitted by the *Ombudsman Act*, I was obliged to close these cases in 1981. To the best of my knowledge at the time of writing, many of them have not yet been rectified.

CS 81-041

Impossible deadline

The owner of a 10-acre property beside a creek complained that the Ministry had ordered her to clean up a mess for which she was not responsible, and had set an impossible deadline for completion of the work.

Investigation revealed that the complainant had made an oral agreement with a contractor, by which the contractor removed 30,000 cubic yards of gravel from the property in order to provide fill for another job he was doing. However, after he removed the gravel, the contractor failed to complete the job. Winter rains turned the partly-excavated property into a "moonscape", and much mud was washed into the nearby creek. In an effort to put pressure on the contractor the complainant contacted a number of agencies, including her Regional District office. That office contacted the Ministry of Environment, which sent an engineer to inspect the site. Noting the condition of the property, the contamination of the creek, and the fact that a downstream neighbour used the creek water for domestic purposes, the official ordered my complainant to clean up the creek within six weeks, and to take steps to prevent further contamination.

The complainant felt that the Ministry should pursue not her but the contractor who had caused the problem. She could not afford the $10,000 it would cost to restore the property. Further, the ground was soaked and would not support the heavy machinery needed for the job. The complainant felt sure the Ministry would fine or otherwise punish her if she did not meet the deadline.

We discussed the problem with all parties involved except the elusive contractor. The complainant finally accepted that it was reasonable for the Ministry to address its order to her as the owner of the property, and not to become involved in the dispute between her and the contractor. The Ministry, recognizing her problems, withdrew its deadline and agreed that the work could be completed later in the year, when weather and ground conditions were suitable. Also, it clarified that it was requiring only about $500 worth of work, just sufficient to prevent further contamination of the stream.

The contractor had used the gravel he had removed on a job he was doing for the federal government. In an attempt to help the complainant further, my investigator contacted federal government officials, to see whether the contractor had been required to post a labour and materials bond which might be used to repay the complainant. A bond had been posted, but unfortunately the time limit for claims had expired months earlier, so the dispute with the contractor remained. However, the part of the dispute which was within my jurisdiction, that involving the impossible deadline imposed by the Ministry, was resolved.

CS 81-042

Water pressures

A single parent contacted my office with two complaints. The Ministry of Environment was, she said, delaying issuing her with a water licence, thus depriving her and her family of a water supply. The Ministry of Human Resources was, she felt, harassing her in an attempt to prove that she was incapable of caring for her son.

As lack of water was the more urgent concern, I decided to focus my investigation on this matter first. The water problem hinged on the issue of access to her water supply as the souce of the water was not on the complainant's land, but on land owned by MacMillan Bloedel and leased by a neighbour. The neighbour was denying the complainant the right to cross the lease to reach the water supply. Therefore, simply issuing a water licence would not have provided her with access. Consequently, while arranging for the licence to be processed quickly, my office informally approached MacMillan Bloedel in an attempt to resolve the problem. As a result of their cooperation, she was issued a formal access permit. The complainant now has a clear legal right to the water.

With the water problem resolved, the household pressures that were aggravated by lack of water were relieved and the complainant decided not to pursue her complaint with the Ministry of Human Resources.

Resolving this complaint involved the voluntary cooperation of a range of authorities—from the R.C.M.P. to the school board to MacMillan Bloedel. Their recognition that the complainant's difficulties with her water line warranted their time and attention is commendable.

CS 81-043

Duty to inform

Every spring, the river next to a complainant's property burst its banks and damaged his property. The property owner applied to the Ministry of Environment for financial help in controlling the river. Under the River Protection Assistance Program, Ministry staff may approve government funding of up to 75% of the cost of works needed to prevent damage caused by a flooding river. There is, however, a long waiting list, and the complainant was told that his project was eligible but could not be funded immediately.

A year and another flood later, the complainant decided he must go ahead on his own. He assumed he would eventually be reimbursed 75% of his costs, but apparently did not check this assumption with the Ministry. In fact, the Ministry had a policy against sharing in projects already completed and assumed the complainant was aware of this. The property owner complained to me that Ministry officials should have made this policy clear.

I concluded that both parties had acted upon unreasonable assumptions. It seemed to me that the complainant ought to have first obtained a commitment from the Ministry that he would be subsequently reimbursed if he went ahead on his own. Similarly, I concluded that Ministry officials acted unreasonably in assuming that the complainant was aware that if he went ahead on his own, he would not be subsequently reimbursed. I appreciate that it can be argued that it is not the responsibility of Ministry officials to ensure that members of the public are aware of all relevant information so that they may conduct their affairs accordingly.

However, it is my view that when a public servant has information that he knows is needed by a member of the public and is contacted by that member of the public, the public servant should provide that information.

In this case, it appeared that the works which the complainant had constructed were not of a sufficient quality to provide long-term protection from flooding. I therefore recommended that the Ministry either pay half of the 75% which they would have ordinarily contributed to the complainant's cost of the works, or pay the entire cost of bringing the works up to the necessary standard in order to ensure its durability. Although the Ministry did not agree with my conclusion that Ministry officials had acted upon unreasonable assumptions, the Ministry did agree to accept my second recommendation, and I thereby considered the complaint rectified.

CS 81-044

Clean-up

The complainant lives near a mill in the northern interior of the province. The mill uses a beehive burner to get rid of wood waste. The complainant was concerned that waste material around the burner and prevailing winds created a serious fire hazard to his home, workshop and property.

I notified the regional office of the Ministry of Environment. The next day, the mill was issued an order under the *Pollution Control Act* to clean up the area and provide sufficient cover material near the burner. The order was not complied with and the mill was held in contravention of the *Pollution Control Act*. The Ministry, recognizing the seriousness of the situation, then met with regional Crown Counsel to discuss bringing legal action against the company.

As the Ministry took the steps provided by the legislation for the investigation and resolution of this matter, I discontinued my investigation. I found the regional staff cooperative and sympathetic in a situation where the threat of a fire was a vital concern to the complainant.

CS 81-045

Brewer's sewer worries neighbour

A homeowner became worried when he was told that a nearby brewery had received approval to construct a storm sewer on an easement which crossed his property, to a river behind. He had heard that the brewery would be able to discharge warm water or industrial waste into the sewer, and he was concerned about the potential environmental effects, such as enhanced algal growth in the river. Also, he was afraid that construction of the sewer might increase the likelihood of flooding on his land. He felt the government should not give the necessary approvals for this sewer until his concerns were addressed, but he was uncertain how he should proceed.

I found that the brewery's pollution control permit allowed the discharge only of uncontaminated cooling water into the new storm sewer, which would flow into the river where the brewery's discharge would be diluted about 100 times. This made it unlikely that any significant water temperature rise or algal growth would result. The discharge of any other industrial waste by the brewery would contravene the *Pollution Control Act*. These and other facts were explained to the complainant by Ministry officials and by my investigator. The complainant was satisfied by the explanations, and agreed that he would contact the Ministry immediately if he had reason to believe improper discharges were being made into the new sewer.

CS 81-046

Garbage in, garbage out

A man complained to my office about the manner in which his application to operate a landfill site had been treated by the Ministry of Environment and the Pollution Control Board. He said the Ministry's Waste Management Branch had taken into consideration irrelevant factors when evaluating his application, and that the Pollution Control Board had delayed unduly in deciding on his appeal of the Branch's decision, and had finally issued an order which the Branch could not or would not implement.

The man and his partner had applied for a permit in June of 1979, and were turned down in September of the same year. The Director of Pollution Control stated that the application was being rejected because of technical problems associated with the site.

My complainant then appealed the Director's decision to the Pollution Control Board. The appeal was heard in December 1979, and the resulting order was issued in September 1980. The Board ordered the Director to accept an amended application, but the Director refused on the grounds that he had no legal authority to do so. Neither the Director nor the Board held public hearings into the matter, although there were 95 objectors to the application, some of whom wanted to present conflicting technical information.

My investigation revealed that although the Director of Pollution Control had cited technical reasons for rejecting the application, other factors were influential in the decision. These other factors included representations made by local and provincial elected representatives, doubts about the cooperativeness of the applicant, and the vigour of local protests.

I also found that the Pollution Control Board had failed to provide the applicant with file documentation prior to the appeal, had delayed unreasonably in issuing its order, and had issued an order which I believe to be contrary to law. I found that both the Director and the Board had erred in not holding a public hearing into the matter, and that through this failure both the applicant and the objectors were denied adequate opportunity to know and to respond to the other parties' arguments.

The result was a situation in which both applicant and objectors were placed in limbo, with neither party given certainty that the landfill application would or would not ultimately be approved. To remedy this situation I recommended that the Pollution Control Board consider and properly determine the appeal, and that a public hearing be held as part of the Board's consideration of the matter. I also recommended that either the Ministry or the Board incur the costs of the parties involved in the hearing. This recommendation was accepted, and the Board heard the appeal in a public hearing on June 25-26, 1981. On June 29, 1981 the Board issued its decision denying the appeal and upholding the Director's September 1979 decision.

My concern in this matter was not the issue of whether or not the site in question was suitable for a landfill operation, but rather that fair administrative procedures be followed in arriving at a decision on the application. I am satisfied that the holding of a public hearing resulted in a clarification of some matters, but I was not satisfied with the general administrative procedures followed by the Pollution Control Board. The Board at that point was being replaced by the new Environmental Appeal Board, and I am monitoring the development of procedures by the new Board.

CS 81-047

Inspecting pesticide permits

The complainant, an environmental group, was concerned that the Pesticide Control Appeal Board had upheld a permit for use of 2,4-D on a tract of forest land. The grounds upon which they complained of this decision were twofold. First, there appeared to be a discrepancy between the amount of 2,4-D applied for and granted, and the amount accounted for in the applicant's treatment plan and map. Secondly, the applicant had allegedly failed to comply with some of the conditions outlined in the same permit during the previous year's pesticide treatment period.

My investigation revealed that while the applicant (a large forest products corporation) had been granted permission to treat 750 hectares over a three-year period, their treatment plans accounted for application of pesticide to only 498 hectares. In response to this finding the Pesticide Control Branch amended the permit and notified the corporation that the total area to be treated under the permit would be 498 hectares. Furthermore, I found that the following two conditions of the permit had been violated:

Condition 2: That the contractor hired to carry out the project possess a current British Columbia Pest Control Service Licence.

Condition 6: That the effective date of this permit is March 26, 1981, and that the project be carried out within the period June 1 to September 15 in each of the years 1981, 1982 and 1983.

As a result of these findings, the Pesticide Control Branch suspended this permit. In addition, my investigation has had a significant impact on the Ministry in that it has prompted the Pesticide Control Branch to make a number of changes in its procedures which are outlined as follows:

1. Licences pertaining to various permits will be placed in a separate file to verify that the licence is valid during the period that the permit is in effect.
2. If the permit is for a number of years, the validity of the licence will be verified for each effective period of the permit.
3. If the licence is found to be invalid during the effective period of a permit, the permit will be automatically revoked by headquarters.
4. The following guidelines for inspecting a pesticide permit site have been inserted into the Ministry's policy and procedure manual. An inspector of the Branch as defined by the *Pesticide Control Act,* will endeavour to verify the following points when inspecting a permit site, either before, during or after treatment:
   a. date of inspection
   b. permitholder's name & address
   c. permit number
   d. name of employee contracted & certificate number
   e. date & time of pesticide use
   f. location of permit area
   g. total treatment area
   h. pesticide and its registration number under the Pest Control Products Act (Canada)
   i. rate of application & method of application
   j. target pest species
   k. the prevailing meteorological conditions, including temperature, precipitation and approximate velocity and direction of the wind
   l. special problems unique to the target area & application equipment
   m. any other relevant information such as proximity of area to domestic water supplies or fish-bearing waters

In my view, these steps constitute an acceptable response. I found the Ministry staff very cooperative in resolving this matter and interested in making improvements in its procedures which will serve to improve internal audits on permits and thereby ensure that in future, permits are utilized exactly as specified.

This case was technically closed in early 1982. It is included here as an exception to the general rule because of its general information value.

MINISTRY OF FINANCE

Declined, withdrawn, discontinued	19
Resolved: corrected during investigation	9
Substantiated: corrected after recommend.	2
Substantiated but not rectified	0
Not substantiated	17
CLOSED—TOTAL	47
Number of cases open Dec. 31, 1981	24

The Ministry of Finance is responsible for the administration of the financial affairs of the government and the management of public revenues and expenditures. As was true in 1980, the complaints I received about the Ministry in 1981 primarily involved the Consumer Taxation Branch and the Real Property Taxation Branch. The concentration of complaints in these areas of the Ministry probably stems from the fact that the taxation statutes which these branches administer directly affect the public.

The Consumer Taxation Branch administers, among other statutes, the *Social Services Tax Act.* Complaints for the most part concern the application of the charging provisions or exemptions under this Act. Complaints about the Real Property Taxation Branch involve questions about eligibility for home owner grants and penalties for late payment of property taxes.

Most of the complaints I have received seem to involve disputes over whether the facts of an individual case fall within or outside a given statutory provision. However, an area of general concern has emerged. It involves the procedures used in the forfeiture of land to the Crown for the nonpayment of property taxes and the relief available once forfeiture has occurred.

Ministry staff continue to be cooperative and responsive to requests from my office.

CS 81-048

Double tax is hardship, Cabinet agrees

A newly-formed paving company objected to paying sales tax twice, once when it purchased a trailer, and again when it leased the same vehicle back from a finance company.

Because the *Social Service Tax Act* defines "sale" to include lease arrangements, the Ministry was allowed to collect sales tax on the trailer twice. In this case, the complainant made the purchase only because he was unable to arrange a lease; only a month later, he succeeded in transferring the trailer to the finance company and leasing it back. This is probably not the situation the definition of "sale" was intended to cover.

In my opinion, the company had a valid complaint. Although there are no statutory provisions for the return of taxes paid in this situation, the *Financial Administration Act* allows the Cabinet to remit a tax in order to avoid public inconvenience, hardship or injustice to individuals. This provision is used very infrequently. The Ministry is reluctant to amend the statute to provide for repayment as that may allow abuse of the tax system.

I recommended that the Ministry apply to Cabinet so the tax paid on the lease transaction could be refunded. The Ministry accepted my recommendation, and Cabinet approved a refund.

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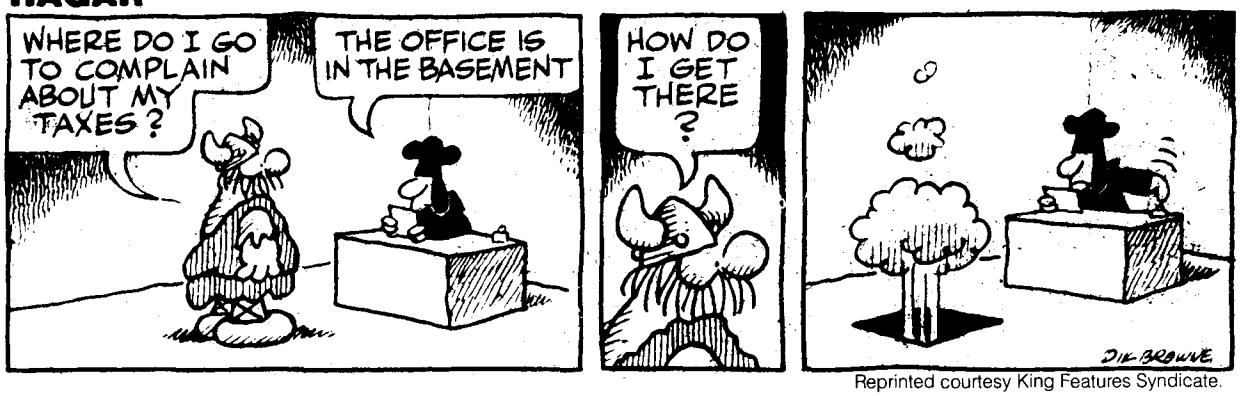

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CS 81-049

Ministry does its best for religious objector

An employee of the Ministry of Finance was dismissed from the public service because her religious convictions forbade her joining the B.C. Government Employees Union. The *Public Service Labour Relations Act* makes union membership a condition of employment.

It is possible for a person with a religious objection to union membership to seek an exemption from membership, and to authorize payment to the union of money equivalent to the union dues. The complainant successfully applied to the Labour Relations Board for an exemption from membership. However, the complainant was unwilling to authorize payment to the union, and the legislation does not allow exemption from this requirement. Although an officer of the Ministry made sure the employee understood that if she refused she might lose her job, she could not authorize payment because of religious scruples. As a result, the Ministry had no choice but to end her employment.

The Ministry made further efforts to help the complainant. It looked unsuccessfully for a job for which union membership was not required. Further, she was given several short-term positions for which union membership was not necessary, with the hope that this action would give her time to find a new job outside the public service.

I did not find that this complaint against the Ministry was substantiated.

CS 81-050

Tax tangle

An individual complained to me that his 1981 property tax notice had shown 1980 taxes in arrears. He stated that he had never been advised by the Surveyor of Taxes in 1980 that any taxes were owing.

I learned that before the complainant bought the property, an error had occurred. In registering the property, the mortgage holder, a lending institution, had switched the legal description of the property with another on which it also held a mortgage. The registration error went undetected until early 1980 when one mortgage was discharged on the sale of the property to the complainant. The lending institution agreed to notify the Surveyor of Taxes of the mistake, but did not.

The result was that both the lending institution and the complainant's mortgagee forwarded 1980 tax payments for the same property. The taxes on the second property were not paid at all. The Surveyor of Taxes returned one of the payments as an overpayment. When, some time after this, the Surveyor of Taxes was notified of and corrected the original error, the arrears and penalties surfaced as owing against the complainant's property.

After following the tangled course of events, the first lending institution agreed to accept responsibility for the problem. The complainant withdrew his complaint against the Surveyor of Taxes.

CS 81-051

A house or a home?

An individual applied for a homeowner's grant on property he owned. In addition to owning this property, he also rented an apartment close to his place of work. He was denied the grant by the Surveyor of Taxes because it appeared, given the use of the apartment, that the property in question was not his principal residence.

As the Surveyor of Taxes suggested, the homeowner submitted a statutory declaration stating that the property was in fact his permanent residence and that he resided there for "by far the greater part of the year". The Surveyor of Taxes, however, asked that he fill in and have notarized a form outlining in more detail the number of days he spent in each location. The complainant refused; the Surveyor of Taxes continued to insist. At this point the individual complained to me.

I found that the complainant had already submitted an affidavit, and had perhaps not been told to include the more detailed information. When I pointed this out to the Surveyor's staff, they agreed to meet the complainant and hear his evidence,

rather than insisting on a further affidavit. This flexible approach satisfied the complainant, whose grant was then approved.

CS 81-052

Absence makes tax collector no fonder

An individual complained to me that he had been charged a penalty for the late payment of his property taxes. He stated that he fished commercially in the summer and only returned to his home port when he had a full catch. Normally, this was June or July, but that year the fishing had been poor and he had not returned until August. He paid his taxes as soon as he returned.

The property tax notice sent to taxpayers each year states that a penalty will be charged if taxes owing are not paid by the end of July. The complainant was not a new property owner and he had been in contact with his family during the time he had been away. In these circumstances, I did not think it unreasonable to expect the taxpayer to arrange his affairs so that his taxes were paid on time.

CS 81-053

Tax rule catches fisherman's motor

A sportsman complained to me that he was being billed for social services tax that he did not owe. He had bought an outboard motor some three years earlier, and had not paid tax at that time. He believed the salesman had said his outboard motor was not subject to tax.

Before the complainant wrote to us, social services tax collectors had tried on three occasions to collect from him. At one point, they had even started formal debt-collection proceedings. Recently, he had been notified once more that he owed $118.23.

When I investigated, I could not support the complainant's stand. Clearly, his outboard motor was subject to tax. Social Services Tax Branch records did not suggest the salesman had said that the purchase was tax-free. I told the complainant that according to the *Social Services Tax Act* he still owed $118.23.

CS 81-054

House on lake is home, taxman grants

A family moved to their lake resort home in mid-1978 and lived there until the end of 1979. The wife (co-owner of the property with her husband) phoned to the Victoria office of the Surveyor of Taxes in April 1979 to inquire about eligibility for a Home Owner Grant. She was told that the house would not be eligible for a grant and so did not apply for a grant for the year 1978. However, she applied for the year 1979. The Surveyor of Taxes denied the application. The home owner complained to us that the Surveyor of Taxes had unreasonably refused the application.

On investigation, I discovered that the Surveyor of Taxes had assumed that lake houses are necessarily summer houses, not permanent residences. I succeeded in convincing him that the assumption was wrong in this case. The Surveyor of Taxes then reconsidered the rejection of the grant for both the years. Ultimately he awarded the grant for each year. Thus the family received their lawful entitlement.

CS 81-055

Timber tax

An individual complained that several years earlier he had been improperly assessed logging tax on the sale of three parcels of land. The appeal period had now passed. I discovered that payment of tax was indeed required, and concentrated on whether the assessment had been fairly done.

When land with timber is sold, vendor and purchaser usually state what portion of the price is for the land and what portion for the timber. As they had not done so in this case, the Ministry had done its own apportionment, using a fair market-value formula.

On being notified that I had received the complaint, the Ministry reviewed the assessment and found errors, including the use of timber market values for the wrong year. The Ministry corrected this error and made a refund of $3,106. Because this reassessment was made, the complainant's right to question other features of the assessment revived. The *Logging Tax Act* now gave him appeal mechanisms including a right of review by the courts, and I discontinued my investigation.

MINISTRY OF FORESTS

Declined, withdrawn, discontinued	17
Resolved: corrected during investigation	6
Substantiated: corrected after recommend.	2
Substantiated but not rectified	0
Not substantiated	24
CLOSED—TOTAL	49
Number of cases open Dec. 31, 1981	35

In my last Annual Report I was able to note that despite its size and importance, I had received relatively few complaints about the Ministry of Forests. During the first fifteen months after my office opened, I closed 27 complaints pertaining to the Ministry. This year I completed 49, and carried 35 more forward into 1982. Thus the number of complaints investigated and closed has almost doubled, and the indications are that there will be a further increase in 1982.

There are a number of possible explanations for this increase. It may be that more people involved in forestry matters are becoming aware of the existence of my office, it may be that they have been given more cause for complaint, or it may be that the Ministry's public involvement program has raised public expectations and awareness. I am not concerned about this increase. I would emphasize that the number is still not high given the large number of people whose lives are in significant ways touched by the Ministry of Forests.

One important trend has emerged: almost a third of the complaints closed in 1981 pertain to public input. In some cases the complainant expressed the need for some means of providing public comment on Ministry plans. In other cases complaints concerned lack of public information or dissatisfaction with the available public input process.

The Ministry of Forests is one of the few Ministries to have initiated an approach to planning and management which includes a formal mechanism for public input. The public involvement program is a new one. One could expect that until it has been in operation for a while, wrinkles and inadequacies will appear. Some complaints appear to arise because people are not aware in what circumstances the Regional Director will be likely to choose a complex form of involvement such as a joint planning team, and in what circumstances only a consultation, such as a position paper, will be allowed. I commend the Ministry for its initiatives in the area of public involvement, but I would urge the Ministry to use the complaints about the process to develop and improve it. I would also urge the Ministry to distribute more widely information on how to provide public input.

Eight of the 49 closed complaints dealt with delay on the part of the Ministry. Many concerned delay on timber sale applications under the Small Business Program. The Small Business Program is a new one, and again I recognize that some difficulties can be expected. But delay on such sales can cause small operators to go under. Their livelihood consists of cutting timber, and if they have to wait months to learn whether an area of timber will be put up for sale, their cash flow suffers. I have been told that the recent decentralization within the Ministry is responsible for a number of delays. By next year the new organization will have been in place long enough that decentralization cannot reasonably be blamed for such delays. I hope that this, coupled with refinements in the Small Business Program, will result in fewer delay complaints next year.

I had become concerned about the Ministry's policy of not notifying individuals of their appeal rights under the *Forest Act*. The Act contains a significant number of appeal provisions; however the Act is long and its wording difficult. As a result, large forestry companies armed with their own lawyers are in an excellent position to appeal decisions which they feel are unfair or detrimental to their interest, but small operators are at a distinct disadvantage.

The Ministry appeared to fear an avalanche of appeals if it were to provide notice of appeal rights. It also appeared to feel that it would be administratively difficult to inform the public about appeal rights. I do not agree. It has been my experience that notification encourages officials to make more considered and careful decisions. This in itself decreases the number of appeals. Other large Ministries have found that administering an appeal notification system is not impossible.

I consider it important that individuals be notified of their appeal rights, and I recommended that the Ministry adopt a policy whereby notice of appeal rights is given each time the Ministry makes a decision or issues an order which can be appealed under the *Forest Act*.

After much deliberation, the Ministry of Forests has agreed to implement my recommendation, and has prepared a detailed notification form which will be provided to all those who might have occasion to appeal Ministry decisions.

CS 81-056

To log or not to log

Early in 1981 I received a number of complaints about the Ministry's plans to permit logging around Quesnel Lake. Some complainants opposed logging the area altogether. Others were concerned about possible clearcutting as opposed to selective logging. Still others were concerned about plans to remove the timber and the possible contamination of the lake as a result. Some of the complaints came from individuals, while others came from groups.

I learned that the Ministry had not made any decisions to permit or to reject logging the Quesnel Lake area. A proposal for logging had been drafted, and the Ministry had organized "storefront" information sessions in two communities to advise the public about the proposal and to receive their comments on it. The Ministry stated that it would not make any decisions respecting logging in the area until it had received and considered public comment on the proposal.

Since the Ministry had not yet made a decision on this matter, and since it had established a means through which public comment could be received and considered, I concluded that these complaints were unsubstantiated. I provided each of the complainants with information on the time and location of the "storefront" sessions.

CS 81-057

In search of a supply of wood

The owner of a small sawmill complained to me that delays and apparent indecision on the part of Ministry employees were preventing him from obtaining an adequate supply of timber for his mill.

The man had established the sawmill with the assistance of a Department of Regional Economic Expansion grant. After his initial supply of timber was exhausted, he applied for additional timber sales under the Small Business Program. However, he found that long periods elapsed between application and auction, or that proposed areas were rejected, even when the initial suggestion for the proposal had come from Ministry employees. He managed to obtain some small direct sales, but because the volume of wood was low, he found his sawmill running continually short of wood and his bankbook continually short of funds.

I found that there was no means by which the Ministry could guarantee him a supply of wood, and in fact no such guarantees had been made. But I also found, as he had stated, that his relationship with the Ministry seemed plagued with delays and rejections of proposals and applications. In response to my initial inquiries, Ministry officials advised that they had met with the sawmill owner, and had agreed to proceed with a Category II Small Business Sale in the area by October, 1980. My staff monitored the progress of this commitment and found that the sale was delayed to January 1981. However, at that point the sawmill owner was the sole bidder and was awarded the sale at upset price.

Since this was a fairly large timber sale and would give the sawmill a supply of wood for some time, I decided to discontinue my investigation of the complaint.

CS 81-058

Strange arithmetic in log salvage regs.

A man complained on behalf of log salvors throughout the Province that Gulf Log Salvage Co-operative Association had refused membership to log salvors and that this refusal contravened the Log Salvage Regulations. The Ombudsman's jurisdiction does not extend to non-governmental bodies such as Gulf Log. However Gulf Log holds a receiving station licence issued by the Ministry of Forests, and if the Association contravened the Log Salvage Regulations, its licence could be suspended or cancelled by the Minister of Forests.

From my investigation of the matter it appeared that the Log Salvage Regulations did grant log salvors the right to membership in Gulf Log. One section of the regulations stated that any person who is engaged in or who has an interest in a business which manufactures, uses or deals in timber "is entitled to own not more than 10% of the shares in a log receiving station business". Certainly log salvors are engaged in a business which deals in timber, and Gulf Log is the only organization in B.C. to be issued a log receiving station licence.

