1983 ANNUAL REPORT OF THE OMBUDSMAN

TO THE LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

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Province of British Columbia

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May, 1984

The Honourable K. Walter Davidson
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 Fifth Annual Report covers the period of January to December 1983.

Respectfully yours,

Karl A. Friedmann
Ombudsman

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HIGHLIGHTS OF THE 1983 ANNUAL REPORT

- This is the fifth occasion for tabling an annual report in the Legislative Assembly. The report deals with the activities of the Ombudsman office during 1983.
- My office received 9,534 new complaints in 1983, an increase of nearly 17 percent over those received in 1982. This is a slow-down in the size of the annual increase in complaints received: in 1982 complaints had increased by 66 percent over 1981 (from 4,935 in 1981 to 8,179 in 1982).
- With 9,534 new complaints received in 1983 and 1,333 complaints from previous years still under investigation on January 1, 1983, my office handled a total volume of 10,867 active complaint files in 1983. Of that total, 9,762 complaints were investigated or otherwise closed in 1983. A few more files were closed in 1983 than opened, allowing for a reduction in an increasingly onerous backlog of investigations and open files.
- Of the total of 9,762 closed complaint files, 4,606 or 47.2 percent were directed against authorities within my present jurisdiction (Table 3) and 5,156 or 52.8 percent were outside my present jurisdiction (Tables 4 and 5).
- In September 1983 British Columbia hosted the Annual Conference of Canadian Legislative Ombudsmen in Vancouver. A short report on the proceedings of the conference can be found in Part I of this report.
- In my 1982 Annual Report I tried to spell out a "Code of Administrative Justice", in an effort to make explicit those principles and values I use in judging the fairness and justice of official actions. The Code met with a great deal of interest, some skepticism but also a lot of support from my Canadian Ombudsman colleagues and Ombudsmen in other countries. I would like to know in greater detail whether officials and Members of the Legislative Assembly in British Columbia find it useful for their interactions with my office. I plan to work further on this statement of principles in 1984 and include a revised statement in my Annual Report for 1984. I welcome any comments, in particular critical comments, from anyone with an interest in administrative fairness and justice.
- My urgent plea for action to eliminate unreasonable delays in Boards of Review hearings against Workers' Compensation decisions went unheeded. Instead of getting better, the situation has become worse in 1983. (See comments in Part I — B.2.a).) The new Chairman of the Boards of Review is unhappy about my comments concerning the Boards of Review. He wants a hearing from the Legislative Assembly. I would support his request.
- I want to express my appreciation for the many very helpful, courteous and service-oriented officials I and my staff have encountered last year. Complainants and my office tend to notice more frequently the official who is a little less than perfect on account of the fact that he is unusual. We find many more officials who go out of their way to resolve problems. Without the ready help of those officials we could not cope with the increased volume of complaints, and my thanks are due to them.
- I have presented in Part V comments from correspondence of complainants about their encounters with red tape, and their reaction to the service provided by the Ombudsman and staff. It is gratifying to see our hard work and effort recognized by the public we serve. We receive many more comments by phone and in person. I also include critical comments if they find their way into my correspondence.
- In 1982 the B.C. Court of Appeal ruled that the actions of the B.C. Development Corporation are subject to investigation by the Ombudsman (Special Report No. 6). B.C.D.C. and the Attorney General sought leave to appeal to the Supreme Court of Canada, and that Court heard argument on January 30, 1984. Judgment was reserved.
- Adrian Raeside's cartoons are back by popular demand.

PART 1

GENERAL COMMENTS

A. CONFERENCE OF CANADIAN LEGISLATIVE OMBUDSMEN

Every year Canadian Ombudsmen meet to discuss issues of mutual interest, to exchange information and to share experience in our common pursuit of administrative justice. In 1983 I was privileged to host the conference in Vancouver. Intended as a national conference of Canadian Ombudsmen, the event took on an international flavour with the attendance of the Australian Commonwealth Ombudsman, the Ombudsmen for Jamaica and the Netherlands, five Ombudsmen from jurisdictions in the United States and the former Chief Ombudsman for Sweden. Several former provincial Ombudsmen were also in attendance to reflect on their experience in office.

The conference was open to Members of the Legislative Assemblies. Members and staff of the Ontario Provincial Parliament's Select Committee on the Ombudsman and several members of the Alberta Legislative Assembly's Committee on Legislative Offices were present and contributed to the discussion. The Speaker of the British Columbia Legislative Assembly sponsored a lunch for the conference and the Honourable Garde Gardom, Minister of Intergovernmental Relations, addressed the delegates on that occasion, bringing greetings to the conference from the Government of British Columbia. Mrs. Eileen Dailly, M.L.A., brought greetings from the Official Opposition. His Worship, Mayor Michael Harcourt, welcomed the delegates in the name of the City of Vancouver.

The conference spent a great deal of time discussing the principles of administrative fairness and justice. Ombudsman legislation in the nine provinces is very similar, providing a common basis for shared concepts of administrative justice. In the rest of this inevitably brief summary I will concentrate on a few conference subjects that might be of interest to Members of the Legislative Assembly.

The Need for a Federal Ombudsman

Every year, provincial Ombudsmen receive scores of complaints about federal administrative decisions. But Canada has not seen fit to establish a general federal Ombudsman. There are now four specialist Ombudsmen at the federal level, who, of course, are regularly part of this conference: the Commissioner of Official Languages, the Correctional Investigator, the Privacy Commissioner and since July 1983, the Information Commissioner. In 1977 and 1978 the federal government announced commitments in the Throne Speech to establish a federal Ombudsman but the promise has not been implemented as yet. Provincial Ombudsmen have repeatedly over the years expressed to the government and the parties represented in the House of Commons their sentiments about the urgent need for a federal Ombudsman. At the conference several speakers presented arguments in favour of having a federal Ombudsman.

Arthur Maloney, Q.C., a former Ombudsman for Ontario, recalled that Canada was one of the most receptive countries to the Ombudsman idea, yet had failed at the federal level to be consistent with

its belief in caring for the citizen. He then pointed out a few specific areas in which there was a desperate need for the scrutiny and ameliorating influence of an Ombudsman.

Professor Sandra McCallum, of the University of Victoria Law Faculty, felt it was time to revamp the arguments in favour of a general federal Ombudsman for Canada as opposed to setting up more and more specialist Ombudsmen. Australia had placed great emphasis on the need for uniformity and consistency in decision-making, which could only be assured with one general Ombudsman.

Professor McCallum also felt the time was right for a federal Ombudsman because the government had established and proclaimed the freedom of information legislation and human rights legislation, the report of the Federal Law Reform Commission on administrative law reform is close at hand, and the Minister of Justice released a white paper on reforms to the *Federal Court Act*. If you look at the creation of Ombudsman legislation in the context of a package for administrative reform, it is now time for a federal Ombudsman in Canada. She concluded that Canada can look to Australia for some useful examples of why a Federal Ombudsman in Canada would be of great benefit not only to the federal government but also to the provinces.

Professor Jack Richardson, the Australian Commonwealth Ombudsman, explained the events that led to the emergence of a dominant Commonwealth in Australia. At the federal level there has been an enormous growth of power, with very little accountability to the public. Because of a decline in ministerial responsibility, the need for a central authority to review the actions of federal bureaucrats became apparent, hence the establishment of a Federal Ombudsman in Australia.

Dr. Richardson summarized a number of recent administrative law reforms at the federal level in Australia which are not matched in other parts of the world. He pointed out the similarities between the functions of the Canadian provincial Ombudsmen and state Ombudsmen in Australia and elaborated on the independence of his operation at the federal level and the excellent cooperation between federal and state Ombudsmen.

He then explained the Ombudsman Act of Australia and matched it up with federal powers. The Commonwealth Constitution vests in the Australian Parliament enumerated legislative powers. A comparison of these with the federal powers listed in Section 91 of the Canadian Constitution would reveal common features, i.e., the regulation of trade and commerce, the power of taxation, the conduct of the postal service, defence and immigration; and these are the areas of government about which his office receives most complaints.

Dr. Richardson described the operation of his office. He stated that like Canadian Ombudsmen and the New Zealand Ombudsman, he can only make recommendations to government departments and statutory authorities, and he cannot compel the acceptance of a recommendation. He is not prepared to accept the rejection of a recommendation and has to consider the alternative courses available to him. His first recourse is to go to the Prime Minister. He advised that if Canada ever has a federal Ombudsman, there are very great advantages in having the Prime Minister and not some lesser minister responsible politically for the administration of the *Ombudsman Act*. He has found that having the support of the Prime Minister makes government departments think carefully before they challenge him. The final recourse available to him is to table a special report in the Commonwealth Parliament.

Institutions

It has long been my view that the Ombudsman has a special role to play with respect to residents in institutions that are managed by the government. The lives of residents in these institutions are more directly affected by official policy and procedures and the personal conduct of officials than any other segment of the population. Mrs. Rella Foley, the Ombudsman for King County, Washington, U.S.A., Dr. Randall Ivany, Ombudsman for Alberta and Mr. Brent Parfitt, my solicitor, detailed their experiences in dealing with institutions and the special role the Ombudsman should play. The panel suggested that the Ombudsman can play the role of a "safety valve" to allow residents to vent their problems before they are manifest in other ways, e.g. prison riots. For those who cannot express themselves, the Ombudsman can audit and inspect the records of residents and facilities in which they live.

Because the staff in institutions use a 'hands-on' approach, they understandably will be concerned about an outside agency auditing their performance. It is important for the Ombudsman and his staff to explain the role of the office as an impartial finder of fact and an advocate of natural justice and administrative fairness. The Ombudsman has to assure the residents that there will be no retribution as a result of their complaining to the Ombudsman. They must be asked to inform the Ombudsman immediately if they experience retribution.

Ombudsmen and their staff must become very knowledgeable about the life and functions of these institutions and the concerns of the residents. What may appear as a trivial complaint to an outsider could be a major issue to residents. The type, quality and quantity of food and clothing generate many complaints in institutions and should be viewed seriously by Ombudsmen. Investigators

need to develop special skills so that they can communicate with the mentally ill and developmentally and physically disabled residents in institutions. Greater vigilance must be exercised by the Ombudsman on behalf of those confined involuntarily. It is up to the Ombudsman in large measure to watch that they are treated humanely and in accordance with the legislation. The residents have to know that it is all right for them to complain and how to complain.

The Ombudsman must be concerned about the quality of information he receives in investigations. Staff networks may influence or colour evidence in support of colleagues.

The Ombudsman must ensure that as much as possible the institution responds to individual needs. Investigations of assault should be commenced immediately so that physical evidence does not disappear. The Ombudsman must also watch that the facility and programs are of an acceptable quality.

Privacy and Open Government

Ombudsmen everywhere must face the difficult issues raised by competing or conflicting social values. In a democratic society openness of government is essential. At the same time we also feel strongly about our privacy. Ombudsmen are sometimes called upon to balance these competing values in individual complaint investigations. Governments and legislators face the even greater dilemma of developing general policies and standards for the protection of both personal privacy and openness in government. Technological developments in the communications field have quickly created considerable risks to privacy concerns both in the public and private sector.

Professor David Flaherty, a privacy expert from the University of Western Ontario, delivered a thought-provoking paper to the conference entitled "After 1984: Protecting Privacy in an Information Society". He stated that we must recognize that we live in a world in which spy satellites, intercepted telecommunications, wiretapping, polygraphs, information systems and massive networks of computers are commonplace. We are only beginning to see the various effects of a world increasingly dependent upon computers. Learning how to protect one's own privacy is already one of the most critical issues of our emerging information society.

Professor Flaherty asked the delegates to consider the meaning of the term, privacy. He stated that the two principal premises of his presentation are that privacy is not an absolute value — it is in competition with other individual and collective values in Canadian society — and, secondly, that an individual in the late twentieth century can no longer adequately protect his or her own privacy without the assistance of regulatory authorities, especially with respect to the information-handling activities of the public sector. We are, effectively, in a situation of increasing concerns about the build-up of large personal information systems.

Professor Flaherty concluded by stressing the need in Canada at the provincial level for data protection laws that incorporate a standard code of fair information practices and a small agency to oversee and monitor implementation.

Judge Lundvik, former Chief Ombudsman of Sweden, pointed out that Sweden has a long tradition of openness in government administration insofar as the public has, in principle, free access to all official documents. With the advent of electronic information storage, the public on one hand will run into difficulties when they want access to data and on the other hand those persons who can use it will have unlimited access to information which could be devastating to the privacy of individuals whose data are stored in government information banks.

Judge Lundvik then outlined three enactments of the Swedish Parliament: *The Freedom of the Press Act, The Secrecy Act* and the *Data Act.*

The method of storing information in computers makes it difficult for the general public to gain access to that information, thus eroding the principle of public access to official documents. There is also the fear that the use of electronic data processing will encroach upon the privacy of the individual. People resent that authorities should know so much about them, and that the information is too readily accessible.

In Sweden, to set up and keep a personal file containing sensitive information, you must have the permission of the Data Inspection Board. To link one computer to another with a view of matching their contents you must have the consent of the Board. The Board has been very restrictive in its decisions but its decisions can be appealed to the Cabinet.

Charter of Rights and Freedoms

Canadian Ombudsmen must become aware of the effect of the new Charter of Rights and Freedoms when they examine administrative actions of the bureaucracy. It has been argued that the Charter guarantees administrative fairness and natural justice as a right of all Canadian citizens.
Mr. Gordon Fairweather, Chief Commissioner, Canadian Human Rights Commission, stressed that the Charter and its meaning will be what the judges say it will be. To June 1983 he counted 240 court cases that have Charter implications.

The principle of interpretation that has been accepted for the Charter is that the rights preserved in

a constitutional document are not to be interpreted too narrowly. The Charter does not intend the transformation of our legal system or the paralysis of law enforcement, but calls for a generous interpretation, avoiding what has been called by Mr. Justice Jules Deschenes of the Quebec Court of Appeal, "the austerity of tabulated legalism".

Dr. R.A.H. Robson, President of the B.C. Civil Liberties Association, offered the following sobering comments with respect to the Charter of Rights and Freedoms:

> "While we are fully in support of an entrenched Bill we do recognize the severe limitations of its effect on the ordinary Canadian citizen in protecting his or her or her and his civil liberties and human rights. The battle is not won, it's hardly even enjoined, I would suggest. We have a great deal further to go than we have accomplished at the moment and I want to suggest a few reasons why that's the case. There's no doubt, as Gordon Fairweather suggests, that the courts are going, in the next half century or so, to make decisions which are based on the Charter of Rights and some of those decisions will have some favourable impact on the life of some Canadian citizens. . . .
>
> "I would suggest to you that the greatest impact of the Charter of Rights is an educational one. It's not the cases that are decided by the Supreme Court of Canada so much as it is the education that that Charter will have on citizens, particularly young citizens because presumably it will be dealt with in the school curricula. From now on people in Canada will come to realize the importance of civil rights and civil liberties and human rights much more than they have in the past.
>
> "It does seem to me though that one difference that I noticed in the United States was the much more frequent reference to the Bill of Rights than one found in Canada and to the content of the Bill of Rights. It was a matter of public knowledge, it was taught in the schools and most people knew the basic outline of the Bill of Rights and supported those rights. In Canada, . . . it seems to me that one important change that will occur in the future over the long, long pull, is that people in Canada will now realize the importance of civil liberties, that they will not be seen to be luxuries in a sense, but basic necessities. And that hopefully will encourage people, for example, to work for the protection of their rights, that they will not meekly accept abridgement of their rights but will more frequently want to challenge those abridgements and to secure some kind of remedy. I suggest then that the immediate impact of the Charter of Rights on Ombudsmen and on citizens generally is going to be very minimal, is going to be very, very patchy, and that it's only the long-term effects of the education that will result from the Charter that will really have any significant consequences for most Canadians.
>
> "One other limitation I want to point to . . . and that is, there are still enormous groups of people who in spite of all of the fabric and machinery we have constructed to protect people's rights are largely unprotected. Consider, for example, prison inmates, consider the very poor, consider the native Indian, consider people whose first language is not English or French, consider the uneducated. Most of these groups of people whose rights are abridged, and they tend to be, of course, the groups most susceptible to invasions of civil liberties and human rights, do not know often that they have rights that have been abridged. They do not know what remedies are available to them. Often if they do know the remedy they haven't the resources, either intellectual or financial, to take advantage of the remedies that are available. Even if they have all of that they are most frequently afraid of retaliation from those against whom they lay complaints. It is precisely those classes of people who do not have access to Ombudsmen, to civil liberties associations, like ours, and to other community groups which may be available to protect their rights. And it is precisely those groups which need protection and need our help and there is very little in the Charter that will help them protect them from abridgements of their civil liberties and human rights. I think, therefore, that while there are possible advances in the distant future through the Charter of Rights and the judicial system, that that leaves an enormous area of work to be done by Ombudsmen and by community organizations like ours."

When Ombudsmen Receive Allegations of Criminality

This topic was dealt with in camera because of the confidentiality of some of the information shared between the offices. It is not unusual for complainants to state that they suspect criminal wrongdoing in the course of making a complaint to an Ombudsman. In those instances, complainants are referred to the Police or Crown Counsel. If matters of administration are raised in addition, Ombudsmen reserve the right to investigate those concerns after the criminal investigation has concluded. However, in some instances, the issue of criminality only raises its head after an investigation has been commenced, and in a few cases it might appear that a complainant is in some way implicated. This puts the Ombudsman office in a difficult legal predicament. Ombudsmen advise complainants (after obtaining their own legal advice), to discuss the matter with the Police or Crown Counsel. Otherwise it

would be incumbent on Ombudsmen to refer the matter to the Criminal Division of the Attorney General's Ministry. However, the legislation under which Ombudsmen act protects the confidentiality of information given to Ombudsmen even if the courts may wish to have access. It is debatable whether the confidentiality protection in Ombudsman legislation is strong enough to prevent a criminal court from gaining access to information that, in all other circumstances, would be considered confidential. It was this issue that was the focus of the panel discussion.

A representative of the Criminal Justice Division of the British Columbia Ministry of Attorney General, a regional Crown Counsel, a former Superintendent of the R.C.M.P. and my solicitor addressed the conference on the topic. It is clear that in areas of federal legislation (e.g. criminal law) the confidentiality protection afforded by Ombudsman legislation may not be adequate. Ombudsmen can react in two ways: (1) advise the complainant that the confidentiality provisions under the Ombudsman Act are limited and (2) attempt, with the consent of the provincial government, to secure the necessary protections from the federal government and Parliament for information given to Ombudsmen in confidence.

Police Complaints

The complaints procedure under the *Police Act* of British Columbia continues to be a source of concern for me. I have reported in my 1981 Annual Report (pp. 17-18) some of my concerns.

I was gratified to learn, some time ago, of a successful experiment in Toronto that set up a police complaint and investigation mechanism second to none. I invited Sidney Linden, Esq., the Public Complaints Commissioner for Metropolitan Toronto, to explain to the conference how the system works, its problems and advantages. Mr. Linden presented the topic and Mr. Malcolm Matheson, Chairman of the B.C. Police Commission, responded.

Mr. Linden referred to the preamble to the legislation which established a new and experimental police complaints system for Metropolitan Toronto which reads as follows:

> "An Act for the establishment and conduct of a project in the Municipality of Metropolitan Toronto to improve methods of processing complaints by members of the public against police officers on the Metropolitan Police Force".

The project, which is confined to Metropolitan Toronto, commenced on December 21, 1981 and continues until December 20, 1984. At that time a report evaluating the effectiveness of the system during the three years of its operation will be prepared and submitted to the Provincial Parliament for evaluation.

Mr. Linden stated that his office is in many ways a model for others and introduces some rather dramatic innovations with respect to civilian review of policing. He then outlined how his office operates. Dr. Matheson, responding to Mr. Linden's address, made this comment:

> " . . . I didn't want to leave without saying that I'm very impressed indeed with the experiment in Toronto and I can see, Mr. Linden, that we're going to be watching it very carefully here in B.C. and hope to learn a great deal from your experiences . . . ".

How the Ombudsman and the Legislature Relate to Each Other

In all provinces the Ombudsman is an officer of the Legislative Assembly, reports to the Assembly annually and is generally accountable to the Assembly for his stewardship of the Ombudsman office. Successive Ombudsman conferences have grappled with the issue of the proper relationship between the Ombudsman and the Legislative Assembly. The presence of M.L.A.s from Alberta and Ontario offered the chance for a fruitful dialogue. Dr. Robert Elliot, M.L.A., Chairman of the Select Committee on Legislative Offices of the Alberta Legislature, offered, among others, the following comments:

> "The Committee, among its various functions, annually reviews the budgetary estimates, and the reports issued by the Ombudsman and reviews the salary paid to the Ombudsman. All of the reports are tabled in the Assembly by the Chairman of the Committee. Should questions later be raised in the Assembly about any of these matters, the Chairman of the Select Committee is therefore in a position to advise the elected members. In addition to the Chairman, our Select Standing Committee in Alberta is made up of eight members, six from the government side and two from the opposition. . . .
>
> "It's the opinion that the existence of this Committee and its make-up and the present form in which it conducts its activities greatly enhance the understanding and the positive relationship between the Ombudsman's office and the elected Members in Alberta. The Ombudsman's position on the topic is that the relationship between the elected Members and the Ombudsman has resulted in the office of Ombudsman for Alberta being able to provide much more redress to citizens than would be the case if there were an adversarial relationship. As far as dealing with investigations of complaints, it is understood that our Ombudsman will receive any complaints which come his way. It is also understood that he will turn over to the M.L.A. in

the constituency those that properly belong with the M.L.A. Our Ombudsman receives many complaints through referrals from M.L.A.s and indeed Ministers. I feel that we have a fairly healthy respect for each other and in short I can say that the cooperation exists primarily because the Ombudsman and the elected Members have a respect for the role of each in ensuring the protection of the citizen."

Mr. R.W. Runciman, M.P.P., Chairman, Ontario Select Committee on the Ombudsman stated:

"To me the Ombudsman's position as Officer of the Assembly has three elements: first the Ombudsman works on behalf of the Assembly doing things that individual members cannot do themselves and doing them in ways prescribed by the Legislature.

"The second consequence of the Ombudsman's position as servant of the Legislature is that the frequently repeated assurances the Ombudsman is responsible to or accountable to the Legislature must mean something. And unless some mechanism exists such as our Select Committee, the Ombudsman's accountability to the elected Members can be little more than a meaningless platitude. If you truly believe that you work on behalf of the Legislature, which I think you should, then there must be some method of receiving, discussing and answering Members' criticism and advice.

"To me the Select Committee must serve as a communication link between the Ombudsman and the Legislature. The Legislature has created the Ombudsman and expects him to do a job and must assist in whatever way it can. In part this is rendered by having an all-party Committee authorize the Ombudsman's budget rather than leaving it to the government. Principally, however, it means having some method of following through on those cases on which the Ombudsman has seen fit to report to the House and on which the government refused to accept the Ombudsman's recommendation. Once the Ombudsman has taken the case as far as he can and reported to the Legislature, the Legislature must not permit it to end at that point. I think it would be enormously frustrating for an Ombudsman to see his report tabled in the House knowing that the unresolved cases contained in it and the recommendations would sink from public sight within days with no hope of action by the Legislature other than perhaps the opportunity for questions from the opposition. Again, the only practical vehicle for the Legislature to pursue the recommendations denied cases is the Legislative Committee.

"We examine, not re-investigate, the Ombudsman's recommendation denied cases carefully taking evidence from both the Ombudsman and the government and evaluate each on its merits. During both majority and minority governments the great proportion of the Committee's recommendations have supported the Ombudsman's position against the government. We're not always successful in convincing the government of our views but I have absolutely no doubt that the weight of the Select Committee both in the cases of reviews and in the government's participation of it reviewing a case has added very substantially to the effectiveness of the Ombudsman. The corollary of the Ombudsman's genuine accountability to the Legislature through the Committee seems to me to be the Legislature's active support of the Ombudsman in his recommendations through the Committee. So my basic message is that Members of the Legislature and the Ombudsman can and should be allies and sources of mutual support. And I don't want to pretend for a moment that there's not going to be frictions and sometimes rather significant frictions, but as long as we all recognize our responsibility to the public through the fight against injustice we can profit from a closer relationship."

Other Topics

The conference dealt with several other subjects. A short glance at the titles will have to suffice. A more detailed record of the conference proceedings is being prepared and will be available later in 1984.

The recently appointed Information Commissioner of Canada, Inger Hansen, explained her new role under the federal *Access to Information Act*.

Dr. Laura Nader of the University of California, Berkeley, discussed the importance a society must attach to correcting "little injustices".

Professor Kenneth Wiltshire, Australia, offered some international comparisons on the subject of the Ombudsman's independence from the executive.

Professor Larry Hill, University of Oklahoma, Professor Sandra McCallum, University of Victoria, and Professor Patrick Smith, Simon Fraser University, offered comments on the political and legal significance of the policy-administration dichotomy.

Keith Spicer, columnist and former Commissioner of Official Languages, as well as Professor Wiltshire played the role of critics of Ombudsmen in a panel discussion entitled "Watching the Watchdogs".

M. Joseph Berube, the New Brunswick Ombudsman, offered his thoughts on "The Appropriateness of Remedies Proposed for Injustices Identified by Ombudsmen".

Linda Bohnen, Director of Investigations in the Ontario Ombudsman office, examined the Ombudsman's role in relation to quasi-judicial tribunals.

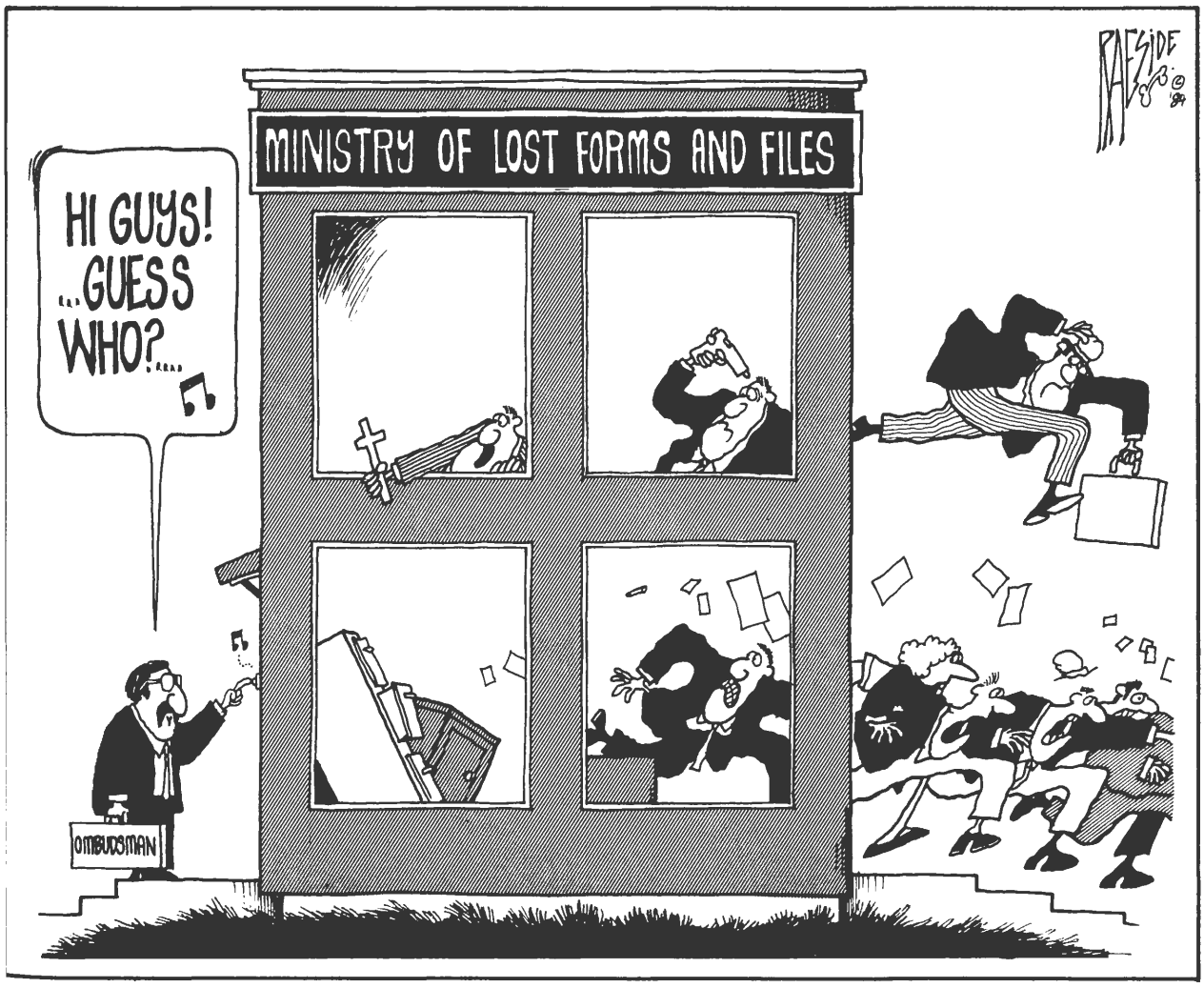
Professor Hill used the Hawaii Ombudsman to take a close look at how agencies implement Ombudsman-initiated administrative reforms. And one panel concerned itself with the standard of proof appropriate for Ombudsmen and other civil investigations.