It became clear that the regulation was poorly worded. It could be interpreted as meaning that everyone in the province engaged in a business which deals in timber is entitled to 10% of the shares in Gulf Log; this would mean thousands of people were each entitled to 10% of the shares.

The Ministry took the position that the intent of the regulation was to ensure that no one could acquire **more** than 10% of the shares of the organization. Since the regulation was absurdly worded, I concluded that it was reasonable for the Ministry of Forests to interpret the section according to the intention of the regulation. The Ministry therefore said Gulf Log had not contravened the regulations. The Ministry also advised that the clause in question would be corrected.

The complainant had originally asked for my help in promoting the view that it is in the public interest to grant log salvors membership in Gulf Log. In fact, I investigated only whether the regulations required that salvors be admitted as members. I told the complainant that the issue of whether regulations should grant membership to log salvors was one which should be decided by the Legislature.

CS 81-059

Tree-spacing contracts clarified

A man complained to my office that the Ministry of Forests had refused to return his deposit on a tree-spacing contract although a Ministry employee had stated that the deposit would be returned.

The man, a contractor, had partially completed a tree-spacing contract when his employees demanded more money. The contractor discussed the matter with a Ministry employee and was advised that the Ministry could not provide additional funds, but that the contract could be cancelled with full return of the deposit. However, after the contract was cancelled, the Ministry refused to return the deposit; the contractor appealed the matter to the Regional Manager, but still was refused.

My investigation revealed that the Ministry had acted properly in refusing to return the deposit, and that the Ministry employee who had said that the deposit could be returned had exceeded his power in doing so. The Ministry's silviculture manual clearly states that the deposit is not to be returned in cases where the cancellation is the result of the contractor's underbidding the con-

tract. The Ministry employee who had said the deposit could be returned was considered by the contractor to be responsible for the administration of contracts. However, although the employee was responsible for certain aspects of contract administration, it was not within his power to determine whether or not a deposit would be returned. His statement exceeded the powers of his position, and although apparently well intended, seemed to have stemmed from a lack of experience and a lack of knowledge of Ministry policies.

Although the Silviculture Manual contained a clear statement of the circumstances under which deposits may and may not be returned, the contract document itself was considerably less enlightening, if not confusing. The Manual, a rather thick and very detailed document, is available to the public for a fee but since the contract is the basic document pertaining to the relationship between the Ministry and the contractor, it too should contain a clear and complete statement regarding the return of deposits.

I recommended that tree-spacing contracts be amended to include information regarding the circumstances under which deposits will be returned, and the Ministry has advised that staff have been instructed to incorporate such a clause in contracts. I also recommended that the Ministry apologize for inadvertently supplying incorrect information, and the Ministry advised that the Regional Manager had conveyed his regrets to the contractor.

CS 81-060

Wrong either way in expropriation wrangle

A man complained to me that the Ministry had expropriated a road through his deeded property, and had offered him an amount which he thought represented only a fraction of the value of the land. The man returned the Ministry's cheque, had an independent appraisal done, and indicated a willingness to negotiate; however, the Ministry refused.

The land was originally acquired in 1963 through a Crown Grant to the previous owner. There was at that time a trail through the property, and the terms of the Grant reserved all existing trails to the Crown. In 1974, the Ministry expropriated a right of way through the property. Before doing so, the Ministry advised the owner that under the terms of the Crown Grant, the Crown could resume 1/20th of the total acreage without compensation. The Ministry offered the owner $1,500 compensation for his road, and later increased the offer to $1,700. In the meantime the land was expropriated. The owner subsequently had an appraisal done and retained two lawyers in an effort to reach an acceptable settlement; however, he did not succeed.

In response to his requests for negotiation, the Ministry took the position that because the Crown Grant reserved the existing trail to the Crown at the time the Grant was issued, the road was in fact a public road and no compensation was due to the owner. The Ministry again offered $1,700 in recognition of minor deviations from the original trail.

Because of the passage of time, I was not able to determine whether or not the road expropriated by the Ministry in 1974 was in the same location as the trail noted on the Crown Grant. It certainly appeared that during the expropriation proceedings in 1973-1974 the Ministry did not consider the road to be in the same location as the trail, since if it were, there would have been no need to expropriate.

However, I concluded that whichever position the Ministry took, some compensation was due to the owner. If the road were in the same location as the trail, there was no need for an expropriation and the owner was misinformed of his legal rights by the Ministry. If so, the owner should be paid for deviations from the original trail, and for his legal and appraisal expenses. If the road were in a substantially different location, the owner should receive compensation for his improvements and interest.

Since I was unable to establish which position was correct, I offered the Ministry two alternatives. The Ministry chose the position that there was a need to expropriate the road in 1974, and offered the owner a total award of approximately $3,200, which included interest calculated from 1974 to the end of 1980.

The owner was willing to accept this settlement; however, as it happened he sold the land at the beginning of 1981, when the offer was made. So after a six-year battle with the Ministry, the owner was unable to benefit from the final settlement.

CS 81-061

Roadblock removed

An Indian Band complained to me about the Ministry's inaction on a promise to assume responsibility for a private logging road so that it could be adequately maintained to serve the needs of area residents. The road links several small communities, and is at present privately owned by a logging company. The logging company maintains the road to suit its own needs, with the result that the road can become impassable when the logging company is not using it. My complainants said the Ministry had agreed to take over the road a year earlier, but had done nothing.

I learned that there had been a number of meetings concerning the road and involving the logging company, area residents and representatives of several Ministries. The Ministry of Forests

had indeed indicated a willingness to assume responsibility for the road. They stopped working in this direction when one of the Indian Bands whose reserve the road crosses, stated that it was not prepared to allow a right of way for the road.

We discussed this matter with the Chief and learned that the Band had reconsidered its position and was now prepared to enter into negotiations for rights of way. At his request we provided him with the name of a person in the Ministry who would be responsible for negotiations, and we advised the Ministry that the barrier which had prevented them from taking over the road now appeared removable.

CS 81-062

No access, no exit, but no fault found

A man complained about the refusal of the Ministry to gazette a "Fire Access" road so that he could use the road for access to his property.

The man had spent his life's savings to buy a piece of land and build a house. The seller had told him that the road to the property was a Ministry of Forests Fire Access road and was available for public use. However, during the winter the road became impassable, and when he approached the Ministry of Transportation and Highways about maintenance, he learned that at least part of the road was privately owned; the Ministry of Forests confirmed this. Further, the owner of the road refused to grant the complainant permission to use the road.

The legal access could only be used if a 110 foot bridge was built over a river. I learned that the previous owner of the property (who had since died) knew that this was the only legal access, and knew that the owner of the private road had refused permission to use the road. Further, the land had been deeded to the previous owner through a Crown Grant, which clearly stated that the land was granted on the condition that the Crown was under no obligation to provide access. The lawyer who had represented my complainant when he purchased the property had not advised him of this condition, nor of documents on file with the Land Commissioner stating that the owner of the private road had refused permission to use the road as access to the property.

Since the jurisdiction of the Ombudsman does not extend to disputes between private individuals, nor to actions taken or omitted by lawyers in representing their clients, I confined my investigation to the propriety of the actions of the two Ministries involved. Both had refused to gazette or expropriate the road on the grounds that to do so would constitute taking land from one private citizen to benefit another. As a general policy, I found this reasonable.

Thus through a combination of misinformation and possible misrepresentation, the complainant finds himself in the situation of having to choose between building a 110 foot bridge or continuing to sneak through a poorly maintained and privately owned section of road in order to get to the home which represents his life's savings. As unfortunate as this situation is, I do not find that it was due to the actions of either Ministry involved.

CS 81-063

Grazing permits: the right to be 'herd'

The complainant alleged that the Ministry had unfairly refused to renew her grazing permit. The permit had enabled her to graze her cattle on Crown range lands; without it, her ranch was no longer a viable enterprise. The Ministry had not provided the complainant with an opportunity to present her case before an impartial individual prior to the decision not to renew her grazing permit. Before making such vital decisions a Ministry should allow individuals a full and fair hearing.

The Ministry consulted with us and a new practice guide was drafted. Before a decision is made not to renew an individual's grazing permit, that individual will have made available to him all information in the Ministry's possession concerning his situation and will have the opportunity of a full and fair hearing before the Regional Manager of the Ministry and representatives of the local livestock association. The rancher will select at least one representative. The Regional Manager will make his decision only after he has heard the individual in full and has received the recommendation of the livestock association. I intend to monitor the development of this new procedure.

MINISTRY OF HEALTH

Declined, withdrawn, discontinued	51
Resolved: corrected during investigation	21
Substantiated: corrected after recommend.	12
Substantiated but not rectified	0
Not substantiated	25
CLOSED—TOTAL	109
Number of cases open Dec. 31, 1981	53

The Ministry of Health covers a wide range of activities which includes registering a birth, inspecting a sewage system and making payment for surgery. Its budget, and number of employees, are among the largest in the province. When this is considered, the fact the Ministry accounted for only six percent of the files I closed is a pleasant surprise.

While I am able to investigate most areas of health care, I am not able to investigate the people we most commonly associate with health—doctors. When section 11 of the Schedule to the *Ombudsman Act* is proclaimed I will be able to investigate the B.C. College of Physicians and Surgeons, which is responsible for the standards of practice doctors maintain.

I continue to receive many complaints against the Medical Services Commission. The Commission has been helpful in resolving these complaints quickly and fairly. Several complaints involved coverage for unusual medical services obtained outside the province. Refusal to pay in these cases often involves severe financial hardship. The Commission has agreed to provide a method whereby a person denied coverage can have the case reviewed. This process is described in the case report called "Surgery denied? Review now possible"—CS 81-068.

I note that the dental plan is relatively new, and I have received few complaints about it.

I received a number of complaints about the Ministry's telephone system. Frustrated callers could not get through until problems with the new phone system were identified and corrected.

The Long Term Care Program was the focus of several complaints. Some involved allegations of inadequate procedures in the selection of homemaker agencies; "Homemaker rules need polishing"—CS 81-066 was one of these. The Ministry agreed with my suggestion that explicit guidelines be formulated on criteria for selecting homemaker agencies. I am also pleased that the Ministry has established an informal review mechanism for clients concerned with reductions in their hours of homemaker service.

In the 1980 Annual Report I mentioned the need for changes to the *Name Act* and the *Vital Statistics Act* to reflect today's concern for the equality between men and women. I am anxious to see legislative changes in this area and have made the Ministry aware of my concern.

Throughout 1981 the Ministry's staff has given my office a high degree of cooperation and assistance.

CS 81-064

Nobody home

We had several complaints that callers got no answer when they dialled the Ministry's toll-free telephone number. My investigation showed three reasons. First, during the postal strike, clients had made increased use of the phone. Second, the Ministry's new system still had technical problems, and the switchboard operator could not tell whether there were incoming calls. Third, the Ministry had a new toll-free number and it was not commonly known.

The two Ministries involved, Universities, Science and Communications (responsible for the provincial phone system) and Health, established a team to install more lines, publicize the new phone number, and look after future problems.

CS 81-065

Privacy v. access to information

A spokeswoman wrote to my office on behalf of a local study action group, to complain that residents of the Salmon Arm area were unable to get written confirmation of the results of certain tests done on their approved water supplies. The residents had provided samples of the local water to the Ministry.

I found the Ministry did not give written confirmation of the results, and residents wanted these results so that they could have a basis from which to compare future results. I considered their request a reasonable one.

The Ministry suggested that it would provide written confirmation of test results to the residents, if the residents put the request in writing. Since the Ministry considered the test results to be confidential information, a resident could obtain confirmation of the test results pertaining to his or her own water supply, and then could decide whether to make this information public or pass it on to the local study action group.

This seemed to me a reasonable approach to the legitimate right of individuals to privacy and the equally legitimate right of those same individuals to have access to information about matters of direct concern to them.

CS 81-066

Homemaker rules need polishing

Two homemaker agencies in Greater Vancouver expressed concern about the allocation of homemaker contracts for service to Long Term Care patients in their area. One agency felt that assessors, who decided what agency should be assigned contracts, were too powerful and could decide arbitrarily not to give contracts to a company. The other agency felt it was being discriminated against in favour of others, and wanted to know why it was not receiving contracts.

Investigation indicated that there was a lack of explicit guidelines for assessors. New assessors were apparently trained by experience, on the job, and orientation was left up to the administrator in each Health Unit. This could lead to lack of coherent policy, as well as to the type of complaint I had received. Accordingly, I met with the Assistant Deputy Minister in charge of Long Term Care. This official recognized that my concerns were

valid, and thought it advisable to formulate guidelines for the assessors. The Ministry agreed to take the lead in drawing up these criteria with input from program officials in Vancouver. Finally, the Ministry agreed to circulate these to all homemaker agencies, with the help of homemaker associations, and to send them to all Long Term Care administrators, with instructions to draw them to the special attention of their assessors.

We suggested to the complainant that they give the new criteria a chance to work and then, if further difficulties arose, to contact us again.

CS 81-067

Confusion and misunderstanding

Relatives of an elderly woman complained on her behalf that she should be getting more government services. When we called the woman, she said she needed more homemaker services and help in paying for expensive medical dressings and stockings not covered by Pharmacare.

We spoke with the District Supervisor of Human Resources, the Long Term Care Administrator, and the Administrator of the organization which supplied homemakers. It was agreed the woman's needs should be re-assessed. The Long Term Care Administrator visited her for this purpose, and informed her of the result. We also referred her to an officer at the nearest Human Resources office who could determine whether she qualified for help with medical purchases.

The woman later called back for help in understanding her re-assessment. It seemed to her that she had been allotted many extra hours of homemaker care and then been denied them. We sorted out this misunderstanding and also suggested she have a discussion with the Long Term Care Administrator on how the new arrangement, provided as a result of re-assessment, was working. The Administrator also promised to put in writing an analysis of the woman's situation and Long Term Care's work on her behalf, and to send me a copy of the analysis. We told the woman that appeal procedures were available if her care was not satisfactory, and that if necessary we would help her set an appeal in motion. Later, the complainant asked our help in sorting out approval of special extra homemaker help.

Besides helping the woman to get re-assessment and to make contact with a financial aid officer, we helped her understand appeal mechanisms. Further, in response to her needs we made informal contact with a Director of her Regional District (Regional Districts are not within our jurisdiction) and passed to him information showing the need for bus services in the area.

CS 81-068

Surgery denied? Review now possible

The Health Ministry makes decisions vital to the well-being of individuals, and often needs complex, technical knowledge to make them well. In some cases, the citizen helps to educate the Ministry, rather than the reverse. In such circumstances, the role of appeal or review is important.

The complainant, raised as a male, had been living as a woman for five years. Work associates, doctors and specialists affirmed a healthy transition in lifestyle had taken place. Now surgery was required to complete the change. The surgery was only available in Ontario, and there was no universal agreement among doctors as to its merits.

The complainant had applied for coverage by the Medical Services Plan. Coverage was denied because the treatment was not considered "medically required." However, this surgery is considered "medically required" by the health insurance systems of some other provinces.

I was concerned that the procedures for assessing eligibility for coverage were arbitrary and unreasonable. I suggested that applicants denied insurance coverage for unusual or unorthodox treatment should be afforded an appeal. The Medical Services Commission agreed to establish an internal review mechanism and to notify persons denied benefits of its existence. I recommend that the Legislature provide an appeal mechanism in future legislation.

In this case, the complainant successfully appealed and her surgery was covered.

CS 81-069

Sewage system rejected

A manager of a resort complained that Ministry officials refused to give him permission to install a package treatment plant for sewage disposal near the boundary of a lake. The manager thought the officials' decision was unreasonable because the package treatment plant was a sophisticated and effective way of treating sewage.

Under the sewage disposal regulations a sewage disposal system must be at least 100 ft. away from the natural boundary of a lake. In this case, the complainant could not meet the 100 ft. requirement. Also, because of pervious soil conditions and a high water table, the local medical health officer asserted that the 100 ft. buffer between the sewage disposal system and the boundary of the lake was not sufficient. Finally, because the resort had a kitchen, the daily sewage flow would include grease. Sewage disposal regulations placed the responsibility for determining the conditions for the sewage disposal system with the medical health officer.

The medical health officer maintained that it was in the best interests of public health for the sewage disposal system to be located more than 100 ft. from the natural boundary of the lake. However, a citizen like the resort manager had the right to appeal the medical health officer's decision to the local board of health. He did this but the local board of health upheld the medical health officer's decision.

As a result of my findings, I concluded the resort manager's complaint was not substantiated, because the Ministry officials had acted within their authority, pursuant to the sewage disposal regulations. Furthermore, the Ministry made its decision fairly, properly, and on the basis of relevant information.

CS 81-070

Ministry finds a way

A physiotherapist presented a complaint on behalf of her patient. The patient had recently undergone a radical mastectomy and needed to use a special piece of medical equipment (a Jobst pump) on a regular basis to relieve the severe discomfort she experienced as a result of the operation. Unfortunately, the equipment was unavailable for loan in her area. She approached Pharmacare for assistance in buying the pump but found it would not provide coverage for medical equipment. The patient (a senior citizen with limited income) had to purchase the equipment with her own funds. The physiotherapist felt it was unreasonable for people to have to purchase expensive medical equipment.

I contacted the Ministry of Human Resources to see why Pharmacare could not cover the expense. The Ministry explained that equipment used for the medical management of a chronic condition does not fall within the funding mandate of the Pharmacare Program. I then took the problem to the Ministry of Health. Officials there informed me that while the Ministry does not fund the purchase of equipment for individuals, it does sometimes fund equipment for hospitals or non-profit societies such as the Canadian Cancer Society. I then contacted the local Cancer Society. The executive expressed interest in having the equipment available to loan to clients and said they would apply to the Ministry of Health for assistance in purchasing the equipment.

In reviewing the Society's request for funding, the Ministry of Health recognized that others who have undergone similar surgery appear to need increased access to such equipment. In response the Ministry has funded the Cancer Control Agency's purchase of several pumps for loan throughout the province.

CS 81-071

. . . and get me to the church on time

A complainant wanted a new marriage licence in her maiden name. Since her lawyer had used her ex-husband's name on her divorce decree, the new licence would ordinarily be issued with this last name on it.

The wedding ceremony was a week away. My investigator contacted the officials at the Division of Vital Statistics. After hearing the particular circumstances of this case, the director authorized an amendment to the marriage licence if there was a sworn affidavit and support documents verifying that the complainant had regularly used her maiden name.

The documents were quickly supplied and wedding bells rang.

CS 81-072

No-nonsense nuns and the fine print

A brother in a religious order, acting as spokesman for nuns in a second order, complained that the sisters had had their Medical Services Plan premium assistance wrongly terminated.

Premium assistance was available in 1981 to people whose taxable income was below $1770. It was not, however, available to people whose "special status" exempted them from paying any income tax. The Ministry had discovered that the *Income Tax Act* granted an extra deduction to members of religious orders who, like these nuns, were under vows of poverty, and had concluded that they had "special status". We showed the

Ministry that they had misunderstood the *Income Tax Act*. The nuns were liable to pay some income tax, and were eligible for premium assistance.

The Ministry changed its general interpretation concerning people under vows of poverty. Further, it reinstated the nuns and refunded the premiums they had been wrongly charged.

MINISTRY OF HUMAN RESOURCES

Declined, withdrawn, discontinued	174
Resolved: corrected during investigation	126
Substantiated: corrected after recommend.	5
Substantiated but not rectified	1
Not substantiated	85
CLOSED—TOTAL	391
Number of cases open Dec. 31, 1981	99

In 1981 I received 391 new complaints about the Ministry of Human Resources. Considering the range of services provided by Human Resources, the number of employees (approximately 5,000) and the number of people who use the Ministry's services (as many as 500,000 at any given time), I do not consider this number excessive.

Many of the complaints are "crisis complaints" requiring immediate action. In such cases I must rely on the prompt attention and cooperation of Human Resources' field staff. Generally I have received this cooperation and complaints are quickly resolved. However, for complaints that raise issues beyond individual concerns (for example, the right to information about appeals), the process of arriving at a resolution has been much slower and more difficult. I attribute this at least in part to the complexity of the issues involved. Occasionally there are significant cost implications.

Complaints against this Ministry fall into three broad categories:

A. Income Assistance

As last year, the Ministry's income assistance programs accounted for about half the complaints. Issues ranged from denial of a benefit to access to information. Complaints about the extent of an individual's financial benefits can be appealed through the Ministry's appeal system. Therefore, simply providing the complainant with information on the appeal process often allows me to discontinue my investigation because an adequate remedy is available.

Access by clients to information on the Ministry's appeal process continued to be a problem this year. While the Ministry agreed in 1980 to take steps to improve the flow of this information, the number of complaints I received in 1981 because the complainant was unaware of appeal rights indicated that further action was required. I proposed that the Ministry display in all district offices a simple, readable poster describing the appeal process (*see* "Appeal information revisited"—CS 81-077). The Ministry has since implemented my proposal and I look forward to finding that a greater number of clients can understand and exercise this appeal option.

B. Family and Support Services

About one quarter of the complaints involved family and support services, from daycare subsidies to family counselling or child protection matters. For these complaints the Ministry has no formal appeal mechanism, although an administrative review of some decisions can be requested by the client. Several of the complaints I have received this year have focused on the need for a formal appeal mechanism in this sensitive area. Following my request, the Ministry has now established a review procedure for foster parents who disagree with the Ministry's decision about the care of a foster child. Further, the Ministry will now develop a review procedure for people who find their names are on the Ministry's Central Registry of Protection Complaints as detailed earlier in this report.

I have found Ministry representatives sensitive to family needs, especially those of children. Complaints generally arise when the Ministry's assessment of the family's needs differ markedly from the family's own assessment. Particularly when the issue is one of child protection, the complaint may already be before the courts, with family members looking for extra help from me or seeking clarification of the Ministry's procedures or mandate. When the problem is before the courts I do not intervene except to provide information and referral.

C. Health Services

I received a number of complaints about the Ministry's Health Care Services and Pharmacare Programs. The issues ranged from the criteria used to define a "handicapped person" to the denial of coverage for essential medical equipment or supplies (see "Hearing on hearing-ear dog"—CS 81-086). The denial or reduction of a health care service is appealable (in the same way as an income assistance decision). I normally refer complainants to the appeal process first. However, I have some concerns about the procedures used in the appeal process, particularly as they relate to issues of health care, and I am presently discussing those with the Ministry. I hope to be able to report some improvements in this area for 1982.

CS 81-073

Fostering fairness

The foster parent of a special-needs child complained that the child had been taken away from her suddenly and without reason.

Community service workers had complained to the Ministry concerning the level of care provided to the child. There was some truth to the concerns about the youngster's physical surroundings, although the foster parent's home provided satisfactory emotional support for the child. Accordingly, the foster parent's case worker started to prepare her for the eventual removal of the child and began a search for a different foster home. While that worker was away on holiday for a few weeks, the Ministry suddenly removed the child from the foster parent and placed the child in an institution.

My investigation supported the Ministry's decision to remove the child, but found the manner of removal to be arbitrary and unfair. The hurried decision did not consider the efforts of the social worker who was preparing all parties for the change. The Ministry's undue haste created bad feelings.

On my recommendation a Ministry representative apologized to the foster parent for removing the child so abruptly. The Ministry also agreed to send a representative to discuss the possibility of some continuing relationship with the child.

I also acknowledge a very useful contribution by the B.C. Civil Liberties Association to this case.

CS 81-074

Care bill paid twelve years too late

A foster father complained that the Ministry of Human Resources reneged on an offer of an additional $500 to settle his claim in providing care. He further complained that the child was apprehended and he was denied access.

The complainant and his wife are Indian. In 1964, a mother gave them her non-Indian baby to raise as their own. He and his wife say they firmly believed the child was now theirs according to Indian adoption custom.

When the Ministry learned that a white child was living on an Indian reserve, it ordered her into the care of the Superintendent of Child Welfare.

However, the child remained in the complainant's home on a "free home basis" for almost seven months; the complainant did not receive payment for her care.

When the child was removed from the home, the foster father requested compensation in the amount of $9,120.30 for expenses incurred for the care of the child. Since he had voluntarily assumed custody without legal basis and since he did not ask the Ministry for their endorsement of the placement, they took the position that they could pay only for the seven months after the committal. The Ministry paid $1,060.30 and promised a further $500, which the father never received.

Although there was a further complaint that access to the child was denied, the child was adopted in 1968. The Ministry can no longer grant access; we limited our work to investigating the question of the missing $500.

I considered the Ministry negligent in not providing full payment. The matter was rectified: the Ministry issued a cheque to the complainant for $500 plus twelve years' interest.

CS 81-075

Rule change keeps family together

A mother of three young children complained that because of a clause in the *Community Care Facilities Licensing Act*, she might be forced to send one child to a separate daycare home, or have all three walk two miles along a highway to the nearest licensed daycare resource.

The children were currently in a suitable but unlicensed daycare home. Ministry staff told the mother that under the Act, unless a care-giver is licensed, she can take only two children. The mother argued that this clause should not apply to children all from one family. In her case, a subsidy was also at stake; the Ministry of Human Resources could only provide this subsidy if the children were in a form of daycare allowed by the Act.

I spoke with Human Resources and with the Ministry of Health, which has responsibility for the *Community Care Facilities Licensing Act*. I found that people in the ministries had the same concern as my complainant, and had arranged to have an amendment to the Act proposed. However, they believed the amendment had not yet come into force. I called the Attorney General's Ministry and found the amendment had come into force the day it was passed.

Human Resources and Health immediately informed their staffs of this change. The mother, and other parents of more than two children, had their problem solved.

CS 81-076

Daycare office cares for parents too

A parent complained that because she worked during office hours and had no car she was unable to keep an appointment with the Ministry's Daycare office to have her eligibility for a daycare subsidy reassessed. As a result, she believed she would not receive the subsidy and felt this was unfair. On inquiry I found that her subsidy would be honoured if she made another appointment within the month.

This resolved the individual complaint, but I continued to be concerned about the more general question of accessibility to the daycare office. I

recognized that many government offices are available only during normal working hours and that generally people can adapt to this limitation. However, it seemed to me that every effort should be made to ensure maximum accessibility within these hours. In this case, accessibility was hampered in several ways.

First, the office was not in a central location.

Second, staff at the office were only available on a part-time basis.

Finally, lunch appointments could be booked only from 12.00–12.30.

I raised these issues with the Ministry. They agreed that there was a problem with accessibility and said they were making a number of improvements. They had hired an extra worker. Further, they would now accept appointments through the lunch hour. Finally, they were searching for a new, more centrally located office.

These steps satisfied me that the Ministry was attempting to resolve the problem.

CS 81-077

Appeal information revisited

In my 1980 Annual Report I described a complaint I received in which an income assistance recipient was not told of his right to appeal a Ministry decision on the extent of his income assistance benefits. On investigation, I found that the procedures used to notify clients of their right to appeal were inadequate. I therefore made several recommendations to the Ministry on ways which I felt would increase client access to information on appeal rights. The Ministry agreed to implement my recommendations and I therefore considered the matter resolved.

In 1981 I again received a number of complaints in which Income Assistance recipients appeared to have no knowledge of their right to appeal decisions on eligiblity or benefits. In investigating these new complaints, I found that the recommendations on access to appeal information I had made in March, 1980 had not been fully implemented though it was more than a year since I had made them.

I again raised the issue with the Ministry, which responded that because of Human Resources' changing rate structures, they had found it difficult to implement my earlier recommendations. I then recommended that the Ministry design a poster explaining the appeal process and that this poster be hung in all district offices. The Ministry agreed to implement this recommendation.

I am pleased that the Ministry acknowledges the importance of clients having full access to information on their rights. I will continue to watch to see whether use of this poster gives clients the information they need on appeals.

CS 81-078

Ministry remedy too late

A single parent's 16-year-old daughter ran away from home and the mother immediately reported the daughter's absence to her social worker. The worker informed her that her income assistance benefits would be immediately reduced by over $200 because the daughter had left the family home. The complainant felt this was unreasonable because with $320 (the amount she would receive after the reduction) she could not maintain her apartment, thereby virtually ensuring that her daughter could not return home.

A member of my staff discussed the complainant's problem with several Ministry officials. All agreed that she was in an extremely difficult position, particularly as she had just moved from Prince Edward Island and was realistically concerned about her daughter's safety in the "big city". With this in mind, the Ministry agreed to extend the complainant's shelter allowance at the rate of two people for another month, to give the family time to sort out their situation.

Unfortunately, the complainant had already given the required 30 days' notice to vacate her apartment by the time this decision was made and was therefore forced to move, despite the Ministry's change of position. Thus, although the Ministry offered an ordinarily acceptable remedy for the complaint, circumstances dictated that the remedy could not rectify this complainant's problem. I therefore consider that, in this case, rectification of the complaint was not possible.

CS 81-079

Which bureaucracy takes responsibility?

A non-Indian family which had been living on an Indian reserve and receiving income assistance for ten years complained of injustice when the Ministry refused further benefits to them and to anyone else living on reserve land.

The background to the problem was that the Ministry does not generally fund social programs on Indian land; that is the responsibility of the Federal Government's Department of Indian and Northern Affairs, or of the Indian Bands themselves.

However, this family had been receiving income assistance at the same location for a number of years. Our discussions with the Ministry convinced them to reinstate the assistance because a 1978 Federal-Provincial agreement could be applied. According to that agreement, status Indians living off the reserve could receive benefits as though on the reserve, while non-Indians living on the reserve could receive benefits from M.H.R. as though off the reserve.

CS 81-080

Income assistance wrongly assessed

A retarded girl who moved from Woodlands School into the community complained that she received less Handicapped Person's Income Assistance than she was entitled to receive when living under Community Living Board sponsorship.

After discussions between my staff and the Ministry, it was determined that the assessment of her eligibility was incorrect and that she had been underpaid.

The problem was resolved when the Ministry arranged through the local office to make up the underpayment.

CS 81-081

Computers are only human

A mother involved in a custody dispute contacted my office in alarm. Her social assistance cheque had been discontinued because she had been reclassified as employable. Her concern focused on the possibility that she might be forced to give up custody of her child if it were established that she could not support the child properly.

I encouraged the woman to make use of the appeal method provided in the Ministry. When she did so it was discovered that she had been reclassified incorrectly by the Ministry's computer. She should have been classified as unemployable and granted a higher amount of assistance. The error was quickly rectified and a supplementary cheque was issued to the relieved mother.

CS 81-082

Religious beliefs and income assistance

A young man contacted my office to find out what rights he would have if his income assistance were discontinued. He said his financial assistance worker had said that his benefits might be discontinued if he refused work on the grounds of religious beliefs which prevent him from working on Saturdays.

The complainant was informed of the requirements under the *GAIN Act* that an applicant actively seek work and of his right to appeal if his assistance were discontinued. Further, since he was alleging discrimination on the basis of religious beliefs, I provided information on the role of the Human Rights Branch in looking at allegations of discrimination. The complainant later contacted my office to report that the Ministry has since indicated that his benefits would not be discontinued.

We have had a number of Human Resources complaints similar to this one in which complainants ask us not to intervene but rather to confirm their understanding of Ministry policy and procedures. Once the "rules of the game" are provided, the complainant is often able to resolve the problem on his or her own initiative.

CS 81-083

New procedure safer for clients

An elderly man came to my office with a letter he had received from the Shelter Aid for Elderly Renters Program (SAFER). The letter said he had received an overpayment of $517.50 but he could not understand how this was possible.

SAFER records showed that the overpayment was made based on information they had from the complainant's original application; he reported he was living in a hotel. Since then he had moved and he was not aware that he should have reported his change in rental costs to SAFER.

I arranged a meeting between the complainant and SAFER where officials explained to him why he was not receiving SAFER benefits. SAFER was in fact reclaiming the overpayment. Ordinarily SAFER would have cut his benefit cheque by a few dollars a month until the repayment was complete. Since the renter was now spending less for rent than he had in the hotel, he was entitled only to $15 a month from SAFER. SAFER found it impractical to hold back a sum smaller than $15. The renter could expect his cheques to begin again when the $517.50 was repaid if his status remained the same. In this way, too, SAFER hoped to avoid a further misunderstanding during the course of repayment if the complainant's status changed again. The complainant was satisfied with this explanation.

During discussions with SAFER and the complainant, it became apparent that certain elderly clients do have problems in giving SAFER accurate current information. At the same time, it was obvious that SAFER was not equipped to check and re-check all client's statements. The officer said SAFER was like Revenue Canada Taxation, in that it accepted clients' reports of income and expenses and only occasionally verified them. Once a year, of course, each client had to make a reapplication and supply up-to-date information about income and rent.

Partly as a result of these discussions, the Ministry of Human Resources began to review some of SAFER's procedures. Clients likely to have problems were identified so that SAFER officials could pay more attention to their statements. SAFER also reviewed some of its correspondence and practices, in order to suit them more closely to the needs of its elderly clients.

CS 81-084

Secret directive spoils job chances

A social worker, a former employee of the Ministry, complained that a secret "do not rehire" directive was spoiling his chances of re-employment with the Ministry and that this was unjust treatment.

Although the complainant had had disagreements with one supervisor, his five years of service had been adequate overall. But when he applied for permanent re-employment, he was unsuccessful, and he was finally told that his file contained the negative directive. He then complained to me.

In my opinion the complaint was valid. The practical effect of a directive such as this one is that no matter how questionable the information it is based on may be, or no matter how much the applicant has improved his skills since, he is shut off forever from re-employment.

Further, there is a problem of procedural fairness in a secret directive. This complainant never knew why his applications were rejected.

When I pointed out this unfairness, the Ministry agreed to attach a memo to the personnel file directing selection panels to consider not just the not-eligible judgment, but the whole work record. The Ministry also agreed to make sure that if the complainant applied for a job in his field, he would be invited to an interview.

There were several similar complaints. I recommended to the Public Service Commission that it delete the question concerning eligibility for rehire from its personnel form, and the PSC agreed.

CS 81-085

Fringe benefits of Ombudsman investigation

An association for physically handicapped persons complained about a contractual problem with the Ministry of Human Resources. Though we found the complaint to be unsubstantiated there was an interesting sidelight to the episode.

The investigator who handled the complaint is associated with a church funding group and when, during the course of his investigation, he learned of the work being done by the association, he brought it to the attention of the funding group. As a result, the church group made a grant of $700 to the association.

CS 81-086

Hearing on hearing-ear dog

An income assistance recipient who is deaf and mute complained that Human Resources had refused to provide her with a special allowance for the care of her dog. She said her dog is vital to maintaining her independence and fills a function similar to that of a seeing-eye dog. Income Assistance recipients can receive a $35 monthly allowance for maintaining their seeing-eye dogs. Therefore, she felt it was unfair that she was not eligible for a similar allowance.

The complainant, who was unaware of her right to appeal this decision, was referred to the appeal process. Further, I arranged for a lawyer to represent her in that appeal.

The appeal tribunal unanimously decided to grant the allowance to the appellant.

MINISTRY OF LABOUR

Declined, withdrawn, discontinued	18
Resolved: corrected during investigation	8
Substantiated: corrected after recommend.	1
Substantiated but not rectified	0
Not substantiated	8
CLOSED - TOTAL	35
Number of cases open Dec. 31, 1981	15

Excluding those complaints registered against the Labour Relations Board and the Workers' Compensation Board, I received during 1981 thirty complaints against boards and branches of the Ministry of Labour. Reports on the boards of review, the tribunals that hear appeals from decisions of the Workers' Compensation Board, are, for convenience, included in my section on the

Workers' Compensation Board, although the boards of review are in fact responsible to the Ministry of Labour and are independent of the Workers' Compensation Board.

An amendment to the *Employment Standards Act* which specifically permits disclosure of documents to the Ombudsman has overcome the inconvenience I earlier experienced in conducting investigations in this area.

Cooperation by officials of the Labour Ministry has generally been good, although there have been isolated cases in which I have had difficulty in obtaining responses to queries. I feel that these difficulties were not the result of negligence or indifference on the part of Ministry staff so much as a consequence of heavy caseloads within certain areas of the Ministry.

CS 81-087

Credit where credit is due

When a complainant tried to get credit from a local department store, he was surprised to discover that he was not considered credit-worthy. A check with the Credit Bureau disclosed that the root of the problem was an outstanding certificate registered against a company he had once owned. The certificate alleged failure to pay the wages of two employees. The irony was that neither employee had ever worked for his company; they had worked for a company with a name very similar to that owned by the complainant.

As he had not yet contacted the Employment Standards Branch directly, the complainant was advised to do so. When the error was brought to that authority's attention, corrective measures were quickly taken, and the complainant's good credit rating restored.

CS 81-088

Labour is sorry

The complainant was attempting to claim wages be believed were owed him by his employer. He contacted the Ministry to assist him but was, he said, given conflicting information by Ministry people. He was also treated in a discourteous manner.

Investigation showed that the complainant was given unclear information and that the complainant had been the recipient of uncomplimentary remarks from one of the employees of the Ministry. The Ministry sent an apology to the complainant and processed his claim.

CS 81-089

You can't contract out of this law

A woman operating a stone quarry business negotiated an agreement with an employee. She agreed to pay him a certain amount for his labour plus a percentage to cover fringe benefits. However, when the employee terminated his employment after several months he complained to the Employment Standards Branch that he had not received sufficient vacation or holiday pay from his former employer. The Branch investigated the matter and supported his claim. The woman was required to pay the ex-employee over $1,000 and complained to me about this decision.

The woman's error lay in her belief that because she had a verbal contract with the employee, she was free to make whatever arrangement seemed mutually agreeable. Although I sympathized with the woman's plight I found the Branch was correct in determining that the quarry worker was an "employee", not an independent contractor. Under statute, an employee must be paid general holiday and vacation pay.

According to Court decisions an employee has a contract "of service". An agent or independent contractor has a contract "for service". A bricklayer who is employed by a bricklaying firm to work on its various contracts and under its general superintendence has a contract of service, whereas a bricklayer hired to construct a specific wall for a fee has a contract for services.

The structure of this employee's work situation made him the holder of a contract of service, entitled by statute to holiday pay. For a well-intentioned businesswoman, this incident provided a costly lesson in labour standards.

CS 81-090

Human Rights Code and harassment

A woman complained that the six-month limitation on reporting allegations of discrimination to the Human Rights Branch, particularly when the allegation is of sexual harassment, is unreasonable. She argued that it often takes victims of sexual harassment a long time to recognize that they have been subject to such harassment and that once recognized, it takes a further period to decide to take action.

Her point was well-taken. However, I found that the six-month limitation is imposed by the Human Rights Code itself, not the Branch. Therefore, legislative change will be necessary to alter the time period or to waive it in cases that require special consideration.

As the Human Rights Commission has responsibility for reviewing the Code to ensure that its provisions effectively meet its intent, I referred the matter to the Commission for their consideration.

The Chairperson of the Commission has since informed me that the Commission has unanimously agreed to request legislative review and change.

I am very pleased with the Commission's response, and look forward to the implementation of the change.

MINISTRY OF LANDS, PARKS AND HOUSING

Declined, withdrawn, discontinued	17
Resolved: corrected during investigation	26
Substantiated: corrected after recommend.	3
Substantiated but not rectified	0
Not substantiated	31
CLOSED - TOTAL	77
Number of cases open Dec. 31, 1981	56

Lands, Parks and Housing is a large, diverse Ministry with a number of programs and objectives. In exercising its mandate, which includes the management and allocation of Crown lands in British Columbia, it is involved in nearly all resource use issues in the Province.

By far the largest proportion of complaints were lodged against the Regional Operations Division, which is responsible for the adjudication of land applications and for the administration of existing tenures, in accordance with established Ministry policy. The operations of this Division are de-centralized. Decisions affecting existing tenures and the adjudication of land applications are normally the responsibility of the eight Regional Directors, although an appeal of the decision of the Regional Office on a land application is available to aggrieved applicants. In most cases, an applicant will be requested to exhaust his available appeal routes within the Ministry before an investigation is initiated by this office.

There may be several reasons advanced for the disproportionate number of complaints received about the Ministry's land management and allocation decisions and procedures carried out by the Regional Operations Division. In recent years there has been an increased public demand for Crown land and over five thousand new land applications were received by the Ministry in 1981. However, this factor alone cannot account for the significant proportion of complaints about the Regional Operations Division. For example, substantially more applications were received in 1981 by the Home Purchase Assistance Branch, although considerably fewer complaints were made against this Branch than against the Regional Operations Division.

Several reasons for this discrepancy are immediately apparent. The Home Purchase Assistance Branch, which provides financial assistance to new homeowners, is constrained to adjudicate applications under the provisions of the *Home Purchase Assistance Act* and regulations. This legislation is quite specific and affords little room for discretion in the adjudication of applications. Legislation governing the allocation and management of Crown land, which is the function performed by the Regional Operations Division, allows considerable discretion for the establishment and implementation of policy by the administrators. Specific recurring problems involving the Ministry's land application policies and procedures are fully addressed in an earlier section of this report.

My office has had good cooperation from the Home Purchase Assistance Branch and all complaints received against the Branch were either resolved, abandoned, or not substantiated. Both the Manager of the Home Purchase Assistance Branch and the Eligibility Committee established under the *Home Purchase Assistance Act* have demonstrated their readiness to discuss fully outstanding complaints.

Future investigations involving this Branch of the Ministry may lead to a suggestion that greater discretion be provided to the Eligibility Committee established under the *Home Purchase Assistance Act* to determine eligibility for benefits where unforeseen or extenuating circumstances are shown to exist. This suggestion was considered but not pursued in an investigation summarized below ("Homeowners get their grant"—CS 81-100), as another acceptable resolution was negotiated.

Mobile Home Registry complaints have involved the Registrar's refusal to effect registration of two mobile homes. However, the refusal in these cases was based on the applicants' inability to provide a satisfactory record of title to the mobile homes back to April 1, 1978, the date when the *Mobile Home Registry Act* came into effect, providing for the registration of mobile homes.

I am pleased to report that this year the Ministry of Lands, Parks and Housing has initiated a program designed to meet the commitment for replacement land given to individuals displaced by the Libby pondage 10 years ago. I had addressed the problem of Libby pondage displacees specifically in my 1980 annual report. While the fact that the Ministry has initiated such a program is encouraging, it remains to be seen whether a satisfactory resolution will be obtained for remaining displacees, as there are serious disputes about conflicting resource use which will have to be resolved with other Ministries for the program to be a success. The benefit of the program to remaining displacees will depend largely on how

committed the Ministry of Lands, Parks and Housing is to promoting their interests with other Ministries.

Other Ministry action which was the subject of several complaints involved requests that compensation be paid because of losses suffered by the complainant as a result of a change in Ministry policy, restricting commercial activity in designated provincial parks. As a result of a recent decision of the Court of Appeal of British Columbia it appears that some of these complainants, who had mining claims within provincial parks which they were later prohibited from exploring, will now be in a position to claim compensation for their demonstrated losses.

Ministry personnel at all levels have been prompt in providing required information and are readily accessible to discuss and consider resolutions of complaints.

CS 81-091

The battle of Buckley Bay

Buckley Bay lies close to the centre of Baynes Sound, which is a sheltered 25 km stretch of water between Vancouver Island and Denman Island, yielding about 60% of this Province's oyster production. Many people were therefore pleased by a news release of July 1980, in which the Minister of Lands, Parks and Housing announced a three-year moratorium on the establishment of new shoreline log-dumping sites on Buckley Bay. However, the release also announced a "review and approval by the Minister of an application by MacMillan Bloedel for log dump and storage facilities at Buckley Bay".

The announcement of this approval was the first that many area residents had heard of the matter. Dissatisfied with the information they were able to obtain from the Ministry, a number of them formed the Baynes Sound Protection Committee (B.S.P.C.), which petitioned the Minister to hold a public hearing to review the reasons for and against the proposed facility. This was refused.

I received complaints from B.S.P.C. and others that the Minister had made his decision without requiring that the lease application be advertised first, and that there had been no prior opportunity either for public discussion or for objection to the proposal. Many people, including neighbouring oyster growers, felt they would be adversely affected by the presence of the dump site.

Does procedural fairness require that a Ministry inform such persons of the proposal and hear their objections **before** it makes a decision?

My investigation revealed that under its existing policy, the Ministry should have required the applicant to advertise the basic proposal. When the Minister's decision was announced in July 1980, the application had already been under consideration for 19 months without the Ministry's requiring the applicant to advertise. Hearings (under what is now s.59 of the *Land Act*) had been held in the past on similar issues, where there were similar grounds for objection and where the number of objectors was far smaller. One Branch of the Ministry of Environment had strenuously opposed the application, and some other agencies had expressed concern. A senior official in the Ministry had apparently ignored a report from the District Land Manager which predicted public opposition and concern, and which recommended that MacMillan Bloedel be requested to advertise its application. MacMillan Bloedel had been refused a similar application a few years before, because of the environmental degradation which had previously occurred as a result of the firm's operations at the same location.

I concluded that procedural fairness had not been observed towards the complainants when the Ministry made its decision to approve the MacMillan Bloedel application, and I recommended in January 1981 that the Ministry take appropriate steps to rectify this omission. Several acceptable courses of action were suggested, but the Ministry's eventual response was to require the firm, in April 1981, to advertise its proposal in the local press, to hold a public viewing of its plans, and to recalculate the costs of certain alternatives to the Buckley Bay facility. In my opinion the advertising was by now a mere formality, and the other steps taken did not really address the basic problem, yet the Ministry appeared unwilling to do anything more.

As I was considering further steps, MacMillan Bloedel resolved the matter by withdrawing its application. According to a news release, the withdrawal was due solely to economic conditions, and was completely unrelated to my investigation. If that is the case, I must humbly acknowledge the support of Higher Powers in bringing this matter to an acceptable conclusion!

CS 81-092

One head lopped from many-headed Hydro

In January, 1981, I received a complaint from the president of an environmental protection group that the Ministry was refusing to provide his group and a number of other interested organizations and individuals with an effective opportunity to oppose a B.C. Hydro application. B.C. Hydro had applied to construct a road for access into the Stikine area in connection with exploratory work for a proposed dam. The complainant also objected to the Ministry's refusal to force Hydro to provide an environmental impact assessment study.

The concerns of these individuals and groups were substantial. They claimed that the proposed

access to a wilderness area would have a detrimental effect on local food supply, trapping and guiding income, Native land claims, and on the region's environment in general.

I attempted unsuccessfully to arrange for the Ministry to participate in a forum in which objectors could voice their concerns. Then I informed the Deputy Minister that I was considering a recommendation that representatives of the Ministry's Regional staff call or attend a public meeting to provide objectors with an effective opportunity to be heard.

On February 26, 1981, B.C. Hydro's only outstanding access application - for a "cat-trail" to the proposed dam site - was disallowed by the Regional Director of the Ministry's Skeena Region. Reasons given by the Regional Director included adverse environmental impact and strong public opposition.

The Ministry has an internal review body which advises the Minister. Known as the Land Application Appeal Committee, it was established to provide an independent review of Regional Operations' decisions on land applications. As it appeared likely that B.C. Hydro would appeal the disallowance to this body, I wrote to the Deputy Minister and recommended that the objectors should also be given an opportunity to be heard by the Appeal Committee. I also recommended that the Ministry hold a public hearing or provide some other suitable opportunity for the hearing of objections, if Hydro re-applied for access.

The Deputy Minister declined to commit the Ministry to public review in considering a new application by B.C. Hydro. He told me that the Chairman of the Appeal Committee had been informed of my views.

In mid-May, 1981, the complainant told me that B.C. Hydro had appealed the Regional Director's disallowance and that a hearing of the appeal was imminent. We met the Chairman of the Appeal Committee and sent a letter to the Deputy Minister. I now recommended that the Appeal Committee not consider reversing or modifying the Region's decision without giving the objectors an effective opportunity to be heard. I emphasized that disallowance had been largely based on environmental impact and public interest concerns and that natural justice demanded that persons expressing these concerns be given an opportunity to defend them.

The Deputy Minister replied that only an aggrieved applicant was entitled to be heard in a review by the Appeal Committee. If public input had been considered advisable, the procedure would have called for public meetings before an applicant was permitted to act on a land use application.

On June 4, 1981, the Minister decided to disallow B.C. Hydro's appeal and required the corporation to meet certain conditions before a new application would be entertained. There was no requirement among these conditions that Ministry personnel hear objectors, despite the fact I had recommended that objectors be given an opportunity to challenge the accuracy of Hydro's information and otherwise express their concerns. I therefore informed the Deputy Minister of my continuing dissatisfaction and advised him that I would be reopening the case in the event of a new application by B.C. Hydro. However, since the Minister had rejected the application by Hydro that was the immediate concern of the environmental protection group, I suspended my investigation until I got another complaint.

Another application was subsequently submitted by B.C. Hydro and a further investigation is now being conducted on this issue, and in respect of several new complaints lodged by the residents' group.

CS 81-093

Crown land: battle with elusive rules

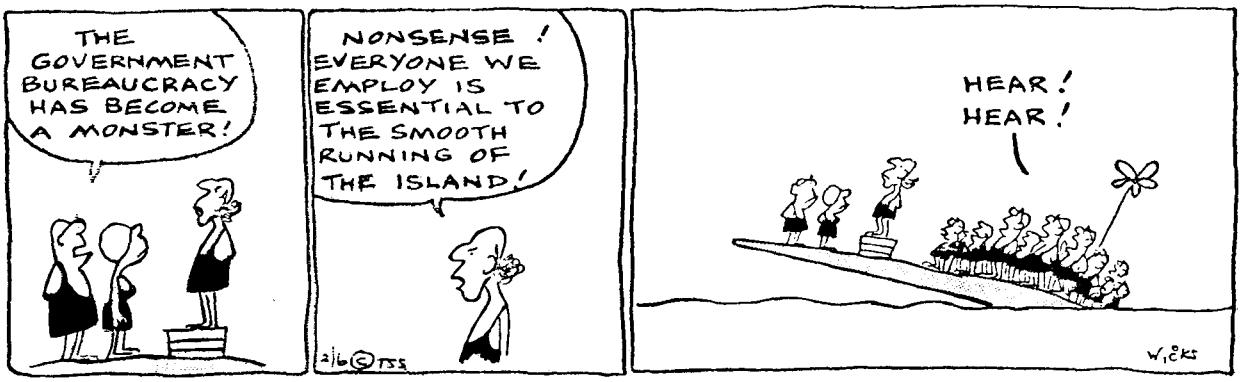
The issue in this complaint was whether the Ministry was acting unreasonably or unfairly by permitting other individuals to participate in a competition for a parcel of land staked out and applied for by the complainant.

This complainant had been engaged in a long, eventful struggle with the Ministry in an attempt to obtain a parcel of unsurveyed Crown land in the Queen Charlotte Islands for a homesite and small agricultural operation. After he had exhausted all his available appeals within the Ministry and 15 months after his original application, he complained to my office that the decision made by the Minister to hold a closed competition for the Crown land was unfair.

Seven months after his original application, the complainant was told by the Regional Director that the land which he had applied for was previously under reserve and could not therefore be made available without a public competition. The complainant had been advised by the District Manager that the application was disallowed because the land was not considered arable and had informally appealed this determination to the Regional District of the Ministry's Skeena Region.

The second letter of disallowance, from the Regional Director, was based on both the finding of non-arability and on the requirement for a public competition.

The complainant next appealed to the Land Application Appeal Committee, which is an internal review body that advises the Minister. It is intended to provide an independent review of land



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application adjudications. The Minister found in the complainant's favour on the question of arability, and decided to dispose of the land. He gave two reasons for requiring the public offering. During a time while other would-be landowners were forced to wait for completion of a Crown land plan which would permit the parcelling of land for sale, it seemed inappropriate to sell this one parcel directly. Also, the land had once been under reserve.

The complainant argued that the requirement for further advertising and public bids was unfair as he had previously advertised his intention to acquire the parcel at the request of the Ministry and there had been no response at that time. The Ministry compromised by advertising its intention to dispose of the land and by requiring all respondents to establish that they had previously expressed an interest in purchasing property in the area, in order to establish their eligibility to participate in the auction.

I was unable to conclude that the Ministry's requirement for a closed competition in this case was unfair. However, I informed the Ministry that I was concerned that the complainant was not informed of the necessity of a public competition until approximately seven months after his application for the parcel was received.

My assistant was advised by the Assistant Deputy Minister that the vast majority of *ad hoc* land applications are disposed of directly to a qualifying applicant and not by way of public competition. The only public notice required in most applications of this type is a published notice of the applicant's intention to acquire the Crown land. Even this requirement is discretionary under the *Land Act*.

At the time of the application the complainant had not been given to understand that a public competition might be required. Although I was not able to agree with the complainant's view that the parcel should be disposed of directly to him, this complaint brought to light problems in the Ministry's procedure for making application for Crown land, particularly for agricultural uses.

CS 81-094

Land is available—until you try to buy

Six months after the complainants had applied for a parcel of land and after they had gone to considerable trouble to obtain the necessary approvals of various referral agencies, they were advised by the Ministry that the land could only be disposed of by public competition as it had been previously held under a reserve from alienation.

During the processing of their application, the complainants had been informed by a Ministry representative in the local office that they should be able to purchase the property as long as approval for the disposition of the land was given by all referral agencies. On the strength of this understanding, the complainants had enthusiastically involved themselves in the land referral process, and had successfully resolved the objections and impediments presented by several referral agencies.

After their enterprise and success in obtaining the necessary approvals, the complainants were dismayed to learn that the Ministry had decided to hold a public competition, if and when a decision was made to dispose of the land.

The complainants had written to the Minister to object. The Minister affirmed the Region's decision and added that the policy of requiring a public competition was designed to afford an equal chance to any interested persons who might have applied in the past for the previously reserved lands. I was concerned. The complainants' application was underway for almost six months before they were advised that the land would have to be disposed of by public competition, and during this time the complainants had, on the strength of inaccurate information, gone to considerable trouble to obtain the necessary approvals. I therefore suggested that in future applicants be notified at an early date when the land applied for must be disposed of by public competition.

The Deputy Minister replied that the local office only learned about the reserve on getting status clearance information from Victoria. The Ministry hoped to install a computerized information access system in regional offices in the future.

The Ministry has a goal of deciding whether to accept a land application within 120 days. Therefore, they begin several processes - field examinations, land statusing, and referrals to other agencies - all at once. In order to prevent future applicants from being frustrated as this one was, the Deputy Minister instructed staff to discourage applicants from trying to get approvals from referral agencies before the Regional Director had a report on the status of the land. He also decided to give this complainant first choice of lot in any subdivision developed. This was his own idea; I had not suggested it.

The instructions issued to field staff and the proposed computer land statusing in Regional Offices appeared to provide an adequate remedy to the issues of procedural fairness raised in this complaint. I therefore decided that a satisfactory resolution of the complaint had been reached and the complainants were happy to learn that they might yet benefit from their efforts.

CS 81-095

He lost a lot when they broke their promise

A former B.C. resident complained that the Ministry of Lands, Parks and Housing had failed to live up to its commitment to give him a chance to buy a specific lot of Crown land in the Kootenays. He had recently learned that the lot in question had been promised to another individual, contrary to assurances given to him by the Ministry that lots in the area would be disposed of by public competition.

The complainant had originally applied for the lot in 1974 and his application was disallowed. The letter of disallowance stated that the area was previously held under reserve. In accordance with departmental policy, Crown lands previously held under reserve must be disposed of by way of public auction. The complainant was advised that an inspection of the lots was being undertaken at the time and that if the report were favourable, due notice of the auction would be given and the department would attempt to contact the complainant personally.