Last but not least, Jack Webster entertained the conference over lunch with his own explanation of B.C. politics.

B. PAST AND PRESENT ISSUES

The present report for the year 1983 covers the fourth full year of operation of the Ombudsman institution in British Columbia. It was a very difficult year for my office in that we faced a high and still increasing load of complaints while the government imposed staff and budget cuts on my office. I had no choice but to cut service to the public. The government's funding priorities with respect to this office inevitably led to greater superficiality in investigations. There is just less time for each complainant. My staff and I try to do the best we can under extremely trying circumstances and hope that these measures will not discredit this office in the eyes of complainants and the public.

In times of restraint complaints increase. There is a greater need for the service provided by my office, not a decreased need. Government officials make



more harsh decisions, pinching fiscal resources at every turn, withdrawing or curtailing services the public has come to expect and feels entitled to. Officials often try to withdraw from obligations and responsibilities by claiming that they are out of resources, as though that released them from their responsibilities. The public's expectations of fair and just treatment at the hands of government officials have not suddenly diminished. The approval of the new Charter of Rights and Freedoms has strengthened the legitimacy of the public's expectations of fair and just treatment from government officials.

The public has been relatively generous in the face of increasing shortcomings of my office. In fact, I believe, the office enjoys a great deal of support among the citizens of British Columbia, and my complainants in particular, as is evident from the correspondence we receive (Part V).

I have found almost all public officials very willing to help with the resolution of complaints. In more than 1400 cases complaint resolutions were achieved with the help and consent of officials.

In the following sections I would like to update information previously reported and discuss a few current and ongoing fairness and justice concerns.

1. PREVIOUS PROBLEMS — AN UPDATE

a) The Reid Case Revisited

In my 1982 Annual Report (page 19) I discussed my Special Report No. 5 to the Legislative Assembly which concerned a complaint from Mrs. Vera Reid against the Ministry of Transportation and Highways. To summarize briefly, Mrs. Reid owned property through which a developer wanted to put an access road to his new subdivision. Mrs. Reid did not want the road through her property and objected to both the developer's and the Ministry's tactics in attempting to force her to permit the construction of an access road. After Mrs. Reid complained to me, the Ministry played its final card and expropriated the road, thus precluding a reference to the Supreme Court of B.C. to determine the correctness of the Ministry's prior assertion that there was already a public road in place.

I concluded that the expropriation of private property for the sole purpose of benefiting another private citizen was unjust and oppressive. I recommended that the Ministry repeal its expropriation of part of Mrs. Reid's property and return the land to her. The Ministry refused to implement that recommendation, and, at the time of writing of my 1982 Annual Report, was negotiating with Mrs. Reid to get her to accept compensation for the land the Ministry had by force and improperly taken from her.

In December of 1983, Mrs. Reid informed me in a letter that she had finally agreed to accept the Ministry's latest offer of $23,000. The amount surprised me, considering that in 1982, the Ministry had offered Mrs. Reid only $9,500 for the same land. I am, however, happy for Mrs. Reid that at least she has received compensation. It does not, however, make the Ministry's actions right. Force and impropriety prevailed — not justice.

b) I.C.B.C. Keeps Promise

I mentioned in my 1982 Annual Report (CS 82-189 at page 121) that I had discussions with I.C.B.C. about providing to claimants regular up-to-date accounting information regarding their claims expenditures. This concerned money available to claimants for rehabilitation and medical expenses. There is a ceiling on such benefits and claimants will want to be sure that the money is spent wisely.

Regular accounting has now been adopted and I.C.B.C. has received some favourable feedback from claimants. Since I.C.B.C. has been sending its claimants accounting information, I have received some complaints from claimants about payments made by I.C.B.C. on their behalf.

This proves to me that accounting information is indeed important. It enables I.C.B.C. claimants to be good consumers and ensures proper management of the limited funds available for their rehabilitation.

c) Invasion of Privacy and I.C.B.C.'s Investigation Ethics

Last year, I reported a complaint from a woman who felt that a private investigator hired by I.C.B.C. had improperly invaded her privacy (CS 2-195).

During the investigation, my staff discovered that the private investigator had obtained among other questionable information, without the woman's consent, a report on her credit history from a credit reporting agency, an action that constituted a breach of the provincial *Credit Reporting Act*.

I recommended that I.C.B.C. communicate its position concerning breaches of legislation and other improper investigative practices to all private investigative firms which it retains. As a result of my recommendation, I.C.B.C. issued a memorandum to be distributed to both private investigators and adjusters within the Corporation. The memorandum states that if a report to the Corporation contains information obtained by contravention of legislation, I.C.B.C. may refuse to pay for the time spent on obtaining that information. I.C.B.C. also warned private investigators that it may terminate its relationship with any firm engaged in inappropriate investigative practices.

In another case (CS 82-194) I questioned I.C.B.C.'s respect for the rights of children. Along with the circular, I.C.B.C. provided copies of internal Corporation bulletins providing information on proper procedures for interviewing minors, and giving instructions to private investigators regarding the *Credit Reporting Act*.

I believe that I.C.B.C.'s response to the problems I identified shows the Corporation's concern for dealing fairly with the public. The information circulated by I.C.B.C. should prevent the recurrence of such problems. Both cases referred to above are on page 123 of my 1982 Annual Report.

d) Litigation

In my 1982 Annual Report I stated that the *Ombudsman Act* of British Columbia will be the first Ombudsman statute to be tested in the Supreme Court of Canada. The complaint that gave rise to this case concerned the conduct of the British Columbia Development Corporation in refusing to renew a lease to King Neptune Restaurant in New Westminster.

The Corporation successfully argued in the Supreme Court of British Columbia that the complaint involved a business decision and did not relate to "a matter of administration " and that I did not have jurisdiction to investigate.

The British Columbia Court of Appeal overturned the Supreme Court ruling and accepted my argument that "a matter of administration" referred to any act of the executive branch of government, whether or not it involved a business decision. The Court of Appeal judgment was placed before the Assembly in my Special Report No. 6.

The Corporation obtained leave in September 1982 to appeal to the Supreme Court of Canada. The Attorney General of British Columbia intervened at that stage of the proceedings, supporting the Corporation's position that an appeal be allowed. In addition the Ombudsmen of Ontario, Quebec and Saskatchewan, were granted permission by the Court to intervene in the case.

Arguments were heard on January 30, 1984 and judgment was reserved. I anxiously await the decision of the Supreme Court of Canada, as do the other provinces and countries which have similar provisions in their Ombudsman legislation. I will report the outcome of the case to the Legislative Assembly.

2. CONTINUING PROBLEMS

a) The Boards of Review

The Boards of Review hear appeals against decisions made by officers of the Workers' Compensation Board affecting injured workers. The Boards of Review are independent of the Workers' Compensation Board. Each of these appeal tribunals consists of a chairman, usually a lawyer, a representative of management and a representative of labour. In my 1982 Annual Report (on pages 20-22) I highlighted the Boards of Review as an area of bureaucracy clearly in distress, dismally bogged down in delay that had direct repercussions on the well-being of many persons forced to go the appeal route. At that time I was dismayed about the performance of the Boards of Review. A year later dismay has turned to despair.

The problem of delay at the Boards of Review remains entrenched. And the trench gets deeper and longer by the day. A year ago I reported with disapproval that a claimant could expect to wait up to 12 months for his appeal to be heard. Now the waiting time is 15 months or longer. Further delay occurs between the time the hearing has finally taken place and the time the Board of Review gives its decision. I have had complaints that this latter step has taken an additional year after hearing of the appeal by the Boards of Review. The following case is but one example.

Excessive Delay

A worker's lawyer contacted me on behalf of her client. She complained that since a hearing before the Boards of Review 11 months earlier, no decision had been made on her client's appeal.

She had sent numerous letters to the Boards of Review, asking for a decision. The only answer she had received was a letter five months earlier, advising her that the Boards of Review would try to reach a decision as soon as possible.

When we inquired, The Boards of Review advised my investigator that a decision would be sent out by the end of the month. This commitment was not kept. My investigator contacted the Boards of Review again and was advised that the Panel would try to send the decision out to the complainant that week. Eight days later, my complainant had still not been informed of the decision.

I advised the Administrative Chairman of my preliminary findings that there had been unreasonable delay by the Boards of Review in dealing with the worker's appeal. I also provided him with my tentative recommendation that the Boards of Review make an immediate decision on the appeal and apologize to the worker for the delay, as well as for the fact that a Board member's personal assurances had not been honoured.

The Administrative Chairman replied that a decision had now been rendered. He apologized to the claimant on behalf of the Boards of Review

for the failure of a staff member to keep the promise of an early decision, as well as for the delay in responding to the claimant's correspondence.

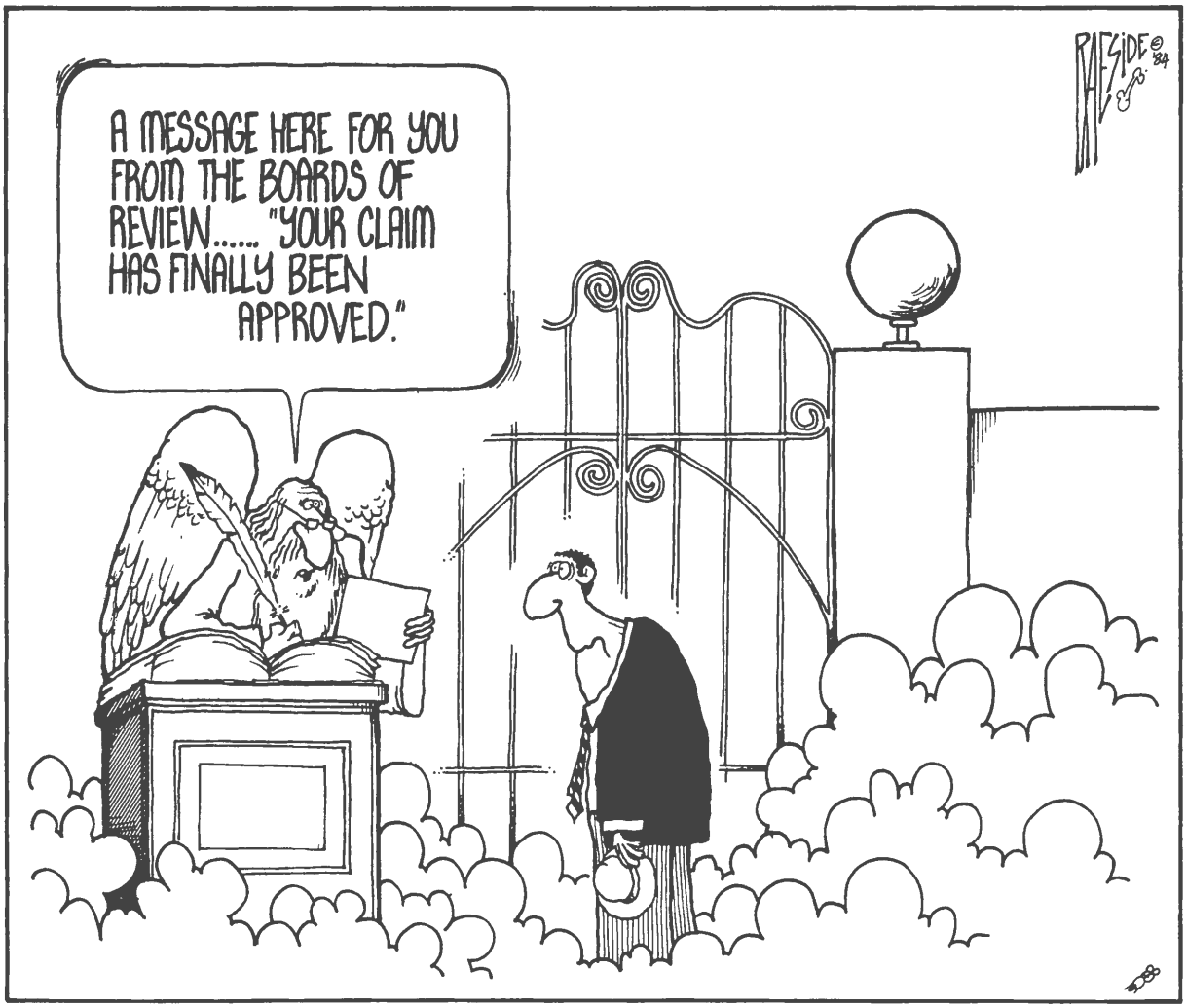
The government appointed a new Administrative Chairman of the Boards of Review in 1983. For the first six months of his time in office, the new Chairman declined to meet with me. This was most unfortunate since we both ought to share an interest in eliminating the delays in the appeal system. Sharing our thoughts on the administration of the Boards of Review, I feel, could lead to improvements in service to appellants.

Finally, in March 1984, the Administrative Chairman indicated that he was prepared to meet with me. Any hopeful anticipation I entertained was, however, short-lived, as it quickly became apparent that it was not over the issue of delay that he proposed to meet. The issue that concerned him was whether or not the Ombudsman had authority to investigate complaints against the Boards of Review.

I first became aware of this objection when I realized that any recommendation I made concerning the Boards of Review remained completely ineffective because of the position taken by the new Administrative Chairman. Initially, the Administrative Chairman claimed that the Boards of Review cannot reconsider a decision, unless directed to do so by the Commissioners of the Workers' Compensation Board in specific cases.

Apart from this one exception he contended that Boards of Review decisions are final and cannot be open to reconsideration. He took the position that there is nothing in the *Workers Compensation Act* which would permit the Boards of Review to reconsider a decision made.

I maintain that the *Workers Compensation Act* clearly gives the Workers' Compensation Board itself the power and exclusive jurisdiction to interpret the Act; and in a decision made in 1974, the Board determined that the Boards of Review could indeed reconsider a decision. Specifically the Board stated:



> "Where an application for reopening of a claim questions the validity of a previous decision, the application must be referred to the level of adjudication of the decision being questioned . . . where the application questions a previous decision of an old Board of Review, or of a new Board of Review, it will be referred to the new Boards of Review."

While I can appreciate that finality is desirable in decision-making, the need for substantive justice is much more important. If the wrong decision has adversely affected a worker's well being, that decision must be addressed and the most efficient level at which to do so is where the decision was originally made. I pointed out to the Administrative Chairman:

> In a two-tiered system of appeals, the last body which made a decision should be the one to reconsider new evidence. Since it is already familar with the case, it is able to deal with the new evidence expeditiously. If it changes its decision, a further appeal is unnecessary and the inconvenience in delay entailed in it is minimized.

I have now learned that the present Commissioners of the Board support the Administrative Chairman in his views. I believe it may be wrong in law; it certainly cannot be accepted as just. Not only does it prevent reconsideration at the proper stage, namely by the Boards of Review, it seriously impairs the statutory mandate assigned to the Ombudsman by legislation. I will be studying this position further.

More recently the Administrative Chairman of the Boards of Review has broadened the attack on my authority by claiming to exercise a judicial function which is outside the boundary of any administrative review I might perform. In my opinion there are court decisions which clearly support my authority to investigate the Boards of Review. Acceptance of the position of the Administrative Chairman would remove from me the ability to comment on any action of the Boards of Review, including such purely procedural issues as unreasonable delay. This is a challenge that goes right to the heart of the authority granted to the Ombudsman by the Legislative Assembly of the Province. It is a challenge I must address if I am to deal meaningfully with the complaints the public brings to me about decisions made by the Boards of Review.

It had occurred to me that perhaps part of the difficulty in having my recommendations accepted might have been caused by the Boards of Review not having enough staff to cope with the demands placed upon this appeal body. It might be just a hint of desperation which caused the Administrative Chairman to write to me in response to a recommendation I had made: "Your office completely fails to recognize the extent of the workload that the Chairman and Members of the boards of review face . . . you ask us to do things which are impossible." I do not usually accept a lack of staff as justification for administrative peccadilloes but I may have to make some concession to the Administrative Chairman on this score. Simple arithmetic underlines the desperateness of his situation. When one considers that six review panels are forced to deal with up to 400 new appeals each month, one can understand some of the exasperation at being asked to eliminate delay. I would hope the government would listen to his lament. Surely the answer is to eliminate the delay and not to silence those who must point out the unfairness and tragedy of the delay.

I understand that changes are being considered in the structure and operation of the Boards of Review. Such changes, if they come to pass, may be effective in dealing with the formidable backlog which now taxes the resources of the Boards of Review. Last year I pointed out, however, that there were steps the government and the Boards of Review could take immediately to alleviate at least a portion of this burden.

The fate of workers is at stake. They are often at the end of their resources and face the prospect of losing home, family stability, and self-respect. The situation for many is desperate.

The steps I indicated last year could and should be taken immediately. With the concurrence of the appellants, some of the less serious cases could be assigned to one-person panels. This could require a change in legislation. Other measures, such as permitting any member of a panel, not just the Chairman, to write the decision, would require no legislative change. I also suggested that the Boards of Review be allowed to engage retired members of the Boards of Review to fill temporary vacancies caused by illness and vacation of the present members. This would allow all of the panels to function full time.

A number of the changes I proposed have also been suggested by other concerned individuals and organizations. Some proposals for change were contained in a management consultant's report prepared for the Boards of Review in June 1981. I appealed to the Minister of Labour in my 1981 Annual Report to bring about changes to alleviate the problem. In my 1982 Annual Report I renewed the challenge in more urgent terms asking the new Minister of Labour to take immediate steps to alleviate the stress caused by the appeal backlog. Again the challenge went unheeded. None of the proposed steps were implemented.

The Administrative Chairman of the Boards of Review has taken the position that delays in the Boards

of Review system will remain until, in his own words to me:

> "The legislation has changed; certain administrative matters, as to how appeals are filed, constituted and heard are changed to speed up the process; there is a halt to the practice brought about, because of your admonition to the Workers' Compensation Board, requiring that there be an advice, that not only is there a right of appeal but practically inviting an appeal to be brought.
>
> "This latter item is an expensive luxury which is one of the prime factors causing the breakdown of the Workers' Compensation appeal system."

I do not know if the Administrative Chairman's last claim is accurate. I have not been supplied with any statistics which suggest that my intervention has encouraged a host of workers to embark upon the pursuit of lost causes. I do accept some responsibility for having encouraged the Workers' Compensation Board to make claimants aware of their appeal rights whenever the Board makes a decision which could be subject to appeal.

But I make no apology for that. If anything I would regard this accomplishment with some pride. One of the cornerstones of a democratic society is an informed citizenry; informing the public of its rights should be encouraged, not discouraged. It is part of a fair procedure that decision-makers with superior knowledge inform those adversely affected by their decisions of possible appeal rights. The fact that about 40 percent of appeals to the Boards of Review are successful strongly suggests that we should not talk glibly about dispensing with appeal rights simply for the sake of administrative convenience. I hope that in time those responsible for the operation of the Boards of Review will come to share this view.

b) Reasons for Decisions

In my 1980 Annual Report (p. 14) I identified the refusal to provide reasons for official decisions as a recurring general problem. I tried to advocate the giving of reasons as good common sense and a sound administrative practice and suggested that many complaints to the Ombudsman would not be

necessary if officials explained themselves properly and fully to the public affected by their decisions. In our dealings with government we expect to be treated fairly. Fairness has two sides: substantive fairness and procedural fairness.

Substantive fairness assures that the right decision is made or the proper action taken. To be substantively fair, a decision must, as a minimum, be in accordance with the law. All relevant information must have been considered and no irrelevant factors taken into account.

A decision by the Motor Vehicle Department not to issue a driver's licence to an applicant with red hair would be unfair in substance because the colour of a person's hair is irrelevant to his fitness and ability to drive a vehicle.

Procedural fairness is equally important. The maxim that justice must not only be done but must be seen to be done is more than just a cliche. Procedural fairness is our best guarantee that just decisions are made. Only by following fair procedures can both the decision-maker and the persons affected by the decision be assured that the decision itself will be correct and fair.

Procedural fairness is a body of rules developed over the past three decades by the courts, and includes what lawyers call the rules of natural justice. These rules include among others the right to be notified of an impending decision which may affect a person, the right to be heard, the right to present information and make arguments, and the opportunity to rebut the evidence supporting the other side.

One of the most important rules of procedural fairness is that public decision-makers give reasons for their decisions or actions which adversely affect a citizen. Regrettably I have had only limited success in persuading officials to follow this rule. One of my few successes involved the committee which hears appeals from students who have been refused financial aid. At my request, the committee agreed to provide reasons whenever it denies a student's appeal.

I have had no success in persuading the successive Ministers of Labour to give reasons when they refuse to appoint Boards of Inquiry on human rights complaints. According to the *Human Rights Code,* a matter must be referred to the Minister if the Human Rights Branch believes that the complainant's rights have been infringed upon but the complaint remains unresolved. The Minister then may appoint an independent Board of Inquiry to hear all the parties and make a decision.

During the past four years, I received many complaints in which the Human Rights Branch believed that the complainant's rights had been infringed but the Minister refused to appoint a Board of Inquiry. Because of administrative and investigative delays in the Branch, the complainants had usually waited for months, sometimes years, to get to this stage, and then they received a letter from the Minister which usually said something like the following:

> Dear Mr . . .
>
> The Director of the Human Rights Branch has reported that she has been unable to settle your allegation of discrimination against . . .
>
> After careful consideration of the case, I have decided not to appoint a Board of Inquiry in this matter.
>
> Yours sincerely,
>
> Minister of Labour

I recommended that the Minister provide reasons for his decisions in these cases. Both the Honourable Jack Heinrich and his successor as Minister of Labour, the Honourable Robert McClelland, have refused to implement this recommendation. At one stage I asked to review the Ministry's files in these cases to ascertain the reasons for the decisions myself. I discovered that no documentation at all was available and decided that any further pursuit of the matter was fruitless. I have now closed these cases as "not rectified".

While I was unable to persuade Ministers to give reasons for their decision, I remain convinced that my arguments in favour of reasoned decisions remain valid. The following is an excerpt from my letter of March 8, 1982 to the Honourable Jack Heinrich, then Minister of Labour, explaining my position:

> **"1. Ministerial Discretion as Exercised in Administrative Decision-Making**
>
> "As I pointed out in my letter of November 9th, I recognize that under Section 16(1) of the *Human Rights Code* you have the discretion to decide whether or not to convene a Board of Inquiry on an unresolved Human Rights complaint. I believe that in making this decision you are not primarily acting in your capacity as Minister, weighing the various political and executive considerations a ministerial decision often implies. It seems clear to me that you are acting in an administrative capacity. As such, you are bound to make and express your decision in a manner appropriate to an administrative function.
>
> "You may be aware of a recent decision of the Ontario Divisional Court (*Dagg v. The Ontario Human Rights Commission,* 1980) which supports this position. In arriving at its decision on the matter, the Court stated:

. . . 'the Minister, in declining to appoint a board of inquiry, [was] exercising administrative functions . . . the Minister . . . was exercising an administrative function in acting on the report or any other information received.'

"While I recognize that the Ontario Code is not identical to that of British Columbia, the role of the Minister in both cases is clearly comparable.

"2. The Duty to Act Fairly in Arriving at Your Decision

"A central aspect of my mandate as Ombudsman is to promote the concept that administrative decisions made in the name of the province must be arrived at fairly. It appears desirable and compelling to me that you act fairly in deciding on Boards of Inquiry and that you be clearly seen to be acting fairly.

"In Judicial Review of Administrative Action, de Smith comments:

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

"This approach has been applied by the courts in various instances. A case on point is the recent Supreme Court of Canada decision that stands for the proposition that when a Minister is exercising an administrative power, he must act fairly (*Minister of Manpower and Immigration v. Hardayal* [1978] 1 SCR 470).

"3. Fairness Requires That Reasons be Provided

"I realize that the *Human Rights Code* does not explicitly require you to provide reasons. However, I do not consider this an acceptable explanation for failing to provide reasons. Explicitly reasoned decisions can prove beneficial to the complainant, the general public and the decision-maker.

"As Evans and Janish point out in their Administrative Law text, for the complainant an explanation of the reasons behind a decision may satisfy him or her that the case was given the serious consideration it deserved. Reasons can serve to satisfy those adversely affected that the decision was not made arbitrarily and that the relevant points that may support a contrary view have not been ignored. Further, the individual who seeks a judicial review of the decision may be unable to exercise this right effectively without knowing the grounds upon which the original decision rested. Reasons may persuade the court that the decision was justified in the light of the true nature of the problems with which you were dealing. Alternatively, of course, the court may infer from the reasons that you had in some important way misunderstood the statutory mandate, or that the evidential basis for a finding of fact was quite inadequate.

"I might add also that a complainant may ask me as Ombudsman to investigate your decision. If I have your full reasons stated in your decision letter before me I might be able to decide on the merits of the complaint immediately without further investigation. Such further investigation could become a time-consuming operation.

"From the public perspective, failure to provide reasons leaves you open to complaints of arbitrariness, bias and/or political pressures. On the other hand, providing reasons could enhance public acceptance of such decisions. As Reid and Davis said in *Administrative Law and Practice:*

'The keystone . . . is the neutrality of the judge. Should even the appearance of it be lost the usefulness of the court is at an end and the structure collapses. In a celebrated, if overworked, phrase, 'Justice should not only be done, but should manifestly and undoubtedly be seen to be done'. This overriding need for neutrality, in appearance as well as in fact dictates a standard requiring freedom from even the appearance of bias. Nothing less will do.'

"I find that the public generally has an interest in knowing that the powers conferred on public officials are being exercised in accordance with the objectives for which these powers were created. Knowledge of the rationale used by an agency/person in arriving at a decision is a prerequisite to informed public opinion. Therefore, it seems to me that the need for secrecy must be strong and well-articulated before it can override the public interest in disclosure.

"For you, the process of explaining to others the bases for your decisions can serve to focus the issues clearly. Also, the existence on file of earlier reasoned decisions is likely to assist in decision-making, both for yourself and for future Ministers, by providing a basis for the development of useful criteria and policies that promote consistency. . . ."

In closing I would like to mention another aspect of this problem which I have not yet investigated. When a citizen makes a written complaint about a municipal police officer, the commanding officer is required under the *Police Act* to "promptly" investigate the complaint and inform the complainant of the "results of the investigation." Following the in-

vestigation, citizens are sent "Form 9," which is entitled "COMPLAINTS AGAINST POLICE, NOTIFICATION OF RESULTS OF INVESTIGATION." In most cases, many of the words on the form are crossed out and the following sentence stands out: " . . . 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 whether Form 9 complies with the statutory requirement that the citizen be informed of the results of the investigation, but the form most certainly does not provide the commanding officer's reasons for not taking further action. If there are valid reasons for a decision, there is no justification for not explaining those reasons; decisions which cannot be explained perhaps ought not to be made in the first place. Form 9 is both patronizing and insulting, and certainly does not comply with the requirements of procedural fairness.

c) The Child Abuse Registry

Of all the complaints I receive, those involving the abuse and neglect of children are the most tragic. In particular, sexual abuse by a parent can leave a child emotionally damaged for life. I am greatly concerned that the Ministry of Human Resources, as the agency primarily responsible for the protection of children, should take more effective action to bring this enormously serious problem under control.

In my 1981 Annual Report (pages 7-8) I first reported on the complaints I had received from parents about the Central Registry of Protection Reports. These parents thought it was unreasonable for the Ministry to retain their names on the Registry, particularly when the Ministry had investigated an allegation of child abuse and had determined that the allegation was unfounded.