The complainant subsequently moved to Oregon, leaving a forwarding address. During a visit to the area in 1979, he learned that commitments had been made to sell several lots, including the one he wanted, to individuals who had made *ad hoc* applications. He quickly expressed his objections to Ministry personnel and eight of the outstanding applications were disallowed, including the application for the lot for which the complainant had previously applied.

The Ministry subsequently advised the complainant in writing that it now intended to dispose of the lots by public lottery and that he would be notified when the arrangements for the lottery had been completed.

In August, 1980, an exchange took place and the lot which the complainant had applied for was committed to one of the individuals who had been promised a lot in 1979. The complainant learned of this and contacted my office to object to the arbitrary and unfair manner in which he had been treated by the Ministry.

I discussed these findings with the Regional Director, who claimed any suggestion that the Ministry had acted unfairly or had any obligation to apologize to the complainant. It was therefore necessary to pursue the matter formally at a more senior level. I advised both the complainant and the Deputy Minister of my findings and my recommendations that an apology be sent to the complainant and that the Ministry notify him of any future sale of similar Crown land. The Deputy Minister agreed that the complainant had been treated unfairly and instructed all Regional Offices not to promise personal contact in future, to prevent this problem from recurring. He also expressed his hope that a letter of apology would suffice and requested that I be more specific in my second recommendation. The complainant, on the other hand, felt that my recommendations were inadequate and considered that he should be entitled to buy a lot of his choosing at a reduced price.

While the complainant's position was understandable, I decided to limit my recommendation to a letter of apology and a commitment by the Ministry to notify the complainant of land in the area he was interested in. The complainant had lost a promised opportunity to participate in a public competition for the lot but it is quite possible he would not have won the lot at the auction even if the Ministry had kept its promise to him. The thrust of my second recommendation was therefore to restore to the complainant the opportunity he had lost.

However, after the end of 1981, when I had completed my investigation and submitted my recommendations to the Deputy Minister, the Ministry made my complainant an offer he is pleased with: another suitable property in the area he wanted, and at 1979 prices.

CS 81-096

Saving sea-park proper, refusing reasons not

A man who was trying to acquire unsurveyed Crown land was told to advertise this intent in his local newspaper and *The British Columbia Ga-*

zette. While his advertising was underway, he contacted the District Land Commissioner who told him his application had been denied. On the complainant's request, the Commissioner promised to forward reasons for refusal and information on the method of appeal. A month and a half later, the information had not arrived, and the would-be landholder complained to us.

The Commissioner agreed to send us and our complainant the information. We asked our complainant to get in touch again if he had further problems.

Incidentally, the reason his application had been rejected was that the land he wanted was part of a marine recreational area reserved for public use.

CS 81-097

You pay your money, and they forget your title

A man in Sardis complained that the Ministry had delayed in providing him with title to land he was buying from the Crown. The complainant had sent the purchase price, at the Ministry's request, on August 15, 1980. His subsequent letters to the Ministry's Regional Office to ask when the transaction would be completed went unanswered and on May 25, 1981, he wrote to my office about his problem.

We telephoned the Regional Office on June 2, 1981 and were told the office would speed up the complainant's Certificate of Purchase and the preparation of the Crown Grant. A letter was sent by the Regional Office to the complainant the same day, confirming this information and apologizing for the delay.

We were told by the Regional Office that the Crown Grant could only be issued from Victoria and that this could take from four to six weeks. We discussed the delay with the Regional Office. Then the individual responsible for issuing the complainant's Crown Grant agreed to push the grant through within two or three days of receiving the necessary documents from the Regional Office.

We told the complainant what we had done to remedy the problem; he was satisfied with the solution.

CS 81-098

Taking the land into your own hands

I received a complaint that the Ministry of Lands, Parks and Housing was acting unfairly by refusing to grant the complainant a recreational lease of Crown land on Hudson's Bay Mountain and by requiring him to move the cabin which he had erected on the property.

The complainant felt that the Ministry had wrongly refused, for many years, to comply with a public demand to release Crown lots in the area for recreational purposes. Based on this belief, he had constructed a cabin on the area without obtaining authority to do so.

My staff learned that development in the area had started about 15 years ago, when persons occupying the land on mining claims began unlawfully constructing cabins. Action was taken with respect to these unlawful occupations in 1973, but through the intervention of their M.L.A., the cabin owners were successful in obtaining recreational leases to legalize this occupation of Crown land.

Reasons given by the Ministry for declining to start orderly development of the area related to health and pollution problems associated with the very shallow soils in the area, lack of access in winter and the need for an overall plan for development of the ski hill as a recreational area. The complainant did not accept these explanations and felt that the Ministry should have marketed the land.

On the basis of these beliefs and in light of the government's previous legalization of unauthorized occupations of Crown land in the area, he started construction of the cabin. Several days after construction started, he was told by the Regional Office of the Ministry to stop construction or face legal action under the *Land Act*. The complainant was originally given a 30-day deadline to remove the cabin. The time was later extended nine months through the intervention of the complainant's M.L.A. The complainant continued to feel that the Ministry should lease him the property and contacted my office for assistance several months before the expiry of the second deadline set by the Ministry.

No suggestion was ever made to the complainant that his occupation would be legalized and the Ministry took action soon after it learned of his activities. As the Ministry had not misled the complainant and as he had no legal authority to occupy Crown land, I concluded that his complaint was not substantiated. The Ministry had now decided to consider restricted marketing of land in the area, and agreed to make whatever arrangement was possible to relocate the complainant's cabin if lots were sold.

CS 81-099

Almost doesn't count for First Home Grants

An individual complained that his application for a First Home Grant had been unfairly refused by the Ministry's Home Purchase Assistance Branch. The complainant had bought his first home for $71,500 and the price limit in effect at the date of purchase was $70,000.

Price limits for homes eligible for grants and loans under the *Home Purchase Assistance Act* are established by regulation, and are subject to periodic review. The complainant had argued that the price limit imposed by regulation was inher-

ently unfair, as he could not have bought a home for that amount. In view of the small difference between the price of the complainant's home and the maximum price limit, I disagreed with this argument, and concluded that the complaint was not subtantiated.

CS 81-100

Homeowners get their grant

The complainants, a native couple, had been refused a Family First Home Grant because the Home Purchase Assistance Branch received their application 10 days after the one-year deadline prescribed under the *Home Purchase Assistance Act*. According to the Act and its regulations, an application must be received by the Minister within a year after the homeowner takes occupancy.

As the complainants' home was on an Indian reserve, the Home Purchase Assistance Branch required that their Band Council confirm that the family was entitled to the land and occupied the home. The complainants had submitted their application to the Band Council office soon after they first occupied their home, but as a result of errors and misinformation on the part of the Band Council office, the application was not forwarded to the Home Purchase Assistance Branch on time. Nine days before the expiry of the one-year limitation, the complainants took matters into their own hands and sent in a second application, without the required Band Council resolution. Since the couple had done everything in their power to comply with the one-year limit, it appeared unfair to deny them their grant.

We met with the Manager of the Home Purchase Assistance Branch and the Director of Housing Programs. I suggested that the Band Council could be deemed an agent of the Ministry for the purposes of receipt of an application. Under this interpretation, the complainants would have made application well within the one-year time limitation.

The Eligibility Committee agreed to approve receipt and processing of the application.

The complainants were very pleased to learn of this decision and were finally issued a grant.

MINISTRY OF MUNICIPAL AFFAIRS

Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	4
Substantiated: corrected after recommend.	1
Substantiated but not rectified	2
Not substantiated	11
CLOSED—TOTAL	25
Number of cases open Dec. 31, 1981	18

Local government probably affects directly a larger number of people than any other level of government. The Ministry of Municipal Affairs has varied responsibilities concerning cities, districts, towns, villages, regional districts and the boards and commissions related to these bodies.

The Ministry of Municipal Affairs is divided into two Departments: Deputy Minister for Planning, Policy and Ministry Services and Inspector of Municipalities who has Deputy Minister status. In the case summaries which follow, I will explain my limited authority in local government matters (see "Rezoning blocks view; lack of authority blocks Ombudsman"—CS 81-101).

A high percentage of the complaints I received related to the office of the Inspector of Municipalities and the investigations carried out under his direction. Complaints about the lack of proper investigative techniques seem to have been caused by an increased work load. The reason for the increased load is that more citizens, believing their local governments have treated them unfairly, have demanded intervention by the Inspector of Municipalities. The Inspector of Municipalities assures me that he will have more trained investigation officers in 1982. This should help alleviate the problems.

Throughout 1981, the Ministry of Municipal Affairs' staff has given my office a high degree of cooperation and assistance.

CS 81-101

Rezoning blocks view; lack of authority blocks Ombudsman

A husband and wife complained that Municipal Council had failed to follow the steps demanded by the *Municipal Act* for rezoning land. They and their neighbours opposed the use of nearby land for multiple-unit buildings. They believed there would be traffic congestion, a change in the character of the neighbourhood, and a blocked ocean view. The *Municipal Act* requires public hearings when rezoning is planned. Notice is given to nearby owners and newspaper ads are placed. The complainant told me there were mistakes in the advertisements and in the notices they were given and that therefore the rezoning violated the requirements of the *Municipal Act*. They were not satisfied with later attempts to correct these deficiencies.

Although the *Ombudsman Act* designates municipalities as an "authority" subject to investigation, the Legislature has not yet proclaimed this part of the Act in force. Therefore, I have so far no jurisdiction to investigate the decisions of municipalities or comment on the fairness of their actions.

When a complaint that is beyond my jurisidction comes to me, I try to suggest an alternate remedy.

In this case, I suggested the complainants take their grievance to the Inspector of Municipalities. They asked him to overturn Council's rezoning decision.

The Inspector investigated and replied that despite the mistakes in the notice and advertisements, no one lost the chance to be present and be heard at the public hearings. Therefore, his office would not act.

I am powerless to help except by reviewing the investigation carried out by the Inspector, and considering the restricted jurisdiction vested in his office in matters of this kind, I accepted the results of his investigation. If the portion of the *Ombudsman Act* concerning municipalities had been proclaimed, I could have conducted an investigation myself, and not have had to rely on the efforts of another party.

CS 81-102

Restructure of boundaries

After a poll to approve restructuring of the boundaries of a town, some voters complained that the poll had been designed to support the opposite decision from the one they wanted. Their complaint was based on a misunderstanding which good communication might have prevented.

The town council had received several requests from rural land owners that the water distribution system (which was owned by the town but situated in the rural area) be upgraded in order to serve their needs better. A committee was appointed by the town and the Regional District to study the question of restructuring the boundaries of this town in order to meet the wishes of the rural residents. The committee comprised six voting members (three from the town and three from the rural area) with Ministry of Municipal Affairs' representatives acting in an advisory capacity.

The committee sponsored public meetings in order to answer questions from the public. After a year of deliberations, the committee requested that the Minister of Municipal Affairs hold a referendum in the area described by the committee, with a view to establishing a new, incorporated community. The Minister complied with the request of the Committee by appointing a Returning Officer and directing that a poll be taken in the area designated by the committee.

The Minister has the legislative authority to direct the procedures for the poll that is taken and he directed that the area be divided into two polling divisions. The Returning Officer, who had authority to make local arrangements for the vote, then decided that the voting for both divisions should be held in one room in the Town Hall and that a different colour of ballot would be used for each polling division. The ballots cast by the town voters and the rural voters would be unmistakably separate.

The Returning Officer did not explain to the public the procedural decisions she and the Minister had made. As a result, some residents interpreted the procedures at the polling station as indicating that a majority in each of the two polling divisions must separately vote in favour of the proposed extension of boundaries before incorporation would take place.

My investigation revealed that the Ministry of Municipal Affairs acted according to legislative requirements in the holding of the referendum.

I have suggested to the Ministry that in the future, the public be clearly informed of the rules under which a vote is being taken so that there will be no misunderstanding of the procedures used in the process of restructuring boundaries.

Because of this and other complaints, I have begun a separate study into the problems associated with municipal restructure and boundary extension and I will be reporting the outcome of the investigation.

CS 81-103

Inspector's investigations inspected

Through my investigation, I substantiated the complaint of a B.C. resident that the Ministry of Municipal Affairs did not properly investigate the problem which she had brought to its attention. Under the provisions of the *Municipal Act*, a person who is not able to obtain a supply of water from an irrigation or water district may appeal to the Inspector of Municipalities, Ministry of Municipal Affairs, who, after investigating the complaint, may intervene on behalf of the aggrieved party. If the person is not satisfied with the investigative procedures utilized by the Inspector, my office may then examine this aspect of a complaint.

The chief deficiency in the procedure adopted by the Ministry was that the complainant was not interviewed at the time that the Ministry contacted the irrigation district officials.

The Ministry accepted my recommendation that it implement a fair investigative procedure policy. Such a policy would establish three rights for a complainant. First, the complainant must be given the opportunity to be heard or interviewed before a determination is made. Second, reasons for decisions must be given and each complaint receive an answer from the Ministry. Third, there must not be unreasonable delay in carrying out the investigation.

In this case, subsequent contact with the complainant revealed no new evidence that the irrigation district had treated her differently than others in similar circumstances.

With the new policy in place, future complainants are now assured of a fair hearing as the Ministry of Municipal Affairs meets its statutory investigative responsibilities.

CS 81-104

Maintenance of fire hydrants

A householder informed me that her Fire District and the several Water Districts within it were arguing about whose job it was to maintain fire hydrants. As a result the hydrants had been left unrepaired for two years. The Ministry knew about the squabble but had not done anything to get it settled. The complainant was, of course, worried that her hydrantless district would be in serious trouble if a major fire broke out.

I consulted the Ministry, the Fire District and the Water Districts. All agreed a solution must be found, so I arranged for them to meet. A member of my staff attended the meeting and it was soon decided who should service and maintain the hydrants.

CS 81-105

Delaying inspection amounts to inaction

A person wrote to the Inspector of Municipalities in 1977 and asked the Inspector to investigate an alleged conflict of interest on the part of an elected official. The allegation concerned the conduct of a member of a Municipal Council as it related to his land holdings in the municipality and the surrounding area. The Inspector of Municipalities did not answer the letter which requested that a public inquiry be held into the matter.

Subsequently, the person complained to my office about the delay in obtaining an answer from the Inspector. My investigator discussed the matter with the complainant and with the Ministry of Municipal Affairs officials. I found the complaint substantiated. However, I concluded that because of the extended delay in receiving a response from the Inspector, it would be difficult to have an inquiry which would ensure that all facts could be accurately recalled.

This particular complaint could not be rectified. However, the Inspector of Municipalities has assured my office that now practices within the Ministry have been changed so that the public will no longer be required to wait an unreasonable period of time prior to having action taken.

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES

(Not including PSC, Superannuation, and GERB)

Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	2
Substantiated: corrected after recommend.	0
Substantiated but not rectified	1
Not substantiated	4
CLOSED—TOTAL	13
Number of cases open Dec. 31, 1981	9

CS 81-106

"First Citizen" gets bursary

A young non-status Indian complained that he had been unreasonably denied a bursary from the First Citizens' Fund Student Bursary program.

He had come to work in British Columbia from Manitoba in 1973. Later, he enrolled in post-secondary institution and was from 1977–1981 a full-time student. He believed that he would be able to receive repayment of his Canada student loan through the First Citizens' Fund Student Bursary Program. However, when he applied to the Advisory Committee, he was granted repayment only for the 1980–1981 academic year.

In 1969, the Legislature made provision for the Minister of Finance to use the interest on the First Citizens' Fund to pay amounts for the purpose of "the advancement and expansion of the culture, education, and economic circumstances and position of persons of the North American Indian race who were born in and are residents of the Province".

My investigation revealed that in 1979 Provincial Government and Indian people began to consider it discriminatory that Indian students who were born outside the province but become residents of British Columbia were ineligible to be considered by the First Citizens' Fund Advisory Committee. Some exceptions were made during and after 1979. By the 1980 school year a new policy was in effect allowing bursaries to be paid on the basis of B.C. residency.

I suggested a relaxation to allow the young man to receive the assistance he had expected. The Ministry of Provincial Secretary and Government Services agreed and his student loan for 1979–80 was repaid for him on compassionate grounds.

CS 81-107

Innocent until proven guilty

A junior stenographer had been suspended without pay from her job in a cabinet minister's office after criminal charges were laid against her. After the charges were dropped, over a year passed and, still jobless, she complained to me.

The complainant's lawyer wrote to her former employing Ministry and informed the Ministry that charges against her had been dropped; he also inquired about the complainant's employment status. The Ministry replied that a reorganization of the public service had taken place and that the complainant's position was now part of the Ministry of Finance. The Ministry also advised that copies of the lawyer's letter had been sent to the Ministry of Finance and to the Chairman of the Public Service Commission.

Five months later, the complainant had heard neither from the Chairman of the Public Service Commission nor from the Ministry of Finance. She wrote to the Public Service Commission and once more inquired about her employment status. After another six months she was interviewed by a personnel officer with the Ministry of Finance. She was told that, because she had been away from the job for so long, she would have to undergo a typing test. No prospects for a job were held out.

Finally, the complainant contacted my office, and I made preliminary inquiries. It turned out that the complainant's position, following government reorganization, was not with the Ministry of Finance, but with the Ministry of the Provincial Secretary and Government Services. It became evident that the position had never been filled with a permanent incumbent since the date of the complainant's suspension. The Ministry of the Provincial Secretary and Government Services interviewed her and offered her work.

I conducted no formal investigation into this matter and I am therefore not making a formal finding. However, after the complainant was re-employed, two problems remained.

The complainant was unemployed and without an income for almost 17 months while criminal charges were pending against her. The provisions of the *Public Service Act* permit suspension of a public servant while criminal charges are pending against him or her. However, there is some discretion as to whether such a suspension should be with or without pay. Because this complaint was settled without a formal investigation, I am not sure what criteria are applied by the Public Service in deciding on whether a suspension should be with or without pay, or indeed whether criteria exist at all. I intend to make this question the subject of a separate investigation.

The complainant was also unemployed and without an income for another 16 months after criminal charges against her had been dropped. There appeared to be no reason for not re-employing the complainant immediately. I was able to negotiate a settlement of $11,000 to compensate the complainant partially for loss of income she suffered during this period.

MINISTRY OF TRANSPORTATION AND HIGHWAYS

Declined, withdrawn, discontinued	88
Resolved: corrected during investigation	48
Substantiated: corrected after recommend.	6
Substantiated but not rectified	0
Not substantiated	50
CLOSED—TOTAL	192
Number of cases open Dec. 31, 1981	78

I again received a substantial number of complaints involving the Ministry of Transportation and Highways in 1981. About two-thirds of the complaints received involved the Highways Division of the Ministry, while most of the remaining third concerned the Motor Vehicle Branch.

Complaints about decisions of the Motor Vehicle Branch are often resolved, due in large part to the excellent cooperation received from the Branch. A number of cases which remain open concern the procedures employed by the Branch in suspending, or refusing to issue, drivers' licences on medical grounds. The Superintendent of Motor Vehicles has a statutory duty to satisfy himself that every person given a driver's licence is medically fit to drive safely. Under current procedures, the Branch makes these decisions on the basis of the guidebook published by the B. C. Medical Association. I am concerned that where a person and his doctor believe that he is an exception to the general rule, that his particular medical condition will be reviewed by a panel of medical specialists. The Branch has agreed with this principle and is currently undertaking substantial changes in its procedures for dealing with these cases.

I would like to emphasize the high degree of cooperation and assistance I have received from the Superintendent of Motor Vehicles and his staff. Responses to my findings and/or criticisms are candid and well-reasoned. As might be expected, it is much easier to resolve complaints and issues which arise out of my investigations where the agency actively participates in finding a solution.

Complaints involving the Highways Division of the Ministry have been more difficult to investigate and resolve. Much of the difficulty in this area arises from the fact that the Ministry's respon-

sibilities to construct, repair and maintain the public highways network are not defined by statute but rather, are left at the discretion of the Ministry. Thus a complaint that the Ministry has refused to upgrade a certain public road is difficult to find either substantiated or not substantiated. The Ministry has no statutory responsibility to do such work, yet one must presume that the Legislature provides the Ministry with its sizeable budget at least partly for the purposes of upgrading and maintaining the public road network. Generally speaking however, Ministry officials and, in particular, local staff have sought to provide the public with good service and resolve those complaints which do arise.

A particularly difficult problem which is currently under investigation involves claims by the Ministry that certain roads are public roads. According to the *Highway Act*, if public money has been spent on a private road for purposes other than snow-ploughing, that road automatically becomes a public road. Did the Legislature really intend that roads be expropriated without compensation because, for example, they were graded a few times many years ago? I have written to the Ministry as a result of receiving many complaints on this issue, and I may be making recommendations in the future.

CS 81-108

No right to buy back land freely sold

A husband and wife had sold their property to the Ministry of Transportation and Highways almost twenty years ago. At that time, the Ministry believed that the property would be required for highways purposes and had approached the complainants to acquire the property. The property had never been used and the complainants complained to me that the Ministry refused to sell the property back to them.

In another part of this Report, I discuss the Cuthbert case which involved very similar circumstances. But in that case, the Ministry had actually expropriated the property, whereas in this case, the complainants had voluntarily sold their property to the Ministry. Because of this, I did not feel that the Ministry was under any moral obligation to sell the property back even if it was no longer required, and I concluded that the complaint was not substantiated.

If the property had been expropriated, or if the Ministry had led the complainants to believe that they had no choice but to sell their property, I would have probably concluded that the property should be returned.

This case raises another issue. Do property negotiators for the Ministry of Transportation and Highways always properly inform persons from whom they wish to purchase property of their legal rights? Until a property has been expropriated, the owner retains the right to refuse to sell the property. Is the owner advised of this or is he led to believe that he has no choice but to sell his property to the Ministry? I hope to investigate this issue in the coming year.

CS 81-109

Ministry cleans up mess

During a visit to Nelson I received a complaint that the Ministry of Transportation and Highways had failed to restore the complainant's ranch to a usable condition after expropriating some gravel for highway construction. We contacted the Director of the Construction Division of the Ministry and brought these complaints to his attention. The Director told us that he was planning a visit to the Kootenays and that he would visit the complainant's ranch and take a first-hand look at the situation. He said he would ensure that all commitments made to the complainants were kept, and that the property would be returned to an acceptable condition.

We discussed this proposal with the complainants, who agreed with the suggestion. I encouraged the complainants to contact me if they were unable to work out a suitable settlement with the Ministry. As it appeared the Ministry was willing to negotiate a settlement, further investigation was not necessary.

CS 81-110

Smoothing out the bumps

An individual had owned a small rural property for some years, but had great difficulty in gaining access to the property because of the condition of the adjacent public road. A sawmill used a portion of the road and heavy machinery had caused the road to deteriorate to such a state that it was impassable. The individual complained that the Ministry of Transportation and Highways had not properly maintained the road.

The Ministry of Transportation and Highways has an obligation to ensure that all public roads are both safe and passable. Obviously, the standard to which a road is maintained is a matter of discretion and depends very much on the amount of traffic using it. However, where a public road provides the only access to an individual's property, I believe the Ministry has an obligation to ensure that the road is usable.

In this case, I brought the complint to the attention of the District Highways Manager and Highways' crews did the needed work in the few weeks following.

CS 81-111

Water, water everywhere

During 1981, I received three similar complaints about flooding to the complainant's property caused by water running under or adjacent to a public road. Each complainant told me that the Ministry of Transportation and Highways had not taken the necessary steps to ensure that this water did not flood the complainant's property.

I worked on the principle that the Ministry had an obligation not to divert a natural watercourse in such a way that it damaged private property, but had no obligation to divert a watercourse from its natural location to prevent such damage.

In two of these cases, I discovered that the watercourse had flooded the complainant's property during heavy rain even before the construction of the public road. In constructing the public road, the Ministry of Transportation and Highways had not altered the natural watercourse, but had instead merely placed culverts under the public road in order to let the water course follow its natural route. In these cases, I concluded that the Ministry had no obligation to prevent the flooding of the complainant's property.

In the third case, the public road had been constructed along the base of a large hill. It acted as a collection device for natural runoff flowing down the hill. The road had collected all of these small streams and rivulets, and channelled them through a single culvert under the public road and onto the complainant's property. As a result, the complainant's property had been eroded. It was my tentative opinion that the complainant had a legitimate claim to the Ministry for compensation for the damage caused to her property, but because the *Ministry of Transportation and Highways Act* provided the complainant with the statutory right to arbitrate the Ministry's refusal to pay her compensation, I concluded that I had no jurisdiction to investigate her complaint. I was required by the *Ombudsman Act* to refer her to the arbitration procedure.

CS 81-112

Heads Crown wins: tails you lose

A young couple had bought a half section of Crown land in the Peace River area some years ago. As a condition of their purchase, they were required to construct a road on the public right of way which provided legal access to their property. This they did at considerable expense. Recently they tried to divide their half section into quarters so that they would be able to sell half at some future time. The Minister of Transportation, acting as the approving officer, refused to permit the subdivision until they had constructed another public road to provide access to the other quarter.

The complainants argued that they were getting stuck at both ends: both as buyers and as sellers they were made to build roads.

I found that the complaint was not substantiated. First, it was not unfair that the Crown had originally required the complainants to construct a public access road to their property, since the price they paid was low because the property did not have a public access road. Second, the fact that the Ministry now required them to construct a public access road to the second quarter was not unfair, because this was a requirement placed upon all subdividers (except the Crown) and the cost could be passed on to the purchaser. It has long been policy in this province that individuals who wish to subdivide their property must provide access to all newly created parcels. In this fashion, the persons who benefit from the access road, pay for that access road.

The Crown historically has not been required to provide lands sold with a public access road. This has created problems as is illustrated by the next complaint.

CS 81-113

Private dispute not solved with public funds

A farmer had for years obtained access to his property, which had originally been bought without access from the Crown, via a private road across his neighbour's land. As a result of a dispute, the neighbour had withdrawn his permission for the complainant to use the road. Consequently, the complainant had asked the Ministry of Transportation and Highways to create a public road to his property, and the Ministry had refused.

I discovered that there were really only three people who would be affected and that two of these people did not want a public road. I therefore agreed with the Ministry that it was not in the public interest that a public road be constructed at the taxpayers' expense.

It seemed to me that if the complainant wanted unrestricted access to his property, he should be prepared to buy the necessary right of way from one of his neighbours and pay for the cost of constructing a road. This would increase the market value of his property, and he would probably be able to recover the cost of construction when he sold the property. For the above reasons, I concluded that the complaint was not substantiated.

CS 81-114

L'examen en francais

We dealt with two similar complaints involving problems experienced by French-speaking residents of the province. The first case was brought

to us by the concerned acquaintance of a francophone who had been unable to obtain his airbrake driver licence during the two years since he had come to live in B.C. He had worked in Quebec as a professional truckdriver, but was now forced to work at a lower-paid job, because he had been unable to pass the written airbrake licence exam in English. My staff arranged with the Superintendant of Motor Vehicles for the man to take the exam orally with the aid of a French/English dictionary.

In the second case, the B.C.-born wife of a French-speaking immigrant from Europe contacted my staff to complain that no service was being provided in French. She said that immigration officials abroad had assured her husband that he would be able to function quite well in Canada if he spoke French or English in addition to his native tongue. She had offered to act as translator during the written exam, but had been refused. After some discussions with the Superintendent's and the local Motor Vehicle Branch office, it was arranged that a local French-speaking schoolteacher would act as translator. The Branch obtained references, was assured that the couple did not know the teacher personally, and said that the couple would have to pay any fees required.