The Registry was a central listing of child abuse allegations, investigative reports, and abusers' names. This information was cross-referenced with the children's and parents' names.

During my investigation, I found several major problems with the administration of the Registry. To recapitulate, these problems were:

a. Information stored on the Registry was often incomplete. It was also not clear who had access to the sensitive and confidential information.

b. Some social workers had difficulty classifying child abuse investigations because the categories were not adequately defined. This led to inconsistencies in classifying the investigative reports about 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. There was no administrative procedure to remove from the Registry parents' names, even after an allegation of child abuse was proven unfounded. Parents' names were retained on the Registry indefinitely, and parents often were not aware that their names were registered.

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

In January 1983, the Ministry established a new set of policies and procedures for the Registry. The Ministry had redefined its categories for classifying investigations. The definitions were clearer and the labels were different: "substantiated," "uncorroborated," and "unfounded."

Social workers were expected to register any investigation report classified as "uncorroborated" or "substantiated." A review mechanism allowed parents/alleged abusers to appeal the Ministry's classification of the investigation report. But this review was only for complaints classified as "uncorroborated". The Ministry also introduced a mechanism which would automatically bring up for review reports registered as "uncorroborated" after three years. If the Ministry had not received any further abuse allegations about the family, the information on the Registry could be expunged. Likewise, on a local district level, reports classified as "unfounded" could be destroyed after two years.

At the time, I did not think the Ministry had done as good a job as it could in restructuring the Registry's policies and procedures (see my 1982 Annual Report, page 14). Moreover, the final policies and procedures differed significantly from those in the draft, which I had felt was acceptable. I added to my list of concerns the following:

a. There was no appeal of investigation reports classified as "substantiated."

b. The letter from the Ministry to parents notifying them that their name was on the Registry did not give clear information about the Ministry's appeal procedure.

c. The Ministry needed to add the word "immediately" to its procedures when social workers were to notify the police of allegation of sexual abuse or incidents of serious physical abuse. In the past a delay in reporting this information had impeded criminal investigations.

In March 1983, the Ministry went back to the drawing board.

In June 1983 the Deputy Minister notified me that he was considering a different direction in the central recording of protection concerns. In January 1984 I received a final draft of the Ministry's new Registry procedures.

The Ministry now proposes to change the Registry to a Central Index. The difference is that the Central Index will no longer store information about abuse allegations, investigation reports or other miscellaneous information the Ministry receives regarding child abuse allegations. The Ministry also plans to index only the abused child's and parents' names, along with a note listing the specific district office which has the file on each case.

A social worker calling the Central Index for information about a particular family will learn only that another district office has a file on the case in question. Any further information will have to come from that district office. The index will no longer register the names of persons who are alleged to have abused a child, except when that person is also the child's parent.

Investigative reports will no longer be classified. In the Ministry's view classifications appeared to cause problems with parents, often raising more problems than they resolved. Classifications also appeared to cause problems for social workers. Some social workers would substantiate an abuse allegation if the incident took place. Others would consider whether the incident took place in the larger context of an abusive family, before attaching the label "substantiated." By eliminating classifications, the Ministry hopes to avoid these inconsistencies.

In comparing the concerns I had about the Registry in 1980, to the concerns I have now, I see that the Ministry has made the following changes:

a. The information stored on the Central Index will be simple.

b. Social workers will no longer have to classify child abuse.

c. Once they have received an allegation of child abuse, social workers must now refer to the Index to determine whether the family has another file in another district office. They must also register with the Central Index a child's and the parents' names, after they have investigated the allegation and determined that the family needs a service to protect the child from further abuse or neglect. When they open a file for the family, the names will be registered.

d. Because the Ministry no longer classifies abuse allegations, it feels alleged abusers are no longer entitled to a review mechanism.

e. The letter to parents clearly states what action the Ministry has taken, why it has taken the actions, and what information will be entered into the Central Index. If parents have questions, they are asked to contact their district office.

f. Social workers must now "immediately" report to the police any allegation of sexual abuse or incident of serious physical abuse.

With these changes, the Ministry will have addressed my specific concerns about administrative fairness. Parents will now be better informed about what is happening as a result of a child abuse allegation. My one remaining concern is that the Central Index, as proposed, will not include the names of all alleged abusers. While registering the child's parents' names will solve this problem in those cases in which the parents are the alleged abusers, there are many children abused by persons who are not a parent, but are closely associated with the family. If such a person may continue to be associated with the child, I think his or her name should also be recorded.

The decision not to record the names of all persons alleged to have abused a child is a matter of social policy, and not one of administrative fairness. For that reason, I must accept whatever decision the Ministry chooses to make. I have, however, recently written to the Deputy Minister and urged him to consult with both public and private agencies directly or indirectly involved in the protection of children before substantial changes are made to the Registry. I hope that such discussions would assist the Ministry in developing better mechanisms to protect our children from abuse.

d) Third-Party Problems

In normal circumstances a complaint investigation is a relatively simple matter. The complainant is either right or wrong, and if he is right a suitable recommendation will restore the balance of justice. I receive, however, an increasing number of complaints which are complicated by the fact that persons other than the official and the complainant are affected by my findings and recommendations.

Repercussions from my investigation of a complaint may not be limited to the authority whose action or decision the complainant challenges. Often what the complainant wants will have adverse effects on someone else. In these cases I must be careful to protect, not only the rights of the complainant, but also the rights and interests of innocent third parties.

The *Ombudsman Act* deals with this problem. Section 14 and Section 16 provide direction and establish guidelines for procedural fairness in the consideration of complaints that involve third parties.

Those sections require that I notify and listen to anyone who may be adversely affected by a recommendation I am considering.

Listening to all of the parties who may be affected by a decision ensures that I have all of the relevant information upon which to make a fair decision. However, making a decision in these cases is not easy and perfect justice is not always possible. Occasionally I am unable to agree that the resolution a complainant seeks is fair because it would injure the interests of others, even though my complainant has a substantiated complaint against a government authority.

Cases involving third parties perhaps illustrate best the Ombudsman's dual function on individual complaints. Not only must I investigate a complaint and decide whether the complainant has been treated fairly by government, but I must also seek a resolution to a substantiated complaint. When a third party is potentially affected, my staff must balance the interests of all parties in order to find a resolution which satisfies and protects each of those interests.

A Regional District was the third party affected by a complaint investigation against the Ministry of Transportation and Highways. In establishing a garbage disposal site, the Regional District had relied upon information from Ministry officials that the road leading to the disposal area was a public road. My complainant owned land traversed by this road and objected that the Ministry had informed him, before he bought his property ten years previously, that the road was private.

It appeared the Ministry had erred in informing the Regional District that the road would provide public access. The Ministry agreed to re-evaluate its position and concurred with my view that the road was not public. Negotiations took place to purchase the private section of road from the complainant, thereby satisfying both the complainant and the Regional District.

Another complaint in which we found an acceptable compromise involved the Ministry of Lands, Parks and Housing. This complaint was about an access route to the complainant's property, which had not been properly recorded by the Ministry at the time the right-of-way was granted to the complainant. The right-of-way crossed land subsequently leased by the Ministry to a third party for agricultural purposes. The agricultural lease stated that the lessee should not interfere with existing roads or trails. The complainant's right-of-way had not been deleted from the leased property, as was the Ministry's usual practice. Later the lessee informed the Ministry of his intention to relocate the trail which my complainant had constructed on the right-of-way. He then proceeded to bulldoze the trail and although the complainant objected to the Ministry, no action was taken to protect his interests or to ensure that the trail was re-established.

In discussions with my staff, the complainant insisted that he wanted the original trail restored. However, he was unable to provide reasons why an alternate location, agreeable to the lessee, would not be satisfactory. I proposed a compromise resolution, which was ultimately agreed to by all parties: the Ministry would require the lessee to establish an alternate north access for the complainant.

Sometimes we simply cannot find a solution which would protect everyone's interests and someone must accept a loss. My approach in these cases is to lean in favour of that resolution which will result in the least loss to anyone.

In one case, the Ministry of Transportation and Highways had closed part of a public road, but had in error closed too much of the road and one of my complainant's properties was left without any access. The error was not discovered until some years later. In the meantime a neighbour had built an expensive house very close to that part of the road which had been closed in error. To reopen the road at this point would have substantially devalued the neighbour's house.

The only other alternative was to create an access road to my complainant's property from another angle. This meant he would lose some of his property. If the Ministry paid for the land required for the road my complainant would at least not suffer a monetary loss. I decided in favour of that alternative. My complainant was not very happy with my decision. I believed that reopening the road which had been closed in error would have resulted in an even greater loss for the neighbour.

As in the above cases, complaints involving third parties frequently arise out of an error on the part of an authority. Usually this presents no problem; we simply ask the authority to correct the error. However, sometimes rectifying the error would adversely affect someone else. In some cases, I conclude that such action would be unfair to the third party and must refuse to take further action on behalf of the complainant.

In a complaint against the Ministry of Transportation and Highways, I declined to accede to a complainant's request that a right-of-way be expropriated over private land, in order to give the complainant legal access to his land. The complainant suggested expropriation as a resolution to his complaint. The Ministry of Transportation and Highways had wrongly assured him, prior to his purchase of the property, that the existing access to the land was a public road. Prior to my involvement, a dispute with his neighbour led to litigation. In 1977, the British Columbia Court of Appeal decided the road was private, leaving the complainant without legal access.

Although I sympathized with my complainant, I was satisfied that the Ministry of Transportation and Highways had done everything possible to establish public access, short of expropriation. I declined to recommend expropriation in this case. In my view taking private land by force of law is a power that should be exercised only for the greater public good, and not for the benefit of one individual, or to protect the government from the possibility of legal action. (My Special Report No. 5 to the Legislative Assembly on the Reid case involved the application of the same principle, and is an example of a situation in which an authority used its expropriation powers to benefit one private party at the expense of another.)

In these cases little can be done to help a complainant because helping him would violate the rights of a third party. There is sometimes a positive aspect to such disputes. We review the source of the original error and are occasionally able to suggest procedural changes to prevent such errors in the future. Although this type of procedural review may be of little benefit to the complainant, it can help others.

In one complaint I declined to pursue the resolution requested by the complainant. My investigation, however, brought to light an oversight in the administration of placer mining leases by the Ministry of Energy, Mines and Petroleum Resources. A gold commissioner, following official policy, extended the complainant's placer mining lease after the expiry of the lease. The complainant's former partner, with whom a dispute had arisen, learned that such extensions were not permitted by the law. The complainant's partner brought this information to the attention of the new Chief Gold Commissioner, who agreed that there was no legal authority for the renewal. The complainant's partner then applied for and received a new lease over the area. My complainant objected that he had been wrongly led to believe by a government office that his lease was valid.

This complaint was further complicated by a number of legal and contractual disputes between the former partners. Because the parties had already initiated legal action and because I believed the matter might best be settled by the courts, I declined further investigation. However, it became apparent during my investigation that other miners might face similar problems. I initiated an investigation of the Ministry's practice which allowed this complaint to arise. (See CS 83-045 for details.)

Many administrative requirements are set up for protecting the rights of other parties; in such situations I ordinarily defend the government's position if I am satisfied that the requirement is necessary and reasonable. In one case, involving the Ministry of Environment, my complainant owned land traversed by a creek. He believed the creek in its present condition damaged his property. The complainant sought to improve the condition of his property by deepening and widening the creek. The complainant's plan, however, included adjacent property, owned by a neighbour with whom the complainant was not on good terms.

The complainant's original application to the Comptroller of Water Rights, for permission to undertake work on the creek, was denied. He successfully appealed to the Environmental Appeal Board, but objected to a condition attached by the Board, which required him to engage a professional engineer for the work and to provide reports to the Ministry of Environment. I investigated whether this condition was unduly restrictive and discriminatory. After a full investigation, including a review of all relevant documentation and discussions with the complainant's neighbours, I concluded that the condition was justified.

No doubt my office will continue to be called upon to investigate complaints involving conflicting interests. Justice in these disputes is always tailor-made. Third party complaints continue to demand resourcefulness and imagination, both from my staff and from Ministry officials, in order to find fair and satisfactory resolutions.

PART II

COMPLAINTS: THE WORK OF THE OMBUDSMAN OFFICE IN 1983

A. COMPLAINANTS AND COMPLAINTS

In this part of the report I will make a few general comments about complaint volumes and the outcome of my office's consideration of these complaints.

The year 1983 was in most respects like previous years; in a few respects some new developments occured. Complaints initially came in at a rate suggesting we might have more than 10,000 new complaints by the end of 1983; intake then slowed down while the public was confused, as a result of speculation in the media, about the availability and resources of this office. In the end we received a total of 9,534 new complaints in 1983, an increase of close to 17 percent over 1982.

In addition to opening 9,534 new complaint files, my office responded to several hundred other requests for which no files were opened. They are not included in the above total of 9,534 new complaints.

As a convenient overview I have below tabulated the totals of complaints received and closed for each year this office has been in operation.

Total Complaints Received and Closed

Year	Received	Closed
1979	924	256
1980	3,840	3,941
1981	4,935	4,765
1982	8,179	7,979
1983	9,534	9,762
79-83	27,412	26,703

Detailed statistical information is again presented in seven tables in Part VI of this Report. The complaint data presented in those seven tables are based on complaint files *closed* in 1983, that is the 9,762 jurisdictional and non-jurisdictional complaints that were investigated or otherwise dealt with and closed in 1983. As shown below, new and continuing investigations meant a total of 10,867 active complaint files in 1983; of this total 9,762 complaints were closed in 1983.

1983 Complaint Load

1979-1982 complaints carried into 1983	1,333
New complaints received in 1983	9,534
Total active complaints in 1983	10,867
Complaints closed in 1983	9,762
Complaints still under investigation at year end (December 31, 1983)	1,187*

*As explained in previous Annual Reports the figures for "files opened" and "files closed" will vary slightly. A complainant will normally have one complaint file opened when he first contacts my office. In the course of the investigation a second complaint file may become necessary. Occasionally it also becomes necessary, in the interest of describing the results of the investigations correctly, to report a second disposition, if e.g. one complaint of the same complainant is substantiated while his other complaint is not substantiated. There were about 82 such files closed in 1983, thus explaining the discrepancy between intake, closed and open complaint files.

In this reporting year 4,606 complaints (47.2 percent of all cases closed) were directed against authorities within my present jurisdiction. A total of 5,156 of all cases (52.8 percent) were non-jurisdictional.

As in the past, my staff attempted to assess the extent of service provided to complainants with non-jurisdictional complaints; the results are presented in Tables 4 and 5. The figures show that my office provided roughly the same level of service in these non-jurisdictional complaints as in past years, except that there were just more complaints (1,305 more non-jurisdictional complaints in 1983 over 1982, or an increase of 34 percent).

B. DISPOSITION OF JURISDICTIONAL COMPLAINTS

When a complaint file is closed, the statistics reported reflect in broad categories the final disposition of the complaint. Details are contained in Table 3 of Part VI. I commented in last year's annual report that four Ministries/Agencies (Human Resources, I.C.B.C., the Workers' Compensation Board and the Attorney General) had been consistently the four offices attracting the highest number of complaints. This was also true in 1983. Human Resources, however, jumped ahead of I.C.B.C. with a sizeable increase in complaints: 64 percent. The other three just named authorities had only minor increases in complaints (2 to 7 percent), less than the average across all agencies (12 percent).

I also stated in last year's report that four other Ministries had consistently occupied positions 5 to 8 in terms of total complaints closed (Consumer and Corporate Affairs; Transportation and Highways; Health; Lands, Parks and Housing). This also holds true in 1983, although Consumer and Corporate Affairs was the only major authority with a significant reduction in complaints, a drop of 38 percent in 1983 from 1982. This must, no doubt, be attributed to the diminishing role of the Rentalsman and consumer protection in that Ministry. The other three Ministries just named had complaint increases from 20 to 28 percent.

I can state, as last year, that I do not think any significance should be attributed to the frequency of complaints against particular Ministries or Boards. I believe the frequency of complaints is simply the consequence of frequent and/or intensive contact between a Ministry and the public, rather than a reflection of the quality of service or administration. The increase in Human Resources complaints and the decrease in Consumer and Corporate Affairs complaints tends to confirm my belief. The increase corresponds with a sizeable increase in the clientele of Human Resources, while the decrease in Consumer and Corporate Affairs complaints corresponds with the Ministry's cut in services to the public.

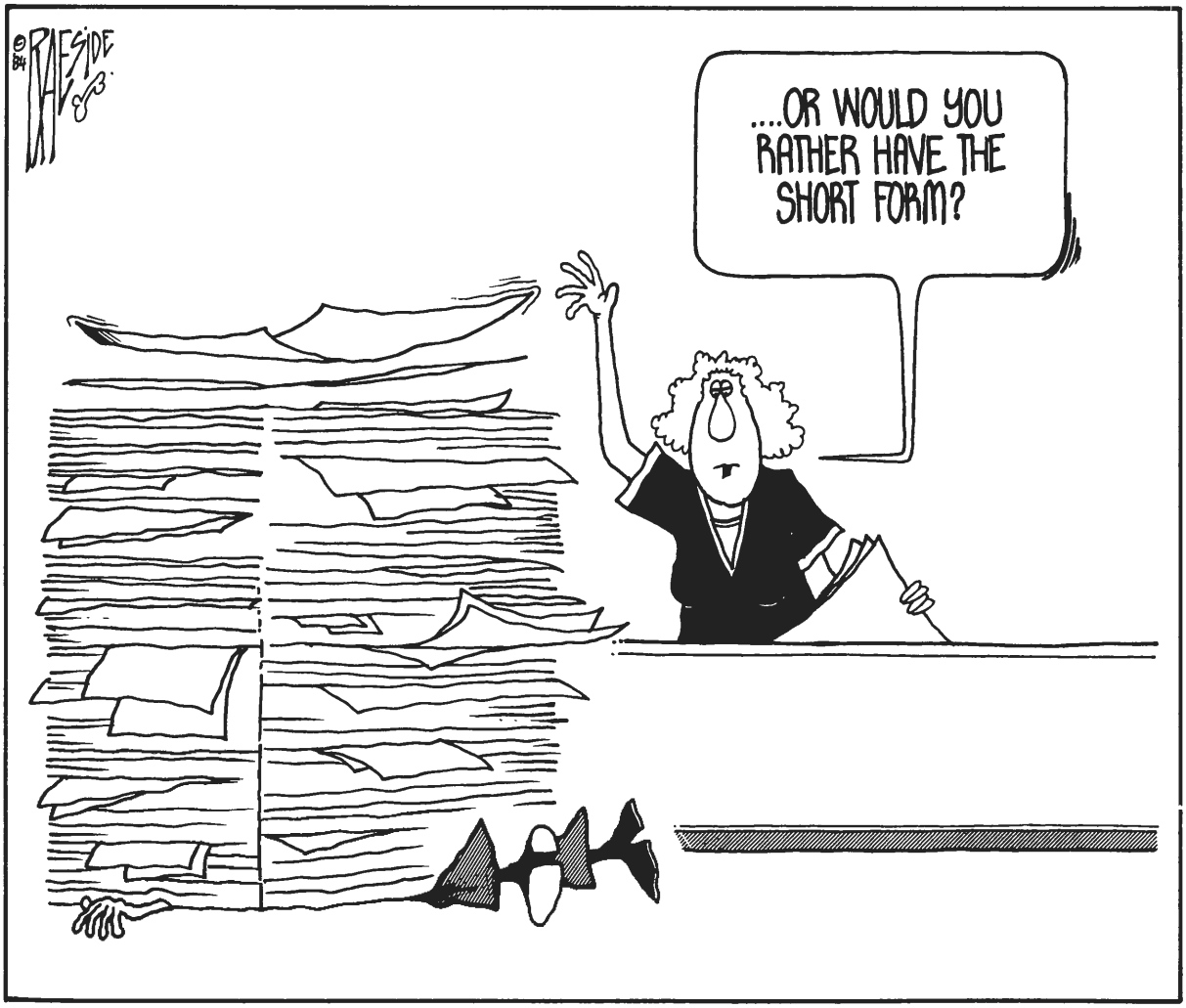
Table 3 in Part VI shows the disposition of all jurisdictional complaints closed in 1983 according to Ministry/authority and five broad disposition categories.

1. The first column ("Discontinued" for short) contains all those complaints that were closed in 1983 and not investigated or not fully investigated. A total of 1,907 complaints, or 41 percent of all closed jurisdictional complaints, fall into this category for a great variety of reasons. Table 6 offers a breakdown of reasons for decisions to refuse investigations or to terminate investigations before completion. (About 30 percent of all "discontinued" complaints are actively or passively withdrawn by complainants; 14 percent are declined because a statutory appeal is available; most of the remainder, some 54 percent, are declined or discontinued for a variety of discretionary reasons contained in Section 13 of the *Ombudsman Act*.)

2. Returning now to Table 3, the second column contains all those jurisdictional complaints that were "Resolved" by the respective authorities to my own and the complainant's satisfaction, i.e. in the complainant's favour. A resolution may be found at any time in the course of an investigation, at the beginning or near the end of an investigation, and an injustice is corrected in all these cases *before* I feel called upon to make a formal finding and recommendation under Sections 16 and 22 of the *Ombudsman Act*. A "resolution" of a complaint is thus defined as a change in the official disposition of the administrative decision complained of, in favour of the complainant, but with the full agreement of the authority and without formal findings under Section 22 of the *Ombudsman Act*. As Table 3 indicates in 1,417 complaints, or 31 percent of all jurisdictional complaints closed in 1983, an injustice was thus corrected, in favour of complainants, and with the full co-operation of administrative authorities.

3. The third column ("Rectified" for short) contains all those cases in which I found a complaint fully substantiated, but could convince the respective authorities to accept my recommendation only after making formal findings under Sections 16 and 22 of the *Ombudsman Act*. These cases frequently reflect initially substantial disagreements between my office and the respective authorities over facts, laws and justice and fairness issues which were, however, overcome in the end by the authority agreeing to my recommendations or modified recommendations. Table 3 shows that 139 complaints (3 percent of all jurisdictional cases) were "rectified" in 1983.

4. Column four contains 20 complaints (half a percent of all closed jurisdictional cases in 1983) in which I found the complaint substantiated after full investigation. My formal recommendations under Section 22 of the *Ombudsman Act*, were, however, not accepted by authorities. For a variety of reasons I nevertheless decided to close these 20 cases, without having achieved rectification for the injustice identified. I do not close these cases lightly but taking into account all the circumstances, the importance of a case



and the general significance of the issue in contention, it is sometimes unavoidable. Occasionally a remedy is just not available even though it has been accepted by all sides that an injustice has occurred.

5. The final column contains 1,123 complaints (24 percent of all jurisdictional complaints closed in 1983) that have been fully investigated and found "not substantiated". In all "not substantiated" complaints a full investigation has taken place, and full reasons for my decision not to substantiate a complaint are provided to the complainant and the authority. In these cases the administrative actions of the respective authorities stand up to close scrutiny and no recommendations for change are warranted. There have been variations over the last four years in the disposition of jurisdictional complaints. The numbers of complaints considered have, of course, increased. The relative distribution of complaints in the four or five major disposition categories have, however, remained on a remarkably stable pattern, as shown by the tabulations below.

Disposition of Jurisdictional Complaints 1979-1983 — Numbers of Complaints

	79/80	1981	1982	1983
Discontinued	864	1,220	1,926	1,907
Resolved	506	601	1,169	1,417
Rectified	59	180	135	139
Not rectified	0	74	18	20
Not substantiated	459	682	880	1,123
Totals	1,888	2,757	4,128	4,606

Disposition of Jurisdictional Complaints 1979-1983 — Percentages

	79/80	1981	1982	1983
Discontinued	46	44	47	41
Resolved	27	22	28	31
Rectified	3	7	3	3
Not rectified	0	3	1	1
Not Substantiated	24	25	21	24
Totals*	100	101	100	100

* Totals may be more or less than 100% because of rounding.

C. BEYOND INDIVIDUAL COMPLAINTS

In my 1982 Annual Report I outlined very informally my office's investigation goals and strategies. There is no point in repeating that exposition even though those goals and strategies were as valid and important in the present reporting year. As in the past my staff and I emphasized, and sought changes in procedures, practices and regulations, when they fell short of fairness requirements. This emphasis is oriented towards prevention of administrative injustice before it occurs. We use existing complaints to identify unfair practices, seek changes in procedures and regulations, thus bringing about a fairer and more tolerable system of public administration in British Columbia. Part IV of this report summarizes a selection of such changes accepted in 1983 by authorities within my jurisdiction.

Table 7 in Part VI provides an assessment of the overall number of cases in which a change affected more than an individual complainant and led to some change in practices or procedures. In some 219 cases my staff identified some general change that came about as a result of our investigations and recommendations.

PART III

COMMENTS ON MINISTRIES AND COMPLAINT SUMMARIES

MINISTRIES

MINISTRY OF AGRICULTURE AND FOOD

Declined, withdrawn, discontinued	3
Resolved: corrected during investigation	3
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	4
Total number of cases closed	10
Number of cases open December 31, 1983	8

As in previous years, we received very few complaints against this Ministry. I am including one case summary in this report because it is an important one.

Double trouble

A farm operator was denied financial assistance under the Agricultural Land Development Assistance program on the basis that loans could only be approved for farm operators under the age of 65.

The property was owned by both the complainant and her husband but the Ministry considered the husband to be the farm operator and rejected the application because he was 67 years old.

The woman explained to us that her husband had been in retirement since his operation seven years earlier and that she was operating the farm herself with the assistance of her son. She objected to the Ministry's policy of regarding her husband as the farm operator, and also to the policy of not approving loans for operators over the age of 65.

The Ministry told my investigator that a recommendation to abolish the age restriction had just been sent to the Deputy Minister. Ministry staff confirmed that the husband was always considered the principal operator in farm operations owned jointly by a married couple. Some time later, my investigator confirmed that the Ministry was no longer using age as a criterion for loan approvals and that the complainant's application would now be considered on its merits.

I am still concerned about the Ministry's policy of automatically designating the husband as the principal farm operator but since the complaint was resolved on other grounds, I decided not to pursue the issue at that time.

Some months later, the same woman complained that the Ministry had rejected her application for benefits under the Partial Interest Reimbursement Program because her declared income was derived from pasture rental, rather than from farming as required by the Act and Regulations.

After discussing the problem with both Ministry staff and the farm operator, it became clear that the Ministry had based its rejection on a misunderstanding. The Ministry assured us that if the complainant resubmitted her application, it would review the case.

Based on a further clarification of the pasture rental income, the Ministry allowed the farm operator full benefits under the Plan. (CS 83-001)

MINISTRY OF ATTORNEY GENERAL

Declined, withdrawn, discontinued	154
Resolved: corrected during investigation	138
Substantiated: corrected after recommendation	18
Substantiated but not rectified	0
Not substantiated	118
Total number of cases closed	428
Number of cases open December 31, 1983	218

The Ministry of the Attorney General has many different functions. It houses prisoners, licenses guns, mediates family disputes and looks after the estates of those who are no longer capable of handling their own money. If there is any common thread in the complaints I receive about this Ministry, it is that people cannot get a handle on what they must do to relate effectively to the system. To many of my complainants the Ministry seems to be a monolith with its own rules and even its own language.

There is a famous English comedy skit in which two miners are bemoaning their jobs. One tells the other that he would rather have been a judge, but he didn't have the Latin. The "Latin" — the forms, words, rules and procedures normal to courts but foreign to most of the public — generates some of the complaints. The following two examples prove how incomprehensible the "Latin" in the court system is to my complainants.

All together now: one, two, three . . .

A driver went to the Court Registry to file his dispute on the seventh day after receiving a traffic ticket, but nobody would accept his dispute because he was too late.

He made a number of telephone calls and discovered that the registry in the next municipality would have accepted the dispute on that day. At this point, the motorist contacted my office. We found that some court registries interpreted the seven-day dispute period differently. They included the day on which the motorist received the ticket, whereas others didn't.

We were able to resolve this case quickly when the registrar in question agreed to adopt the practice that would allow alleged traffic violators the maximum number of days to file a dispute. Still concerned that some motorists might not get equitable treatment, I asked the Ministry to apply the seven-day rule uniformly. The Ministry responded quickly, and now all registries count up to seven by the same method. (CS 83-002)

A classic "Catch 22"

Two Vancouver tenants, both of whom had Rentalsman orders that their landlords owed them money, came to me for assistance.

The Rentalsman's office had told them to file the orders in County or Supreme Court, and then proceed to enforce the debts. The Registries would not file the orders, which were for less than $2,000 and sent the tenants to Small Claim Court. Small Claim Court would not file the orders because there was no 'certificate' from the Rentalsman. The Rentalsman had no power to issue the certificate demanded by the Small Claim Registry. Somewhere there was a gap in the legislation. After several months of frustration they called my office.

We brought the matter to the attention of Court Services, the Master of the Supreme Court Registry and the Rentalsman. The Master acted promptly, found a middle ground, and issued, with the approval of Court Services, a directive to all levels of Court Registries explaining exactly what may be filed and where. (CS 83-003)

Back to the story of the two miners. Now reconciled to their fate, they discuss the best methods of extracting coal from the rock face. One favours scrabbling at the rock with his bare hands. This also is an experience known to our complainants, many of whom try hard to resolve their own problems and only come to me when they lose their grip. (CS 83-003)

Court "loses" shoes

One of the more unusual complaints involved a man who had his shoes taken away by the courts and, no matter how hard he tried, he could not get them back.

He had been arrested and charged with breaking and entering in the summer of 1982. The shoes he wore at the time, and another pair, had been introduced as exhibits at the trial. For some reason, the ownership of the shoes was not established at the trial, and when the judge dismissed the charge, he did not specify to whom the exhibits should be returned. A year and three months later, the man asked for our help in his quest to retrieve his shoes.

Two phone calls later, we found the shoes and had them sent back to our complainant. Why had he been unable to locate the shoes? The courthouse where he was tried was scheduled to close down, and all exhibits had been sent to another court. The clerk holding "possession" of exhibits was also transferred but to a different place. When the courthouse stayed open after all, but without its former exhibits, the confusion was complete. (CS 83-004)

Ministry must pay interest

When a couple in the province's interior separated, some of their joint property was sold and the money paid into court because no one knew the whereabouts of the wife.

For six years, the money was held "in court," meaning it was administered by the Ministry of Finance. The wife then got back in touch with the family and she and her husband hired a lawyer who had no problem getting the money but without interest. The husband then asked us to help him get the interest, an estimated $13,000, he felt the court or the Ministry of Finance owed him.

During the investigation of this case, I learned that the Supreme Court Rules divide payments into "funds" which earn interest, and "monies" which do not. Which of the two it is, depends on

the reason or 'style of action' for the original deposit. In this case, it worked out well. The Registrar, who could have simply asked the couple to appear before a judge to determine whether or not their money was "funds," agreed to review the matter. He eventually sent a revised certificate to the Ministry of Finance, ordering the interest paid.

The problem was solved in this case but I was concerned that the province can hold $15,000 for six years, use the money for whatever purpose and not have to pay interest on it. I am, therefore, happy to hear that this rule is now under review. (CS 83-005)

Now you tell me

A woman was ordered by the courts to prepare social assessments required in custody cases but before she could bill the Ministry for her work, the government decided to discontinue paying for such services.

From now on, the lawyers and persons involved will have to arrange payment. Nobody, however, had told the woman of this change and the Ministry simply refused to pay the bills she submitted. After some discussion, the Ministry agreed that the new policy should not have applied the outstanding bills. The bills were paid with interest on the outstanding balance. (CS 83-006)

The problem with boundaries

A young couple complained about the Ministry's unwillingness to deal with a problem of uncertain boundaries affecting a lot they had purchased in the Okanagan in 1979.

Their surveyor disagreed with the surveys already on file and suggested that about 20 other lots, many of which were still vacant, would be similarly affected. The couple hired a lawyer who discussed the problem with the Land Titles Office, the surveyors, and the Office of the Surveyor General, all to no avail. A year later, the Ministry was still ignoring the surveyor's recommendation that a Special Survey be ordered. The couple's lawyer then raised the issue with my office, complaining that nobody appeared willing to provide a solution to his clients' problem.

We asked the Director of Land Titles to resolve the bureaucratic impasse and to investigate possible resolutions to the problem. Even though the couple did not get a special survey, the Attorney General finally broke the deadlock. He agreed to underwrite the cost of hiring a surveyor to report to the government on the discrepancies between existing surveys, and to determine whether a special survey was needed. (CS 83-007)

Back at the bottom of the mine, the second miner offers his own favourite way of extracting coal. He runs at the rock face and bangs his head against it to dislodge the ore. Regrettably my staff and I seem to have spent a fair amount of time practising that technique this year. The next few cases look like successes; the head-banging part is not immediately apparent. My frustration will become clearer when I point out the time and effort expended to achieve these results.

In the first case, it took six months after the error was admitted to pay the $500. In the second one, it took five months from my letter outlining the facts, to the payment: the man was already out of jail. The last case is the worst: it took fifteen months and the exchange of twenty-four pieces of correspondence to achieve a solution. Is it any wonder my complainants could not resolve their own problem?

Abuse of power

A man and his girlfriend complained that a sheriff was not only rude and intimidating when he enforced a writ to satisfy a debt to his former wife but actually seized a car which did not belong to my complainant.

The car belonged to the man's girlfriend and was registered in her name. She had bought it from my complainant who produced receipts proving that he paid out his bank loan when he sold the car to her. The couple told my investigator that the sheriff arrived at their home at 11 p.m. to seize the car. When they said they wanted to call the police, the sheriff told them not to bother, because the car would be gone before the police could get there.

After seven months of arguing, the Ministry offered the couple $600 as compensation for the "inconvenience" and conceded that the sheriff had not followed "policy" when he seized the car. Wanting to put an end to the months of frustration, the couple decided to accept the money and I agreed to close the case on that basis.

I was convinced that the seizure was wrong and I regarded the offer of payment as confirmation that the Ministry shared my belief. I also regard the sheriff's actions as both high-handed and discourteous. Although I have not pursued this issue, I am concerned that the Ministry chose to ignore the strong suggestion that an employee abused the power of his position in dealing with the public.

Three months after I had closed my investigation, the complainants called my office again: they had not received the money. When my investigator called the Ministry she discovered that two different Branches of the Ministry were

involved. One Branch had recommended payment, the other had to approve. This second Branch was not sure the payment was based on a legal claim, and in any event was trying to get it paid by the solicitor for the judgement creditor who had originally ordered the car seized. This lawyer had "indemnified" the sheriff in writing, prior to the seizure.

For two months my staff tried to resolve this bureaucratic impasse, arguing that my complainants' payment should not have to await possible recovery from the lawyer. When all this failed I wrote directly to the Attorney General, outlining the problem and asking for his personal intervention. That worked, and finally, six months after compensation was offered, the cheque was on its way. (CS 83-008)

Swap on the way to jail

A man was arrested, and held in police cells. From there the sheriffs escorted him to appear in court, and then to the Regional Correctional Centre. When the sheriff picked him up, they noted his possessions as $77.80, belt, lighter and papers. When the jail received him they noted $17.80, a watch and a ring! He did not consider this to be a fair "swap" and complained to my office.

The reason for the error was hard to find, because this jail did not sign the sheriffs' receipt if the escort was local. Such receipts for goods, signed at both ends of the escort by both prisoner and staff, are normal for all lengthy journeys.

The Ministry agreed with my recommendation to use the receipt method for all escorts in future. It took a lot longer to get a decision on my recommendation that the Ministry pay compensation for the missing money ($60) and papers. In fact my complainant was back in the community before a decision was made. Finally, however, the Ministry did agree, and paid compensation of $97.80. (CS 83-009)

Flagrant bureaucratic indifference

A man complained that after nearly a year, there had been no decision on a request he had made. He had asked that the Attorney General use his power under the *Police Act* to compensate him for the wrongdoing of an RCMP constable. Let me make it very clear that the wrongdoing had been admitted, and that my complainant was not upset that his claim had been refused. He simply wanted an answer; any answer; yes or no.

Our complainant was very patient. He had battled for a year on his own, and waited patiently for the fifteen months it took my office. The paper work and time involved in this case stretched the imagination. My staff had to argue everything, from the relevance of a Federal-Provincial memorandum of agreement, on down to whether or not the complainant had phrased his claim in the proper words.

The decision, yes or no, was never made, but in the end the Attorney General's Ministry got the R.C.M.P. to compensate my complainant. Why did it take two years? I still don't know but I am sure that stalling tactics, evident from my investigation of this case, constitute one of the most flagrant examples of bureaucratic indifference. (CS 83-010)

Not all has been bad this year, of course. There are times when the coal comes out quite easily. Many branches of the Ministry co-operated in trying to resolve my complainants' problems. The following examples are typical of my everyday dealings with the Ministry.

Cheque went to wrong ex-wife

A woman was receiving maintenance payments for her children from her ex-husband. For several years, and with no problems, this money had been paid into the Court, which noted the payment and then forwarded the cheque to the mother.

The fun started when during building renovations, the court temporarily amalgamated with a neighbouring court. The woman, whose name is unusual, had the misfortune that another couple of the same name were also making payments through that court. For three months the maintenance cheques were sent to the wrong ex-wife, who cashed them!

After patiently waiting for several months, the complainant went to the court, was informed of the error and was told the court would "try" to get her money back. She contacted my office to see if we could speed up the process. Part of the problem had been that the Court Administrator was away and no one had made a decision in his absence to correct this problem. We pointed out to the Court Administrator that "try" was not good enough, that as far as I was concerned it was her money, and the problem of recapturing the wrongly cashed money was theirs and was an entirely separate process.

The Court Administrator agreed. The money with interest, was paid within a few days, and apologies were offered to both my complainant and her former husband. (CS 83-011)

And the good news is . . .

A Vancouver man phoned our office in a panic. He and his wife had sold a house, and the transfer was to be effective within 15 days. His wife

was in Europe, and the power of attorney she had left behind was not acceptable to the Land Titles Office. The man had phoned his wife and got a new form prepared through the Canadian consulate but there was something wrong with this form too. It looked as if the sale might fall through, and they would lose the money. All of this on a Friday, and he was due to leave for Europe the next day to join his wife. So much for the bad news.

The good news is that all obstacles were overcome before my investigator even had time to call back. The Registrar of the Land Titles Office kept his office open late, talked to our complainant and the lawyers involved, and worked out a compromise which allowed the deal to go through. The complainant later wrote: . . . "intelligent people allowed reason to prevail and found a rapid solution," to which I can only add: Amen. (CS 83-012)

Officials admit liability

After several years of waiting in vain for maintenance payments ordered in her divorce, a woman retained a lawyer, and went back to court for enforcement.

That was in February. In June she still did not have the judge's decision on her hearing. Phoning her lawyer had not worked, so she began calling the Court Registry, and even called the judge's office. Soon after, she received the judge's order but was not satisfied with the explanations why it had taken so long. She was told the document had been "lost" and that, in fact, the judge had made his order back in March.

There were two main difficulties in investigating this complaint. The woman was worried that an investigation might affect the judge's decision and wanted me to wait until her action was finished. It was also difficult to determine how much the lost document and the delay had actually cost her.

Having waited, I was happy to see how quickly the Court Services Branch admitted its responsibility and liability. The officials did not question the "costs" of the delay, as estimated by the woman's lawyer, and agreed to pay her in full for that portion of the lawyer's bill.

And the amount was not trivial. The lawyer's bill for extra work, such as trying to find the lost document, came to more than $500. (CS 83-013)

Take your hands off me

During a trial on the Lower Mainland in late 1982, when Attorney General's staff became aware of threats that courtroom procedures might be disrupted, and weapons smuggled to the prisoners, they ordered that members of the public attending the trial be searched.

Some time later, I received a complaint from a woman who said she had been humiliated by the sheriff conducting the search. She complained about unnecessary physical contact, saying that a metal detector had been pressed under her breasts. All this she said, took place in the courtroom corridor after each recess, even if she had just been sitting there drinking coffee in full view of the sheriff.

The woman was also annoyed because the sheriff had treated people differently. Some were searched; others, including a prison guard's wife, were not. She wanted to know what the 'rules' were for such searches.
To my amazement, I was was unable to find any policy statement on the question of searches of members of the public. There was nothing in the Sheriff Manual, nor was the question dealt with in sheriff training courses. In December, 1982, I asked Court Services to consult with me on the issue.

It took a while but in September, 1983, guidelines regarding searches were issued and circulated throughout the Province. The guidelines are clear and reasonable, I believe.

From now on, "courtroom" searches will involve the use, without physical contact, of a metal detector, and a search of purses, umbrellas etc. Sheriffs were warned that unnecessary physical contact may result in criminal charges and that all members of the public should be subject to the same degree of search. If a more thorough search of a particular person is believed to be necessary, it is to take place in private. The search is to be conducted by two sheriffs (one a supervisor if possible) of the same gender as the person being searched. (CS 83-014)

Lone clerk gets help

A man complained that he was given misleading and incorrect information by a Small Claims Court clerk. As a result he failed to appear on the court date and lost his case.

The complainant was able to take care of his immediate problem by filing an appeal to County Court but the bigger problem remained: the clerk involved had been placed in her job without proper training. She works half-time, alone, in an isolated area of British Columbia and is without the support and advice of other workers.

I considered the combination to be unfair to both the community and the clerk. I was also concerned that the Ministry appeared to be deliver-

ing a markedly lower level of service to an isolated part of the province. The Ministry answered both of my concerns by providing training and support for the clerk. (CS 83-015)

Wrong licence suspended

A man who was arrested for drunk driving gave the police his friend's name and driver's licence number. He immediately realized his foolishness and asked his lawyer to tell the authorities what had happened and get the court records changed. In the end, he was convicted under his own name, with his friend's name as an alias, but he could not shed a nagging doubt about whose driver's licence number had been affected by the suspension.

He asked us to look into the matter and we found that the court had forwarded the wrong driver's licence number to the Motor Vehicle Department which had promptly suspended his friend's licence. The Department corrected its records immediately, suspending my "complainant's" licence. I'm still not sure whether or not I "helped" this man. (CS 83-016)

The last case is included because I get several complaints just like it every year. An former Surveyor General once wrote that "there is nothing like a little surveying to create the illusion of ownership." ("Crown Lands", Ministry of Lands, Parks & Housing, published 1975). To that I would add that when the surveyor's plan is deposited in the Land Titles Office, the illusion becomes complete.

A shocking discovery

A woman contacted my office in shock after a survey done by her neighbour apparently removed one-fifth of the land she thought she owned.

To add to the confusion, her driveway now dead-ended into the new fence the neighbour had erected on the lines of his survey. My complainant believed that something must have gone wrong at the Land Titles Office. When she bought the property, she had checked the plans on deposit and everything seemed in order. Now she was told that she never did purchase the land included in those plans.

This woman is just one of many complainants who are frustrated to learn that they cannot hold the Land Titles Office responsible for such errors. In British Columbia, a precise and reliable system has evolved to guarantee what is called "indefeasible title". Regrettably most people do not know what that means. In layman's terms, the certificate of title gives an owner clear right to the legal description known as lot . . . of block . . . of . . ., subject, of course, to any mortgages, liens or other charges, such as a right-of-way, which may be registered against the title. What the title does not do is tell you where on the actual land the property is.

The delineation of boundaries is the responsibility of the owner's surveyor. Surveyors must deposit copies of their plans, and a Land Titles Officer will reject the plan if errors are noticed, but the fact that a plan is deposited does not mean that the Land Titles Office guarantees its accuracy.

Most people who come to us find this hard to believe and harder to accept. Telling them that they have the right to sue the surveyor, or maybe the person from whom they purchased the property, is small comfort. Sometimes those people are dead, or are themselves innocent parties to errors buried deep in history.

I include this issue in the Annual Report in the hope that the public will become more aware of this aspect of the law. I receive many such complaints, and there is nothing I can do to help, other than tell people: Buyer Beware! (CS 83-017)

WHAT ABOUT THE VICTIM?

One other issue I wish to raise for the purpose of public information, is the difficulties which arise for victims of crimes. The problem for victims ranges from trying to obtain compensation for damage or loss, through frustration with the lengthy delays common before trial, to trying to find out how they can recover their property which has been held as exhibits. Many agencies, including the federal authorities and a committee within the Ministry of Attorney General, are presently reviewing the problems of victims.

At present I have made no formal recommendations to the Ministry, though I have informed them of my concerns. In my mind it is important that the Crown Counsel prosecuting an offence ensures that a victim is aware of his right to be present at the trial and to ask the judge to award restitution for his losses. When physical injury is involved, I believe the Crown or the police should also ensure that a victim is aware of his rights to apply for Criminal Injuries Compensation.

There is no system to ensure that victims are informed of their rights. Individual Crown Counsel and a few police officers try to help victims, and will even ask the court to order restitution as a condition of probation. Others consider their duty complete if they simply notify the victim of the trial date, and then let him cope for himself. I hope that some of these inconsistencies will be addressed as a result of the studies now under way.

CONTRARY TO LAW

When a person suffers loss or damages because safeguards were not observed by the authority and a wrong was committed, he should be entitled to recompense. I found in the following case that eviction was not according to law and a wrong was committed. With the help of an MLA, the complainant's damages were recognized and payment concluded. A complainant with less fortitude would have given up. As it was the complainant carried the cost of numerous legal actions needed to establish his claims until his resources were depleted.

Tenacity pays off

Our complainant provided maintenance services for his landlord who credited this service against the monthly rent. Unfortunately, the landlord died. The Rentalsman, who was asked to settle a dispute over non-payment of rent, decided to grant an Order for Possession against the tenant. Our complainant then applied to County Court for a judicial review of this decision but before the judicial review could be heard, the Possession Order of the Rentalsman was filed in Court Registry and the Writ of Possession issued to the Sheriff's officers. They evicted our complainant on November 19, 1975.

I investigated this complaint which was first directed against the Rentalsman. The complainant was tenacious in his pursuit of a legal remedy. The judicial review upheld the tenant's application and found the Rentalsman's Order for Possession wrong in law. The Order was set aside and the Rentalsman was directed by the Court to give the matter further consideration. Besides the first judicial review by the Court, eight Court decisions were made in regard to this dispute. Finally, our complainant was informed that he was entitled to full and peaceable vacant possession as of November 1, 1979. But he was unable to take possession and his tenancy terminated for failure to pay rent.

I concluded that the complainant should not have been evicted after applying for judicial review. I also found that this action was the responsibility of the Court Services Division and recommended that the Attorney General:

1. Appoint a representative to review the complainant's statement of losses incurred as a result of the eviction.
2. Reimburse the complainant for loss of furniture, personal belongings, and expenses related to moving.
3. Examine the legislation and procedures under which the complainant was evicted, when he should not have been.

The first and last recommendations were accepted by the Attorney General.

To conclude this matter, the complainant also sought the assistance of Mr. Angus Ree, MLA for North Vancouver-Capilano. With his help, the Attorney General agreed to the second recommendation and a cheque for $5,000 was paid to the complainant. (CS 83-018)

CORRECTIONS

Three events last year underline the difficult and costly task of holding persons against their will until they are properly dealt with or sentenced by the Courts. These events were the riot in April at Prince George Regional Correctional Centre which caused an estimated $2.5 million in damage; the August opening of the $22 million Vancouver Pretrial Service Centre which holds 150 men; and the November riot at The Lower Mainland Regional Correctional Centre which resulted in damage to the west wing of more than $100,000.

The present prison population is close to the maximum capacity and stretches the institutions' ability to provide facilities adequate to the concepts of justice and humanity.

The effects of the fire and riot at Prince George are still being felt as repairs are not yet completed. Telephone access between prisoners and their families is restricted, and staff are cautious about reintroducing programs which were lost because of the riot. Other institutions, particularly Kamloops and Victoria, were obliged to accept more inmates from the Prince George region. Holding inmates in custody during reconstruction, increases the strains on inmates and staff.

The Vancouver Pre-trial Service Centre is one of the most enlightened expressions of our society's view of justice. No one is guilty until his case is so decided in court. The new centre maximizes access to family and friends, provides contact with legal counsel and has humane facilities and comforts. The new institution will be examined closely by those in Corrections who are preparing for adequate replacement facilities in their regions, notably the Kamloops, Burnaby, New Westminster and Fraser Valley areas.

The events at the Lower Mainland Regional Correctional Centre emphasize the unpredictable nature of the prison population. While Oakalla has the most experienced officers, the events of November in which the west wing inmates smashed their cells and broke through fire doors, caught officials by surprise. The event emphasized the need for constant vigilance and security and responsive administrative policies to maintain good order and discipline.

My staff visit secure correctional centres on a regular basis. They meet with inmates and staff to promote redress for aggrieved inmates. Complaints arising in the restricted population of the prisons often indicate administrative arbitrariness, unfairness, abuse of power, error, and failure to consider the objectives of the Corrections Branch.

The greatest number of complaints arose over medical and dental matters, followed closely by complaints concerning transfers and protective custody conditions. The introduction of standard procedures and policies, which incorporate fair hearing principles involving disciplinary matters, resulted in a significant drop in the number of complaints about disciplinary panels. A clear understanding of these principles by both inmates and staff reduces the number of complaints and improves the procedures adopted by the authority.

UNREASONABLE PROCEDURES

Every person has a right to know what his financial obligations will be if he buys a product or contracts for services. I viewed a failure to include this standard consumer principle in prison transactions as an unreasonable procedure. An inmate should know at the beginning of his dental treatment whether he is responsible for some or all of the costs of dentures.

Putting teeth in the contract

An inmate at a Regional Correctional Centre had very bad teeth and requested their removal. His remaining bottom teeth, nine in all, were removed in October. In mid-November, the inmate was asked to sign a letter stating that the Correctional Centre would assume no financial responsibility for providing replacement dentures. He signed, and later that month, had his remaining seven top teeth pulled.

On December 29 we received a complaint from the inmate who said he had been told he could only have his top teeth pulled if he signed the November letter.

I was concerned about the chain of events which seemed to indicate that by asking the inmate to sign such a waiver in the middle of an operation, the institution had unfairly taken advantage of a very painful situation.

I discovered, however, that the institution had asked for the inmate's signature to protect itself against possible later claims from the inmate. They feared that, although the inmate had requested the tooth removal operation, he might afterwards say: " You pulled my teeth, you restore them."

Considering the time it would take for the inmate's gums to heal, impressions to be taken and dentures fitted, the institution could not possibly have provided dentures for him before his release.

On the other hand, I considered it important for all parties involved in such operations — the institution, the dentists and the inmate — to have a clear understanding of the financial aspects. I therefore recommended that before an inmate undergoes any dental work, the details be set out in a written agreement. After some delay, the Corrections Branch adopted such a policy.

An interesting footnote to this case (perhaps I should say tooth-note): While serving a subsequent sentence, the inmate was provided with a set of dentures. (CS 83-019)

IRRELEVANT GROUNDS OR CONSIDERATIONS

In prison the fundamental freedoms of all persons are limited by the need of the institution to provide secure custody. A paternalistic atmosphere in which most decisions of the inmates were monitored or dictated thrived in pre-charter times. The prison experience placed adult inmates in a retrogressive dependency on the institution. Restrictions which are no longer required to provide security must be reconsidered, revised or abolished. The following case has the effect of broadening the inmate's ability to decide how he will spend his money.

Prison cash flow secured

An inmate awaiting trial in a secure institution must surrender all cash to an inmate trust fund held by the institution.

One inmate's father placed $350 in his trust fund account. When the inmate requested to send $250 to an acquaintance outside the prison, the Director denied this request. Based on information from sources available to him, the Director suspected that the money was to be used for the purchase of contraband which was then to be brought to the institution. The inmate's explanation of the purpose of the payment did little to alleviate that suspicion.

I determined that inmate funds must be controlled within the institution to prevent inmates from forcing other inmates to transfer money to them and to reduce theft and fights over gambling debts but I could not find that payment of money to a person outside the institution would affect the internal security of the prison.

I concluded that the decision to deny payment was based on irrelevant grounds or considerations, and recommended that policies governing payments from inmate trust accounts be subject

only to those conditions which directly affect the security of the institution.

The institution agreed and my recommendations became part of a detailed study from which the Corrections Branch will establish an inmate trust accounting system which may be computerized or manually operated. Standardized policy and procedures concerning disbursement of funds from inmate trust accounts will be incorporated in the Operations Manual for all provincial institutions. (CS 83-020)

THE HORRORS OF PROTECTIVE CUSTODY

In my 1981 Annual Report I expressed concern about the special needs of inmates who require protection from other inmates. Last year I anticipated greater progress from the Corrections Branch in meeting these needs, and I reported an inmate's experience whose safety was jeopardized when he was transferred to a second institution. The Corrections Branch quickly remedied the error in the second institution, but my investigation showed that something more than complaint resolution was needed.

Canadian law does not separate one group of inmates from another, nor does it allow one group of inmates to be treated differently from any other. The prison population segregates itself and forces the officers and administration to provide protection to certain individuals. Failure to protect some individuals would result in certain injury or even death.

The need for protection grows from many different causes. An inmate may need protective custody because of the nature of the crime, such as sexual assault, rape, incest or child abuse. An inmate may require protection if he is known to be a witness or gives testimony against another inmate in a trial. Inmates who identify with police or prison guards as informers are often quickly segregated.

An inmate who compulsively cleans his cell or has other personal idiosyncrasies may be an irritant to other inmates and require protection. Weak, timid or very young inmates and persons employed before conviction as R.C.M.P. officers, prison guards, security guards or anyone perceived by inmates to be on the side of the law, may also require separation. Additionally, inmates who simply incur greater gambling debts than they can pay, or who provoke a powerful inmate, are sometimes pushed into protective custody.

Senior Corrections staff are aware of the growth of protective custody as a separate identity within prison. They note that in an earlier, more restrictive period, inmates were not allowed as much free movement in prison and had less opportunity to coordinate or plan an assault on another inmate. Unfortunately, inmates now identified as protective custody inmates will usually retain the designation throughout their custody in provincial or federal jurisdiction. In addition to the social separation from other inmates, a protective custody inmate faces, in most prisons, the most severe restriction on privileges, work opportunities and use of the facilities.

An inmate risks his life if he leaves the umbrella of protection afforded by either facilities or by guards. The recognition of this danger places additional costs on the justice system. The separation of inmates must, for example, be maintained in all activities and services: transportation to and from Court, transfers between institutions, separation on and in reception areas, separate cells and living quarters, exercise, visiting, eating, recreation, medical parades, and work locations. The Corrections Branch has reduced services and privileges and practised maximum lock-up rather than meet the cost required in providing separated facilities.

When I received complaints from the Lower Mainland Regional Correctional Centre I investigated and found more than 70 protected inmates in the hospital, east, south, and north wings. The problems of these inmates were being treated on an ad hoc basis. Privileges were being denied. The verbal harassment of protected inmates by other inmates was not only allowed but actually fostered by their placement in close association with other inmates. Guards acknowledged applying pressure in an oppressive manner on these inmates to reduce their complaints, rather than trying to solve the legitimate complaints which were voiced.

In some wings the inmates did not have separate daily exercise, visits or medical parade. There was no clear policy on how decisions were made about those inmates who requested protection. Movies offered regularly to general population inmates were sometimes available to protective custody inmates and sometimes not. Inmates in protection felt they had to beg for what other inmates received as a matter of course. The experience of inmates in the wings was exhausting and dehumanizing; their tiers were generally dirtier and noisier.

After I referred my findings to the Corrections Branch, some individual complaints were resolved. The Inspection and Standards Division appointed an Inspector to visit L.M.R.C.C. and deal with the findings. Some problems were not resolved because the facilities and staff necessary to implement changes were not available. The Corrections Branch agreed to monitor the number and situation of protective custody inmates.

On the basis of the Corrections Branch response to my findings, I concluded that the failure to develop guidelines governing the placement of inmates in protective custody was an unreasonable practice and based on irrelevant considerations. I found that the practices followed in doctor's parade to place all inmates together whether in "protection" or not, added unnecessarily to their risk.

I recommended that phone calls be fairly apportioned to protective custody inmates in the wings. I recommended that visiting procedures (which gave opportunity for inmates to verbally abuse the visitors of the protected inmates) be changed. Protected inmates were reducing their contacts with family and friends in the community to prevent this harassment of their visitors. I concluded that the internal problems within protective custody tiers resulted from the failure of the Corrections Branch to provide job opportunities, programs and recreation which was available to other inmates.