We discussed with the Branch various ways of dealing with such problems. The Superintendent said that translators had been used in the past, but had not been satisfactory: they tended to overcharge licence applicants and they influenced test results. Finally, I recommended that the driver manual and the written exam be provided in a bilingual edition. Since the MVB was concerned about cost factors, we obtained estimates for translating and printing; these were quite reasonable. However, the Ministry referred the matter to a Cabinet Committee, rather than implementing the recommendations, suggesting alternatives, or even refusing to accept them. After several months of waiting and following up with the MVB, I decided to close my files. I am not satisfied with the outcome of the overall issue, but appreciate the Superintendent's efforts on behalf of the individual francophones who originated the complaints, especially in this time of nationalism and Canadian unity.

CS 81-115

Driver gets foreign licence back

A man complained that he had been required to surrender his foreign driver's licence to the Motor Vehicle Branch upon application for a B.C. one. He said the Motor Vehicle Branch staff had indicated that he could make an appeal for a return of the licence to the Superintendent of Motor Vehicles and that he would probably have it returned to him. He wrote to the Motor Vehicle Branch in Victoria, but was refused his old licence. He said that he had various reasons for wanting the old licence. For example, it entitled him to drive both cars and motorcycles. He was not sure he could get a B.C. motorcycle licence in time for a planned holiday. Furthermore, the licence served as a source of identification in his country of origin and enabled him to rent vehicles and get driving insurance more easily there. He was also not sure whether he would remain in Canada permanently, and so wanted to keep the old licence.

We did a full investigation on this complaint. The Motor Vehicle Branch cited the *Motor Vehicle Act* which stated that a driver's licence held prior to application for a B.C. licence should be surrendered unless the Superintendent dispensed with the surrender. The Superintendent informed the Ombudsman that he rarely exercised this discretion and usually only in the case of B.C. residents working in a neighbouring province or in the United States but residing in a border area in B.C. The Branch felt returning foreign licences would not be in keeping with B.C.'s "one licence concept". We did research on other provinces' treatments of foreign driver's licences and found that some were as stringent as B.C. but that a number were less stringent.

After numerous discussions and various letters to and from the Motor Vehicle Branch, I recommended that the Motor Vehicle Branch institute a new procedure, whereby holders of foreign driver's licences would be able to request their return.

The Motor Vehicle Branch agreed to institute this new procedure. Form letters were drawn up to deal with requests for return of foreign driver's licences, as well as to explain the use of the B.C. driver's licence and the international driving permit and including a list of countries in which these were usable. The Branch also stated that individuals surrendering their foreign driver's licences would be informed that they would be held for up to five years or until expiry, whichever date came first, and that they had the right to apply to have the licence returned in the future. This would apply only to new cases of surrender of foreign driver's licences as, prior to institution of the Ombudsman's recommendation, driver's licences had either been returned to their home jurisdictions or destroyed.

CS 81-116

Driver can rebut claim he's unfit

A driver told me that the Branch had refused to tell him the details of a complaint received by the Branch about his fitness to drive. Since the Board had used the complaint as reason to require him to take a driver re-examination, he felt it unfair that he

was not told the details and was not given a chance to respond.

The Superintendent of Motor Vehicles has the authority under the *Motor Vehicle Act* to require a driver re-examination. Once the Motor Vehicle Branch has received a complaint about a driver's fitness or ability to drive, and it is satisfied that the complaint is legitimate, the Branch sends a standard notice asking the driver to comply with the item(s) indicated in the notice. In the usual course of events, the Motor Vehicle Branch does not inform the driver of the reasons for the notice. If the driver questions the Branch's notice, he may be given details about the complaint, but he will not be given the complainant's name or an opportunity to repond to the complaint.

While I acknowledged the Branch's need to keep the complainant's name confidential, I was concerned about their administrative procedure, which did not give the driver the reasons for the request for the re-examination, the details of the complaint, or an opportunity to respond to the complaint.

The Motor Vehicle Branch agreed to amend its administrative procedure. Now, the Motor Vehicle Branch sends a letter requesting the driver to appear for a re-examination and saying that the Branch has received a complaint about his fitness to drive. The letter gives the driver the name of someone to contact for information. If the driver can show the complaint is unjustified, the Branch will withdraw its request for a re-examination. In my opinion, the Branch procedure is no longer arbitrary or unfair.

CS 81-117

Restriction invalid, amputee finds

The complainant's left leg had been amputated immediately below the knee and a prosthesis fitted. In 1977 he purchased a logging truck, and applied to obtain a Class 1 driver's licence. He passed the driver's test, but the Motor Vehicles Branch would only grant him a Class 1 licence which restricted him to driving in British Columbia. The complainant said this affected his opportunities for work.

My investigator contacted the Motor Vehicle Branch, and was told that individuals with a below-the-knee amputation did not meet the medical standards for a Class 1 driver's licence. The Motor Vehicle Branch said that while it could permit such an individual to drive within British Columbia, it was contrary to reciprocal agreements with other provinces to grant him a B.C. licence to drive Class 1 vehicles in other provinces.

I contacted the Alberta Motor Vehicles' Division, and received a letter from the Division indicating that if B.C. was prepared to grant the individual a restricted Class 1 operator's licence, Alberta would be prepared to honour such a licence in that province. It appeared to me that notwithstanding this letter, the individual would be without a valid driver's licence upon crossing the Alberta border.

I contacted the Motor Vehicle Branch again. The Branch agreed to seek a legal opinion as to whether or not it could expand the restriction on the individual's Class 1 licence to permit him to drive in British Columbia and Alberta. The Branch's solicitor subsequently advised that, while the Branch had no authority to restrict a person to driving in British Columbia and Alberta only, neither did it have authority to restrict an individual to operate a vehicle in British Columbia only. Subsequently the Motor Vehicle Branch agreed to lift this restriction from the individual's licence and the complaint was thereby resolved.

CS 81-118

Tell 'em like it is!

The complainant had been convicted four times in four years of alcohol-related driving offences and had had his licence suspended indefinitely. Over the past two years, the Motor Vehicle Branch had sent him a number of letters requesting that he provide a letter from Alcoholics Anonymous or a similar organization attesting to his sobriety for the previous six-month period. The complainant had sent in two such letters but the Branch did not reinstate his licence.

Upon investigation, I concluded that the Branch had misled the complainant into believing that he needed only to provide the Branch with a letter of attestation and his licence would be automatically returned. In fact, the Branch was quite properly more concerned that the complainant had solved his alcohol problems and for that reason had telephoned the people who had written the letters on behalf of the complainant. These people had stated that while the complainant was progressing, he had clearly not resolved his problems with alcohol. I concluded that the Branch had acted properly in continuing to refuse to reinstate the licence.

However, while I did not think the Branch had acted improperly in telephoning the authors of the letters of attestation, I did conclude that the Branch had acted unfairly in leading the complainant to believe that he would get his licence back if he sent in such letters. I therefore proposed that the Branch make it clear that when it received a letter attesting sobriety, it might telephone the author for more information. The Branch agreed, and promised to make this clear in any future letters to such persons.

CS 81-119

Suspensions suspended during labour strife

A complainant had received a notice from the Insurance Corporation of British Columbia which stated that because he had not paid money owing to the Corporation, I.C.B.C. had asked the Superintendent of Motor Vehicles to suspend his motor vehicle licence. The complainant pointed out that even if he paid, I.C.B.C. might not be able to process his payment because I.C.B.C. employees were, at that time, on strike. The suspension request might not be counteracted.

The complainant was finally able to contact the manager of customer collections for I.C.B.C., and the manager made sure that the complainant's payment was processed and the suspension stopped.

While this individual's problems were thus resolved, I remain concerned that other residents in the Province might find themselves in the same situation.

Officials in the Motor Vehicle Branch agreed that suspension notices received from I.C.B.C. would not be processed during a labour dispute, although this directive did not apply to people who owed previous debts to I.C.B.C.

CS 81-120

Intimate transfers

This was an investigation that I initiated on my own, after receiving six individual complaints dealing with the same issue. Each of the complainants had owed money to the Insurance Corporation of British Columbia as a result of receiving penalty points on their driver record. In each case the complainant had failed to pay at the required time, and his or her motor vehicle licence had been, quite properly, suspended. Each of these complainants had wanted to sell his or her vehicle to a family member, but the Motor Vehicle Branch had refused to permit the sale. The Branch believes that the sale was probably a fraudulent transaction and that the complainant would continue to use the vehicle. The complainants needed to sell their cars quickly so they paid the money they owed and thus solved their problems. However, I initiated my own investigation.

I was unable to find any statutory authority which would permit the Superintendent of Motor Vehicles to refuse to transfer a motor vehicle on the grounds that the owner owed money to I.C.B.C. Furthermore, it was my opinion that this policy was unfair for two reasons. First, there is no logical relationship between owing money to I.C.B.C. and being prohibited from selling one's vehicle. Second, these individuals were being deprived of their right to sell their property without having received an opportunity to be heard. The Board arbitrarily assumed a sale to a relative must be fraudulent, and did not give the complainant a chance to explain the reasons.

The Motor Vehicle Branch agreed with my conclusion that the policy was without statutory authority, and the policy was subsequently abolished.

CS 81-121

The pleasures of purple gas

In order to buy inexpensive coloured gasoline for her Ford "Bronco", which she used to haul feed and farm equipment, the complainant needed commercial plates. She had been denied these. The reason given by the Motor Vehicle Branch for the refusal was that the Bronco had a removable back seat. This meant that the vehicle did not fall within the provisions of the *Commercial Transport Act*, which says that a commercial vehicle is a motor vehicle having permanently attached to it a truck or delivery body.

I understood that the Bronco's cargo-carrying area was comparable to or greater than the area provided in other vehicles which were classified as commercial vehicles, and that the rear seat was readily removable for large loads. I therefore concluded that the vehicle had a permanently attached delivery body and that the presence of the removable rear seat was not relevant. On the basis of this conclusion, I recommended that the complainant be provided with commercial plates and that the Motor Vehicle Branch reverse its practice of denying commercial plates to vehicles with removable rear seats, if they are in other ways commercial vehicles.

The Superintendent of Motor Vehicles accepted my recommendation and the complainant was able to obtain her commercial plates.

BOARDS, COMMISSIONS, TRIBUNALS AND CORPORATIONS

AGRICULTURAL LAND COMMISSION

CS 81-122

Lease arrangement means second house possible

The complainant and his father-in-law purchased ten acres of property in the Thompson-Nicola Regional District with the intent of using the land for market gardening. He applied to the Commission for subdivision approval as both he and his father-in-law wanted to construct homes on the property. The application was refused on the grounds that the property was capable of supporting a wide range of crops and that its agricultural potential should be preserved. It was the Commission's opinion that a ten acre parcel was the minimum size practical for vegetable or market gardening purposes. The complainant felt that the Commission had not been consistent, having made the opposite ruling for other applications in the vicinity.

The Commission provided my office with a summary of how applications for subdivision in the immediate vicinity had been disposed of. I concluded that the decision did not involve any discrimination or impropriety towards this individual's application and that it was in keeping with the intent of the *Agricultural Land Commission Act* to preserve agricultural land intact.

During my investigation, it became clear that what the complainant really wanted was permission to build a second residence. I therefore advised him that he could re-apply to the Commission for subdivision by a lease with an explanatory plan. The Commission tends to look more favourably on this type of application as it does not involve the creation of further land title parcels in the Land Title Office. The complainant agreed to proceed with this new application.

CS 81-123

Waterslide approved; objectors take dunking

A number of Okanagan residents complained about the Commission's approval of a waterslide within the Agricultural Land Reserve. Any change in land use must be approved by the Commission. Waterslides are composed of sections of molded fibreglass strung together in a snaking fashion and then waxed to make them slippery. Water pours down each slide creating a wet ride of approximately 400 feet. Opponents had used a court challenge before coming to the Ombudsman. I investigated the Commission's procedures in granting approval.

The waterslide operators had obtained all the necessary approvals in order to operate the slide. The property was in an area zoned tourist/commercial and the application was recommended for approval by the Board of the Regional District. An on-site inspection of the facility was arranged, and several local orchardists were interviewed.

I concluded that the Commission had acted according to law in approving this application, that it had imposed appropriate controls on the developers, and that the complaint was not substantiated.

A side issue in this complaint was the concern of surrounding orchardists that the spray drift from chemicals used in their orchards would pose a health hazard. Although orchards and campsites exist side by side throughout the Okanagan, these orchardists complained that it is not a good rationale for increasing a health hazard to say that the same hazard exists elsewhere.

Members of my staff who visited the property noted that the waterslide is constructed as far as possible away from orchards on the ten acre lot. The Commission made it a condition of approval that a chain-link fence be erected along the property line bordering on orchards. I noted that tourists camp in or near orchards throughout the Okanagan and it was my opinion that any conditions imposed on the operators of this particular waterslide and campsite should also be imposed on other Okanagan campsite operators. I brought the question of the potential health hazard to campers to the attention of the Minister of Agriculture and Food, the Minister of Health, and the Minister of Tourism.

ASSESSMENT AUTHORITY OF BRITISH COLUMBIA

Declined, withdrawn, discontinued	12
Resolved: corrected during investigation	0
Substantiated: corrected after recommend.	1
Substantiated but not rectified	1
Not substantiated	7
CLOSED—TOTAL	21
Number of cases open Dec. 31, 1981	6

Since assessment of property is the basis for payment of tax, I find it surprising that I have received only twenty-one complaints involving the Assessment Authority. Perhaps property owners are aware that my authority to deal with these problems is limited. Property owners have a right to appeal their assessment to the Court of Revision, and where such a statutory right of appeal exists I cannot investigate.

Complaints I did receive involved the Assessment Authority's determination of actual value, its classification of a complainant's property for assessment purposes, and the procedures employed by the Assessment Authority. Where the complainant had a right to appeal I explained the appeal procedures.

A number of substantial achievements were made in the area of farm classification, as a result of an investigation I undertook on my own initiative as a result of a diversity of individual complaints dealing with a variety of aspects of farm assessment. The standards which a property must meet in order to be classified as a farm, though at face value quite simple, are in fact complicated, and my primary concern was that farmers and assessors alike be properly informed. I very much appreciated the Assessment Commissioner's willingness to review my concerns and to take action as recommended.

CS 81-124

It's not a farm if it doesn't sell produce

I received in both 1980 and 1981 a number of complaints concerning the manner in which the Assessment Authority determines whether or not a property is classifed as a farm for assessment purposes. Prior to 1979, an individual's property qualified as a farm if he produced roughly $1,600 worth of agricultural produce, while after 1979, the individual was required to produce **and sell** produce in order to receive farm classification. Since a property which is classified as farm is taxed at a lower rate, people who lost farm classification as a result of the change in definition felt unfairly treated.

I found the change was neither unjust nor improperly discriminatory. Cabinet intended that farm classification be given only to those land owners whose agricultural production benefitted society as a whole.

In conducting these investigations I came across a number of other issues concerning the manner in which farm classification is determined. These issues included both apparent ambiguities in the prescribed standards for farm classification and apparent inequities in the procedures employed by the Assessment Authority in classifying such properties. I subsequently wrote to the Assessment Commissioner and proposed seven changes to both the farm classifications standards and the administrative procedures used in implementing the standards. I found the Commissioner and his staff to be most cooperative in resolving these concerns, and each of my suggestions was either implemented or resolved after further discussion.

CS 81-125

No proof unweighed apples are underweight

After completing a college program in agricultural studies, a young man returned to his parents' property on one of the northern islands in Georgia Strait. He attempted over a number of years to farm the property, but despite his best efforts the Assessment Authority declined to classify the property as a farm for assessment purposes. The young man complained to me.

I found that the Assessment Authority had arbitrarily assumed that the crop of apples which the complainant had produced and sold was smaller than what he had stated. In the absence of evidence to support this presumption, I concluded that this action was procedurally unfair and contrary to law. Furthermore, the Assessment Commissioner had tentatively classified the property as a farm, subject to a further review by his staff. This review was not conducted yet the property was not given farm classification. I concluded that this was contrary to the regulations for farm classification. Farm classification had been tentatively approved by the Commissioner; it was the responsibility of the Authority's staff to complete the review, and their failure to do so ought not to have prejudiced the complainant.

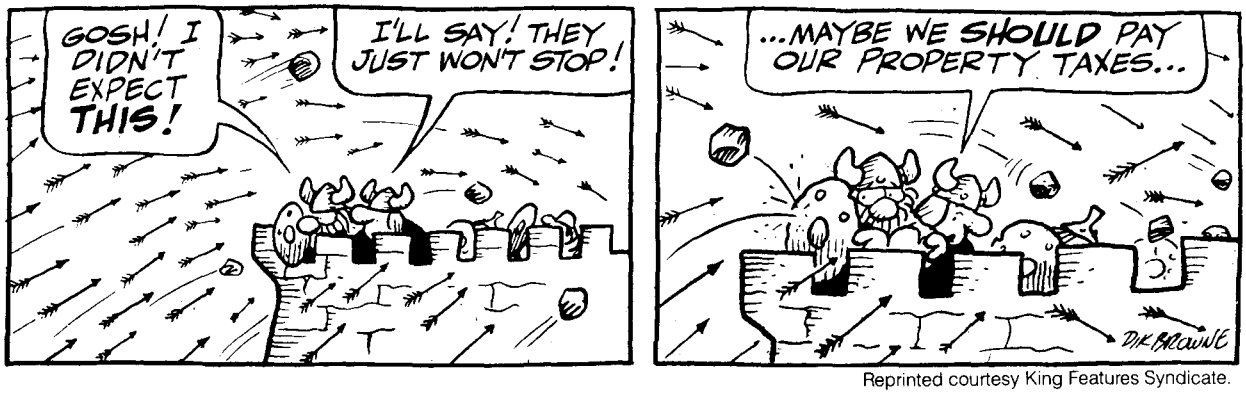
I informed the Assessment Authority of my conclusions, but I did not make any recommendations in this case. The complainant had not sufered by not receiving farm classification because the taxes paid on the property were already so low that farm classification would not have affected them. Furthermore, it was impossible in law for the classification of the property in prior years to be changed retroactively. I closed the complaint as not rectified.

CS 81-126

An (un)appealing case

In 1979, a property owner appealed his assessment to the Assessment Appeal Board arguing that the actual value as determined by the Area Assessor was too high. The Appeal Board agreed and reduced the actual value. The property owner, on the basis of this decision, argued that the actual value figure on his 1978 assessment, which had been determined by the same assessor, should be lowered and a refund of taxes recommended. When this was refused, the property owner complained to me.

HAGAR



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In British Columbia, the Court of Revision and the Assessment Appeal Board review the decisions of the Assessment Authority assessors with respect to the actual value of properties. These tribunals only review such decisions when appeals are brought to them. The property owner in this case had not appealed his 1978 assessment and because of that, the Court of Revision and Assessment Appeal Board were precluded from reviewing and amending that assessment.

In my view, the fact that the Board had reduced the assessment in 1979 was not conclusive evidence that the 1978 assessment was in error. The assessor insisted it was correct and without further evidence I could not decide the matter.

The property owner could have appealed the matter in 1978 at very little cost. If successful, he would have saved only $55 in taxes. As a result I was unwilling to expend a great deal of my resources in resolving the matter. I therefore suggested that the property owner obtain, at his own cost, an opinion from an accredited real estate appraiser on the actual value of the property in 1978.

He was unwilling to do this and I discontinued my investigation.

CS 81-127

Tax battler gets method of oil company assessment

A complainant had been trying to prove that an oil company was not paying enough property tax and that as a result he and his neighbours were paying more than their share. He came to me with three complaints about the Assessment Authority and the Assessment Appeal Board. He complained that he had been denied information concerning the method used in arriving at the assessment of certain properties of the oil company and the facts obtained to support the assessment. He also complained that the Assessment Appeal Board in hearing the appeal of his own assessment was wrong in refusing to require that the Assessor provide him with details about the assessment. In addition, he felt the Board had acted unfairly in refusing to state a case, that is, to ask B.C. Court of Appeal for an opinion about whether people like himself were entitled to the information.

I decided that the Authority had acted properly in not disclosing the supporting data about the oil company's assessment. The *Assessment Act* provides that no member of the Assessment Authority may release information obtained under the Act to a person not legally entitled to it. It appeared to me that any disclosure in this case would have been contrary to law. However, in my view this restriction did not apply to details about the method used in arriving at the assessment. The Area Assessor agreed with this view and stated he would provide this information to the complainant.

With respect to the complainant's own appeal, I felt that it was not unreasonable for the complainant after reading the rules to assume that the particulars would be produced. The Appeal Board's rules of procedure seemed to me to be ambiguous on the point. However, the Board's interpretation of the rules was not an unreasonable one either, so I was unable to conclude that the Board had acted unfairly. However, at my suggestion, they have changed the wording of the rules to end some ambiguities.

B.C. BOARD OF PAROLE

CS 81-128

One-liner answer won't do, says Parole Board

An inmate at the Prince George Regional Correctional Centre complained that he had been given no reasons for the denial of his parole application.

Investigation confirmed that the inmate's application was denied by the Board. During the hearing interview, the inmate had been given oral reasons for the denial of parole. The obligation to inform the inmate **in writing**, as required by the Regulations of the *Parole Act* (Canada), had been met by

the one-line statement that the inmate "has not received maximum benefit from incarceration."

In my opinion, the complaint was substantiated. The general and opaque statement given was not adequate from the standpoint of administrative fairness. Adequate reasons should refer to the information upon which denial was based or to the findings upon which the decision rests. An adequate reason must have specific content which may be refuted, or which will help the inmate to take specific steps before he next applies for parole. The Board agreed with my position, contacted the members involved, and issued a revised decision. This complaint also served as the focus of discussion at a General Membership Meeting of the Board where the provision of written reasons was considered in depth. The cooperative attitude of the Board was further evidenced by its invitation to address the Board on developing a code of administrative fairness.

B.C. FERRY CORPORATION

Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	10
Substantiated: corrected after recommend.	0
Substantiated but not rectified	0
Not substantiated	5
CLOSED—TOTAL	19
Number of cases open Dec. 31, 1981	6

During the latter part of 1981, a reorganization and some new appointments in B.C. Ferry Corporation resulted in delayed communications from the Corporation to my office. I anticipate that this difficulty will be resolved when all positions have been filled. I have found that in most situations, B.C. Ferry Corporation personnel have been cooperative.

I have received complaints from both the ferry-using public and employees of the Corporation. During a field trip in the summer of this year, I saw the system first hand and heard the comments of northern residents who rely on these vessels. Some northern residents fear that their needs may be overlooked in an effort to accommodate large numbers of tourists. Since my return, I have discussed these concerns with the Chairman of B.C. Ferry Corporation Board. I will report later in 1982 about the actions taken by the Board.

CS 81-129

Unfair procedures cause blow to captain's honour

I received a complaint from the captain of a B.C. Ferry Corporation motor vessel that he had been unfairly found 70% at fault for a collision between two Corporation vessels. After the collision, an inquiry into the cause of the accident was held by the Ferry Corporation and the complainant was advised of the allocation of fault arrived at by the inquiry panel. He had pursued every means available to vindicate himself, and had finally sought my help.

The initial, informal inquiry into the cause of the accident had taken place the day following the collision. A further inquiry, in which both captains were represented by legal counsel, was set for a month later. That hearing was adjourned so the Corporation could get legal advice on questions raised by the lawyers for the captains. Approximately one month later, further evidence was heard.

We conducted an extensive investigation into the procedural fairness of the inquiry conducted by the Ferry Corporation. The complainant is a master mariner with a lifetime career in navigation. It was indisputable that a finding of 70% responsibility for a marine accident was a serious blot on his honour. In light of the importance to the complainant of the decision made by the Corporation, it was my view that an adverse decision should only have been made after an inquiry in which the principles of procedural fairness and natural justice were strictly observed.

Several aspects of the inquiry were of concern to me. Although the other captain and all crew members of both vessels were union members, the complainant was not. A union representative was present to represent the others during the evidence given by the other captain and by the crews of both vessels. However, the complainant did not hear the evidence of the other crew, and only heard the evidence of his own crew by insisting on doing so.

The second time the inquiry was convened, a month after the accident, a new member had been added to the panel. This member was integrally involved in making the ultimate decision on fault, although he had not heard the evidence given the day after the collision, when the events would have been most fresh in the minds of the witnesses. Further, this member did not hear all the witnesses, as some only spoke on the first day.

Further, counsel for both captains requested notice of any alleged error or misconduct on the part of their clients, but the panel declined to provide this notice and stated that the intention of the panel was solely to determine the facts and not to allocate fault.

As a response to the complainant's persistence, a review panel composed of three Ferry Corporation captains was later constituted. However, no notice was given to the complainant and he was therefore denied the opportunity to present his argu-

ments and evidence to the review panel before it rendered its decision.

I advised the General Manager and the Chairman of the Board of the B.C. Ferry Corporation of my concerns and informed them that I had under consideration a recommendation that the complainant be given an effective opportunity to present his case to a fairly constituted review panel, empowered to vary the decision if indicated. I also suggested that the Ferry Corporation modify its practice of excluding persons who may be adversely affected by a decision from hearing all the evidence, they need to hear all the evidence if they are to defend themselves effectively.

The Chairman of the Corporation told me that he would have the General Manager review the procedures I had found fault with and keep me informed. He also decided to wipe references to the accident from the personnel files of both captains, and to make adjustments to the complainant's salary.

As it was my view that the Chairman had acted promptly and fairly to resolve the complaint, it was not necessary to make any formal recommendation.

CS 81-130

Instructor unjustly ejected

An engine-room instructor complained that B.C. Ferries, which had at one time laid him off from work with the Corporation, was now improperly interfering with his employment chances elsewhere. The instructor had been hired by a training institute to teach students how the engine room of a ferry works. The training required that the students spend a short part of their course in an actual engine room. The training institute had made an agreement with B.C. Ferries which allowed the students to spend time in the engine room but required that they be accompanied by an instructor. Two days after the students came on board, a Corporation official told the principal of the institute that the instructor was not welcome on the ship. The principal was forced to place his students on ships not operated by the Corporation. No instructor was needed there, and the instructor therefore worked a shorter time than he had expected.

I discovered that the Corporation had violated its agreement with the training institute by refusing admittance to the instructor, and that this violation had caused the unjust termination of his employment.

Although B.C. Ferries refused to accept responsibility for the instructor's loss of his job, it did accept my recommendation that it issue him a cheque for the amount he would have earned if the job had lasted the proper length of time.

B.C. HOUSING MANAGEMENT COMMISSION

CS 81-131

Right tenant gets suite

A single mother of three children, who was receiving income assistance, applied for a subsidized apartment in a B.C. Housing Management Commission building. When she was unsuccessful in her application, she complained to me that the Commission had granted the apartment to a woman who was better off financially than she was.

We reviewed the material available at the Commission. We found that the correct priority had been allotted to each applicant. The tenant in the designated unit had actually been worse off than the complainant and, through no fault of her own, had been given notice to vacate her previous residence. Consequently, the complaint was not substantiated.

B.C. HYDRO AND POWER AUTHORITY

Declined, withdrawn, discontinued	19
Resolved: corrected during investigation	20
Substantiated: corrected after recommend.	1
Substantiated but not rectified	0
Not substantiated	9
CLOSED—TOTAL	49
Number of cases open Dec. 31, 1981	34

Hydro has a wide-ranging role in the Province, and as a result the year's 49 complaints concerning Hydro have been equally wide-ranging. I have looked into complaints about disconnected service, a pole placed on private property, damage caused by a poorly maintained railway crossing, delay in dealing with a request to transfer a water licence, and illegally collected taxes.

When I have found a complaint justified Hydro has responded favourably to my recommendations. In one case, Hydro could not correct an inequity itself, but provided information to a regional district, which could and did correct it.

I found one recurring problem: separated couples had no way of knowing whether Hydro would bill both members, or only the account holder, for overdue accounts. I suggested that Hydro develop a formal policy and have all credit officers apply it. I am happy to report that Hydro now has a policy based on this suggestion.