I recommended that the Corrections Branch plan for the number of protective custody inmates and adequately protect them against physical and verbal abuse from the general prison population. This plan would include regular exercise and recreational programs, particularly for inmates of the east wing.

The Corrections Branch requested more time to give the officers directly affected an opportunity to examine the implications of my recommendations.

When the facilities became overcrowded, protective custody inmates in the east wing bore the most direct abuse from other inmates. At one point, spears and projectiles from broken broom handles were used to pierce the screen protecting the front of the inmates' cells. A fire was started on the protective custody tier by general population inmates below them. Protective custody inmates were ordered to take down blankets they had put up as barriers to protect themselves. The tier inmates lived in a climate of fear and hostility. Protected inmates doing assigned work in the presence of other inmates were assaulted. Complaints of "shivs" (inmate knives) being made increased. Rumours abounded and fears multiplied. One unfortunate inmate whose real name was the same as a common epithet used by the inmates to degrade all protective custody inmates, was driven to slash his wrists in order to get off the general population tier where he was rightfully placed. He was removed eventually to the hospital.

I wrote to the Commissioner of Corrections again with a list of the current complaints noting the intolerable tensions and conditions.

Finally, the institution made some significant progress in meeting the needs of protective custody inmates by relocating the protective custody tiers of the west and east wing. I received letters of thanks from inmates who appreciated the calm which resulted from the changes. In addition to making the physical changes which rectified many of the complaints, the Corrections Branch appointed a committee to consider the policy and problems of the protective custody inmates. This committee is still to report. I will continue to monitor the complaints of these inmates.

Victim of false accusations

An Oakalla inmate complained that he had been denied a temporary absence on the basis of his record of assault causing bodily harm. In addition, inmates on his tier had given him a warning that he was to get off the tier as soon as possible because he was the co-accused of a known sex offender.

The inmate denied these allegations but had to be removed for his own protection. Fortunately for the inmate, he was within two weeks of his release date but he was very concerned about the rumour which was driving him into protective custody. He feared for his safety even though the time was short.

My assistant checked the inmate's record immediately and found that he was not the co-accused of a sex offender. This false information was traced to the report of an auxiliary officer from camp who had used the term co-convicted in reference to an internal disciplinary board.

The incorrect information on the conviction for assault had arisen from a report by a classification officer that the inmate was facing a charge of assault causing bodily harm, a charge which was reduced to common assault when the matter went to Court.

When the facts were presented to the Correctional staff, the inmate's temporary absence was reconsidered and granted. (CS 83-021)

Watch it

When an inmate left the contents of his cell unguarded, his cheap Timex watch was stolen. The watch was quickly bartered in the prison underground to a third inmate in exchange for canteen goods.

The rightful owner complained to the guards without knowing where the watch was and

thereby set up a tangle of investigations that eventually involved a Member of Parliament, the Division of Inspection and Standards, the director of the wing, and my office. The message to inmates, guards and staff is clearly: "Watch it."

Guards recovered the watch in a search and seize operation but inmates put pressure on the original owner, trying to force him not to cooperate with the guards and to pay "protection money" by doing favours for the inmates involved. While the guards held the watch, the inmate victim tried to resolve the pressure on him by forcing the guards to return the watch to him or to the inmate who bought it from the thief.

The matter was not resolved until the rightful owner had been assaulted on his tier. The inmates who attempted this assault were disciplined, the watch owner was moved around the institution and eventually transferred, and the watch itself was placed in the effects of the inmate who had originally bought it on the underground discount market.

When a Member of Parliament tried to assist by asking questions in the House of Commons, he received a letter from the Corrections Branch containing inaccurate and misleading statements. When the Member of Parliament gave the letter to the complaining inmate to verify the facts, the inmate found himself referred to as a protective custody inmate. He was informed that his assailants had not been identified, and that the Corrections Branch felt the matter was adequately handled by staff.

When the inmate complained to me, I sifted through the cold files, talked to present and retired staff, reconstructed the events and identified the key problem as the lack of identification of valuables in prison.

Operation Identification is used in the community to prevent thefts, yet inmates were not required to identify their personal possessions in prison. Strong inmates intimidate the weaker, nimble thieves strike at will, and the prevention of theft becomes nearly impossible without some identification system.

I proposed that if inmates are allowed to have items, such as watches and jewellery in their possession, a positive identification system should be utilized. My other proposals were also considered and a letter of apology setting the record straight was sent to the Member of Parliament. The watch itself? I disagreed with the solution, but at the request of its rightful owner, the watch was given to the inmate who had bought it from the thief. (CS 83-022)

OPPRESSIVE

I view as oppressive requirements an inmate cannot reasonably meet. Officers should not transfer responsibility for their failure to follow a prescribed procedure on an inmate.

Canteen purchases missing

An inmate at the Lower Mainland Regional Correctional Centre was removed from his cell and transferred without appropriate notice or warning to another city for a court appearance.

Although notices of court transfers are provided to the institution prior to the date of transfer, the officers did not make this known to the inmate. His cell effects were, therefore, left unguarded and unprotected from the other inmates who had free access to his cell. On his return, the inmate found that his canteen purchases and newspapers were missing. He complained to several officers but no investigation took place. The inmate was required to supply proof of possession before an investigation would be started.

I confirmed that the inmate had been transferred without warning. The procedures normally required by staff for such transfers were not followed. I concluded that the staff failed to exercise reasonable and proper care. It was unfair of them to expect the inmate to bear full responsibility for the loss of his canteen goods.

I also found it oppressive that local officers required proof of possession as a pre-condition to their investigation and concluded that the officers had been negligent. The inmate was reimbursed for the loss of canteen items he had purchased just two days before his transfer took place. (CS 83-023)

INTERPRETATION OF LEGISLATION

In the following case, I found that instead of denying an inmate the right to apply for a program, the enabling legislation included him. There was no authority to deny the inmate his right to apply for an offered program except on the merits of his application. Complaints of this kind require the Corrections Branch to revise their policy which then affects all inmates in this group.

Temporary absence

Most inmates earn fifteen days of remission for each month they are in prison. These remission days, which are earned by industrious work and good behaviour, decrease the number of days served in custody. A few inmates do not qualify by law for remission because they are not held in custody for a conviction for an offence. An inmate complained to me that he was not eligible

for remission and was not able to apply for a temporary absence when he was held in custody as a result of a Court Order under the *Family Relations Act*.

After reviewing this matter, I came to the conclusion that the inmate did not qualify for remission under the law but that a denial of a right to apply for temporary absence could not be supported under the provisions of the *Correction Act*. The Corrections Branch reconsidered this matter and agreed with my finding.

As a result, the Corrections Branch redrafted its policy on temporary absence and now provides that "prisoners detained for civil contempt of Court, failing to comply with a Civil Court Order and failure to pay maintenance under Section 67 of the *Family Relations Act* are eligible for temporary absence under the provisions of the *Correction Act*." This policy will enable these inmates to apply for a temporary absence and insure that the applications are considered on their individual merits. (CS 83-024)

JUVENILE CONTAINMENT

I stated in my 1982 Annual Report that I made a commitment to have staff visit the Victoria Youth Detention Centre once a month. Behind that commitment was my concern about how government treats juveniles in detention. Government control of a child's life should be constructive, regardless of the reasons which brought on this control. My concern is how institutions meet this reponsibility.

I recently assigned a staff member to visit the Willingdon Youth Detention Centre in Burnaby, on a monthly basis as well. These visits began late in the year, but by year's end I received significant complaints from residents — too few activities and too much lock-down time. I plan to examine these issues very carefully.

During 1983, the Director of the Victoria Youth Detention Centre was very responsive in addressing the issues which came his way as a result of my staff visits. He set out to clarify policies and practices to benefit both staff and residents. In the end, he viewed my staff's visits (which were initially considered an unnecessary event) as beneficial.

I believe the staff and residents of the Centre now have a better understanding of their rights and responsibilities. For example, as a result of a complaint, residents can now expect to learn of an incident report, dealing with inappropriate behaviour, as soon as possible after the report has been completed. This enables residents to understand the relationship between poor behaviour and its consequences.

There have been other changes. Residents alleged on several occasions that staff swore at them without any consequences, whereas they were disciplined whenever they swore at the staff. They complained that this was unfair. The Director agreed. He reminded staff that swearing at a person, even in a light fashion, is not acceptable for either staff or residents.

Complaints I investigated during the year ranged from allegations of abuse to the absence of the simple comforts of life. For example, some female residents complained that the toilets did not have seats. This complaint was rectified. Another complaint came from some female residents who did not fit into the boys' jeans the Centre supplied as mandatory clothing. This complaint was also rectified. Girls now can wear their own jeans when the Centre's do not fit.

I investigated several complaints about abuse by staff. Usually the residents' account of what happens differs from the staff's.

Good example essential

One resident complained that he was physically abused, threatened, and sworn at by a staff member. He and a friend had been caught stealing an Exacto knife and a blade. Staff reprimanded the two and suspended them from the Arts and Crafts Program for one week. They were also confined to their cells to reflect on their behaviour.

The complainant claimed a staff supervisor came to his cell, swore at him and repeatedly slammed his head against a steel wall.

My staff investigated the case and came to the conclusion that the complainant had not been physically abused. But there was a good possibility that the supervisor had verbally abused the complainant.

I was concerned about the use of profanity by staff. If residents are caught swearing, they are disciplined. They have a choice of 25 push-ups or 15 minutes' confinement in their cells. If residents are disciplined for swearing, staff should set an example by not swearing.

The Director of the centre agreed with my view and took corrective measures. (CS 83-025)

A gamble for smokes and sleep

Another resident complained that a staff member had lost a bet with him and would not pay up. The complainant and the staff member had bet on the outcome of an arm wrestling match between two other residents.

If the complainant won, he would get a package of cigarettes; if he lost, he would go to bed early two nights that week. The resident won but did not get his package of cigarettes.

I was concerned about the incident for several reasons. I did not think that betting with a resident for monetary or tangible rewards was an appropriate way of dealing with young people in confinement. I also did not think it was appropriate to make bets that involve consequences normally imposed on residents for bad behaviour. And finally I believed that an institution responsible for young people in its care should discourage a habit, such as smoking, not encourage it.

But a bet is a bet. The youngster got his package of cigarettes and the staff member a memo with instructions to refrain from any future betting. (CS 83-026)

A fitting resolution

Several female residents complained about the clothing provided by the centre. The jeans, they said, were made for boys and did not fit them. The complainants said the jeans were usually too big and uncomfortable to wear. Comfort may not have been the only motive for this complaint but I pointed out that residents should be allowed to wear their own clothing if the Centre could not provide clothing of a reasonable fit. The Director agreed and promised to relax the clothing rule. (CS 83-27)

Have a seat

Several female residents complained that the toilets in their wing had no seats, whereas the toilets in the boys' wing had seats.

To solve the problem without major cash outlay, I suggested that some of the toilets be switched to give each wing toilets with and without seats. In the end, the British Columbia Buildings Corporation fitted all existing toilets with seats. (CS 83-028)

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

Declined, withdrawn, discontinued	109
Resolved: corrected during investigation	40
Substantiated: corrected after recommendation	3
Substantiated but not rectified	1
Not substantiated	60
Total number of cases closed	213
Number of cases open December 31, 1983	25

THE RENTALSMAN

During 1983, I received less than half the number of complaints against the Rentalsman than I received in 1982. This dramatic drop in the volume of complaints immediately followed the government's July 1983 announcement of its intention to phase out all of the services provided by the Rentalsman. Consequently, I had very little contact with the Rentalsman's office during the latter half of the year. For this reason, I have decided not to comment on the administrative policies and practices of the Rentalsman at this time apart from the following few case examples.

Tenant caught in dilemma

The owner of a mobile home complained to me that the Rentalsman refused to resolve a dispute with his landlord. The complainant wished to sell his mobile home but his landlord would not let him assign the trailer pad to a new owner. Without the pad, the complainant could not sell his home. He believed that the landlord's refusal was unreasonable.

According to the *Residential Tenancy Act (1979)*, a tenant must obtain the landlord's permission before assigning a tenancy agreement. The Act also stipulates that the landlord's consent "shall not be arbitrarily or unreasonably withheld." A landlord commits an offence under the Act if he improperly refuses permission for a tenant to assign the Tenancy Agreement.

When the landlord refused permission to assign the pad, my complainant asked the Rentalsman for a ruling on the reasonableness of the landlord's refusal. The Rentalsman declined to act, claiming that he only had jurisdiction to decide the matter if the landlord attempted to evict the tenant for assigning the pad without permission. Clearly my complainant was caught in a "Catch 22" situation: he could not sell the trailer unless he could assign the pad but the Rentalsman would or could not rule on the assignment unless he sold the trailer.

I noted during my investigation that the *Residential Tenancy Act* empowered the Rentalsman to make an order prohibiting a landlord or tenant from contravening the Act. The landlord committed an offence under the Act if he arbitrarily or unreasonably refused permission to assign the pad. I argued that the Act gave the Rentalsman the authority to determine if the landlord was improperly refusing his assent for an assignment and to make an order in the tenant's favour if he found that the landlord had committed the offence.

The Rentalsman accepted my argument and agreed to adjudicate the dispute. (CS 83-029)

Landlords need Rentalsman too

In November 1981, a landlord applied to the Rentalsman for a rent increase in excess of the 10 percent hike allowed by the rent control regulations in order to meet increased mortgage costs.

The tenant agreed to pay the new rent in March 1982, the effective date of the rent increase application. The Rentalsman, however, did not rule on the application until October 1982, at which time he allowed the increase but made the effective date November 1982. This decision left the landlord liable for reimbursing the tenant for the rent increase he had paid between March and November 1982.

The landlord complained to me after the Rentalsman told him that the decision regarding the effective date of the increase was final. The landlord had asked the Rentalsman to change the date of the increase because he could not afford to reimburse the tenant and the tenant did not object to paying the increased rent from March 1982. I advised the landlord that the *Residential Tenancy Act (1979)* allowed the Rentalsman to vary his orders and that he should apply in writing to the Rentalsman for such a variation.

The Rentalsman acknowledged the landlord's request for reconsideration in February 1983 and asked the tenant to comment. In March, the Rentalsman declined to vary his original order because the tenant had not commented on the landlord's request to vary the effective date and because the landlord had not presented any new evidence that was not available at the time the original order was made.

I pointed out to the Rentalsman that the tenant's failure to comment could reflect acquiescence in, rather than disagreement with the variation of the rent increase order. I also suggested that the Rentalsman was not aware that the tenant had been paying the increased rent since March and that such information constituted new evidence.

The Rentalsman agreed to reconsider. When the tenant raised no objections, the Rentalsman varied the date of the rent increase to March 1982. (CS 83-030)

Allegations of bias withdrawn

The tenant of a mobile home park who had appeared before the Rentalsman on a number of previous disputes with his landlord, complained that a particular Rentalsman Officer who had been assigned to hear a new dispute was biased. The tenant claimed that, at a previous hearing, the officer made comments which the tenant interpreted as pressure to accept a resolution which would have been against his interests and he feared that this same officer would not be able to conduct an impartial hearing on the current matter.

In view of the complexity and seriousness of the allegations, my investigator arranged for a joint, face-to-face discussion between the complainant and the Rentalsman Officer to determine more accurately who said what to whom. As a result of this process, the complainant acknowledged that he had misinterpreted certain statements of the Rentalsman Officer and came to the conclusion that the Rentalsman Officer had actually been trying his best to resolve the dispute. Both parties appeared to be satisfied with the outcome of the discussion and the tenant withdrew his complaint. (CS 83-031)

CONSUMER AFFAIRS

The activities of the Consumer Affairs Department are quite diverse. The Department licenses debt collectors, travel agents and car dealers, regulates cemeteries and crematoria, helps people who owe more money than they should, enforces the *Trade Practices Act* and, until October 1983, mediated disputes between businesses and consumers. During 1983, I received 27 complaints about Consumer Affairs. Considering the diversity of the Department's activities, this number appears small. Here are two examples:

Files get lost in the shuffle

A businessman who believed that a credit reporting agency had issued an incorrect report about his company brought the problem to the attention of the office of the Minister of Consumer and Corporate Affairs.

When the Minister's office not only failed to respond to his complaint but also lost a number of documents that were difficult to replace, he turned to us for help. As it turned out, there was a change of ministers shortly after the man took his problem to the Minister's office and his problem was lost in the shuffle. The former Minister's executive assistant and secretary, both now in different positions, recalled my complainant's name, but did not know what happened to the documents.

We asked the Director of Consumer Credit and Debtor Assistance whose office deals with complaints against credit reporting agencies to search for the lost documents in his files, but he could not find anything.

The Director's office offered to apologize to the complainant for the loss of the documents, assured us that it would assist him in recreating some of the lost information and said it would

make every effort to solve his original complaint. With these assurances, we considered the case closed. (CS 83-032)

Better late than never

A debt collector came to me with a complaint about the Director of Debt Collection who had rejected his application for a new licence.

Whenever a debt collector changes employers he must apply for a new licence. In this particular case, the Director was unwilling to grant the collector's request on grounds that it may not be in the public interest to grant the new licence. Unfortunately the Director made his decision without giving the applicant an opportunity to be heard.

When my investigator phoned the Director of Debt Collection, he was already thinking about holding a hearing and it took little effort to persuade him to do so very quickly. (CS 83-033)

CORPORATE AFFAIRS

The Ministry's Corporate Affairs Department administers programs designed to regulate some aspects of the market place. It regulates the activities of credit unions, co-operatives, B.C. trust companies, and monitors the market, as far as real estate, insurance and securities are concerned. The Department also registers partnerships, proprietorships, companies and societies and keeps a register of liens against chattels of all kind.

Again, the diversity of responsibilities is large and the volume of transactions remarkable. For example, the Central Registry registered approximately 369,500 liens and conducted close to 333,000 searches in 1983. During the same year, I recieved 34 complaints about Corporate Affairs, a relatively small number, compared with the Department's work load.

I should add that I declined to investigate six of these complaints. Of the remainder, seven were resolved before I could complete my investigation, and 10 were not substantiated, even though I was able to make a recommendation. The following are examples of the complaints.

Restraint hits car dealers

Car dealers make extensive use of the Ministry's Central Registry to find out whether there are liens on vehicles they purchase or take in trade. A Vancouver car dealer complained that it was impossible to get through to the Registry on its telephone search line.

My investigator tried several times to phone the search line but the line was always busy. A representative of the Registry who appeared to be quite aware of the problem told my investigator that there are five incoming phone lines and that at times, when search staff are absent because of illness or some other reason, the number of lines has to be reduced to four.

The Registry had already considered a number of options to alleviate the problem but their implementation would cost money, which is in short supply. Ironically, the most obvious solution, adding extra phone lines, which in itself is a costly proposition, would not even work because additional staff would be needed to deal with the increased number of incoming search requests.

In short, Central Registry would like nothing better than improve the search line service but finds its hands tied, as long as it cannot hire additional staff. Even though I found the car dealer's complaint substantiated, I was in no position to make a recommendation which would alleviate the problem. (CS 83-034)

What a bummer

A woman wanted to open a store specializing in baby and maternity clothing. Trying to think of a catchy name, she came up with "Baby Bums and Moms." The name was an instant hit with anyone she tried it out on, until she attempted to register it as a company name. An official of the Registrar of Companies told her the name was not acceptable because it might offend some people's sense of propriety.

Determined to call her shop "Baby Bums and Moms," and not entirely convinced that people's taste might be so easily offended, the woman came to me for help. One of my investigators phoned the Deputy Registrar of Companies who promised to think about the matter. It did not take him long to decide; the following day, he informed us that "Baby Bums and Moms Enterprises Ltd." was all right with him. All of which goes to prove that a baby's anatomy and reference thereto are now officially acceptable: bum is not a four-letter word. (CS 83-035)

An ocean by any other name . . .

A complaint which might be considered trivial by some, although certainly not by the complainant, came from the Ocean Kayaking Association of B.C.

What had raised the ire of this group of mariners was the fact that the Registrar of Companies had allowed another group with similar recreational interests to call itself the Sea Kayak Association of B.C.

The names, the complainant said, were too similar and were confusing the public.

I asked my solicitor for an opionion and was advised the the words "Association of B.C." cannot be claimed since most societies in B.C. use them at the end of their names. That left the words "Ocean Kayaking" versus "Sea Kayak," which appeared to be legitimate alternate descriptions of the same activity.

A quick check with the Concise Oxford Dictionary (COD) showed that "ocean" is: "1. Great body of water surrounding the land of the globe; . . . 2. The sea . . ."

"Sea" was described as: "1. Expanse of salt water that covers most of the earth's surface and encloses its continents and island, the ocean, any part of this as opposed to dry land or fresh water . . ."

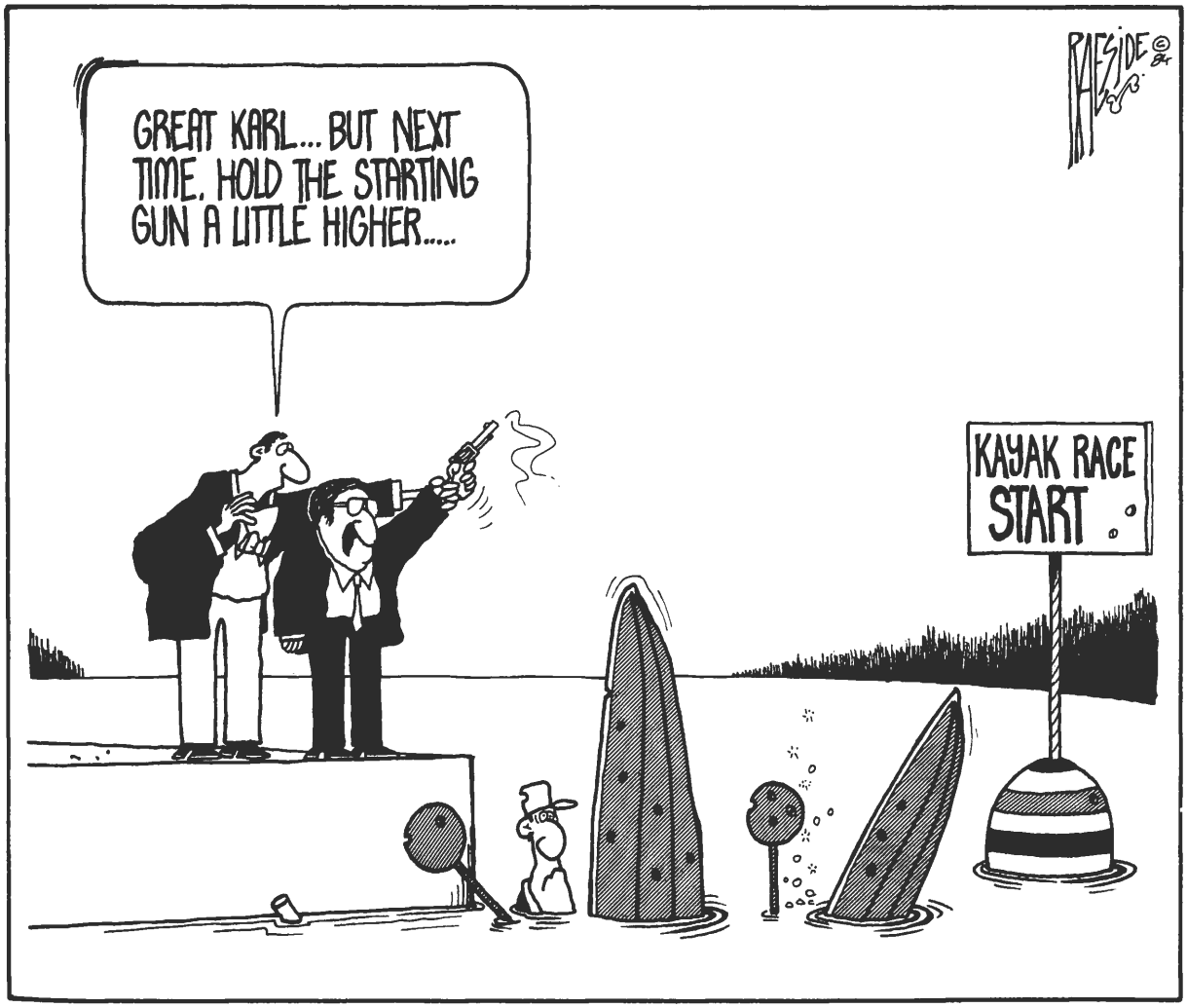
So, while ocean and sea are synonyms, the words themselves are different from each other.

Both societies derive their transportation idea from the Inuit word "kayak" which my trusty COD described as "Eskimo one-man canoe of light wooden framework covered with sealskins." There can obviously be no trade mark-like claim on that word either.

I know that ocean or sea kayaking is a sport or recreation activity distinctive from fresh water kayaking — even though I own a kayak which refuses to take sides, alternating instead between fresh and salt water.

I found that the Registrar had exercised his dicretion and come to the conclusion that the second name was sufficiently different from the first. Further distinction could, of course, be achieved by voluntary means. The societies could decide to moderate their geographical ambitions by using the designation "Association of Vancouver Island," or "Association of Vancouver," rather than "Association of B.C."

As a final suggestion to settle the dispute, I offered my services as a referee in a kayak race from Victoria to Vancouver. The winner could oblige the loser to change its name to "Saltchuk Sealskin Covered Canoe Association of B.C." So far, I might add, I have not been taken up on my offer. (CS 83-036)



LIQUOR CONTROL AND LICENSING

I received a total of 10 complaints about this Branch, not one of which was substantiated. Here are some examples.

The dance that almost wasn't

The vice-president of a social club which holds a dinner and dance for elderly couples once a month complained that the Liquor Control and Licensing Branch had rejected a recent application for a special occasion liquor licence, even though he had provided all the necessary information.

The complainant said the club had previously never experienced any difficulties obtaining special occasion licences for its monthly events. We phoned the General Manager of the Branch who made some enquiries but was unable to find any trace of the club's application. The dinner and dance went ahead as scheduled, after the General Manager saw to it that the licence was issued without delay. (CS 83-037)

Where there's a will, there's a way

Applications for neighbourhood pub licences do not only bite the dust because everybody wants them in someone else's neighbourhood. Sometimes they get lost in a maze of red tape.

That's what happened to a corporation whose application for preclearance for a neighbourhood public house licence had been rejected by the Liquor Control and Licensing Branch. The applicant could have appealed the decision of the Branch within 30 days, but apparently the Branch had not informed the corporation of its right to appeal. By the time the applicant became aware of this appeal right, the statutory appeal period had expired.

At first it seemed that we could do nothing for the complainant because the law is very specific about the appeal period but eventually a way was found. The complainant was to ask the Liquor Control and Licensing Branch to review its decision. If the Branch rejected the application again, the complainant had another 30 days to appeal. (CS 83-038)

Profit yes, but for charity

An ethnic cultural club complained to me after the Liquor Control and Licensing Branch had rejected an application for a special occasion licence to serve liquor at a social event. The club holds social gatherings once a month and intended to use the proceeds to purchase musical instruments for its own use.

After examining the provisions of the *Liquor Control and Licensing Act,* I had to inform the club that special occasion licences are issued only if all profits go to charitable purposes. Raising money for a club's own benefit is not considered a charitable purpose.

The club also fell short of the requirements in another area. Ministry policy, outlined in a booklet published by the Branch, requires an applicant to be a club, a group, an organization or a society registered under the *Societies Act.* My complainants were not registered under that Act. (CS 83-039)

LIQUOR DISTRIBUTION BRANCH

I received only four complaints about this Branch. Three were not substantiated and the fourth was resolved. Here is one case that put a smile on the complainant's face.

A bargain at $6.35, cheers!!

The complainant spotted a good deal in the liquor store and was a little cross when the folks at the other end of the transaction didn't share his enthusiasm.

It all began when a thirsty soul went to a liquor store and, browsing through the shelves, couldn't believe his good fortune. There, right before his eyes, were quite a few four-litre bottles of B.C. red wine with a sticker price of $6.35. Knowing a good buy when he saw one, my complainant took four of the bottles to the cash register, where he was told it was all a big mistake. The bottles really cost $11.95, and that's what he would have to pay. None too happy, he went to the store clerk's supervisor and was again informed that he would have to pay the regular price. Since at $11.95 the wine wasn't such a good deal, he decided to buy one bottle only. Still convinced, however, that he'd been had, he complained to me.