CS 81-132

Truck is a pawn in Band-Hydro chess-game

A Native Indian Band complained that B.C. Hydro had announced its intention to remove the line maintenance truck from their island Reserve. This would inevitably reduce the quality of service to Band members. The Band Manager said that the Band was currently negotiating with Hydro for the long-term lease of a parcel of Reserve Land to establish a permanent collections office and maintenance yard. He believed that Hydro had proposed removing the truck in an effort to pressure the Band in the negotiations and complained that the decision was not consistent with negotiating in good faith and, in any event, was unfair to Band members.

I requested a statement of B.C. Hydro's position. Since a good number of people would have been affected by the removal of the truck from the island, I also requested that the move be postponed until we had finished our investigation. Hydro staff acknowledged that the decision to remove the truck from the island was an attempt to bring pressure on the Band to recognize Hydro's stated needs and to speed negotiations. Hydro staff explained that they had been trying for four years without success to negotiate the purchase or lease of half an acre of land.

The Band Manager confirmed that the Band had difficulty reaching agreement on the exact conditions under which land should be made available to Hydro. He explained that the approval process was complicated by the requirements of the *Indian Act (Canada)*, the Department of Indian Affairs and the Band Council itself. Our approach to this problem involved ensuring that the level of service to the community was not reduced by removal of the Hydro truck. At the same time we encouraged the Band Manager to clarify the Band's intentions and to keep Hydro informed of the Band's progress in getting approval to release land for Hydro's use.

Four months after I received the complaint, the Band Manager reported that he had met with Hydro's Regional Manager and was now satisfied that the level of service to the community would not deteriorate. Soon afterward the Band reached an agreement with Hydro on the terms of a lease and Hydro replaced the existing maintenance truck with one in better condition.

CS 81-133

Missing bill not Hydro's fault

A resident of the Interior complained that he had received a notice from B.C. Hydro stating that his electricity would be disconnected unless he paid his overdue account of over $200 within one week. He complained that he had not received a bill from Hydro for this amount and was therefore unable to set the money aside.

We found the reason he had not received a bill was that there had been a postal strike. The complainant had a previous history of overdue accounts with B.C. Hydro and had been presented earlier with the option of paying his Hydro bill on the equal monthly payment plan. He chose not to do this and did not set any money aside in anticipation of the inevitable bill.

Given the length of time the complainant had lived in his present home, it was my opinion that he should have been able to estimate the amount he would be billed for electricity. The complainant found it annoying to receive a disconnection notice without having received a prior statement of his account. However, under the circumstances I did not think that B.C. Hydro could be held responsible for his financial difficulties.

Therefore, I was unable to substantiate the complaint and, considering that it was summer, I concluded that B.C. Hydro had not acted unfairly in advising this individual of their intention to disconnect his power if the account was not paid. I suggested to the complainant that he seek financial assistance and counselling through the Ministry of Human Resources if he was unable to resolve the matter on his own.

CS 81-134

Drawing water from Hydro

The complainant owned several acres of land in the Interior and several years ago B.C. Hydro had expropriated a portion of the land for a hydro electric project. The complainant had had a licence to draw water from a creek running through the property but it had gone with the expropriated portion. The man complained that B.C. Hydro had not responded to his requests that the water licence be transferred to the adjacent land which he still owned.

We discussed the complaint with Hydro personnel and examined Hydro's file. It became apparent that no action was being taken on the complainant's long-standing request and, judging from notes on the file, it appeared possible the licence would be cancelled instead of transferred.

Hydro personnel readily agreed to review the complainant's request and subsequently wrote to the Comptroller of Water Rights, requesting the transfer of the water licence.

CS 81-135

Hydro solution enlightens woman

I received a complaint from a woman who was being asked by B.C. Hydro to pay an overdue electricity account which had accrued at a former

residence. The account at that residence had been registered in the name of the woman's common-law husband and, as she was no longer living with him, she felt that it was unfair of Hydro to ask her to pay the bill. She complained to my office when Hydro threatened to disconnect her electricity if she did not pay the account.

I contacted the Credit Officer at Hydro who stated that according to policy, if the couple were still living together, Hydro would attempt to collect the bill from either party. He believed that the couple was still living together.

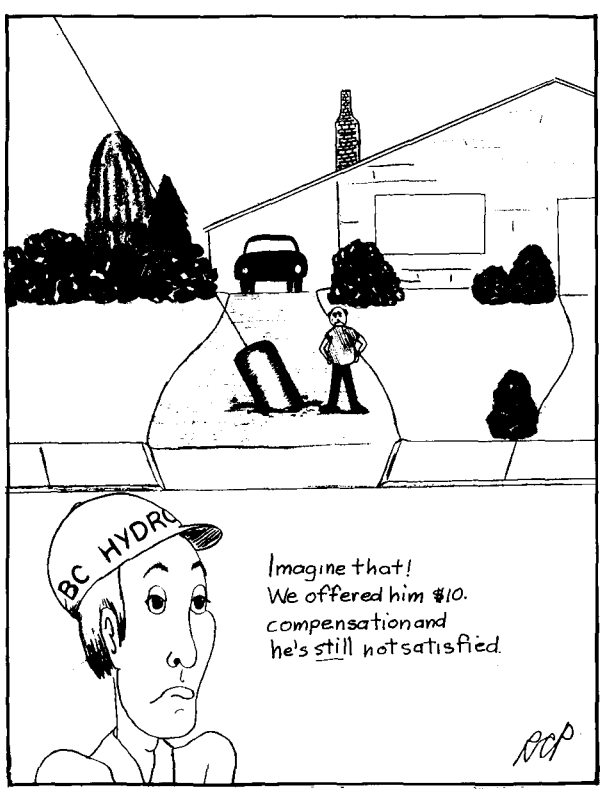
The Credit Officer informed me that if the complainant could prove that she had not been living with her common-law husband since the bill became overdue, she would not be asked to pay the account. He suggested that she could obtain letters from her two previous landlords to bolster her position.

This remedy appeared reasonable. The complainant agreed to collect the necessary evidence and present it to Hydro, ending the problem.

CS 81-136

Who's in charge of the charge?

A man complained that he was being charged the non-residential transit levy rate of $4.21 per month on his Hydro bill. As the power pole for which he was being charged was located on the site of his future residence, the complainant felt that the residential rate of 61¢ per month should apply.



Although Hydro is authorized by the *Urban Transit Authority Act* to collect transit levies on behalf of municipalities and regional districts, it could not adjudicate this type of complaint. However, Hydro informed us that the complainant's electricity account did not qualify for the non-residential rate.

On examining the definition of "residential dwelling unit" in the Act, I found that the complainant's situation was not specifically covered. As I have at this time no authority under the *Ombudsman Act* to investigate complaints involving regional districts or municipalities, I could not recommend that the Greater Vancouver Regional District reinterpret the Act.

However, Hydro did provide information on the status of the complainant's nearly-completed house to the regional district. On the basis of this information, the regional district agreed that the residential levy should be applied to the complainant's account and the complaint was thus resolved without my direct intervention.

CS 81-137

Anchors away

A resident of a small municipality in the interior complained to me that Hydro had placed a power pole anchor on his recently purchased property without his permission. He also complained that the $10 compensation offered by Hydro was not satisfactory. The complainant's attempts to resolve the matter on his own and with the assistance of a lawyer had been unsuccessful.

I contacted Hydro and was informed that Hydro and the municipality had each assumed the other had registered an easement for the anchor with the Land Registry Office. Hydro staff was apparently under the impression that Hydro had a blanket easement over the subdivision and thought that it was the municipality's responsibility to notify prospective purchasers; the municipality was under the impression that it was Hydro's responsibility to notify purchasers of the easement.

As a result of my involvement, Hydro staff acknowledged the error and the inconvenience caused to the complainant and moved the anchor to a location more acceptable to him.

CS 81-138

Taxed patience

An Indian Band complained that Hydro was charging social service taxes on its electricity bill. The Band was informed that if it failed to pay the taxes, electricity would be cut off. The Band complained that the imposition of the tax was illegal on a federal Reserve.

I contacted the Hydro office and pointed out that a court decision had decided the issue 18 months

earlier. In that case, a taxpayer argued that she was exempt from tax under section 87 of the *Indian Act (Canada)*, as electricity delivered to her at her home on the Reserve was "personal property situated on a Reserve." The court ruled in favour of the taxpayer and effective December 4, 1979, registered Indians living on Reserves were exempt from paying social service tax.

Following a consultation between the local Hydro Manager and the Commissioner of Taxation, the latter advised that no action was to be taken against the Band. The Manager was to supply the Indian Band with social service tax exemption forms. Any taxes previously imposed on the Band would be refunded.

CS 81-139

Separated couples treated separately

As a result of several complaints which I received concerning B.C. Hydro's collection procedures in respect to separated couples, I initiated an investigation of the matter.

The complaints which I had received suggested to me that the credit and collection policy respecting separated couples was not uniformly applied by all Hydro's offices. I suggested to Hydro that the policy in this area be written out formally and circulated to all credit officers. Hydro later informed me that they had done just that, and provided me with a copy.

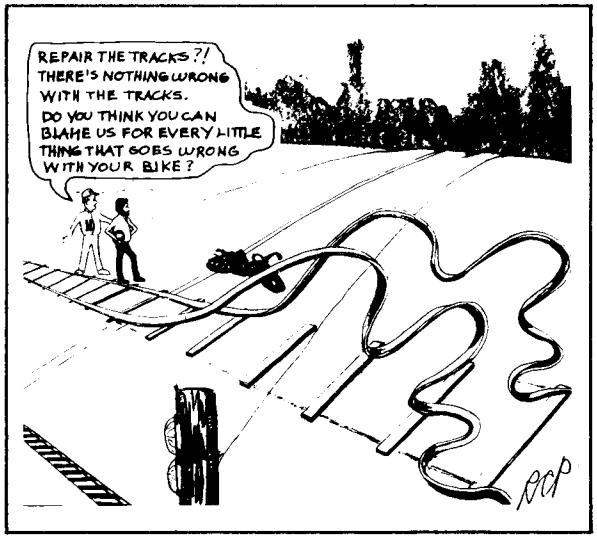
CS 81-140

Rail repaired

A motorcycle driver stated that B.C. Hydro's failure to maintain properly the railway crossing at the south end of the Queensborough Bridge in New Westminster caused his motorcycle to slip on the tracks. He complained that when he brought the problem to B.C. Hydro's attention, Hydro refused to compensate him for the damage to his motorcycle and did not agree with him that repairs to the crossing were necessary. The complainant was particularly concerned that corrective action be taken because he had seen other motorcycles slip at the crossing.

We arranged for an inspection of the crossing by an inspector from the Railway Inspection Branch of the Ministry of Transportation and Highways. He determined that the difference in height between the planking and the track was greater than the one inch allowed under the *Railway Act*. The inspector advised B.C. Hydro of the problem and Hydro immediately dispatched a work crew to correct the level of the planking. We then visited the site with the inspectors and adjusters. On the basis of this joint inspection, the Hydro adjuster decided that it would be appropriate to offer partial compensation for the damage to the complainant's motorcycle.

Inspection showed that the design of the approach to the railway crossing could be improved from the point of view of safety and maintenance. However, any relocation or redesign of the crossing would fall within the responsibility of the City of New Westminster. The representative of B.C. Hydro Railway agreed to discuss the problem with the city engineers with a view to eliminating the crossing in question altogether. In the meantime, he gave his assurance that the problem crossing would continue to be monitored to ensure that it is maintained at an acceptable standard. The complainant was told that if he had any complaint in the future about the quality of this crossing, or any other railway crossing under provincial jurisdiction, he should contact the Chief Inspection Engineer of the Railway Inspection Branch, Ministry of Transportation and Highways.



INSURANCE CORPORATION OF BRITISH COLUMBIA

Declined, withdrawn, discontinued	112
Resolved: corrected during investigation	74
Substantiated: corrected after recommend.	0
Substantiated but not rectified	0
Not substantiated	51
CLOSED—TOTAL	237
Number of cases open Dec. 31, 1981	193

My progress with I.C.B.C. was severely hampered this year by I.C.B.C.'s five month strike. This not only impeded I.C.B.C.'s operations, but also thwarted my ability to investigate complaints against the Corporation. I.C.B.C. complaints

comprised the second largest group of complaints to my office.

I regret to report that the working relationship between my office and I.C.B.C. has deteriorated since last year. I had accepted a procedure whereby virtually all complaints against the Corporation would first be referred to I.C.B.C.'s Public Enquiries Department and that I would subsequently conduct an investigation of my own if I was not satisfied with the response.

Unfortunately, the Public Enquiries Department has taken my willingness to cooperate as an agreement to relinquish my powers to contact other Corporation staff directly. I became aware of this when a copy of an internal I.C.B.C. bulletin was delivered anonymously to my office. The bulletin was directed to all claims staff and read:

> *"Further to our Bulletin Number 602 of July 22, 1980, this is to re-enforce our instructions to the field that under no circumstances are Ombudsman enquiries to be dealt with in the Claims Offices. The procedure is to refer* ***all*** *enquiries to the office of Mr. Murray T. Rogan, Manager, Public Enquiries."*

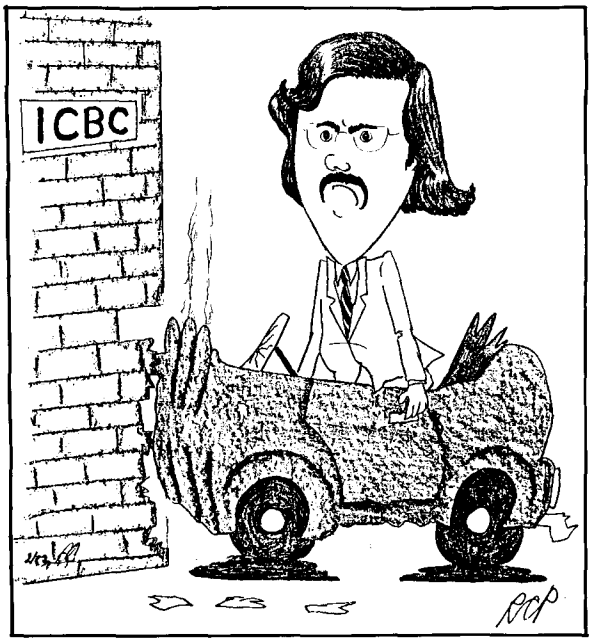
In compliance with this bulletin I.C.B.C. staff have refused to provide my investigators with information when contacted directly. Consequently, a procedure which was originally intended to facilitate the investigation and resolution of complaints has become a serious form of obstruction.

The *Ombudsman Act* makes it an offence for anyone to obstruct, hinder, or resist the Ombudsman in the exercise of his powers or duties. The bulletin counsels Corporation staff to commit this offence. It also places Corporation staff in the dilemma of choosing whether to disobey the law or their superiors.

I am not prepared to tolerate this situation and have initiated discussions with I.C.B.C. to establish a more acceptable arrangement.

I.C.B.C. has a legitimate interest in ensuring that Ombudsman investigations do not unduly burden its staff. I appreciate this concern and will accommodate I.C.B.C. as much as possible consistent with my duty to conduct effective investigations. I should emphasize that the Public Enquiries Department has proved helpful in resolving many individual complaints, and I will continue to rely on its assistance in handling the bulk of the complaints against the Corporation. However, it is essential that I maintain control over my own investigations and preserve my independence. I cannot delegate my responsibility to the Public Enquiries Department where, in my opinion, this is not the most effective or appropriate way to deal with a complaint.

There have, however, been a few improvements in I.C.B.C. procedure during 1981. Among them is a change in the salvage disposal form; (*see*



"Salvage form repaired"—CS 81-147). Further, I mentioned last year that clients often saw I.C.B.C. adjusters as rude. This year, I.C.B.C.'s Public Enquiries Department has undertaken to investigate complaints of rudeness. Also during 1981, I.C.B.C. finally provided me with a copy of the Policy Manual I had asked for much earlier.

I am concerned about I.C.B.C.'s attitude towards claimants who have retained legal counsel for the purpose of settling an accident claim. The Corporation will not provide advice to a claimant with counsel. I do not feel I.C.B.C.'s obligations to the insured end when a lawyer is retained. This is one area where I hope to effect change.

I.C.B.C. has in typically bureaucratic fashion set out to try to contain or control the Ombudsman. I know the public is most disturbed about I.C.B.C.'s practices and procedures and I would fail the public and the Legislative Assembly if I allowed I.C.B.C. to continue its efforts to keep the Ombudsman at bay. I am looking for a quick and profound change in I.C.B.C.'s attitudes towards my office.

CS 81-141

Dust gathers on homemaker service

The Corporation's policy during its strike was to give accident benefits high-priority treatment, but the policy was not always followed. A woman was injured in a car accident and the Corporation paid accident benefits to her for seven months. It also agreed to pay for 10 hours a week of homemaker services. In February 1981 the compainant moved to another area of the Province. She received written assurance from the Corporation that it would continue to pay her for homemaker

services. However, in May she received a letter stating that her homemaker services had been terminated retroactive to March 1. The woman had amassed $669 in homemaker bills during this period, and complained that it was unfair to terminate funds retroactively, thus leaving her to pay the bills personally.

When I contacted Corporation officers, they agreed that the complainant was entitled to the homemaker service and that her service should continue. They told the complainant her cheque would be sent promptly, but some time later, she told me it had not arrived. Once again I contacted the Corporation. At my request, the Corporation agreed to issue the complainant a cheque for the full amount. Unfortunately this was not the end of the complainant's difficulties for when she asked her adjuster for confirmation, she was told that no decision had been made. After several more phone calls over a considerable time the matter was straightened out and the Corporation relased a cheque for the full amount.

CS 81-142

Advance prevents eviction

A complainant needed an advance payment on his claims settlement in order to prevent eviction from his residence. He had only 10 days to secure the necessary funds. Previous attempts by his lawyer to secure an advance from I.C.B.C. were unsuccessful. We contacted the Corporation and proposed payment of an advance. Our proposal was accepted and an advance was released within three days.

CS 81-143

Squeeze play

Because of the length of the strike two employees of the Corporation were unable to terminate their Payroll Deduction Plan and collect a refund of the money they had invested in Canada Savings Bonds. The employees needed to cash their bonds in order to meet their financial obligations.

The bank claimed that it was unable to release the funds without authorization from the Corporation. The Corporation would not provide the necessary authorization during the strike.

Bank representatives advised my office that the bearer of Canada Savings Bonds has the right to terminate the Bonds at any time, and that labour difficulties should not interfere with that right.

We gave this information to the Corporation. It decided to authorize the Bank to cancel the plan of any employee who gave written notification. Employees were, therefore, able to cash their bonds.

CS 81-144

What's sauce for the goose . . .

As a result of the I.C.B.C. strike, a complainant was unable to obtain a refund for his cancelled insurance. The complainant had cancelled his policy in February, 1981 and had been waiting three months for his rebate. Because of what the complainant perceived as an unreasonable length of time in issuing refund cheques, he felt that I.C.B.C. should pay interest on outstanding rebates (my office received a total of 12 complaints dealing with this issue). I.C.B.C. initially refused interest payments to these complainants.

We pointed out to the Corporation that according to a recent amendment to the *Insurance (Motor Vehicle) Act*, it may charge interest to insureds on the balance of outstanding debts at 18%. It therefore would not be unreasonable to expect the Corporation to pay interest on its own overdue refunds.

In July 1981 I.C.B.C. agreed to make an "inconvenience payment" to motorists who had cancelled their insurance and, because of the strike, were kept waiting for refunds. Interest was 15% per year and commenced 30 days after the cancellation of the insurance. The Corporation did not advise me directly of this decision and did not explain its decision to pay only 15% when it is at fault, but charge 18%.

Further, the Corporation refused to extend the policy to late payments not caused by the strike. I initiated an investigation into this refusal as it appeared unfair of the Corporation to charge 18% on funds overdue but to pay no interest at all when it was at fault. At year's end, the Corporation had not accepted my proposal that it pay 18% interest on all overdue refunds.

CS 81-145

Hidden damage

A young man was involved in an accident during the I.C.B.C. strike. His claim for repairs to his vehicle was approved by the Corporation. In repairing the car the mechanic discovered hidden damage. The complainant himself paid for extra repairs, and later asked to be reimbursed. I.C.B.C. refused the reimbursement.

We contacted I.C.B.C. and were told that the Corporation would not pay for extra repairs, as the cost of repairs would then exceed the value of the car. The local office told us the complainant had been informed of this but had no notes on file to prove the complainant had been informed. Although the Corporation thought the reason for the lack of notes was the pressure caused by the strike, it approved the claim and reimbursed the complainant.

CS 81-146

Termination without notice

A car accident victim complained to me that her total disability benefits had been terminated without notice and that I.C.B.C. refused to respond to her calls and letters.

In view of the woman's difficulty in contacting the Corporation, I relayed her request for an advance payment and a cheque was issued to her for $7,000. I.C.B.C. may terminate benefits if a claimant has not followed the Corporation's rehabilitation program. However, the law requires I.C.B.C. to give at least 120 days notice in writing. In this case, benefits were terminated without notice. Therefore, I proposed that the Corporation reinstate the woman's benefits immediately and that the Corporation pay all benefits to which the woman was entitled retroactive to the date of her last benefit. Further, I proposed that all claimants be informed of the notice requirement when their first benefit is paid.

In response, the Corporation reinstated the woman's benefits, as I had proposed. In addition, the President of the Corporation agreed to distribute a bulletin to all adjusters reminding them of the importance of providing notice where it is required by law. These measures satisfied my concerns in the particular case and decreased the likelihood of the problem occurring again.

CS 81-147

Salvage form repaired

Every year I.C.B.C. sells for salvage thousands of vehicles which have been damaged beyond repair. Before a vehicle can be sold as salvage I.C.B.C. must first obtain the owner's permission in the form of a release. I.C.B.C. wishes to dispose of wrecked vehicles as quickly as possible in order to minimize storage charges. But sometimes owners disagree with the amount offered as compensation for the vehicle and refuse to sign the release, even though the release does not commit the insured to accepting I.C.B.C.'s offer. This delays the disposal of the wreck.

In order to speed things up, some I.C.B.C. adjusters have misrepresented the nature of the salvage release form by telling the insured that it was "for towing purposes", or that the insured would be responsible for storage charges if he did not sign the release. Other adjusters have refused to process the claim until the release was signed.

This situation led to a number of complaints, and I found that these practices were improper. I.C.B.C. then agreed to revise the standard salvage release form to make it clear to claimants that they had the option of disputing the amount offered while at the same time authorizing I.C.B.C. to dispose of the wreck. A bulletin to all adjusters explains the new form. I expect that this will eliminate deliberate misrepresentation by I.C.B.C. personnel.

PUBLIC SERVICE COMMISSION

CS 81-148

Too late for job appeal: Another method found

A public servant applied for a different position. He was not successful in his application and decided to appeal to the Public Service Commission. When he inquired about time limits for his appeal, Ministry staff advised him that, because of the postal strike, the time limit had been extended from fourteen days to twenty-one days. On the fourteenth day he phoned the Public Service Commission and was advised that no such extension had in fact taken place. He immediately filed his appeal by telegram. Unfortunately, the telegram reached the Public Service Commission on the next day, i.e., outside of the time limit for the appeal period. The Public Service Commission was not willing to accept his late appeal.

The Public Service Commission informed me that, in addition to the appeal procedures, the complainant could also ask the Public Service Commission to reconsider its decision regarding the filling of the position for which the complainant had applied. I informed the complainant of this possibility. The Public Service Commission agreed to hold a hearing about the job the complainant had competed for.

CS 81-149

No more secret ratings

Whenever a Government employee leaves the public service, his Ministry issues a document called Separation Report. The report, consisting of a form prepared by the Public Service Commission, contains some standard and routine information. Until recently, it also included information regarding the former employee's job performance and whether the Ministry would be willing to rehire.

In most cases, the employee concerned was not aware of the existence of the form. If the form contained negative information, the employee was unaware and had no recourse. Yet the Separation Report became a permanent part of the employee's personnel file.

I had received a number of complaints from former employees with difficulties in obtaining re-employment with the public service. It became obvious that, in some cases, negative information in the Separation Report barred re-employment.

I recommended to the Public Service Commission that the Separation Report form be changed and that it should not contain information about job performance and a Ministry's willingness to rehire.

I suggested that job performance is more appropriately assessed in annual performance appraisals, involving a dialogue with the employee concerned and giving the employee an opportunity to comment.

The Public Service Commission accepted my recommendation and redrafted its Separation Report form.

SUPERANNUATION COMMISSIONER

CS 81-150

A matter of interest

An individual joined the public service after he had reached the age of 55 years. According to the *Pension (Public Service) Act*, he was not eligible to contribute to the Public Service Pension Plan and to receive a pension upon retirement. However, pension contributions had been deducted from his pay cheque throughout his five years of employment.

Upon retirement, he learned that he could receive no pension. Furthermore, the Superannuation Commissioner was only willing to refund the complainant's actual pension contributions plus 6% interest as prescribed by the pension legislation.

It was my argument that, since the complainant was not entitled to contribute to the pension fund, his contributions never became a part of that fund and therefore should not be subject to the 6% interest restriction. I recommended that the complainant's return should include interest actually earned by his contributions. The Superannuation Commissioner accepted my recommendation and the complainant received approximately $500 more than he would have otherwise.

WORKERS' COMPENSATION BOARD

Declined, withdrawn, discontinued	223
Resolved: corrected during investigation	33
Substantiated: corrected after recommend.	16
Substantiated but not rectified	0
Not substantiated	91
CLOSED—TOTAL	363
Number of cases open Dec. 31, 1981	139

W.C.B. BOARDS OF REVIEW

Declined, withdrawn, discontinued	27
Resolved: corrected during investigation	6
Substantiated: corrected after recommend.	5
Substantiated but not rectified	1
Not substantiated	7
CLOSED—TOTAL	46
Number of cases open Dec. 31, 1981	11

This year I received 410 complaints against the Workers' Compensation Board and the boards of review who provide an independent appeal from Workers' Compensation Board decisions. Complaints came both from workers who felt their claims for compensation had been unjustly dealt with, and from employers who felt they had been improperly assessed by the Board.

The Board has been fairly receptive to the procedural changes which I have recommended; some of these changes are summarized in the cases below. Not all of my procedural recommendations have been accepted. The Board has refused to advise employers of their right to appeal assessment decisions to the Commissioners in all cases. In addition, the Board has refused to reconsider the enactment which prevents it from extending the 90 day time limit for Medical Review Panel appeals. The rigidity of the 90 day limit results in injustice to claimants, who for legitimate reasons, fail to appeal within the time allowed.

The Board has been very reluctant to accept my recommendations in cases where I conclude that a decision was unjust based on the available evidence. The Commissioners balk at recognizing my authority to make recommendations based on the Board's weighing of evidence despite the fact that the *Ombudsman Act* permits me to recommend that a decision be changed where I believe that it is unjust. Over time, I have succeeded in having almost all my recommendations accepted, however, a large proportion of them were not accepted until after I had included them in a report intended for presentation to the Cabinet and Legislative Assembly.

I have continued to receive cooperation from the Board's staff in the investigation of complaints this year. I have had exemplary cooperation from the Industrial Health and Safety Department and in particular I commend that department's informal approach to problem solving. Information Services has also exhibited a commendable attitude towards accepting my suggestions.

I continue to be concerned about the lack of procedural fairness displayed by the Assessment Department. In addition, I am increasingly concerned about complaints against the Rehabilitation Department. Complainants often refer to instances of rehabilitation staff rudeness or insensitivity as well as to specific procedural problems. Overall, I hope that I will receive increased acceptance of my role and recommendations from the Board's new Chairman and Commissioners in 1982.