Initially, the Liquor Distribution Branch told my investigator that the complainant should have received one bottle at the lower price because it was Branch policy that in case of a pricing error, the lower price applied, but to one bottle only.

When I pressed a little harder, the Liquor Distribution Branch agreed to reassess its policy. As a result, my complainant was able to get four bottles, which he originally intended to buy, at the price of $6.35. More importantly, the Branch changed its policy: if a product on the Liquor Store shelves is marked lower than it should be, it must be sold at the marked price. That goes for one bottle or 50 bottles. Every bottle that carries a price sticker will be sold at that price. (CS 83-040)

MINISTRY OF EDUCATION

Declined, withdrawn, discontinued	13
Resolved: corrected during investigation	12
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	9
Total number of cases closed	35
Number of cases open December 31, 1983	7

I receive many complaints each year about matters arising out of the public school system. Most of these complaints are not within my jurisdiction because they concern decisions of school administrators and local school boards. My staff will attempt to identify the persons within the school system the complainant should contact, and refer the complainants to them. Occasionally, we will discuss the complaint with someone in the Ministry to at least provide the complainant with some background information. One complaint, which was out of my jurisdicition because it concerned a matter of fiscal allocation, related to the construction of a new school.

One new school — coming up

The parents of children attending the public school in San Josef asked the Ministry of Education to build a new school. When their request was rejected, they complained to us.

The parents claimed that the existing school was a safety hazard to their child, and was beyond rapair. The Ministry had told the parents that its restricted budget did not allow for the construction of a new school in San Josef.

Since funding for the construction of schools is a matter of fiscal allocation, rather than one of administration, I found the complaint non-jurisdictional. The Ministry eventually provided funding for a new school although not as a result of my involvement, and the parents were delighted with that resolution. (CS 83-041)

Most of the complaints against the Ministry of Education within my jurisdiction concern the B. C. Student Assistance Program. This program provides funding to assist young people to attend universities, colleges, and vocational institutes. During 1983, the Ministry made a number of changes to the criteria which students must meet to qualify for financial assistance. These changes resulted in a number of complaints to my office from students who were unable to meet the new, more restrictive, criteria.

When no obvious administrative error has prompted the complaint, I usually refer the student to the Ministry's Appeal Committee which can review the Ministry's decision. After monitoring a number of complaints during the appeal process, I became concerned about a specific problem and decided to begin an investigation on my own initiative.

Reasons will be given

Students who apply for grants from the B.C. Student Assistance Program and are dissatisfied with the amount they received may state their case before an Appeal Committee.

Last year it came to my attention by way of several complaints that the Appeal Committee did not provide reasons to students for its decisions. In my 1981 and 1982 Annual Reports I outlined the requirement of administrative fairness which includes the provision of reasons for administrative decisions. Having to provide reasons for a decision helps prevent arbitrary or ill-considered decisions and fosters public confidence in government administration.

I raised this concern with the Chairman of the B.C. Students Loans Authority who is responsible for the appointment of the Committee's members and its terms of reference. The Chairman agreed to direct the Appeal Committee to provide reasons for its decisions in the future. (CS 83-042)

Some of the complaints against the Ministry are from employees who feel they have been treated unfairly by their employer — the government.

Ministry pays up

A woman who had been working for the Ministry of Education on a casual basis from 1975 to 1980, marking assignments completed by students of the Ministry's Correspondence Branch, complained that she never received any vacation pay, as provided for by law.

Remuneration during those years was on a piecework basis. My complainant was paid a certain amount for each paper she marked. Although the Ministry deducted money for income tax and unemployment insurance from her pay cheque, it never made any provisions for vacation pay.

I recalled an earlier case in which a person who had worked for the Correspondence Branch under similar conditions, had not received any vacation pay either. As a result of my investigation at that time, the Ministry made retroactive payments to a number of persons who were entitled to vacation pay for the years 1978 and 1979. My present complainant was among those who received an unexpected cheque in April of 1981,

but she now noticed that she should also have received vacation pay for 1975, 1976, 1977, and 1980.

It turned out that she was not entitled to vacation pay for the year 1980 because that year she provided services as an independent contractor and could not be considered a Ministry employee. On my recommendation, however, the Ministry issued a cheque for vacation pay covering the years from 1975 to 1977. (CS 83-043)

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

Declined, withdrawn, discontinued	8
Resolved: corrected during investigation	3
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	1
Total number of cases closed	13
Number of cases open December 31, 1983	9

I do not receive many complaints against the Ministry of Energy, Mines and Petroleum Resources, but the ones I do get are often complex. Most of the complaints involve claim-staking problems that resulted from disputes between miners or from the Ministry's administration of its legislation. The following two case summaries are typical of the complaints we receive against the Ministry.

No gold in that there red tape

Two prospectors disputed each other's mineral claims in a remote area. Following an inspection by a ministry employee, the Chief Gold Commissioner informed one prospector that his claim would be disallowed because of improper staking.

The prospector was familiar with section 50 of the *Mineral Act*, and immediately advised the Minister that he wished to make representations. Shortly afterwards, he delivered three statutory declarations as evidence, and requested a decision on the matter.

Ministry officials appear to have been uncertain whether the law called for a personal appearance before the Minister, even though this had not been requested by the prospector. Under section 50(4) of the *Mineral Act*, the Minister should have "afforded that person a reasonable opportunity to make representations to him not later than 60 days after the service of the notice under subsection (3)." The notice was dated November 8, 1978, and had been served a few days later. Thus, any hearing thought to be necessary should have been held by early January 1979. The prospector regarded the material he had already provided as his "representations," but he was prepared to appear in person if the Ministry considered it necessary. What he really wanted at this point was a decision.

In December 1979, after the prospector and his lawyer had exchanged numerous letters and phone calls with the Ministry, they complained to me that they could not get a decision. Soon after I notified the Ministry of my investigation, the complainant was given a hearing date. He received a favourable decision in February 1980.

Fifteen months had elapsed, however, since the service of his notice to the Ministry, not just 60 days, and during this time my complainant had lost the opportunity of various business deals involving the claim. He had also received a lawyer's bill for $2,100 for all the letters, phone calls, and discussions occasioned by the Ministry's delay. He felt he should receive some kind of compensation.

As I investigated the reasons for the delay, Ministry officials explained that the *Mineral Act* had been proclaimed only a short time earlier, and the hearing provided by section 50 was an innovation. They needed a procedure to follow in a hearing, they said, and had asked their solicitor in the Attorney General's Ministry for advice. According to the Chief Gold Commissioner's staff, that was where most of the delay had occurred. I could not verify this from the Ministry's own files, which were very skimpy and contained few records of discussions or decisions on this matter. I felt that verification might be possible from the solicitor's files, in the Attorney General's Ministry, but these were protected by the solicitor-client privilege which existed between the Ministry and its legal advisor. At my suggestion, the client Ministry waived its privilege, and asked its solicitor to provide me with the files.

This initiated a new round of delays. The solicitor first advised my investigator that despite the client's waiver, he could not release the files without his superiors' approval. This apparently took weeks to get. Then he advised that his Ministry did not keep just a single file on this matter, but relevant papers were distributed in a variety of files, whose other contents were not relevant to

my investigation. These files would have to be perused, and a file of relevant material would be assembled, but this would take time.

Then my investigator was advised that the Attorney General's Ministry had just initiated a study on the legal ownership of the documents I had requested, and this would take more time to complete. Depending on the outcome of this study, I might still eventually be refused access to the papers. At long last, I was provided with certain documents, from which I concluded that the solicitor had actually taken only about two months to respond to the request for a procedure.

To summarize the time frames involved, at the time (May 1979) the Ministry of Energy, Mines and Petroleum Resources asked its solicitor for recommendations on procedures to follow during a hearing:

— twenty-one months had passed since the Mineral Act had received assent, that is to say, the final version of the Act, including the appeal provisions, were known for at least this length of time;
— seventeen months had gone since the Act was proclaimed effective;
— six months had elapsed since the Ministry was aware that an appeal had been made under section 50 of the Act.

Furthermore, even after the solicitor had provided the Ministry in July 1979 with the suggested procedures (together with a recommendation that hearings "proceed forthwith"), a further seven months elapsed before a hearing was actually held and a decision given. Apart from one memo written by an Assistant Deputy Minister in April 1979 (". . . decisions are overdue . . . the two disputes should be resolved as soon as possible . . .") I found little evidence of any sense of urgency.

Most government agencies suffer from delays at one time or another. In retrospect, my office could have pursued this complaint with a little more alacrity and I am certainly aware of how delays occur when demands on a system exceed the resources available. However, when a delay is clearly identified, I believe it is incumbent on the agency responsible to rectify the matter to the best of its ability.

I concluded that the complaint of unreasonable delay was certainly substantiated. I could not accept the excuses offered by the Ministry. Officials had, in my opinion, clearly shown poor judgment and no anticipation with regard to the new provisions of the Mineral Act, and their treatment of my complainant showed little concern for the problems and needs of the industry and the public they purported to serve.

Despite my exchanging several letters with the Deputy Minister, he rejected my recommendation that the complainant be reimbursed at least for his legal expenses relating to the period of delay. His final word on the matter:

". . . of course, both of us have our duties to fulfill. One of mine is to shepherd my Ministry's portion of the public purse. Therefore, I cannot take the unprecedented step that you suggest in the penultimate paragraph of your letter to me . . ."

The concept of paying the costs incurred by others as a result of one's errors or negligence may indeed be unprecedented in this Ministry. However, it has been accepted by other authorities here in B.C., as well as in other provinces or countries where Ombudsmen have made such recommendations. Regrettably, I had to close the complaint as substantiated, but not rectified. (CS 83-044)

Former partners fight over claim

A woman complained that the Chief Gold Commissioner had unfairly cancelled her husband's placer lease and awarded it to his partner. Her husband's application to extend the lease was made after the term of the lease had expired and, therefore, under Section 8 of the *Mining (Placer) Act*, the lease had legally expired. The former Chief Gold Commissioner, however, usually did not enforce this section of the Act and "extended" the lease. Unfortunately, an expired lease cannot legally be extended under the Act and the former partner who realized that the extension was improper applied for and was granted a new lease for the area.

The issue was further complicated by a number of legal and contractual disputes between these former partners. Because the private disputes could best be settled through available legal remedies, I declined further investigation of the complaint.

Still, I was concerned that the Ministry had lulled these people into a false sense of security by apparently extending their lease. During the course of the investigation it also became apparent that some other miners may not hold valid leases because of the Ministry's inconsistant administration of Section 8 of the *Mining (Placer) Act*.

As a result, I have opened an Ombudsman initiated investigation against the Ministry on Section 8 of the Act. (CS 83-045)

MINISTRY OF ENVIRONMENT

Declined, withdrawn, discontinued	21
Resolved: corrected during investigation	38
Substantiated: corrected after recommendation	5
Substantiated but not rectified	1
Not substantiated	47
Total number of cases closed	112
Number of cases open December 31, 1983	52

Comparing the number of complaints involving the Ministry of Environment during the past three years, I find that my office closed 30 per cent more in 1983 than in 1982. The year before that, there was an increase of 43 per cent.

In other words, during the past two years the complaint rate for this Ministry has almost doubled. This increase is more or less proportional to the overall increase in complaints during the same period, and in terms of absolute numbers Environment still ranks seventh out of 17 ministries.

This year, the Water Management Branch clearly was the chief target of complainants. Of the complaints we closed, 38 per cent were directed at water licensing problems, water utility rate increases, and various flood control or drainage disputes. More than half of these, however, were resolved by the Ministry's staff without the need for written recommendations.

An eight-year paper war has happy ending

In April 1969, several days of extremely heavy rain in the area around Trail resulted in flood damage to many properties. One property owner, living some distance outside the municipality, suffered damage when a nearby creek changed its course and flowed across his land, flooding the basement of his home and leaving mud, silt, and gravel on his grounds.

After an inspection and some exchange of correspondence with Ministry officials, this man received a letter from the Minister, agreeing to pay half the cost of constructing a dyke that would prevent a recurrence of this episode. The letter set a maximum of $630 for the Ministry's share, and required the property owner to follow certain procedures.

What happened next is not quite clear. The Minister's letter set no date for completion of the project, so the property owner worked on the dyke, on and off, for the next three or four years. He had already obtained a formal written approval for the work, as required by the *Water Act*.

When he finally returned to the Ministry with his bills and tried to collect $420, he was refused. He was told that he should have completed the project and collected his reimbursement in the first year. The Ministry also claimed that he had not followed all the procedures set out in the Minister's letter. After continuing the argument for seven years, during which a phenomenal number of letters were exchanged with various officials and politicians, he brought his complaint to me.

I was unable to determine exactly what had been said twelve or thirteen years earlier. According to the Ministry's version, my complainant had been told to get estimates for the job and to obtain a Ministry official's agreement to the costs and specifications before proceeding. This would ensure durability of the work, and would control the costs. According to the complainant, he was told his project was too small to take up the officials' time when they were busy with problems involving large-scale coal development in the area. He was to go ahead, and bring in the bills and details later. I found both versions quite plausible. He might well have received both messages, at different times.

In my view, at this point the important verifiable facts were that the complainant did, in fact, build a dyke in the proper location; that the dyke was still standing, and was therefore presumably of adequate workmanship; and that he had actually spent the money he was claiming, and was not attempting to defraud the government. Taking everything into consideration, I felt the decision to refuse payment was unjust, and I recommended that the complainant be paid $420 as originally claimed. The withholding of interest for the intervening years would recognize any procedural irregularities on the part of the complainant.

My recommendation obviously raised some concerns with Ministry officials who did not wish to set a precedent for the payment of claims when a claimant had not jumped through all the required hoops. In view of the unique features of this case, however, and considering the time already spent on what it considered a minor matter, the Ministry eventually agreed to my proposal. The complainant also accepted the solution I had recommended, and the problem was rectified eight years after the paper war had begun! (CS 83-046)

Not illegal but highly unusual

In one area of the Okanagan Valley there is a medium-sized lake close to, but not connected

with, the Okanagan River. The soil in this area is very porous, and when the river level is high, during the spring freshet for instance, the lake rises, fed by underground seepage, resulting in the occasional flooding of lakefront properties.

About nine or ten years ago, staff of what is now the Water Management Branch in the Environment Ministry persuaded the residents of the area that it would be advantageous for them to form an improvement district. The district would be responsible for the operation of a pumping station to prevent flooding, by pumping excess lake water back into the nearby river. The Ministry would share the capital costs, but the operating costs would be covered by the improvement district, which would levy taxes on members, estimated at $10 or $15 a year for a small property.

The usual procedure in forming an improvement district was to circulate a petition amongst the potential members, so that people could indicate their support for, or rejection of, the proposal. If a substantial majority was in favour, the petition would be sent to Cabinet via the Ministry officials, and the necessary Order in Council would be passed, to form the district and to establish its boundaries. The procedure was used in this case, and the new improvement district was created.

Shortly before this, the owner of a parcel of land, not bordering on the lake, had subdivided the property to create three small residential lots for members of his family, and had sold the rest. Due to an oversight, the petition did not take into account this subdivision. The new owner had signed the petition as though he owned the entire original parcel. He was in favour of forming the improvement district but the family members owning the three small lots were not aware of the petition, and did not sign it. If they had, they say they would have opposed the plan because they felt the improvement district would not have benefitted them in any way; and since their properties were along the outer boundary of the proposed district, a slight adjustment on the map would have left them out of it. In fact, they were included in the new district, though they did not know it.

The events of the next seven years are hard to explain. To put it briefly, a major dispute soon arose between the trustees of the new improvement district and the Ministry's staff. Because of this, the trustees did not claim the Ministry's promised share of the capital costs, but took other steps which resulted in a rapidly-escalating debt. Neither did they pass by-laws enabling the district to tax members, and therefore no repayments of the debt were ever made. Despite many irregularities, it was not until 1982 that the government placed the improvement district in receivership. (By then, responsibility for monitoring improvement districts had been transferred to the Ministry of Municipal Affairs.)

It was only after about six years that the three families on the subdivided lots discovered that they were in the improvement district. They had never been notified originally of their membership, nor had they ever received a tax notice since none had ever been sent out. In 1981 they contacted the trustees, who told them that a boundary adjustment to exclude them could be arranged. After receivership was imposed, however, the receiver advised all members of the serious financial situation, and drew up a plan for retiring the debt. Even small properties would share in the heavy tax load, and "resignations" from the improvement district could not be considered. The three families complained to me about the way they had been unknowingly honoured with unwanted membership!

As the facts emerged, it became clear that although the way my complainants had been included in the district was not contrary to law, it was highly unusual. I felt it was simply wrong and unfair that a citizen could unwittingly and entirely without notice become a member of an improvement district and could remain so for years without his knowledge, consent, or an opportunity to object to the situation. My investigation revealed an extremely complex and tangled situation, which was eventually resolved by a general agreement between all parties involved.

For my complainants, the Ministry of Municipal Affairs agreed that the improvement district would be terminated as soon as a suitable alternative arrangement could be negotiated with either the local regional district or irrigation district; and the complainants would be excluded from the taxation area allotted to the new operator of the pumping facility. The complainants were satisfied with this solution. For the two authorities (Ministries) involved, I think the moral of this story is that where a legal requirement exists for the supervision of improvement districts, water utilities, etc., that duty must be discharged from the start. Allowing an unsatisfactory or illegal situation to continue for a number of years, merely lays the beginnings of what may later develop into a Gordian Knot. (CS 83-047)

Three other areas each triggered approximately 14 per cent of the complaints involving the environment. They are the Provincial Emergency Program, the Waste Management Branch, and the Fish and Wildlife Branch. A major portion of these were resolved or were not substantiated.

One home lost is not a disaster

A homeowner who was losing his property to repeated landslides complained that the Provincial Emergency Program had rejected his request for aid.

The man's home was located on property bordered by a clifftop, and overlooking the ocean. Early in 1982, a series of landslides occurred, as a result of which my complainant and his neighbours lost much of their land to the sea, as the edge of the cliff moved inland towards their homes.

For the neighbours, the loss was restricted to land surface lying close to the original edge of the cliff, but my complainant was not so lucky. A V-shaped notch brought the cliff right up to a corner of his home, and partly undermined the foundation. When the home was declared unsafe for habitation, my complainant tried to get compensation or relief from his insurance firm, from the Red Cross, from the local municipality, and from the Provincial Emergency Program, but all in vain. He felt the Emergency Program should have provided help on this occasion.

I examined the legislation and the Ministry's policy and guidelines for providing relief. Each year, many people in different parts of the province lose their homes or land because of flooding, avalanches, landslides, etc. but the guidelines and policy, approved by the Cabinet, envisage compensation or relief only in special circumstances.

I cannot at this point go into all the details and subtleties of the guidelines, and in any case, they are subject to re-confirmation by the Cabinet as each particular incident is dealt with. Generally speaking, however, disaster aid is provided only in cases where a large number of people is involved, and the economy of a whole community may be affected. No compensation is paid for insurable losses. Each claim is subject to a "deductible." Compensation for dwellings is made only to owner-occupiers, and there is a ceiling on each claim. For contents, only items essential to everyday living may be claimed.

After examining the Ministry's report and recommendations on this particular incident, I felt that the policy and guidelines had been followed. I advised the complainant that I was unable to substantiate his complaint. He then raised a further question — were the guidelines fair? Why did it have to be a "group disaster" before aid was given? The Ministry's argument was that it had a limited amount of money to use for disaster relief. It therefore tried to utilize its resources where the need was judged to be greatest, i.e. where a community's viability was threatened, or other special circumstances existed, in addition to individual needs.

Clearly, whenever a limited sum of money is to be distributed, criteria will be established; and certain persons, or groups of persons, may be excluded. In other words, there may often be discrimination. The question is whether such discrimination is illegal, improper, or intrinsically unfair. Although I am not entirely comfortable with the Ministry's arguments, in this case, I finally decided that I could not substantiate the complaint.

This case is typical of many which I hear of each year, where relief is not given despite evidence of hardship suffered. (CS 83-048)

Reasonable or exorbitant?

A man living in a remote area of northern of B.C. complained to me about the destruction of his home in a forest fire.

Not only was he unhappy about the way the Ministry of Forests went about fighting the fire, but he was aggrieved by the refusal of the Provincial Emergency Program to provide compensation for his loss.

We found that he had been refused help for several reasons. First, this was a seasonal residence, not a permanent and only home. Secondly, although this was a relatively large fire, which burned for over a month, only a small number of persons had lost their homes. It was not considered a "community disaster", which is one of the criteria generally used for a Cabinet decision to pass an Order in Council authorizing disaster relief. Thirdly, he had not insured the house against fire. Provincial Emergency Program guidelines preclude compensation if insurance coverage is available "at reasonable rates."

My staff contacted several insurance firms, and found that premium estimates for fire coverage varied between $1,200 and $2,000 a year. The Ministry staff considered this to be "reasonable" in view of the remoteness of the area, the lack of fire-fighting facilities, and the likelihood of fire. They argued that persons who chose to live in remote areas must be prepared to put up with the resulting high costs or lack of services such as hospitals, police, and fire-fighting. The complainant considered the premiums anything but "reasonable" in relation to his income.

Decisions of this type are always difficult. At what point does a premium become unreasonably high? In reaching my conclusions, I took into account the fact that others had made similar claims, and the Ministry had been consistent in the application of its policy; and that there were other reasons given, besides the insurance ques-

tion, for rejecting this request. I advised the complainant that I could not substantiate his complaint. (CS 83-049)

Ministry not negligent

A man living in the south-east corner of British Columbia suffered from various allergies and respiratory problems. He was upset when a large coal firm near his residence emitted for several days what he described as a "huge dust storm" of coal dust.

He was more than upset when he discovered that the firm was not only exceeding the emission limits specified on its waste management permit, but that Ministry officials were apparently tolerating this. He complained to me that the Ministry was not doing its job, and was causing health problems for him and many others.

I found that the firm had applied for a variance from the terms of its permit, and that the Minister, after consulting with the local labour union and the municipal authorities, had issued a variance order. The firm was now allowed to emit considerably more particulate matter than had been allowed in its original permit, and the variance order was effective from February 1983 to December 1985, unless amended further by the Minister. The issuing of such orders at the Minister's discretion is authorized by section 13 of the Waste Management Act. It was therefore clear that the Ministry's staff was not being negligent by tolerating the higher dust levels emanating from the firm's premises.

I advised the complainant that I could not substantiate his complaint, but pointed out that the Minister still retained the discretion to cancel or change the original variance order. If he felt that there were good reasons why the order should be changed, he should send his arguments to the Minister for consideration. (CS 83-050)

How is the ozone out there?

One complainant had a deep concern for spaceship earth. He wanted to discard an old refrigerator at the municipal dump, but he realized that when the refrigerant pipes eventually rusted away, several litres of freon would be released into the atmosphere.

He was aware of the international concern that had been voiced in recent years that freons were reacting with and depleting the ozone layer around the earth, and that this might have serious climatic and health effects. He knew that several national governments, including ours, had restricted the use of freons as propellants in aerosol products. And he wanted to avoid contributing to the problem, by having the freon removed from his refrigerator before he dumped it. When the Waste Management Branch of the Ministry could offer no advice or assistance, he complained to me.

My investigator, a former chemist, was as surprised as the complainant when, after contacting both federal and provincial environment officials and SPEC in Vancouver, he found that this particular disposal problem apparently had not been addressed either by government authorities or by the environmental societies.

The authorities pointed out that, despite concerns for earth's ozone layer, the freons were relatively inert, non-toxic substances, not regarded as being in the same undesirable class as carbon monoxide or sulphur dioxide. The laws did not specify emission limits for freons. Further, refrigerator repairmen working on cooling units often fill and empty the pipes several times, releasing unwanted freon to the atmosphere each time. One more "shot" as the machine decayed in the dump was therefore not regarded as significant.

Since freon evaporates almost instantly at normal temperature and pressure, recovery from old units would require the use of high-pressure pumps and containers. With only a few litres involved in each unit, and a lack of public awareness or commitment to a recovery program, the officials felt such an effort was not practical.

I therefore found the complaint not substantiated, and referred the complainant to his M.P. and M.L.A. if he felt that the governments should develop legislation or programs to deal with this concern. (CS 83-051)

The Conservation Service is the "enforcement arm" of the Ministry, but the public often confuses it with the Fish and Wildlife Branch. Early in 1983, I was contacted by several persons who were upset about the distribution of sustenance permits by conservation officers.

Discrimination charge not substantiated

A native Indian complained to me that his son had been refused a sustenance permit by the Ministry's Prince George regional office. He attributed the refusal to racial discrimination.

Sustenance permits are special hunting permits which authorize the holder to hunt the named species of animal after the end of the usual hunting season. In each region, only a strictly limited number of these permits were issued, based on the Ministry's estimate of species population in that area. They are issued only to people judged to be in need, but because of the high unemploy-

ment rates in B.C. during the winter of 1982-83, the Ministry relaxed its criteria a little, and received an unusually large number of applications when this became known.

My investigation revealed that the complainant's son had applied for a permit around February 10, close to the end of the period during which most sustenance permits were valid. Even if he had received a permit at once, he would have been able to hunt only for a few days. In fact, at the time of the application all available permits for the area had been issued. The refusal was therefore not based on racial discrimination, but on the unavailability of further permits, and I found the complaint not substantiated. (CS 83-052)

By the 1983-1984 hunting season, the Ministry had established new procedures which, I believe, will eliminate most of the problems encountered during the preceding season.

In my 1982 Annual Report, I referred to public concern about the use of pesticides. This usually results in complaints against the Environmental Appeal Board, but occasionally the Pesticide Control Branch is the subject of a complaint.

Air pollution, the verbal kind

An employee of a store selling plants and gardening products complained about the behaviour of a Ministry official in the store.

According to the Pesticide Control Act and Regulations, any customer purchasing certain types of pesticides from a store must, at the time of purchase, be given an oral warning about their use by a suitably-trained employee. From time to time, "unmarked" Ministry officials buy such products from stores, to see whether the law is being obeyed. In this case, an official of the Pesticide Control Branch bought an insect-killing hang-up strip. Apparently the store clerk did not realize that a warning was required with this product, and gave none.

According to the complainant, the official moved away from the counter, turned, and began yelling at the two employees present about the legal infraction — "He just blew up at us, in front of all the other customers!" — and left. Both employees were very shaken by this incident, but when one of them later phoned the Branch to complain about it, she was put through to the same official, who reminded her that the store's licence could be suspended because of the infraction that had occurred.

She then complained to me, though the store manager had some concerns that the complaint might result in a reprisal in the form of a licence suspension. My investigator therefore agreed not to proceed with the investigation or notification of the Ministry for a week or two, so that we could be sure that any licence suspension originating in this time was not a reprisal.

Once we started the investigation, the matter was quickly resolved. The official said that he had felt very frustrated on this occasion because the store had made several similar errors in recent months, and had been warned before. However, he agreed that his behaviour had been inappropriate, and he wrote a letter of apology to the persons involved. Also, a meeting was arranged at which he and the store's staff could discuss the legal requirements in a calm atmosphere, to avoid any future problems.

I believe it does credit to the dignity and maturity of both parties in a dispute when an error is frankly admitted on one side, and an apology is accepted in a generous spirit on the other. Unfortunately, this kind of attitude is not encountered frequently enough. (CS 83-053)

As far as the Environmental Appeal Board is concerned, there have been no changes in the unsatisfactory situation I described under "Specific Issues for the Attention of the Legislative Assembly" in my 1982 Annual Report. Most members of the Board, and the Chairman, were re-appointed when their terms of office expired in December 1983.

There were relatively few complaints concerning the Board this year, but one of them received some publicity in the media. It arose as a result of a resolution passed at a conference of Environmental Non-Governmental Organizations ("ENGO"), which noted that out of 165 appeals heard during 1982 (against the issuing of pesticide permits), "none was upheld by the Environmental Appeal Board." The conference, therefore, asked me to investigate the bias demonstrated by this record.

While it may be true that no appeals were successful in 1982, it is also true that the Board did strengthen the conditions and precautions attached to some of these pesticide use permits. After some preliminary work, I declined to pursue this complaint because I did not feel that an investigation would benefit the complainant by leading to a satisfactory outcome. It is not my function to substitute my decisions for those a board must make, and I felt this complaint was directed at the Environmental Appeal Board's values and priorities, rather than the administrative procedures used at hearings. I suggested to ENGO that it consider making representations to the Minister, requesting a change in the regulations to provide values or guidelines to the Board. The present legislation provides virtually no guidance.