Appeals to the boards of review have been subject to extremely lengthy delays throughout the year. These delays have created extreme hardship for injured workers whose claim or part of it

was rejected by a W.C.B. adjudicator and who must now establish their claim through a complicated appeal system. I have encountered such claimants who could not return to work because of injury. To get their appeal decided takes often a year or longer. In the meantime, they are forced to rely on social assistance. It is readily apparent that the long delays inherent in the present appeal system create manifest hardship and injustice. I know that the Minister of Labour is aware of the problem and I hope that he will succeed in bringing about changes soon to alleviate this problem.

The boards of review, like the Workers' Compensation Board, have been reluctant to accept my recommendations where I have concluded that their weighing of the evidence was unjust.

In retrospect, I have been fairly successful in having my recommendations to the Workers' Compensation Board and the boards of review accepted this year. However, lengthy correspondence is invariably required before success is achieved. The resulting delay is an added frustration for claimants who have already been engaged in years of appeal. I hope to address this problem by developing with the W.C.B. Commissioners and the boards of review a more informal and expeditious approach to handling these complaints in 1982.

CS 81-151

Controlled disease no bar to first aid work

A first aid attendant complained to my office that she disagreed with the decision of the First Aid Section of the Industrial Health and Safety Division of the Board not to recertify her as an Industrial First Aid Attendant. This decision was upheld by the Commissioners.

In reviewing the Board's file, I found that the decision to deny the complainant recertification was based on the fact that she had not been free from epileptic seizures over the last twelve months. The complainant disputed this reasoning as she felt that the seizures had resulted from an unsuitable dosage of medication. This situation had ended. A neurologist's findings on this point had not been sent to the Board, and we told the complainant to have the neurologist send in his report. The report would be considered by the First Aid Section as further medical evidence.

As a result of investigating this complaint, I became aware of various problems with the procedures of the First Aid Division. These were that:

1. Persons applying for Industrial First Aid Certificates were not informed that if they suffered from specific medical conditions, they might not be eligible for certification. They sometimes did not discover this until after the course was completed.
2. Although all relevant medical evidence is considered and each case is decided on its own merits, the usual letter sent to applicants when they apply for initial certification says that applicants must be free from seizures for twelve months prior to examination. The applicants were not told that they could submit medical evidence on the reasons for the seizures and on whether the condition was now controlled.
3. If the Board has suspended or cancelled a first aid certificate, applicants are not advised of their right to appeal. The Industrial First Aid Regulations provide a right of appeal to the Commissioners.

As a result of my staff's discussions with the Board's First Aid Division, the following changes to the above procedures were implemented:

1. Application forms will note that further medical information may be required even though all the standard medical forms are completed.
2. Letters sent to persons applying for initial certification, and subsequent acceptance letters, will note that failure to meet the criteria will not necessarily result in disqualification; if provided, reasons for not meeting the criteria will also be considered.
3. Decision letters will include a paragraph advising applicants of their rights of appeal.

CS 81-152

Board agrees to think ahead

An employee of a municipality was injured while participating in a mandatory exercise program required by his employer. The employee, whose job required a high level of physical fitness, had been following his employer's exercise program at work and at home. His injury occurred at home. The Board refused compensation, saying that the injury did not occur during the course of his employment.

Representatives of the municipality maintained that the Workers' Compensation Board had given oral approval of the exercise program prior to its implementation. I investigated the complaint and discovered that the employee had received full wage reimbursement by his employer for the time he had missed work due to his injury. Therefore, the complainant had a remedy which solved his individual complaint. However, I was concerned that the matter which he had brought to my attention might affect many other employees in the province, as mandatory or voluntary exercise programs are becoming more frequent. In fact, my investigation revealed that the Board had made

several decisions concerning injuries during work exercise programs over the past several months including one in which one of the Board's own employees had been injured. None of these decisions had been made public.

I therefore suggested that the Commissioners review the whole area of coverage of sporting activities during work and publish a decision in the Reporter Series outlining their policy so that all employers and unions in the province would be aware of it.

I was also concerned that only oral approval of a complicated thirty-page exercise plan had been given to the employer by a representative of the Board. I recommended that the Board institute a system of advance rulings similar to that provided by Revenue Canada. This would enable employers or unions or their physicians to develop a plan, and submit it to the Board for advance approval of the activities which would be covered. Situations in which workers are injured and find themselves without coverage would then be avoided.

The Board agreed to include a statement in the Reporter Series that advance rulings will be available to employers throughout the province. However, rulings should only be viewed as guidelines and will not be binding on the Board; it will still be necessary to determine whether the specific accident being investigated fits an advance ruling.

CS 81-153

Proper accounting

An injured worker's pension was being seized by the Board in order to recover a debt. The debt had arisen when he previously owned a business and had not paid his assessments. The Board is entitled to seize a subsequent pension in these circumstances. The worker complained that despite the fact that his pension had been seized for over a year, he was unable to discover the outstanding balance of his account, whether cost of living increases were being applied to his pension, and the present monthly rate of his pension.

Investigation showed that the Collections Branch of the Board could not provide this information to the complainant since the Branch was not given the information by the Pensions Branch. There was no procedure for informing workers of the amount of the funds credited to their accounts or even of the fact that such transfers of funds had been made.

I suggested the Board adopt a new practice for informing this worker and others in his position. Every six months when the pension is adjusted the Pensions Branch should advise the Collections Branch of the amount of the pension and the amount of the cost of living increase. The Collections Branch could then give the complainant this information and also tell him of the amount credited to his account and the outstanding balance. The Board adopted this proposal and advised the complainant of the relevant information.

CS 81-154

Board re-reads Act, makes award to children

A woman complained that the Board had denied her application for compensation for herself and her three children after the death of her former husband in 1972. The woman had been divorced from her husband but then had resumed living with him for seven years until three years before he died. At the time of divorce, she had obtained a Family Court order requiring her husband to pay support to her and her children. However, she had made no effort to enforce this order. The Board denied her application for benefits, stating that neither she nor her children were dependent on the deceased.

The woman was, however, named as beneficiary in an insurance policy taken out by her husband one week before he died. Further, the Board had not considered a section of the *Workers' Compensation Act* which provides for compensation to children, widows or parents who, though not dependent on the deceased worker's earnings at the time of his death, had a reasonable expectation of pecuniary benefit from the continuation of his life.

I proposed that the Board consider whether the woman and her children had a reasonable expectation of pecuniary benefit. The Board accepted my suggestion but maintained that the woman was not eligible as she was not the deceased's wife and therefore could not be his widow. In addition, the provisions concerning compensation for common-law spouses were not applicable to her situation. The Board agreed to pay compensation to the children in the amount of $1500, together with interest on that sum.

CS 81-155

We find no cause, but pain persists

I received a complaint from a worker concerning the Board's refusal to reopen his claim. The Board did not consider him disabled and the symptoms which he experienced were deemed not to be related to his compensable injury.

From a review of the available medical evidence, it appeared that the Board's decision not to award this worker further benefits was correct. None of the many doctors who had examined him over the years was able to find objective evidence to account for his complaints of severe pain and disability. These were slight residual deformities but these were not considered to be of sufficient magnitude to cause the worker severe pain or to be in any way disabling. This decision was affirmed in

appeals to the boards of review, the Commissioners of the Board, and a Medical Review Panel.

Despite the fact that I was unable to substantiate the physical aspect of this worker's complaint, I wrote to the Board pursuant to Section 14 (2) of the *Ombudsman Act* which permits me to consult with an authority at any time during or after an investigation in an attempt to settle a complaint. In view of the lack of medical evidence to account for the worker's complaints, and his insistence that he was suffering pain to a disabling degree, it occurred to me that "chronic pain syndrome" might be a factor in his delayed recovery. In view of this possibility, I suggested that the Board refer the worker either to a psychologist at the Board or to a specialist outside the Board for a psychological examination to determine whether there was any psychological disability related to his injury.

The Commissioners had the worker's claim reviewed by a Board psychologist to determine whether he might have a chronic pain syndrome or other psychological disability arising from his injury. The psychologist was unable to find any such indication. I concluded that the Board had exhausted possible solutions to the complaint.

CS 81-156

Full disability, full pension

I received a complaint from an injured worker who felt that the permanent pension awarded to him by the Board was not a fair reflection of his disability.

Although the memo written by the Disability Awards Officer stated that the worker was totally unemployable, the Board found that 30% of his disability was due to noncompensable factors. These factors were not specified. Board files suggested that the worker had personality traits which predisposed him to a tension-stress reaction to his compensable injury. I pointed out that the worker had enjoyed good health and had had a good work record before being injured. I concluded that the Board's decision to accept only 70% responsibility for the worker's total unemployability might be unjust and, moreover, appeared to be contrary to the Board's policy as outlined in the Claims Adjudication Manual.

The Commissioners agreed that whatever his personalty type, the man had shown no evidence of being disabled before his injury. Therefore, they decided that the worker's permanent disability should be assessed at 100% and that his pension should be recalculated accordingly.

CS 81-157

Damage didn't start with Review Board finding

I received a complaint from a worker who disagreed with the Board's decision not to backdate disability benefits prior to the date of a favourable Medical Review Panel decision.

The worker injured his lower back while working. Wage loss benefits were terminated one year later as the worker was no longer considered disabled. This decision was confirmed by a Medical Review Panel. A year later, new evidence became available as a result of surgery. However, the Board refused the worker's request to reconvene the Medical Review Panel as it considered this evidence did not justify a reconvening of the Panel. Once again the worker asked for a reconsideration. This time the Commissioners agreed that the report based on the surgery was valid new evidence, but they allowed the worker's claim without reconvening a Panel. The worker received a letter from the Board stating that the benefits awarded him as a result of the Commissioners' decision could not be backdated prior to the Medical Review Panel Certificate as the Certificate was, by law, binding on the Board.

In my judgment, the condition found at surgery must have existed since the time of the worker's injury and, as the worker had consistently complained of pain and disablement since the time of his injury, it was unjust and unfair to uphold the Medical Review Panel decision that the worker was not disabled during the period from the date benefits were terminated until the Medical Review Panel decision.

The Board agreed that they should have reconvened the Panel rather than making the decision themselves, and agreed that there was some inconsistency in agreeing to pay benefits for the period after the Medical Review Panel's Certificate but not the period prior to it. Finally, they agreed to my recommendation that the Panel be reconvened. However, the results are not yet known as the implementation of my recommendation has been postponed pending the results of an appeal to the boards of review by the worker on another issue.

CS 81-158

Who's making the decisions here anyway?

A man complained to me that although his appeal to a board of review had been successful, the Workers' Compensation Board persisted in refusing to pay him compensation.

My investigation revealed that the Board's original decision was that, as of March 1978, the worker would receive no more compensation for his knee injury. A board of review panel concluded that the worker remained partially disabled from March 1978 until September 1978 and stated that he should receive wage loss benefits for that period.

Following the decision of the boards of review, the complainant was informed by his Claims Adjudicator that, as he could have found employment paying more than wage loss benefits, he would not receive compensation for that period.

I concluded that the Board had acted improperly in refusing to pay benefits as the boards of review had already reviewed the evidence concerning the availability of employment to the worker, and had concluded that he was entitled to compensation.

The Commissioners agreed with me that there was no authority under the *Workers' Compensation Act* for refusal to implement a board of review's decision without first referring the decision to the Commissioners. The result of my investigation was the payment to the worker of full wage loss benefits for the period from March to September 1978.

CS 81-159

Medical Review Panel answer reviewed

In this case we explored the difficult question of the relationship between Medical Review Panels and the rest of the Board. The complainant said that the Board had refused to accept responsibility for an operation which he believed was directly related to a prior compensable injury and surgery. The Board, stated that it was bound by the findings of a Medical Review Panel which found the worker fit.

However, the doctor who performed the second operation stated that there was a direct causal relationship between the first and second operations. We brought this to the attention of the Board and pointed out Board policy that a decision of a Medical Review Panel is conclusive unless new evidence becomes available. The Commissioners reconsidered the claim and resolved the complaint by also accepting responsibility for the second operation.

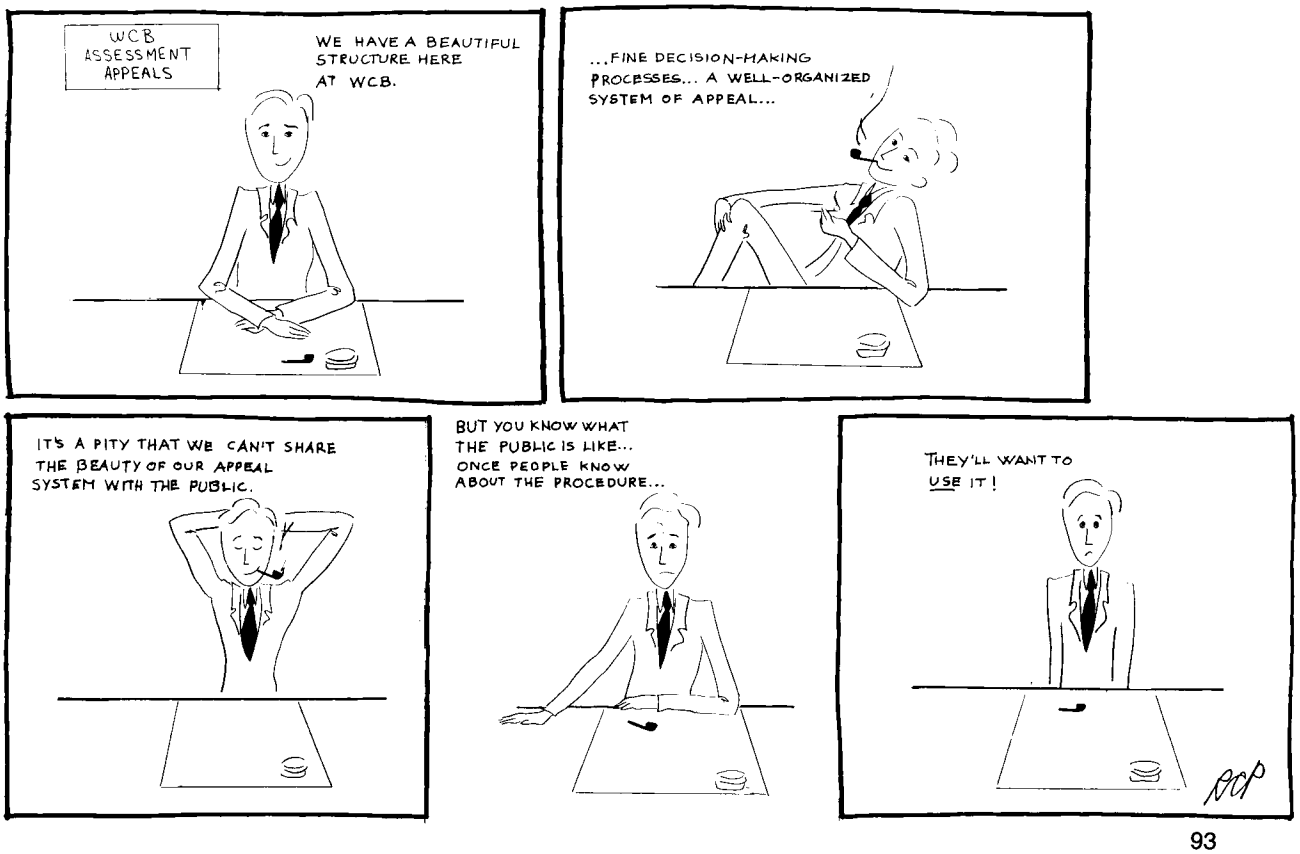
CS 81-160

New evidence on old knee damage

I received a complaint from a worker who had injured his knee at work in 1953. Although he received some wage loss benefits from the Board at that time, he was denied continuing benefits on the basis that there was no medical evidence of any permanent knee damage.

The complainant had suffered from knee pain and stiffness from the time of his accident until 1978, at which time an orthopedic surgeon operated on his knee, discovered the cause of his problems, and repaired the damage. On submitting this new medical evidence to the Board, the worker was told that there was no authority to review a decision previously made.

We obtained a letter from the complainant's doctor indicating that the damage which he had repaired was very likely caused by his 1953 work injury. I then proposed to the Board that the worker's 1953 claim be reopened and reconsidered. The Commissioners quickly notified me



that they acknowledged the error made in his claim, and agreed to refer the complainant back to a Claims Adjudicator for reconsideration.

CS 81-161

Minimum error

A motel operator who had purchased a business in December was assessed a $25 minimum assessment for the calendar year by the Board's Assessment Department. The complainant was unable to persuade the Board to have this minimum reduced to reflect the fact that he had only operated the business for one month of the year.

A regulation made following the Act provided for a minimum assessment of $10 for a calendar year or portion of it. A "Board Authorization", however, increased this amount to $25. The Board's actions were contrary to law.

I proposed successfully that the Board vary their assessment of the motel to comply with the regulation and refund $15 to the complainant. Other employers in the same position were not refunded $15 as the cost of processing would be unjustifiably high. As a result of this investigation the Board also agreed to publish changes concerning assessments in the W.C.B. News and W.C.B. Reporter Series.

CS 81-162

Owner foots the bill

The owner of an apartment block complained about the Assessment Department's decision to charge him with the costs of his employee's husband's work related injury.

The owner of the apartment block employed a woman as manager, on the condition that her husband would assist with maintenance of the building. After several attempts to have a broken lock repaired by a locksmith, and then by a carpenter, the manager's husband attempted to repair the door himself and, in the process, injured his foot. The owner was not aware that he was operating a firm within the scope of the *Workers' Compensation Act* and therefore was obliged to register. Since he had not registered, he was charged with the costs of the injury.

The Act requires an employer who has defaulted on his coverage to repay the Board's expenditures on behalf of an employee injured during the period of default. The Act further provides that the Board may relieve the employer of his liability where the default was excusable. The Board did not feel that the failure to register in this case was excusable as the owner had operated the firm for six years and it was felt that this afforded ample time to discover and fulfill his responsibilities under the legislation. In addition, the Board considered the manager's husband to be an employee of the owner due to the fact that the husband's services were required as a prerequisite to the owner's contract with the manager.

The final question was whether the employee's injury arose out of and in the course of his employment. The Board concluded that it had for several reasons. The injury occurred on the premises of the employer. The injury occurred in the process of doing something for the benefit of the employer. Finally, the injury occurred in the course of action in response to instructions from the employer. As the evidence relating to the instructions given by the owner to his employee was conflicting, the Board was guided by one of its former decisions which states that where it is found that the actions taken by a worker were unauthorized, the most appropriate test to follow is whether or not the actions of the worker resulting in injury appear to have been done *bona fide* to advance the employer's interests. In this case, it appeared that the actions of the worker did advance his employer's interests.

I found this complaint unsubstantiated as there was no administrative error or injustice in the Board's decision to charge the owner of the apartment block with the costs of his employee's injury.

CS 81-163

Is a gas bar a service station?

I received a complaint concerning the Assessment Department's classification of a service station. The operator said his firm should not be charged the rate for a full fledged service station as his firm only sold gas.

It is the Board's policy to classify firms by the industry in which the firm is engaged. In this case, both gas bars and service stations fall under the general category of automotive industry and are charged a common rate. The Board does not classify by occupations and is reluctant to proceed to a system of classification by occupation as it is felt that, although this system might be more equitable, the high cost of administration would eliminate any economic benefits which might result from a change in systems. However, in 1980 the Board instituted a new system of classification called industry rating. The change was based on the premise that certain industries within the same subclass do not create similar compensation costs. Therefore, the Board decided to base the contribution from each industry on its individual payroll and previous year's claims cost. A subclass average will still be calculated. However, individual industry rates will vary from the average according to the previous year's claims cost. Very similar industries such as those engaged in the manufacturing of envelopes and

the manufacturing of stationery will continue to share a common rate.

Although the Board's new rating system will come into effect gradually, at some point in the future gas bars may be assigned a rate separate from service stations.

I considered this complaint to be substantiated. However, since the Board is in the process of remedying the inequity complained of, I decided not to make a recommendation to the Board.

CS 81-164

Homeowner nailed by the Board

A homeowner who had had his house framed by a labour contractor was afraid that he would be charged with the cost, or a portion of the cost, of a worker's accident. The Board had decided that the homeowner was the prime contractor and employer of the labour contractor. The homeowner stated that he had been advised by the labour contractor that he had coverage through the Board, but this proved not to be the case. In this situation, the Board regards the labour contractor as a worker of the prime contractor who in this case is the homeowner. The *Workers' Compensation Act* provides that an employer who neglects to make a payroll return to the Board or who refuses to pay an assessment is liable to pay the compensation costs. As the homeowner was going to appeal and had hired a lawyer, he did not need our help himself. However, we asked the Board to clarify its requirements so that other homeowners would understand their obligations towards their construction crews.

My office contacted the Information Services Department of the Board, and suggested that as the general public entering contracts would not be aware of their obligations, it would be a good idea to communicate this information, perhaps through the Yellow Pages.

Information Services agreed to place advertisements in the Yellow Pages throughout the Province under appropriate headings such as Contractors, Plumbers, Roofers. Below is a sample of the advertisement.

CS 81-165

Delay

A worker complained that he had been waiting eleven months for a decision from the boards of review on an appeal from an adjudicator of the Workers' Compensation Board. His lawyer had contacted the boards of review a number of times regarding the delay, but the decision had not yet been sent to him.

I notified the Administrative Chairman of the boards of review that, in my opinion, the complaint was substantiated and the worker had suffered undue delay in receiving his decision. I also asked that every effort be made to deliver the decision to the complainant immediately.

The Chairman replied that the decision had been delayed pending the signature of a former board member and informed me that the decision had

just been completed and mailed to the complainant.

The Chairman also explained that although he was personally concerned about delays at the boards of review, he did not feel that this case was typical as the issues involved had required an especially thorough investigation by the Panel.

CS 81-166

Speed shows compassion

A man needed a quick decision from the boards of review. His family was on welfare in Ontario. He had arranged to return to Ontario that week, but he felt certain that the Panel's decision would not be available in the immediate future.

We contacted the Chairman of the Panel hearing the appeal. Because of the complainant's impending return to Ontario and the desirability of having a hearing before his departure, she arranged a special hearing early the following week. Two hours after the hearing, the complainant received a telephone call, saying a favourable decision had been made. Hats off to a speedy resolution and compassionate handling of a problem by an authority having to deal with requests for priority every day.

FUTURE JURISDICTION & NON-JURISDICTIONAL AUTHORITIES

During 1981, 284 people brought me complaints against unproclaimed authorities listed in Sections 3–11 of the Schedule to the *Ombudsman Act*.

Where I am able to help reverse grave injustices brought to me, I do so. I have two basic methods. First, my staff have information on private agencies and other resources equipped to solve special kinds of problems. Sometimes I have directed complainants to government agencies able to deal with their grievance, or to their Member of Parliament, M.L.A., or local officials.

A lack of space prevents me from giving a wider sampling of interesting non-jurisdictional complaints. Five cases will provide some insight.

CS 81-167

A real lemon

A self-employed man bought a second-hand long-distance hauling truck from a major car dealer. He was told that the truck had been repossessed from the previous owner for failure to keep up with payments and that he was entitled to inherit the two months remaining on the new-vehicle warranty. Shortly after purchase the complainant became aware of numerous serious defects in the truck. Some repairs were made under the terms of the warranty but these were never done to the complainant's satisfaction. Once the warranty expired, the manufacturer denied all responsibility. The complainant was very frustrated and angry. By the time he came to my office, he had amassed some $11,000 in repair costs and had learned that the original owner had refused to make payments because of the defects in the truck.

Because the complainant had purchased the truck for business purposes, he was not protected by provincial consumer legislation. My assistant contacted several consumer groups who were unable to offer him any assistance. The Ministry of Industry and Small Business Development expressed an interest in helping the complainant resolve his problem informally, but did not feel in a position to be of real benefit to him when presented with a list of defects and repairs. We twice heard the suggestion that the complainant should paint yellow lemons all over his truck and park it in front of the car dealer's office. My only alternative was to refer the complainant to a lawyer to bring suit against the car dealer. The previous owner had already done so and had won some money in an out of court settlement.

This complaint is a fairly typical example of how small businessmen are not protected by existing consumer legislation. It is an area that I hope will be addressed in the near future by government.

CS 81-168

Revenue Canada: SIN nightmare

A young man came to my office to discuss the ongoing difficulties he was having with the federal government and with private agencies; these related to a case of mistaken identity. The complainant had immigrated to Canada in 1973 and had applied for a social insurance number. Unfortunately, when Health and Welfare Canada issued him his card, an identical card was mistakenly sent to another man with the same name. The

other man assumed he had been assigned a new social insurance number and began to use it accordingly. Despite an attempt to resolve the problem in 1976, Revenue Canada continued to assess our complainant for the other man's earnings. In addition, several private insurance companies and one medical benefits plan had the identical social insurance number on file for each of the two men and continued to confuse their contributions.

We contacted representatives from Revenue Canada who separated the two taxation files and Canada Pension Plan contributions. They ensured that the other man was using his correct (first) social insurance number. Revenue Canada representatives also contacted each of the two men's former employers and private insurance companies to ensure that they had the correct numbers on file. We also spoke to the chief of social insurance numbers issuance and control in Bathurst, New Brunswick, who was willing to provide our complainant with a letter saying that he was the only legitimate holder of the number in question.

The *Ombudsman Act* does not provide me with the authority to investigate complaints against the federal government. However, Revenue Canada personnel gave prompt attention to my questions on this matter and I would like to thank them. Despite federal safeguards to ensure that information gathered by the use of social insurance numbers is kept confidential, human or computer error can still result in an invasion of privacy and inconvenience.

CS 81-169

Lending assistance

In my report last year I discussed the problem of a woman who was denied a student loan on the basis of residency requirements between B.C. and Alberta. The problem has arisen more than once in the past year also. In one case, a young woman was accepted as a student in the Faculty of Dentistry at the University of Alberta. She made inquiries about her eligibility for a student loan and was told that as a B.C. resident, she would qualify for a B.C. student loan but not for one from Alberta. She was distressed to learn this, as British Columbia has a $3,800 ceiling on all student loans while Alberta has a $6,800 ceiling for students enrolled in professional programmes. Although anxious to enroll in the University, she felt that she would not be able to meet the expenses.

I inquired about provincial student loan applications and found the complainant's information to be correct. Applicants who have not been living independently for at least four years are considered to be residents in the same province in which their parents reside.

However, although technically a British Columbia resident, the complainant had only actually lived in British Columbia for one year. She had been educated in Alberta until her last year of high school, moved with her parents to British Columbia at that time, and then, after graduation, moved back to Alberta to complete a two year pre-dental programme.

We spoke to the head of the Student Finance Board at the University of Alberta. He agreed to consider her application on the basis of her extensive residence in Alberta. When the complainant provided him with proof of residence, she was delighted to learn that her loan application would be accepted.

CS 81-170

Mayor uses muscle to bend rule on suites

A woman wanted to build for her disabled father an in-law suite in her house in a single family dwelling zoning area. She felt that if this was not permitted, her father would have no choice but to move into a nursing home. When she approached the municipality, she was told that this would be impossible as the municipality no longer approved in-law suites.

The complainant was willing to sign an affidavit that the suite would only be used by her parents, but municipal officials were not willing to consider this.

The complainant had already contacted her M.L.A. who discussed the problem with the Mayor of the Municipality. The Mayor saw to it that the in-law suite was allowed with the proviso that it only be used by the complainant's parents.

CS 81-171

Registered Nurses Association of B.C.

A registered nurse from Newfoundland applied for registration with the Registered Nurses Association of British Columbia and was rejected on the ground that she did not have sufficient psychiatric training. She was advised that she would have to complete a 10-week course in psychiatry at the British Columbia Institute of Technology. The next available course was not scheduled to begin for eight months. The nurse felt that the requirements of the Registered Nurses Association of British Columbia were unfair. She further complained that she could not understand why she could not work as a "graduate nurse" pending registration.

The Registrar of the Nurses Association told us that the Association requires all applicants for registration to have completed a course in psychiatry. The Registrar offered to meet with the complainant to review her qualifications and to assist her in understanding the requirements of the Association.