I suspect that any reduction in appeals to the Board, or complaints to my office about the Board, arises more from the inhibiting effects of the $25 fee for

each appeal (since 1982) and the knowledge of past results, than from anything else.

One complaint which came to my attention was very similar to the complaints which led to my major investigation in the Garibaldi case in 1981. The details of the latest complaint involving substantial property damage as a result of a natural disaster, are outlined below.

Disaster victims need more consideration

On February 11, 1983, an avalanche of mud poured down a creek, running through the village of Lions Bay, off Highway 99, between North Vancouver and Squamish.

The torrent of debris claimed two lives and destroyed the homes and properties of four families. Insurance for natural disasters of this type is very difficult to obtain and none of the affected parties had coverage for what were in some cases enormous losses.

Not long after the disaster, we received complaints from four families in the Lions Bay area, including three of the residents whose property had been severely damaged or destroyed by the debris torrent. Some of the complaints involved the Village of Lions Bay and were not within my jurisdiction. Other questions required legal advice.

Several of the complainants, however, told us that the provincial government had refused them access to certain reports and documentation regarding the geological hazards associated with Alberta Creek. The property owners were anxious to get this information before August 7, 1983, the deadline by which they had to decide whether or not to accept relief money offered them by Cabinet order under the provisions of the *Flood Relief Act*. The complainants felt somewhat uneasy because attached to the government's offer was a condition that they would forego any right to sue the Crown, should they believe that negligence on the part of provincial government agencies contributed to their losses.

Of primary importance to the complainants was a geological engineering study prepared for the Ministry. Several Cabinet Ministers visited Lions Bay shortly after the disaster and the complainants were initially assured that this report, known as the Thurber Report, would be made available to them by mid-March, 1983. In late July, however, a senior official of the Ministry of Transportation and Highways informed my investigator that the report would not be released. On July 27, 1983, I wrote to the Minister of Transportation and Highways requesting that he confirm this information and asking that he reconsider his decision to provide reasons for the government's refusal to release the report.

I expressed my concern about ongoing delay and stated my view that any expert information bearing on the geological hazard should be made available to the people most closely affected and as soon as possible. I noted that the Thurber Report was financed with public funds and that public commitments had been made for its release.

I did not receive a reply to this letter, but subsequent inquiries by my assistant to a senior official of the Ministry of Transportation and Highways revealed that the Thurber Report had been completed and was made available to the public on August 8, 1983.

Payments under the *Flood Relief Act* had been authorized on July 4, 1983 and were being administered by the Provincial Emergency Program of the Ministry of Environment. I proposed to the Deputy Minister of Environment that his Ministry extend the deadline for acceptance of the offers until the Thurber Report was released and the families had had a chance to review it.

The Deputy Minister did not agree with my recommendation but extended the settlement date by several weeks to August 30, 1983. After a meeting with the Minister of Environment, the Honourable A. Brummet, the deadline for acceptance of the Ministry's offer was again extended, until October 24, 1983.

Some of the property owners had already accepted the government's offer but two others were reluctant because they would have recovered only a portion of their enormous losses. They were also worried that they might not be able to rebuild on their land because it was not clear whether the Ministry of Transportation and Highways would build a catchment basin on Alberta Creek to protect Highway 99, or whether the Ministry of Environment would complete the work it had under consideration for the protection of properties adjacent to the Creek.

They also worried about a 1973 municipal bylaw which now prohibited construction of homes within 100 feet of the creek banks. This bylaw was passed in 1973, after the complainants had built their homes. If enforced, it meant that they could not rebuild their homes, even if the safety concerns did not exist. However, a report commissioned by area residents indicated that the area was not safe to rebuild on under present circumstances. With all these uncertainties hanging over their heads, and still unable to assess the true magnitude of their losses, the two property owners felt they could not properly decide whether to accept the Ministry's grant offer or pursue legal action against the provincial government.

The Ministry of Environment assured me repeatedly that the offers to the complainants were being made on humanitarian grounds to alleviate some of the hardship they had suffered In no way, officials stressed, should the offers be viewed as compensation. On the other hand, the government would not budge from its condition that the complainants must sign a release from all future legal claims before they could get any money.

The complainants were in an untenable position and I recommended that the Ministry of Environment withdraw its requirement that the complainants agree not to sue. As an alternative, I suggested that the Ministry withdraw its deadline for acceptance of the grant offers until the complainants had sufficient information to make an informed decision.

The Ministry refused to implement these recommendations but allowed one complainant to accept the money offered to her without obtaining the release of her tenant, an unfair condition which had previously been imposed. (CS 83-054)

Although I have received few complaints about the Marine Resources Branch of the Ministry, one complaint, which I received in 1980, consumed a good deal of both my time and that of the Ministry.

A mussel ache

My complainant had developed a new technique through which he hoped to make mussel harvesting a profitable industry in British Columbia. Mussels are a shellfish which is found in plentiful quanitities along our coastline but the problems associated with harvesting have usually made it an uneconomic enterprise.

The complainant raised a number of important issues, but one of them involved a basic principle about the relationship between government and private industry. In this case, the complainant started his business employing his new techniques in 1979. By 1980, he had achieved sufficient production that he began to deliver his mussels to market and was optimistic about the future. However, early in 1980, the Marine Resources Branch granted fifteen thousand dollars to one of his competitors to assist in the development of that company's mussel harvesting techniques (strictly speaking the money was not a grant, but rather a contract for the company to provide the Ministry with information about the development of its harvesting techniques). This money was matched by an equal amount from the federal government. My complainant argued that with these grants, the other company would be able to undercut his prices in the market place and would force him out of business. (In fact, the complainant later left the mussel harvesting business but not because of unfair competition from his competitor.)

I agreed with my complainant. I believed that the provision of public funds to ensure the economic viability of the competitor's business, especially in a developing industry which had only two serious producers, and for which there was a limited market, was unjust. I felt that with the grants of money from the government the competitor had a substantial advantage over my complainant.

After hearing the Ministry's arguments and reaching my decision, I recommended that the Ministry enter into a similar contract with my complainant. The Ministry agreed to this on the condition that the money to be paid would depend upon the quantity and quality of the information given to it by my complainant about his mussel harvesting techniques. I believed that this would rectify the injustice which my complainant had suffered.

My complainant agreed to this plan and produced a report for the Ministry about his mussel harvesting techniques. Upon review, the Ministry decided that the report was only worth six thousand dollars, while my complainant felt he should receive fifteen thousand dollars. In an attempt to resolve the impasse, I suggested that the parties refer the report to an outside expert and agree to be bound by his opinion as to the value of the report.

The Ministry agreed to this plan, but the complainant refused to. He felt that the Ministry was being unreasonable, and given his experience with the Marine Resources Branch, I think that he had some justification for feeling that way. However, on this issue I disagreed with the complainant and refused to take further action on his behalf. Consequently, I closed my file and concluded the complaint as not rectified. (CS 83-055)

MINISTRY OF FINANCE

Declined, withdrawn, discontinued	13
Resolved: corrected during investigation	41
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	48
Total number of cases closed	103
Number of cases open December 31, 1983	32

Property tax and social service tax continued to provide the most frequent sources of complaints about the Ministry of Finance — as one might expect, considering the number of people affected by these two taxes. As in previous years, Ministry staff continued to show a helpful and co-operative attitude toward my investigations.

PROPERTY TAX PROBLEMS

I received a fairly wide variety of complaints about property tax problems. Some of these had to do with notices, others were concerned with late payment penalties, and still others related to collection procedures. In one case a number of people complained because they had received the right tax notice, but the wrong tax.

The light switch caper

Several people from the Burns Lake area complained about a street lighting levy on their 1983 property tax notices.

Some of those who contacted me had been in favour of the street lighting project, while others had opposed it. All, however, agreed that the amounts on their tax notices were significantly higher than they had expected.

After contacting both the Ministry of Municipal Affairs and the Surveyor of Taxes, I found that a mistake had been made in the calculation of the street lighting levy. There were two 'specified areas' in which such levies were to be assessed,

and it appeared that the data for the two areas were accidentally switched when the necessary information was passed on to the Surveyor of Taxes. The Surveyor of Taxes agreed to correct the error by reissuing the 1983 tax notices with an amended and reduced levy for street lighting. The residents affected were also given an additional 30 days for payment of taxes. (CS 83-056)

In other cases, property tax problems stemmed from errors on government records. I was able to have these errors corrected, although it was not always clear why they had occurred.

Complaint was solved but not the mystery

A rather puzzling complaint, involving a B.C. man who did not get his 1983 tax notice, and a man in Ottawa who did, still leaves us scratching our heads, even though we were able to solve the problem for the complainant.

The complainant, who had owned the properties in question for a number of years, did not receive his tax notice for 1983. In July he notified the Surveyor of Taxes, sending along a cheque for the estimated amount. In reply, the Surveyor of Taxes sent him copies of the 1983 notices which, for no apparent reason, had been sent to an Ottawa address. The complainant then sent in another cheque for the difference between his original estimate of the taxes and the actual amount shown on the notices.

That, however, was not the end of it. Additional notices asking him to pay penalties for late payment kept coming, but the complainant thought it was unfair that he should be charged a late payment penalty when it was the Surveyor of Taxes who had caused the delay by sending his tax notices to Ottawa.

Neither the Assessment Authority, nor the Surveyor of Taxes were able to shed any light on the matter. Both the assessment rolls and the tax rolls for 1983 showed the complainant as living at an address in Ottawa. The complainant, however, had never lived at that address. In fact, he had been in Ottawa only two or three times in his life for short visits.

The Assessment Authority maintained that it must have received a specific notice of change of address for the properties, but could not produce a copy of such a notice. This possibility seemed somewhat remote, since the complainant owned other properties in the same area which were listed in the Assessment Authority's files under their proper address.

The mystery deepened when we found out that a person with the same name as the complainant's was living at the Ottawa address shown on the assessment and tax rolls. There was no logical explanation why the address had been changed. The complaint was resolved, however, when the Assessment Authority advised the Surveyor of Taxes that the address on the Assessment Roll appeared to be in error, and the Surveyor of Taxes agreed to wipe out the penalty amounts. (CS 83-057)

Hounded for taxes they did not owe

A couple complained to me that the Surveyor of Taxes continued sending them tax bills for a mobile home which they had sold in 1978.

They had advised the local government agent that they no longer owned the home but the tax bills kept on coming. By early 1983, the penalties and interest amounted to more than $600. I contacted both the Surveyor of Taxes and the Mobile Home Registry to find out what had happened. The Mobile Home Registry confirmed that the home had been sold in July 1978 to a mobile home dealer and that it was later resold to another party.

The dealer, however, had not provided the Mobile Home Registry with documents pertaining to either transaction until late 1982 and neither the Assessment Authority nor the Surveyor of Taxes had been notified that the complainants had sold the mobile home.

Soon after, the Mobile Home Registry provided the Surveyor of Taxes with copies of documents required to correct tax records. The Surveyor of Taxes, in turn, informed the complainants that they did not owe any taxes on the mobile home and advised the local government agent to cease further collection action. (CS 83-058)

When the Surveyor of Taxes does not receive the full amount of the outstanding property taxes by the due date, a late payment penalty is charged. Even though these amounts tend to be small, property owners find the penalties very irritating and often complain that they have been unfairly charged. Under some circumstances I agree, but in other cases I find that the penalty has been correctly charged.

Penalty waived

A woman complained that she had been unfairly assessed a late payment penalty on her property taxes, saying the fault for the delay had been the Assessment Authority's.

She had applied for the Home Owner Grant on June 11 and sent in a payment of $125, based on the assumption that the Home Owner Grant would be approved and would cover the remaining amount of property taxes. The Surveyor of

Taxes had received and cashed the cheque on June 16. On July 4, the Surveyor of Taxes sent her a notice indicating that the application had been rejected because it did not contain her husband's signature. The property was in her husband's name and not in her name. The letter from the Surveyor of Taxes stated that if the application was not properly signed and received by July 2, a five percent penalty would be applied to the outstanding amount. She complained that the penalty was unfair because the rejection notice had not been sent until July 4.

The Surveyor of Taxes agreed to waive the penalty because he had been responsible for the delay in processing the complainant's application. (CS 83-059)

Penalty applied correctly

A man complained that the Surveyor of Taxes had assessed a late payment penalty on the wrong amount of taxes.

The man had applied for a Home Owner Grant and mailed his tax payment approximately a week late. The Surveyor of Taxes had questioned his eligibility for the Home Owner Grant because his payment had been mailed in from a location other than his residence. The complainant provided the necessary information and the Home Owner Grant was allowed. That still left the matter of the penalty which was applied to the full amount of his taxes, whereas he felt that the Home Owner Grant should have been excluded from the penalty.

I did not accept this complaint as substantiated. The *Home Owner Grant Act* requires that the home owner apply for the grant each tax year. If a person is eligible for a grant in one year, however, it does not necessarily follow that he continues to be eligible for the grant in the following years.

The complainant applied for the grant after the tax payment deadline had expired which meant that on that date, the amount of outstanding taxes had not been reduced by the amount of the Home Owner Grant. Therefore, the total amount, including the Home Owner Grant, was subject to the penalty. (CS 83-060)

If a property owner does not pay his taxes for three years, the property becomes subject to forfeiture to the Crown. Before this happens, the property owners should receive a number of notices, advising them that such action is pending. In at least one case, these notices also went astray, and the property owner almost lost his twenty-acre parcel of land because of an unpaid $55 tax bill.

New legislation saved his land

A distressed young man complained to us on behalf of his father who was in danger of losing his property because of non-payment of taxes.

The father had bought a twenty-acre parcel of land in 1977 and had lived there from 1978 to 1979. He had never received a tax notice for the property, even though he had made several inquiries. On February 7, 1983, he received a call from the Ministry of Lands, Parks and Housing advising him that the land had been forfeited for non-payment of taxes and offering to sell him five acres of the property for $7,000. He felt this was unfair since he had never received a tax notice.

Our investigation showed that the problem arose because the man had moved on several occasions and had not given his change of address to the Assessment Authority. Both the Assessment Authority and the Surveyor of Taxes use the address on record in the Land Titles Office, unless they are informed of a change of address by the owner. The assessment notices and tax notices had gone to the old address, and the Surveyor of Taxes had a file of all the tax notices that had been returned by the Post Office. The Surveyor of Taxes also stated he had made numerous other attempts to contact him through examining driver's licence information, mortgage information, telephone listings, etc., all without success.

The property had actually been forfeited on November 30, 1980. At that point the unpaid taxes were for the years 1977 through 1980, and the total amount at forfeiture, including penalties and interest, was a mere $54.76. When property is forfeited, it becomes the responsibility of the Ministry of Lands, Parks and Housing. A respresentative of that Ministry had gone out to view the property to determine the best means of disposing of it. He realized that the electricity was still connected and persuaded B.C. Hydro to give him the owner's address. He contacted the owner and gave him first chance to purchase part of the land. (CS 83-061)

Fortunately in 1982, a change in legislation provided a means by which the complainant could stop the process that would have cost him his land. We informed him how he could take advantage of the revision in the legislation and thus retain title to his land. (CS 83-061)

SOCIAL SERVICE TAX PROBLEMS

People pay social service tax on most of their purchases. The great majority of these transactions is completed without problem. There are cases, however, of people neglecting or refusing to pay the

tax. In other cases, people receive incorrect information on whether or not the tax applies. I still get many complaints about social service tax on vehicle transactions. Most of these complaints seem to be associated with moves into or out of the province.

Paying sales tax once is enough

A woman complained to us about the amount of Social Service Tax her son would have to pay on the purchase of a truck.

Her husband was working full time in Alberta, coming back home to B.C. as often as his work permitted. He wanted to give his son a truck he had purchased in B.C. in 1978. The son planned to go to Alberta to work part-time for his father during the summer months and return in the fall each year to his university studies.

When they tried to transfer the registration of the truck, they were told that the son would have to pay Social Service Tax on the value of the vehicle. They were also advised that the son would have to pay tax in Alberta if he registered the vehicle there; and that each time he returned to B.C. to study, he would again have to pay tax to relicence the truck in B.C. They considered this to be both frustrating and expensive, since the cost of the tax would exceed the value of the truck in a short time.

Some of the information given to the complainant was incorrect. For example, there was no sales tax in Alberta. Similarly, the transfer of the truck from the father to the son was not taxable because the transfer was a gift and no money was exchanged.

On the other hand, the truck had been used in B.C., and the husband should have paid tax on the vehicle when he purchased it in 1978. Had he done so, the vehicle could have been transferred to the son without a Social Service Tax charge. To resolve this problem, the husband paid the tax which should have been paid in 1978. This made subsequent transactions from father to son not taxable. (CS 83-062)

Under the *Social Service Tax Act*, vendors are responsible for collecting the tax from purchasers, and for remitting the tax to the Ministry of Finance. When this tax is not remitted, the Ministry can take fairly severe action to collect the money which is owed. Sometimes it is not clear who owes the money. In some of these instances, I have been able to help, but in other cases, the money must be paid.

Despite limited resources, she must pay

A woman who had entered into an unsuccessful business venture with a partner complained that the Ministry of Finance was trying to collect unpaid Social Service Tax from her, without making a similar attempt to to collect the money from the other parties involved.

She and a friend had entered into a partnership to manage a hotel, hoping to buy it if it proved to be a worthwhile investment. They started managing the hotel in July of 1980 and in December of that year, they entered into an agreement with the hotel owner to buy the business from him. When they were unable to make the payments set out in the agreement, the owner repossessed the hotel. It was not until some time in March of 1981, however, that they became aware of the repossession. They continued to manage the lodge until it was closed in August of 1981.

To backtrack for a moment, the complainant and her partner had applied for registration as a vendor under the *Social Service Tax Act* in October 1980. On their registration form they indicated that they had commenced doing business at the hotel in July of 1980. In December, the woman had purchased a company and it was the company which entered into an agreement to buy the business from the previous owner. The woman signed another application form for registration as vendor, indicating that the company was operating the hotel beginning in December 1980.

The hotel did not do well financially, and the complainant did not remit the Social Service Tax she had collected. By August of 1981, the partnership owed the Ministry of Finance about $850 which included unpaid taxes up to December, 1980. The company owed the Ministry of Finance nearly $4,000 which included unpaid taxes from December 1980 to August 1981, plus taxes for the purchase of business assets from the previous owner.

Since both accounts remained unpaid, interest accrued and by July 1982, the partnership owed more than $1,000 and the company owed approximately $8,400. In the meantime, her partner had declared personal bankruptcy and she had taken a job working in a grocery store. In December 1982, the Ministry of Finance sent a letter to her employer advising him that she owed the Ministry more than $1,000 and asking him to withhold funds from her wages for the purpose of paying this debt.

My complainant felt it was unfair that she should be required to shoulder total responsibility for the amount, since during the period in question somone else actually owned the hotel, except for a period of one and one-half months. She felt that the other owner should also be responsible for the repayment of the taxes.

Under the provisions of the *Social Service Tax Act*, however, the vendor is not required to also be the owner of the premises. The complainant and her partner had signed the vendor registration form, indicating that they were responsible for the operation of the business from July 1980, to December 1980. The complainant had signed the registration form as president of the company, thus assuming responsibility for the operation of the business from December, 1980 to August, 1981.

The complainant and her partner had collected the taxes and were responsible for remitting them to the Ministry. Since her partner had declared bankruptcy the Ministry was unable to collect any part of the debt from him and she became responsible for all the debts incurred by the partnership.

Although this resulted in an extremely difficult situation for the complainant who had very limited financial resources, I could not substantiate her complaint that the Ministry had acted unfairly in requiring her to repay the money. Instead, I referred her to the Debtors' Assistance Branch of the Ministry of Consumer and Corporate Affairs, hoping that an orderly payment of debts might be arranged for her. (CS 83-063)

Ministry accepts fair offer

When a man got into trouble with the Ministry of Finance because his former wife had not paid any Social Service Tax for a business in which he was still legally a partner, he came to us for help.

In October 1977, the complainant and his wife registered in partnership as vendors with the Consumer Taxation Branch. They operated a small shop together, and documents on Ministry files indicate that they paid Social Service Tax on a fairly regular basis until March 1979. From that date on until the shop closed in February or March 1981, no tax was remitted.

By June of 1979, the marriage between the complainant and his wife had broken up and the complainant moved out to live elsewhere. He stated that he was not involved in the operation of the shop since 1978, operating his own store instead. In June 1981, a demand notice was served against his store as a result of the non-payment of the Social Service Tax by his wife's shop. The complainant was advised that the shop owed a total of $5,800, the Ministry's estimate of the taxes that were collected but not remitted by the shop between 1978 and 1981.
By the time the complainant brought the matter to my attention, the amount owed had increased to more than $8,000 with penalties and interest. The complainant considered the Ministry's attempts to collect the full amount from him unfair.

From a legal point of view the complainant could be held responsible for all of the debts. He had signed the application for registration and he did not advise the Ministry that the partnership had been terminated. They were both jointly and individually responsible for the debts of the partnership and the Ministry had the right to collect the whole amount from either the complainant or from his former wife.

The Ministry had made little effort to collect any of the money from his former wife, apparently because she was not working and there appeared to be little chance of getting any money from her. Instead the Ministry had concentrated its collection efforts on the complainant and his store. The complainant, however, was also in a difficult financial position. Because of the general economic climate, the store was not doing well.

He had offered to pay the Ministry $3,000 as his share of the debt. He saw this as approximately one-half of the debt which the partnership had incurred. In view of the fact that the man's former wife had been responsible for the operation of the shop during the period in question, I considered his offer a fair one and recommended that the Ministry accept it. The Ministry agreed with my recommendation and advised the man accordingly. (CS 83-064)

OTHER PROBLEMS

I receive relatively few complaints about Government Agents, which is to their credit since they are in contact with the public on a daily basis. Whenever I did receive a complaint, the Ministry responded quickly and thoroughly to my inquiries.

Government Agent acted properly

When a building inspector threatened to close down a small body shop because it violated zoning regulations, the owners complained to us, blaming the local Government Agent for not having informed them of the zoning requirements.

The zoning irregularity had come to the building inspector's attention when the complainants applied for a building permit to construct a shelter for their own car. He said a neighbour had complained and he had no choice but to close down the operation.

This put them in a very difficult position because they had taken out a loan to set up their business and had no other source of income. They felt that if the body shop was contrary to the zoning bylaw, the Government Agent should have advised them of this and should not have issued them a business licence for the operation.

I concluded, however, that the Government Agent had not acted improperly in this case. The *Business Licence Act* requires the Government Agent to issue a business licence upon payment of the prescribed fee. The Act does not require compliance with zoning bylaws. The licence document, however, states that the operation is subject to zoning requirements and that the licence does not exempt the licencee from zoning bylaws. In other words, it is the responsibility of the person applying for the licence to ensure that the proposed operation is in compliance with zoning requirements.

The complaint was not substantiated. Instead, I referred the complainants to their Regional District representative and provided them with some information on the procedures to be used in applying for a delay in the building inspector's orders or for a change in the zoning. (CS 83-065)

MINISTRY OF FORESTS

Declined, withdrawn, discontinued	19
Resolved: corrected during investigation	13
Substantiated: corrected after recommendation	2
Substantiated but not rectified	2
Not substantiated	14
Total number of cases closed	50
Number of cases open December 31, 1983	43

The number of complaints against the Ministry of Forests was slightly higher than the previous year, and again reflected a variety of problems. Some of these problems have to do with grazing rights and timber tenures; others are concerned with public involvement policy, forest fires, special use permits, and the Ministry's participation in projects financed under the federal-provincial Employment Bridging Assistance Program. The Ministry is large and affects many different aspects of people's lives. My degree of success in obtaining resolutions of these complaints has been varied, perhaps a reflection of the co-operation of certain branches or officials, rather than the stance of the Ministry as a whole.

GRAZING PROBLEMS

I continue receiving a number of complaints about grazing matters. The use of Crown range is an important and essential aspect of many ranching operations. Denying, reducing, or otherwise modifying the use of range land can cause significant problems for ranchers whose livelihood is dependent on range use. One could expect these problems to increase in proportion with the increase in competition for the land base. For this reason, and because of the importance of Crown range to the ranching industry, there is a need for planning and policy development within this branch of the Ministry. Unfortunately, relatively little attention or priority appears to be given to the range aspect of the Ministry's mandate.

Don't fence me in

I received a complaint from some members of a grazing association that the Ministry had imposed unfair conditions on their grazing permits.

The permittees on the range unit had been given a grazing increase on a one-year trial basis. Since the unit was not fenced, the Ministry had stated that it would do an inspection at the end of the season to make sure that the area was not overgrazed. The permittees understood that the inspection was to be a joint effort, involving the permittees, the Ministry of Agriculture and the Range Branch of the Ministry of Forests.

The joint inspection did not take place. The following spring, just before the permittees were to turn out their cattle, the Ministry of Forests advised them that it had conducted an inspection the previous fall and that the results were not satisfactory. They were required to keep their cattle off a designated area from June 15 to September 15. Fencing, they were told, would be required in the future because the range users appeared unable to restrict their cattle to the specified grazing areas.

The complainants pointed out that the designated area where their cattle were not permitted during the three-month period included a series of watering holes. It would be nearly impossible to keep the cattle away from the watering holes. The complainants felt that they had been forced into a corner. Either they fenced the area, or they attempted the nearly impossible task of keeping the cattle away from water to avoid trespass charges.

The permittees did not want the fencing because of a fear that the fences would be used to keep cattle away from forage that would, instead, be preserved for wildlife. They felt it was unfair of the Ministry to spend between $150,000 and $200,000, ten percent of which would have to be paid by the range users, for fencing none of them wanted.

Fortunately for the complainants, the Ministry decided not to proceed with plans for fencing the range unit. The 1983 permits were made conditional on the complainants' satisfactory use of riding and salting to avoid overgrazing of the range; and weather conditions had resulted in an abundance of forage which made it likely that they could meet the permit requirements. (CS 83-066)

Cattle arrested, owner charged

A man who leased privately owned land in the middle of a Crown range unit was charged with trespassing and had his cattle seized because the animals had repeatedly strayed onto neighbouring Crown grazing land.

No fence separated the complainant's land from the Crown grazing land, the permit for which had been issued to a different party. It was not surprising, therefore, that the Crown range cattle strayed onto the leased land and the complainant's cattle strayed onto Crown range. After a number of warnings, the complainant's cattle were seized and he was charged with trespassing on Crown range. He considered the charge unfair because the Crown range cattle were also trespassing on his leased land. He also felt that the Ministry had acted unfairly in refusing to grant him an on-and-off permit which would have allowed him to avoid the trespass charges.

After investigating the case, I could not agree that the Ministry had acted unfairly or improperly in either matter. The *Trespass Act* specifically exempts the Crown from having to fence off Crown land from private land. At the same time, the *Range Act* authorizes the Ministry of Forests to seize and impound cattle found on a Crown range unit for which their owner does not have a permit. The law places the onus on the lessee or owner of private land to fence his land off from Crown land to avoid trespass.

An on-and-off permit might have resolved the trespass problem for the complainant but before granting such a permit, the Ministry must make sure that it will not interfere with the rights of the existing permittee. In this case, the existing permittee and the complainant had different breeds of cattle and the fact that there was a possibility of cross-breeding made an on-and-off permit impracticable.

I concluded that the Ministry had acted correctly in taking trespass action against the complainant and that the Ministry's refusal to grant the complainant an on and off permit was appropriate under the circumstances. (CS 83-067)

Co-operation benefits everyone

A couple complained to me that the Ministry of Forests unfairly required them to supply $12,000 in labour for a Crown range fencing project, claiming that normally the government pays the total cost of such projects.

The couple had attempted to obtain Crown range grazing for some time and were granted a one-year grazing permit on the condition that they fence the range along the highway before turnout. At the initiative of the local Stock Breeders' Association, an arrangement had been made whereby the Ministry of Highways would supply the fencing material and the complainants would supply the labour. The complainants also understood that the Ministry of Forests had agreed to construct a tote road to assist in the building of the fence.

The complainants had initially agreed to the arrangement but when it appeared that the Ministry of Forests was not living up to its commitment to construct a tote road, the complainants felt it was unfair that they should be held to the commitment in order to keep their grazing permit.