I passed this information on to the complainant.

PART IV

CHANGES IN PRACTICES AND PROCEDURES ACCEPTED BY AUTHORITIES

MINISTRY OF AGRICULTURE AND FOOD

1. The Ministry agreed to inform individuals adversely affected by decisions of the Farm Income Insurance Program of their right to appeal (*see* "Procedures beefed up"— CS 81-005).

MINISTRY OF THE ATTORNEY GENERAL

1. The Ministry of the Attorney General agreed to provide tapes to court reporters to use as backup to their shorthand notes. The tapes will be the property of the Ministry and when a reporter leaves the Ministry's employment the tapes as well as the notes will remain with the Ministry (*see* "The case of the missing transcript"— CS 81-007).
2. The Court Services Division accepted and adopted as policy a solicitor's opinion that the *Small Claim Act* does not preclude a plaintiff from serving a summons by registered mail (*see* "Small Claims and self help"—CS 81-013).
3. The Corrections Branch agreed to develop a statement of policy and procedures for disciplinary hearings. Included will be new forms designed to guide the questions asked at the hearings. The result should be fair, consistent decisions based on complete, accurate facts (*see* "A duty to be fair: even in jails!"—CS 81-017).

ASSESSMENT AUTHORITY OF BRITISH COLUMBIA

1. The Assessment Authority agreed to seek amendment to the prescribed standards for farm classification in order to end ambiguities in the standards. The Authority also agreed to take steps to resolve apparent inequities in the administration of the farm classification system.

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

1. The Rentalsman issued a policy guideline so that if he is slow in approving a rent increase, tenants will still get the notice of increase they are entitled to (*see* "Justice delayed is justice denied"— CS 81-031).
2. The Rentalsman reminded his officers to keep their promises and, when unable to do so, to communicate their inability to complainants (*see* "Promises, promises . . ."— CS 81-030).

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

1. The Chief Inspector of Mines issued a directive to all the Ministry's mine inspectors and resident engineers, stating that

   a. where new forms or bonds are required for the first time, notice of these requirements should be given to affected miners well before the start of the mining season, and

   b. a simplified procedure should be used for issuing mining permits during the mining season, in order to minimize delays.

2. The Ministry agreed to seek amendment to the *Mining (Placer) Act* to allow for formal hearings on matters concerning placer mining leases. If these are approved, a provision for retroactivity will be included so that current problems and complaints can be heard (*see* "Holes in the seamless web of the law"— CS 81-039).

3. On the Ombudsman's recommendation, the Mediation and Arbitration Board obtained legal advice on the interpretation of s.11 of the *Petroleum and Natural Gas Act*. The result was that a complainant now has a more suitable length of time to renegotiate a lease.

MINISTRY OF FORESTS

1. The Ministry of Forests agreed to correct a provision in the Log Salvage Regulations which had been poorly worded, and which appeared to have the effect of allowing thousands of people each to hold 10% of the shares in an organization (*see* "Strange arithmetic in log salvage regs."— CS 81-058).

2. The Ministry of Forests agreed to add a clause to a standard tree-spacing contract which would explain the circumstances under which a contractor's deposit could be returned (*see* "Tree-spacing contracts clarified"— CS 81-059).

3. The Ministry of Forests revised its practice relating to decisions not to renew grazing permits. The Ministry will now provide individuals in danger of losing their permits with information held by the Ministry and the opportunity of a full and fair hearing (*see* "Grazing permits: the right to be 'herd' "— CS 81-063).

GOVERNMENT EMPLOYEE RELATIONS BUREAU

1. The Government Employee Relations Bureau (G.E.R.B.) decided to pay fee-for-service accounts of psychologists providing assessments for the Forensic Psychiatric Services Commission. Originally, it was decided that since the fee-for-service fee was higher than the negotiated sessional fee, those accounts would not be processed. G.E.R.B., after representations from the Ministry of Health and as a result of my investigation, paid the outstanding accounts.

MINISTRY OF HEALTH

1. The Ministry of Health changed its policy to allow a resident access to the results of water tests pertaining to his or her specific approved water supply (*see* "Privacy v. access to information"— CS 81-065).

2. The Ministries of Health and Human Resources informed their staffs that an amendment to the *Community Care Facilities Licensing Act* was in force. This amendment permits an unlicensed day care facility to provide care to more than two children if the children are siblings (*see* "Rule change keeps family together"— CS 81-075).

3. The Ministry of Health provided funds for the Cancer Control Agency to purchase several Jobst pumps. These relieve discomfort of patients recovering from a radical mastectomy operation (*see* "Ministry finds a way"— CS 81-070).

4. The Ministry of Health formulated guidelines for assessors to use in evaluating and assigning contracts to homecare agencies. These guidelines were circulated to homecare agencies and Long Term Care administrators (*see* "Homemaker rules need polishing"— CS 81-066).

5. A task force was established for the Ministries of Health and Universities, Science and Communications to help resolve problems with the telephone system at the Ministry of Health (*see* "Nobody home"— CS 81-064).

6. The Ministry of Health changed its policy so that members of religious orders who had taken vows of perpetual poverty would not be disqualified for premium assistance on the basis of those vows (*see* "No-nonsense nuns and the fine print"— CS 81-072).

7. The Ministry of Health and the Public Service Commission agreed to clarify the requirements for community care nurses in job advertisements. It was also agreed to apply the same recruitment and selection standards to auxiliary and regular employees.

8. The Medical Services Commission established an informal review mechanism for persons denied medical insurance for unusual or unorthodox medical treatment.

9. The Medical Services Commission changed its policy to include as a benefit under the Medical Plan the costs of gender reassignment surgery for patients completing the Gender Identity Clinic Program at the Clarke Institute of Psychiatry or other equivalent programs (*see* "Surgery denied? Review now possible"— CS 81-068).

10. The Division of Vital Statistics stopped requiring a court order to prove legal custody of a child for an application to change a child's name. An affidavit is now sufficient.

11. The Ministry of Health agreed to recommend several changes to the *Vital Statistics Act* and the *Name Act*. These include changes to allow for the registration at a child's birth of a hyphenated last name. Further a married couple could choose to register their child under the mother's last name rather than the father's. Also to be considered for revision is the provision that permits a married woman to change her name only to her husband's surname, her maiden name, or her surname prior to marriage. A further request was that a change be made in the Act to allow a remarried woman to apply to change the surname of her children of whom she has custody. Also included was a change to allow an unmarried father who has custody of his children to change their names.

MINISTRY OF HUMAN RESOURCES

1. The Ministry established an internal committee to review policy on provision of Income Assistance Benefits to transient applicants. As a result, policy on the question was re-written to provide clarification on eligibility.

2. The Ministry altered its daycare policy to allow for the provision of subsidized daycare by aunts, uncles, cousins, and other family members.

3. The Ministry developed and distributed a "GAIN-Appeal Procedures" poster which outlines the applicant's/recipient's right to appeal decisions on eligibility for income assistance. The Ministry assured me that these posters would be prominently displayed in the waiting areas of all local offices (*see* "Appeal information revisited"— CS 81-077).

4. The Ministry agreed to monitor some S.A.F.E.R. recipients who appeared to misunderstand the program, to personalize collection procedures when an overpayment occurs, and to gear correspondence to the needs of the elderly (*see* "New procedure safer for clients"— CS 81-083).

5. The Ministry of Human Resources agreed to add a section to its Family and Children's Service Field Manual, outlining a complaint procedure to be used by foster parents. The complaint procedure will also be included in the Foster Parents' Manual which is being developed in cooperation with Ministry staff by the B.C. Federation of Foster Parents Associations.

6. The Ministry agreed to revamp the reporting form on income assistance cheque stubs so that it would be clear what action and what information the Ministry expected from the recipient.

7. The Ministry restated several policies in an effort to promote consistent practice across the Province. In particular, the Ministry reminded staff that:

   a. each case must be assessed individually before denying income assistance because the applicant has quit his or her job or is not actively seeking work;

   b. people must be notified of their right to appeal the income assistance decisions; and

   c. there is provision for extraordinary assistance to people in hardship.

8. The Ministry agreed to attach explanatory memoranda to separation reports, directing selection panels to consider an applicant's total record of service with the Ministry in making any personnel selection decisions and to disregard notations on old personnel files like "Not to be rehired" (*see* "Secret directive spoils job chances"— CS 81-084).

MINISTRY OF LANDS, PARKS AND HOUSING

1. The Eligibility Committee established under the Home Purchase Assistance Branch agreed to consider a Band Council Office an agent of the Minister for the purposes of receiving a grant application. An applicant would not then be denied assistance if, because Ministry policy requires that the Band Council attest to the applicant's eligibility, the application did not reach the Committee within the time limit (*see* "Homeowners get their grant"— CS 81-100).

2. The Deputy Minister told field staff of the Regional Operations Division to inform applicants for Crown land that they should not become involved in the land referral process until a full report of the availability of the land had been prepared by the Ministry. This would prevent applicants from wasting time and effort in attempting to persuade other agencies consulted by the Ministry not to object to the disposition requested by the applicants.

3. The Deputy Minister decided to review a recent Ministry policy which provides that the first qualifying applicant for an agricultural lease of Crown land is entitled to purchase the land without participating in an auction. I had expressed concern that the new policy could improperly discriminate against previously disallowed applicants.

MINISTRY OF MUNICIPAL AFFAIRS

1. The Inspector of Municipalities agreed to ensure that the policies and guidelines for carrying out investigations of citizens' complaints will adhere to rules of procedural fairness (*see* "Inspector's investigations inspected"— CS 81-103).

MINISTRY OF TRANSPORTATION AND HIGHWAYS

1. The Motor Vehicle Branch (M.V.B.) agreed to abolish its practice of refusing to permit the transfer of a vehicle from an individual to a relative. The policy had applied to individuals who owed I.C.B.C. premiums for driver penalty points (*see* "Intimate transfers"— CS 81-120).

2. The M.V.B. agreed to inform people required to take a driver's re-examination that they have the right to know the reasons why they have been asked for a re-examination, and an opportunity to comment (*see* "Driver can rebut claim he's unfit"— CS 81-116).

3. The Ministry agreed to consider recommending amendments to the *Motor Vehicle Act* so that personal driver record information would only be available to persons with a legitimate right to obtain such information.

4. The M.V.B. agreed to change letters sent to drivers suspended because of the abuse of alcohol. Letters will now show what action will be required before the licence is reinstated (*see* "Tell 'em like it is"— CS 81-118).

5. The Ministry undertook to seek amendment to the *Motor Vehicle Act* Regulation so that persons who used the "T" type of spare tire, now commonly issued with North American automobiles, would not be in violation of the Regulation.

6. The M.V.B. agreed to retain for five years foreign drivers' licences surrendered to the Branch. A person returning to his native country could then obtain his driver's license for use during his visit home (*see* "Driver gets foreign licence back"— CS 81-115).

7. The M.V.B. agreed that, before refusing a licence on medical grounds, the Branch would inform the applicant of its tentative opinion that the applicant was not medically fit to drive and the reasons for that opinion. The Branch will also invite such persons to provide further information concerning their medical condition, if the licence is needed for work, and the physical demands of their job.

8. The M.V.B. agreed that the presence of a removable rear seat in a motor vehicle which would otherwise be eligible for a commercial classification was not a suitable basis for refusing commercial plates (*see* "The pleasures of purple gas"— CS 81-121).

B.C. HYDRO AND POWER AUTHORITY

1. B.C. Hydro formalized its policy concerning collection procedures as they apply to separated couples (*see* "Separated couples treated separately"— CS 81-139).

INSURANCE CORPORATION OF B.C.

1. The Insurance Corporation of B.C. agreed to pay an inconvenience payment to motorists who, because of the strike, were kept waiting more than 30 days for refunds on cancelling their insurance. The rate of interest will be at 15% per year prorated (*see* "What's sauce for the goose . . ."— CS 81-144).

2. In order to prevent release of confidential driving record information by I.C.B.C. to parties other than the party to whom the information pertains, the Corporation issued a directive to the Driver Penalty Point Premium Department to request the birthdate of the caller in addition to his/her name and driver's licence number.

WORKERS' COMPENSATION BOARD

1. The Workers' Compensation Board established a new practice in cases where pension payments are being seized by the Board in order to recover debts. The Pensions Branch will now advise the Collections Branch when the pension is adjusted, or a cost of living increase is made. The Collections Branch will keep pensioners informed of how much they still owe and how much has been credited to pay off the outstanding overpayment (*see* "Proper accounting"— CS 81-153).

2. The Workers' Compensation Board has agreed to clarify the present policy of issuing advance rulings on proposals for exercise programs. They will include a statement in the Reporter Series that such rulings will be available to employers throughout the province (*see* "Board agrees to think ahead"— CS 81-152).

3. The Workers' Compensation Board has agreed to the following changes in the area of appeal notification:
   a. The Board will now advise workers that decisions made by Legal Officers are appealable;
   b. The appeal paragraph in decision letters will be revised to improve advice and clarity; and
   c. The Board will include an explanation of how to obtain a Medical Review Panel appeal in the general appeals pamphlet.

4. The Information Services Department of the Workers' Compensation Board agreed to place advertisements concerning the contractual obligations of the general public with respect to workers' compensation. The advertisements will appear in the yellow pages throughout B.C. under headings such as Contractors, Plumbers, and Roofers (*see* "Homeowner nailed by the Board"— CS 81-164).

5. The Workers' Compensation Board agreed to alter its practice of charging a minimum assessment of $25 per year; the Regulation lists the minimum assessment as $10 per year. The Board also agreed to publish this and similar changes in the W.C.B. News and W.C.B. Reporter Series (*see* "Minimum error"— CS 81-161).

6. The First Aid Section of the Industrial Health and Safety Division of the Workers' Compensation Board agreed to the following procedural changes:
   a. The Division agreed to advise applicants for certification that further medical information may be required even if all the standard medical forms are completed.
   b. The Division agreed to add a sentence to the letters sent to persons applying for initial certification, and to subsequent acceptance letters, advising that failure to meet medical criteria will not necessarily result in disqualification, as reasons for noncompliance will also be considered when provided.
   c. The Division agreed to add a paragraph to decision letters advising applicants of their rights of appeal (*see* "Controlled disease no bar to first aid work"— CS 81-151).

TALK BACK CORRESPONDENCE FROM COMPLAINANTS

"I would advise anyone having trouble with the public servants, don't go to the Ombudsman, it's like getting bit by a rattlesnake, and then going to another rattlesnake to complain about the bite."(letter to a newspaper)

"I was interested to know that my complaint was still being considered . . . and look forward to a happy ending. I think your office is a very necessary institution in our highly bureaucratic society."

"Thank you for all the time and effort that you have put forth on our behalf. It certainly has been a great consolation just speaking with you. . . . It is unfortunate that the Ombudsman does not as yet have jurisdiction over local government. We personally feel that his intervention at this level could avoid many of the frustrations and complications that we are sure many residents of British Columbia have in common with ourselves."

"Thank you for everything you have done for us so far, never mind we haven't been successful but still you have tried in everyway possible. Funny isn't it? You don't know me and vice versa, but seems as though throughout all of our phone conversation and little chit-chat, I feel as though we've met and know one another."

". . . if the ministry did not bother to check this out, it only substantiates my complaint about their lackadaisical approach to the whole matter. I am terribly disappointed about your office taking the Ministry's statement rather than that of the complainant. But then this is what bureaucracies are all about—lots of pompous verbosity but little action."

"Excellent work. You have succeeded in squeezing information out of the Branch that they would not provide me. Now I can see the proper action to take. . . . You have done much more than I ever expected, or that my own case probably deserved. This is responsive government and democracy at work. . . . Please convey my thanks to those on your staff who did any leg-work. You have my heartfelt thanks."

"The first part of the complaint was dealt with fairly quickly and in a letter dated 23rd January 1981, you informed me that the remainder of our concerns would be investigated. On 10th March 1981, I made a further submission. . . We have not heard from your office since. . . . fortunately I am not paranoid or I would doubtless believe that multinationals controlled every department of government including yours."

"I am dismayed at your opinion yet not discouraged, justice will prevail—eventually—it merely takes time, perhaps I shall not live to see it yet I shall have done my part."

"I would also like to say thank you to your staff who never let me give up hope that things could be changed slowly but surely. We always got a call when our family needed it the most."

"Perhaps you are disappointed in not obtaining equity on all matters, but you certainly assisted a great deal in removing the worst obstacles that originally faced Garibaldi property owners in their negotiations with the Government."

"A lawyer whose first name was Judith helped us and I am glad to say that a small boy has a chance even the freedom to become the best person he is capable of being."

"Your conclusion that my complaint has merit pleases me, but I am concerned that the strength of your two recommendations is inadequate under the circumstances. You have already advised the Deputy Minister of the content of these recommendations, and I fear that there is no likelihood of their being changed. I am surprised that your office would express its recommendations to the appropriate ministry before seeking the opinion of the complaining party. Is the function of the Ombudsman more that of a mediator rather than a representative of a complaining party . . ?"

"We concur with your assessment that the specifics of our complaint have been satisfied and that the ministry policy represents some effort to avoid the kind of problems experienced at Buckley Bay . . . The Baynes Sound Protection Committee wishes to express its thanks and appreciation to you for the service you have rendered the public in investigating our complaint in this matter. It is our feeling that your perseverance in the case has not only resolved the particular difficulties at Buckley Bay, but also gone some way towards improving similar land-use decisions in British Columbia."

"You helped me hang on to my money
And I sure do thank you Honey;
Now my kid can stay in school a while
Thanks to you and your work on my file.
You took my complaint and went to work
From your duties, you didn't shirk;
Phone calls here and letters there
You saved my cupboards from staying bare.
Heather is happy—day care is paid—
I hope you know the difference you made.
Thanks Sue for all that you did,
I thank you and so does my kid!!!"

"Bless the Ombudsman."

PART VI

TABLES

TABLE 1

Profile of Complainants, and Complaints Closed Between January 1, 1981 and December 31, 1981

		Number	Percent
COMPLAINANT/ GROUP	Individual/Family	4,347	91.23
	Business	201	4.22
	Union	9	0.19
	Group	148	3.11
	Public Servant	12	0.25
	Others	48	1.00
	TOTAL	4,765	100.00
COMPLAINT INITIATOR	Aggrieved Party	4,219	88.54
	Relative/Friend	331	6.94
	MLA and MP	27	0.57
	Professional	76	1.60
	Ombudsman	44	0.92
	Public Servant	17	0.36
	Others	51	1.07
	TOTAL	4,765	100.00
INITIATOR'S GENDER	Male	2,752	57.76
	Female	1,788	37.52
	Family	113	2.37
	Group/Other	112	2.35
	TOTAL	4,765	100.00
FIRST CONTACT	In Person	1,012	21.24
	Letter	801	16.81
	Telephone	2,915	61.17
	Not Applicable	37	0.78
	TOTAL	4,765	100.00
COMPLAINT INITIATED AT	Victoria Ombudsman Office	2,016	42.31
	Vancouver Ombudsman Office	2,395	50.26
	Local Visit	354	7.43
	TOTAL	4,765	100.00

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

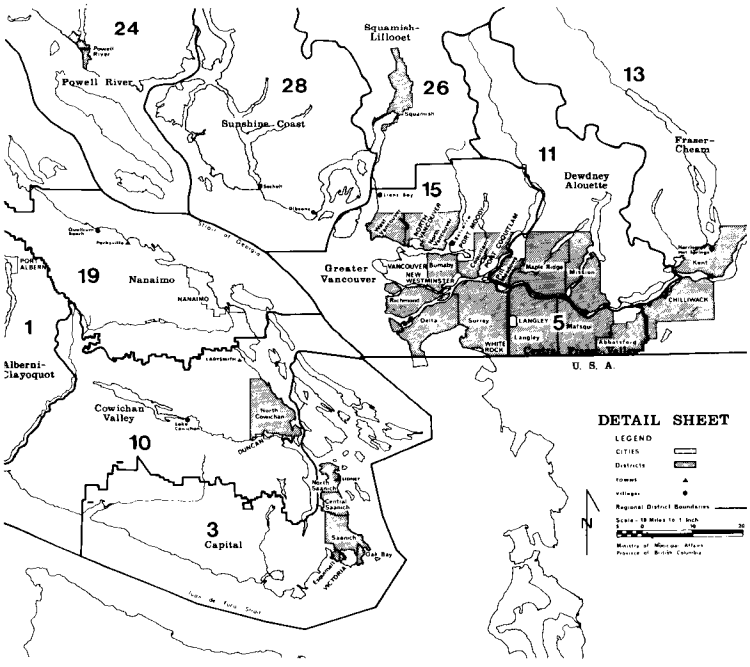


TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1981

Regional Districts	Percentage of Total B.C. Population (October 1980)	Percentage of Total Ombudsman Complaints Closed (as of Dec. 31, 1981)
1. Alberni-Clayoquot	1.2	.7
2. Bulkley-Nechako	1.4	1.2
3. Capital Region	9.2	16.2
4. Cariboo	2.2	1.7
5. Central Fraser Valley	4.1	2.9
6. Central Kootenay	2.0	1.9
7. Central Okanagan	2.9	1.5
8. Columbia-Shuswap	1.4	1.7
9. Comox-Strathcona	2.5	1.9
10. Cowichan Valley	1.9	1.5
11. Dewdney-Alouette	2.2	1.9
12. East Kootenay	2.0	1.7
13. Fraser-Cheam	2.0	1.3
14. Fraser-Fort George	3.3	5.9
15. Greater Vancouver	42.8	41.2
16. Kitimat-Stikine	1.4	1.1
17. Kootenay-Boundary	1.2	.8
18. Mount Waddington	.6	.6
19. Nanaimo	2.7	1.9
20. North Okanagan	1.9	1.3
21. Central Coast	.2	.0
22. Okanagan-Similkameen	2.1	2.0
23. Peace River-Liard	2.1	1.9
24. Powell River	.7	.5
25. Skeena-Queen Charlotte	.9	1.1
26. Squamish-Lillooet	.7	.9
27. Stikine Region (Unincorporated)	.1	.1
28. Sunshine Coast	.6	.4
29. Thompson-Nicola	3.7	2.9
Out-of-Province	N/A	1.3
TOTAL	100.0	100.0

TABLE 3

Disposition of Complaints (Proclaimed Authorities) Closed Between January 1981 and December 1981

	Declined Withdrawn Discontinued	Resolved: Corrected during Investigation	Substantiated: Corrected after Recommendation	Substantiated but Not Rectified	Not Substantiated	TOTAL
A. MINISTRIES						
Agriculture and Food	7	3	18	1	4	33
Attorney General	157	86	9	0	106	358
Consumer and Corporate Affairs	119	52	3	2	36	212
Education	11	6	1	5	9	32
Environment	36	17	85	59	11	208
Energy, Mines and Petroleum Resources	1	5	2	0	3	11
Finance	19	9	2	0	17	47
Forests	17	6	2	0	24	49
Health	51	21	12	0	25	109
Human Resources	174	126	5	1	85	391
Industry and Small Business Development	1	0	0	0	2	3
Labour	18	8	1	0	8	35
Lands, Parks and Housing	17	26	3	0	31	77
Municipal Affairs	7	4	1	2	11	25
Provincial Secretary	6	2	0	1	4	13
Tourism	1	0	0	0	1	2
Transportation and Highways	88	48	6	0	50	192
Universities, Science and Technology	2	1	0	0	0	3
SUB-TOTAL	732	420	150	71	427	1,800
PERCENT	40.67	23.33	8.33	3.95	23.72	100.0

TABLE 3—*continued*

	Declined Withdrawn Discontinued	Resolved: Corrected during Investigation	Substantiated: Corrected after Recommendation	Substantiated but Not Rectified	Not Substantiated	TOTAL
B. BOARDS, COMMISSIONS, ETC.						
Agricultural Land Commission	8	2	0	0	17	27
Alcohol and Drug Commission	4	1	0	0	0	5
Board of Industrial Relations	3	0	0	0	0	3
B.C. Assessment Authority	12	0	1	1	7	21
B.C. Assessment Appeal Board	1	0	0	0	4	5
B.C. Board of Parole	1	2	0	0	0	3
B.C. Buildings Corporation	2	0	0	0	1	3
B.C. Ferry Corporation	4	10	0	0	5	19
B.C. Housing Corporation	3	0	0	0	1	4
B.C. Hydro and Power Authority	19	20	1	0	9	49
B.C. Housing Management Commission	4	2	0	0	4	10
B.C. Police Commission	3	0	0	0	1	4
B.C. Railway	3	0	0	0	2	5
B.C. Systems Corporation	2	0	0	0	0	2
Compensation Consultant	0	2	0	0	1	3
Emergency Health Services Commission	1	0	0	0	1	2
Employers' Advisor	1	0	0	0	1	2
Government Employee Relations Bureau	2	0	0	0	0	2
Insurance Corporation of B.C.	112	74	0	0	51	237
Labour Relations Board	4	1	0	0	14	19
Medical Services Commission	4	11	2	0	12	29
Milk Board	0	0	3	0	1	4
Motor Carrier Commission	6	1	0	0	0	7
Ocean Falls Corporation	0	0	0	0	2	2
Pesticide Control Appeal Board	4	1	0	1	0	6
Pollution Control Board	1	0	0	0	1	2
Provincial Capital Commission	2	0	0	0	1	3
Public Service Commission	8	3	1	0	9	21
Rent Review Commission	2	2	0	0	0	4
Superannuation Commission	5	6	1	0	7	19
Workers' Compensation Board	223	33	16	0	91	363
WCB Boards of Review	27	6	5	1	7	46
OTHERS	17	4	0	0	5	26
SUB-TOTAL	488	181	30	5	253	957
PERCENT	51.00	18.91	3.13	0.52	26.44	100.0
TOTALS A and B	1,220	601	180	74	682	2,757
PERCENT	44.25	21.80	6.53	2.68	24.74	100.0

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities
(Sections 3–11 Schedule of the *Ombudsman Act*)
Closed between January 1981 and December 1981

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Government Corporations (excluding Boards and Commissions)	0	0	1	1
Municipalities (Section 4)	24	115	27	166
Regional Districts (Section 5)	7	35	9	51
Islands Trust	1	0	0	1
Public Schools (Section 7)	3	17	5	25
Universities (Section 8)	2	3	1	6
Colleges and Provincial Institutes (Section 9)	0	2	1	3
Hospital Boards (Section 10)	1	4	1	6
Professional and Occupational Associations (Section 11)	7	11	7	25
TOTAL	45	187	52	284
PERCENT	15.85	65.85	18.30	100

TABLE 5

Extent of Service

Non-Jurisdictional Complaints
Closed Between January 1981 and December 1981

	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	35	243	103	381
Marketplace matters—requests for personal assistance	90	597	141	828
Professionals' actions	11	87	9	107
Legal and Court matters	31	190	40	261
Police matters	8	49	9	66
Miscellaneous	16	55	10	81
TOTAL	191	1,221	312	1,724
PERCENT	11.08	70.82	18.10	100

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		46	3.77
2. Abandoned by Complainant		269	22.05
3. Withdrawn by Complainant		201	16.48
4. Statutory Appeal (Section 11 (1) (a))		197	16.15
5. Solicitor (Section 11 (1) (b))		2	0.16
6. Discontinued by Ombudsman (Discretionary)		505	41.39
a) Over 1 year old	6		
b) Insufficient personal interest	9		
c) Other available remedy	290		
d) Frivolous	0		
e) Investigation unnecessary	124		
f) Investigation not beneficial to complainant	76		
TOTAL		1,220	100.00

TABLE 7

Level of Impact

Resolved and Rectified (Jurisdictional) Complaints
Closed Between January and December 1981

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	491	56	49	1	4	601
Rectified Complaints	55	97	19	1	8	180
TOTAL	546	153	68	2	12	781