My investigation showed that the Ministry of Highways has a program to install and maintain fencing along highways such as the road in question, but before proceeding, the Ministry asks the local Stock Breeders' Association to assign priorities to proposed fencing projects. Since the maintenance of fencing along active ranges is given higher priority than the installation of fencing for new range areas, the complainants' project would not normally have been given priority in the near future.

The local Stock Breeder's Association had suggested the agreement as a means by which the range could be made available for use earlier than would otherwise have been the case. I also found that the Ministry of Forests' understanding of its role in the arrangement differed from the understanding held by the complainants. The Ministry stated that it had made no commitment to construct a tote road and that, in fact, a tote road was not necessary, since access to the fencing area was not a problem. Instead the Ministry stated that its commitment was to supply up to two miles of fencing material for another side of the range.

These details became somewhat irrelevant when the complainants were unable to supply the approximately $12,000 in labour required to complete the project. My office contacted the federal government to determine if funds for the fencing project could be made available through New Employment Expansion and Development (NEED). When the answer was yes, we told the complainants how to apply for the funds.

The project was subsequently approved by the NEED secretariat. The fencing material was supplied by the Ministries of Highways and Forests, and the labour was supplied through the NEED project. This arrangement was beneficial to all parties involved. It provided work for people who would otherwise have been unemployed, and allowed use of a Crown grazing range a few years earlier. (CS 83-068)

OTHER PROBLEMS

The Ministry employs a number of people or companies on a contract basis for projects, such as tree planting. I received some complaints about delays in contract payments. In some cases, the procedure simply takes time, but in other cases, the Ministry has been able to speed up the process.

How come it takes so long?

A member of a tree-planting co-op which had entered into a contract with the Ministry of Forests to plant trees, complained to me about the length of time it took to get paid.

The co-op had a number of tree-planting contracts lined up, some with private industry and some with the Ministry of Forests. Payment from one contract was used as security deposit for the next contract. Speedy payment was, therefore, important. They had completed work on the first phase of a Ministry contract on March 24. On April 14, they had not received a cheque and were advised that it would probably be another four to six weeks before they got paid.

From my investigation, it appeared that there had been some delay at several stages in the payment process. The cheque could ordinarily have been issued by the local Government Agent. In this case, however, the request for payment arrived at the end of the government's fiscal year, and the codes used by the Government Agents to issue cheques had expired on March 31.

It might well have taken another four to six weeks to issue the cheque from Victoria, but fortunately the Ministry was able to speed up the process and send the payment to the co-op by courier on April 22. (CS 83-069)

I also received complaints about the closure of some Ministry offices. Many of the closures meant that residents of certain towns would have to travel greater distances to conduct business with the Forest Service.

Restraint forces closure

When the Ministry closed down its Hixon office, I received a number of complaints. Residents said the closure was inefficient and unfair. There had been a Forest Service office in Hixon for about 30 years, and closing it meant that Hixon residents would now have to travel about 40 miles to the next Ministry office, which is in Prince George.

I asked Ministry officials for an explanation and was told there were two reasons for closing the Hixon office — reorganization and restraint. Hixon is one of a large number of small field offices which had been scheduled to close down as part of the Ministry's ongoing reorganization. The current restraint program simply speeded up the process. As for the complaint about inefficiency, Ministry officials said they expected the closure to save money. (CS 83-070)

Each year, the Ministry spends millions of dollars fighting forest fires. Undoubtedly they save many stands of timber, many buildings and many lives. But forest fires can be powerful and destructive, and often much is lost in spite of the efforts to stop or control the fire. Not everyone believes the Ministry's efforts are effective or worthwhile.

Ministry did the best it could

During 1983, I received several complaints from people who had lost their buildings and possessions in forest fires.

In most cases, the complainants had lost everything they owned: home, furniture, clothing, everything. They had applied for compensation for their losses through the Provincial Emergency Program but were considered ineligible because fire insurance had been available to them.

They blamed the Ministry for their plight, accusing it of having bungled the fighting of the fires. My investigation showed that the fires had been very large and difficult to fight. They had burned for a long time and in the end, it had been the weather, more than fire-fighting methods, which had brought them under control.

There was certainly no evidence that the Ministry had mishandled the fighting of the fires. The complainants had given examples of situations in which they felt the Ministry was deficient in its management of the situation but in each case, the Ministry was able to give me a reasonable explanation. The Ministry had done the best it could with what must have been difficult situations. The complaints were not substantiated. (CS 83-071)

The Ministry was also helpful in clearing up a situation caused by hazardous trees.

Danger: hovering tree

A woman complained that the Forest Ministry's lack of co-operation endangered her home, even her life.

High winds had caused some trees on Crown land to fall or to lean. One tree had already crashed into her back yard, while another got caught in a smaller tree before it could land on her property. That tree was now hovering over a building on her property. If it fell, it would demolish the building.

The woman had asked the Ministry of Forests for help and was told she should feel free to take the tree down. But that meant hiring a faller and special equipment, something she felt was the Ministry's responsibility, not hers.

We discussed the matter with Ministry staff in the local office and Victoria. The Ministry took the position that since vacant Crown land was involved, responsibility lay with the Ministry of Lands, Parks and Housing. Forests also admitted, however, that there was no need to let the tree destroy the building while two Ministries argued about jurisdiction. Forests agreed to take steps to have the tree removed at its expense and to settle the matter later with Lands, Parks and Housing. I considered this to be an eminently practical solution to the problem. (CS 83-072)

MINISTRY OF HEALTH

Declined, withdrawn, discontinued	54
Resolved: corrected during investigation	83
Substantiated: corrected after recommendation	19
Substantiated but not rectified	0
Not substantiated	53
Total number of cases closed	209
Number of cases open December 31, 1983	58

In 1983, my office investigated nearly twice as many complaints against the Ministry of Health as in 1981. Co-operation from Ministry staff has been good, and we were able to resolve 40 percent of the cases investigated.

The Ministry is responsible for a wide range of functions, including registering deaths, licensing long-term care homes, inspecting private sewage

systems, and paying for surgery. The following summaries of complaints demonstrate the diversity of the Ministry's responsibilities.

MEDICAL SERVICES PLAN

Complaints involving the Medical Services Plan account for the largest number of complaints against the Ministry, not surprisingly, as the Plan has nearly 1.75 million subscribers. Complaints against M.S.P. involve either eligibility or payment for services. In the following cases, eligibility was the problem.

Bureaucracy works overtime

A 79-year-old woman complained that her recent application for premium assistance coverage under the Medical Services Plan had been rejected because she did not have a Social Insurance Number.

The complainant had been a homemaker all her life and had never been "employed." Until recently, she had had no need for a Social Insurance Number. Each year she had applied for premium assistance and each year it had been granted.

This time, however, her application was returned with a form letter numbered RP/RE/1A/03/83, stating that her application was incomplete. Her Social Insurance Number was required. She was told to contact her local Canada Employment and Immigration Office.

That office supplied her with a "Certificate of Citizenship" but still uncertain whether or not she had met the requirements, she got in touch with her MLA who directed her to send the application back to Medical Services with a covering letter explaining that she did not have a Social Insurance Number. Medical Services replied with form letter RP/MISC/22803/83. This letter simply instructed her how to fill out a premium assistance form. Confused and bewildered, the woman came to us.

When I brought the matter to the attention of the Chairman of the Medical Services Commission and the Executive Director of the Medical Services Plan, they quickly agreed that an over-anxious clerk must have been working overtime.

The policy is not to require Social Insurance Numbers from persons over 65 who have not been in the job market (CS 83-073)

Health to the rescue!

While travelling overseas, a man was seriously injured. His friend was notified by External Affairs that he would be returned to Canada within a week and that he required immediate medical attention. The complainant's friend called my office concerned about the medical coverage.

We learned that the complainant's coverage had been cancelled for more than a year and that he had been travelling abroad for approximately two years. Medical Service Act Regulations and Hospital Insurance Act Regulations impose a waiting period of at least two months on new residents to the province.

The complainant was able to show that his intention while travelling was to return to British Columbia. Therefore he had maintained his status as a resident even though he was not eligible for coverage during the last year. Medical Services accepted the complainant for coverage from the date of his return to British Columbia. (CS 83-074)

I rely on Ministry officials to keep commitments they made to me or my complainants. In the following case a complainant discovered that two and a half years after the Ministry promised to change a policy, it had not implemented the change.

Policy changed at last

In 1980, the Medical Services Commission agreed to drop its requirement that a Canadian citizen surrender his U.S. Alien Registration Card to United States authorities in order to qualify for coverage under the Medical Services Plan.

The Alien Registration Card enabled Canadian citizens to work in the U.S. for specified periods of time. To qualify for coverage by the Medical Services Plan, an applicant must be a B.C. resident. Possession of the U.S. Alien Registration Card was seen by the Medical Services Commission as an indication that the person may not have given up his U.S. residence.

We found at the time that the Commission made exceptions, allowing some people to keep their U.S. Alien Registration Cards, and recommended that in the interest of fairness, no one be required to surrender his card. Eventually, the Commission agreed to my recommendation.

It was my understanding that this change had been implemented, when, three years later, I found that the old policy was still enforced. I asked the Ministry to remove from application forms the question whether the applicant had surrendered his Alien Registration Card.

Medical Services agreed to remove the question and apologized that the original agreement had not been implemented. (CS 83-075)

Most patients are reluctant to seek medical treatment outside of Canada. Their medical problems

are compounded by the severe financial hardship out-of-country medical treatment imposes on them. When Medical Services coverage is available, it is often insufficient. Because of the extreme financial hardship and the medical complexity associated with this issue, I have, in the past three Annual Reports, stressed the urgent need for an appeal mechanism.

Plan pays after all

A young man complained that the Medical Services Plan would not cover the cost of some tests done at a hospital in the United States.

After the complainant suffered a series of seizures, and tests in Canada had been inconclusive, his family doctor had suggested that he obtain a second opinion from medical experts at a centre in the U.S.

A Cat Scan completed in the U.S. showed that further investigation was required. Additional tests were recommended. The complainant's family doctor wrote to the Medical Services, requesting payment for the Cat Scan.

Medical Services agreed to pay for the Cat Scan, even though it had not received prior notification, but warned the doctor and the complainant that any future services would require prior authorization. Unfortunately, that letter did not arrive until after the next set of tests had been completed in the U.S., and Medical Services promptly rejected the claim for the second set of tests.

I obtained the test results from the hospital and asked Medical Services to review its decision on the basis of this information. On review, Medical Services agreed to allow payment at the British Columbia rates for the services rendered in the U.S. (CS 83-076)

Even though the Dental Care Plan has been eliminated, I received a number of complaints concerning outstanding accounts.

One year makes the difference

A mother complained that her son's dental claim had been rejected by the Ministry of Health.

Her son's birthdate had been incorrectly recorded on her Medical Services Plan card, and the refusal to provide coverage was based on the assumption that her son was 15 years old at the time the service was provided, when in fact, he was only 14 years old and within the age limit covered by the plan.

The Ministry claimed that it could not change the birthdate because the complainant had submitted a copy of her son's birth certificate after the deadline at which all claims were to have been concluded. The deadline was six months after the Dental Plan was eliminated. Since the complainant had not submitted the birth certificate before that deadline, the Ministry would not recognize the claim.

I was concerned that an otherwise valid claim was rejected, even though the complainant had submitted the bills long before the deadline. The error on the plan card had not been hers.

The complainant had been informed of the error a few days prior to the deadline. She had obtained a copy of the birth certificate and presented it to her dentist to forward to Medical Services prior to the cut-off date. The birth certificate was actually in the mail by that date.

The Ministry agreed to reimburse anyone who had made a serious effort to seek reimbursement prior to the deadline, or whose claims were in the hands of their dentists, and, therefore, beyond their control. (CS 83-077)

HOSPITAL INSURANCE

The Hospital Insurance Plan covers the cost of hospital stays for B.C. residents, except for the co-insurance or user charges, fees patients must pay. Complaints in this category also included eligibility requirements.

What a difference a day makes

I received a complaint that the Hospital Programs Division of the Ministry of Health would not reimburse a young woman for payments she had made to a hospital for the cost of her stay in early 1981.

The complainant had arrived in British Columbia from Alberta in the fall of 1980 and left one week later for a short trip to Finland. The Hospital Insurance Act Regulations state that a person is eligible for coverage if he or she is present in the province on the final day of the waiting period. Her waiting period ended on November 1, 1980, and when the hospital submitted her bills to the Ministry of Health, it was noted that she had been absent from the province on the final day of the waiting period, and was, therefore, not eligible for coverage.

The Regulations, however, also provide that if a person has continued to make his or her home in the province during the waiting period, the Ministry of Health will cover the hospital costs.

The Ministry agreed that she had, indeed, made her home in the province during the waiting period and paid the hospital bills. (CS 83-078)

LONG-TERM CARE

The Ministry is responsible for assessing and placing senior citizens requiring care, and for providing homemakers. The Ministry also licenses care facilities. The cases outlined below are typical of the complaints against the Ministry's Long-Term Care program.

Long-Term Care can mean a long wait

A woman who was unable to care for her elderly father ran into difficulty when she tried to get him admitted to a Long-Term Care home.

To be eligible for admission at any of the province's Long-Term Care homes, a person must have resided in British Columbia for at least one year. Her father, however, had only recently moved here. The daughter had been aware of the residency requirement and she originally wanted her father to live with her, but his health had deteriorated badly and it was difficult for her to look after him at home.

The Acting Director of the Long-Term Care program agreed that the case warranted special consideration and authorized an informal appeal. The daughter, meanwhile, was able to get a commitment from the Department of Veterans Affairs to arrange her father's admission to a Long-Term Care home and subsidize the cost of his stay there until the one-year waiting period had elapsed. (CS 83-079)

Family members cannot be hired

A young woman who had to give up working to care for her uncle who had suffered a crippling stroke complained that they could not get any other joint income.

The two had great difficulty making ends meet on his Handicapped Persons Income Assistance and her basic Income Assistance, both from the Ministry of Human Resources. After seeing an ad for Mental Health workers, she applied to act in a similar capacity as a homemaker for her uncle but was refused.

Unfortunately we could not help the woman. Ministry policy precludes the hiring of a family member to care for a client. Home Care Workers are also rarely hired directly by the Ministry or local Health Units but through a homemaker agency on contract with the Ministry. Alternatively a person can apply for a Family Care Licence to look after a number of unrelated Long-Term Care clients in his or her home. Although everyone agreed this seemed to be an unusual case the Ministry of Health did not wish to create a precedent by making an exception. As an alternative, the Ministry offered to consider sending in a homemaker from time to time, or even on a permament basis, to enable the young woman to work but neither she nor her uncle wanted an "outsider" in the home, caring for the disabled man.

In the second case, the client was not so "lucky." He had been injured on the job and, after many years of fighting and living on Handicapped Persons Income Assistance, was awarded a lump sum of money by the Workers' Compensation Board. In such instances, it is customary for Human Resources to file a general assignment with the Workers' Compensation Board. This enables the Board to deduct the amount paid by Human Resources to the client for the period in question and send it directly to the Ministry. What's left over, goes to the injured worker.

In this case, the client had signed specific general assignment documents. The intent of Section 15 of the *Workers' Compensation Act* seems to be that benefits in the nature of "financial or other social welfare assistance" are repaid to the administering authority. In this particular case, the Board Officer would have liked not to repay the money to Human Resources because of the psychological and financial strain the man had been under, but her hands were tied. (CS 83-080)

Caught between a rock and a hard place

About two years ago, a former employee of a Long-Term Care home complained to us that the Workers' Compensation Board had refused her benefits because her employer had no coverage.

Although the complainant had injured her back in the course of her work, while lifting a client, her employer said she should not have been assisting the patient in this manner. Since the home was licensed for "personal care," the lowest level, looking after elderly or disabled people who require a minimum of assistance, it first appeared there was little we could do to help the complainant.

Through experience with the Long-Term Care system, however, we knew that while a facility may be licensed for a low-care level, it often accommodates clients who require extra help and supervision. This situation usually arises when a person is awaiting transfer to an Intermediate Care I, II, or III level or an Extended Care level facility because his or her health has deteriorated.

Transferring a patient from one home to another, however, is not always easy. Openings at a suitable home may not be available, or the family may be reluctant to have the patient moved because

they like the present facility. Our complainant's problems had been caused by such circumstances. Not only were there a large number of patients at the personal care home where she worked awaiting transfer to Intermediate Care homes but the patient she had lifted when she injured her back was in fact on Extended Care.

Getting justice for our complainant was another matter. If we demanded that the Long-Term Care program interpret its rules more strictly by allowing each level of home to care only for patients who fall within the parameters of its licence, we would invite the risk of unsuitable or repeated transfers of elderly patients who were at least in some type of facility, rather than living alone. We also did not take lightly the fact that many of the Long-Term Care clients regard the "facility" they live in as their home.

We therefore concentrated our investigation on the crucial question why not all Long-Term Care facilities were required to have Workers' Compensation Board coverage. The Board's classifications required private hospitals and "nursing homes with 10 or more bedrooms" to have coverage. Nursing homes were defined as all Community Care facilities which required a graduate nurse to be on staff 24 hours a day. Rest homes differed only in that medication might be administered but they did not require 24-hour nursing care, and coverage was optional for such facilities with fewer than 10 bedrooms.

We proposed that the Ministry of Health ask Long-Term Care to point out to the Workers' Compensation Board that its definitions had very little to do with the system as it now existed. In other words, Long-Term Care considered all licensed institutions as Community Care facilities, rather than nursing or rest homes and did not take the number of rooms into consideration.

Most importantly, the Workers' Compensation Board's definitions should take into account that Intermediate and Extended Care clients requiring considerable medical and personal aid are sometimes cared for in small facilities with fewer than 10 bedrooms and which are not required to have professional supervision around the clock.

After an exchange of correspondence between Long-Term Care and the Workers' Compensation Board, and discussions between my staff and those two authorities, the Board finally agreed to amend schedule A of the Workers' Compensation Act by deleting the reference to the number of bedrooms. Although this did not immediately help our complainant, it should prevent other employees from getting caught in a similar bureaucratic maze. (CS 83-081)

Too late for complainant but not for others

A complaint from the owner of a Long-Term Care home resulted in a number of changes in procedures governing the licensing of Long-Term Care facilities but unfortunately we were not able to help the complainant whose initiative helped bring about the changes.

The complainant asked for our help after the Provincial Adult Care Facilities Licensing Board, which is to enforce minimum standards for Long-Term Care homes, decided to cancel her licence. She said the Board had not given her adequate notice of the hearing held prior to cancellation of a licence, had not informed her of her right to legal counsel and not given her access to material the Board was to consider at the hearing.

The Board reviewed its procedures and agreed to notify licensees of impending hearings by letter, to be followed by a telephone call. The Board also agreed to inform licensees of their right to legal counsel and provide them with documents supporting recommendations to the Board.

Although I was not able to assist the complainant in obtaining her licence, these procedural changes should ensure fairer hearings in the future. (CS 83-082)

Last year I brought to the attention of the Ministry a matter that appeared to cause financial hardship for senior citizens. Long-Term Care clients on minimum fixed incomes often have difficulty paying the daily room charge for the Long-Term Care facility, as well as the user fee charged by the hospital. Both types of fees were increased last year, adding to the potential financial burden of Long-Term Care clients. The Ministry of Health has stated that while it recognizes the potential financial hardship, it believed that the Ministry of Human Resources would pay the fees. I am awaiting a reply from the Ministry of Human Resources.

PREVENTIVE HEALTH CARE

The Ministry provides a diverse number of services under the title of preventive health, including public health inspections, licensing day-care facilities, and public health nursing. Here are some examples of the complaints I received in this area.

Day care centre stays open

A non-profit group operating a day care centre was about to lose its licence to look after children three years of age and younger.

The Community Care Facilities Licensing Board said the pre-school supervisor was not sufficiently qualified. She should either have com-

pleted an appropriate course at an accredited institution, or show sufficient job experience. The Board had granted a number of extensions but the last temporary licence was due to expire, and the local health unit's child care representative appeared determined to veto any further extension.

The employee was willing to comply with the Board's training requirements but no early childhood education courses were offered locally. She said she could not afford to give up working to attend classes elsewhere and would have to wait until summer, or until part-time classes were offered at a closer location.

We proposed a resolution suggested earlier by Child Care staff in Victoria, that the day care centre apply for a licence with a qualified employee as supervisor. This meant that a Child Care staff member qualified in Early Child Education would set up a program for the day care centre and train the under-qualified employee in accordance with pedagogic methods and theories she had learned while earning her diploma.

The Ministry accepted the proposal but before presenting it to the Licensing Board and the daycare group, as well as to the two employees, the idea still had to be discussed with the local health unit staff member who had intended to veto an extension of the licence.

Reassured that the proposal would result in a quality day care program supervised by an Early Child Education specialist, the child care worker recommended approval of the revised licence to the Board, which subsequently granted the licence. (CS 83-083)

Unfair conditions

The owner of some property located just outside Fort St. John wanted to subdivide his lot but ran into problems with the Public Health Inspector.

Engineering reports commissioned by the city indicated that the land may be subject to periodic flooding, and was adversely affected by hydrogen sulphide gas emissions from the city's sewage effluent line running past the property. For these reasons, the Public Health Inspector recommended against subdivision approval.

Our investigation showed that the Health Inspector had not considered all available information. Improvements were being made to the city's sewage disposal system, and the level of hydrogen sulphide emissions would probably decrease soon. The city was also taking steps to protect the lot from further flooding.

The Public Health Inspector agreed to withdraw his objections to the subdivision on receipt of an engineering report stating that adequate measures had been taken to protect the lot from further flooding and after one year's successful operation of the approved sewage disposal system. (CS 83-084)

All year my staff attempted to resolve a number of outstanding issues involving private septic systems. Concerns were raised about the enforcement of regulations and the provision of information to citizens by Public Health Inspectors. While these issues were not overly complex, they have resulted in prolonged negotiations with various Ministry officials.

Some complainants were concerned that new homes were built without proper Ministry permits for septic systems. These complaints came from areas where local by-laws do not require building permits. The Ministry has agreed to take a number of preventive steps to ensure that local Health Inspectors are aware of new building projects in their areas. But complainants are still concerned that some septic systems may have been installed without proper approval.

Complainants also have difficulty understanding the role of the Public Health Inspector when their private sewage systems require repairs. I have tried to encourage the Ministry to provide information pamphlets to owners of septic systems, clarifying the role of Public Health Inspectors in such cases.

Ministry officials agreed that such a pamphlet would be helpful but have, so far, not produced one.

INSTITUTIONS

The regulation of people's lives in institutions is almost absolute. The time of their waking, the food they eat, the company they keep, and their bedtime are all controlled. Freedoms are greatly limited, sometimes by the law, sometimes by the residents' disabilities, and sometimes by officials' views of what is administratively convenient or affordable.

My staff visit institutions, such as the Forensic Psychiatric Institute, on occasion to allow residents the opportunity to articulate complaints in person.

Some of the staff in institutions are apprehensive about my visits. Few of us enjoy being reviewed, audited or critically examined in our work. Some doubt my ability to "really understand" the institution. I do not claim to be an expert on mental illness, developmental disability or criminal behaviour. If necessary, we call on professionals to assess and recommend.

My office assesses the administration of the institution and investigates, analyses and reports on the complaints of its residents. While each institution has its own peculiar problems to cope with, I can

assess whether or not it is functioning within the framework of administrative fairness and natural justice.

I am encouraged by the co-operation of staff members at the Forensic Psychiatric Institute. It is the sign of a healthy institution when residents can feel comfortable complaining about its shortcomings, and staff respond dispassionately and professionally to questioning and suggestions.

The following are some examples of complaints I received.

Visiting privileges are important

A resident of a Forensic Psychiatric Institute asked me to help clarify the Institute's policy regarding visiting privileges.

The Institute was established to treat persons who are held against their will at the pleasure of the Lieutenant Governor. Aside from wanting clarification about the Institute's policy on visiting rights, the complainant also asked me to examine whether there are appropriate appeal mechanisms for reviewing decisions regarding visiting privileges.

For its residents, the Institute becomes home. Issues, such as visiting privileges, are of great importance to them. The Institute agreed to clarify to residents on what grounds visiting privileges could be suspended or modified, and who could make those decisions.

The Institute also agreed to establish a new policy by which patients will be informed of the reasons why their visiting privileges have been suspended and of the appeal mechanisms. All departments and physicians were informed of this policy. (CS 83-085)

Slow to adopt safeguards

A social worker, formerly employed at the Forensic Psychiatric Institute, expressed concern to me about the manner in which an alleged sexual abuse involving a resident was handled by institution staff.

I discovered that the incident which had occurred a year earlier was the subject of a grievance arbitration when the institution sought to discipline the employee involved. Because of lack of evidence the employee was reinstated. The arbitrator noted that the institution had not had previous experience in dealing with this type of situation and consequently failed to do two things which might have had a significant bearing on the outcome. The institution did not immediately have the alleged victim examined by a doctor, and did not call the police to investigate until two or three days had passed.

I investigated to see whether or not the Forensic Psychiatric Institute had responded to the words of the arbitrator and established guidelines regarding investigations of rape and/or allegations of sexual misconduct between staff and patients.

During my investigation I was assured by Forensic Psychiatric Services Commission staff that a similar situation would be handled differently now. I discovered, however, that while a policy statement which would provide specific guidance on the issue was being considered, it still had not been formalized. This was about nine months after the original arbitration decision and a year and a half after the precipitating incident. While it was true that those who had been through this experience would undoubtedly know better how to react, how were new staff and those not familiar with the incident to know what was expected of them, should a similar incident occur?

I was informed that the Forensic Psychiatric Services Commission was then in the process of revising its Policy and Procedures Manuals and that such a directive would find its place in that revision. Other priorities facing the Commission had unfortunately delayed such a revision.

I felt it was urgent to provide adequate direction to the staff with respect to the two issues which gave rise to the arbitrator's criticisms and proposed that the Commission proceed immediately with the incorporation of policy statements on these two matters, rather than wait until the remainder of the revisions were completed. The Commission subsequently put forward a policy statement which satisfied my concerns. (CS 83-086)

VITAL STATISTICS

In my 1982 Annual Report I pointed out that the Division of Vital Statistics administers various pieces of legislation that have not changed to reflect the times.

The problems rooted in the antiquated legislation have in the past been compounded by unnecessarily rigid or restrictive interpretation of the legislation. Rules were rules and if there was a way to deny a request, it would be found. This approach does not lend itself to solving problems that are not covered by the rule book.

But even though legislative change is necessary, it will not address all problems. No legislation can anticipate every eventuality. That is where reason comes into play.

In the past two years, particularly in the last 12 months, Vital Statistics has made a considerable effort in that respect. There is a genuine trend towards a less bureaucratic approach. The following are good examples of that effort.

International red tape

A father who shares custody of his child with her American mother, ran into international red tape every time his daughter returned to the United States after visiting him.

Each time the child entered the United States, American customs authorities required proof that she had resident status in that country. A letter from the child's mother confirming her status was not sufficient to prove to the authorities that she was, indeed, the child's mother. The child carries her father's surname, and B.C. birth certificates do not list the names of the child's mother and father.

The American authorities suggested that the father ask Vital Statistics to provide the necessary proof. In a long letter to the Division, he explained his predicament and what kind of documentation he required. He stressed that a birth certificate would be of no use because it did not contain any reference to the parents' names.

He promptly received the very document he did not want — a birth certificate. Frustrated, he came to me for help. My staff got in touch with the Director of Vital Statistics who agreed to review the matter immediately because the child was to arrive shortly, confronting my complainant with the same old problem.

The Director reviewed the case and agreed to release a copy of the child's original birth registration form (normally not available) which contained the information my complainant needed. The Director also agreed to remind his staff that it is important to read correspondence from the public carefully. (CS 83-087)

Marriage and bureaucracy

Marriage is not an occasion that should be marred by bureaucratic hassles but it does happen occasionally. When signing her marriage licence, a woman was advised to spell her name as it appeared on her birth certificate even though the spelling on that document was wrong. She later had the spelling on the birth certificate corrected but Vital Statistics refused to do the same with her marriage licence. The woman felt this was unfair, since her proof of marriage was now incorrect. She brought her complaint to us.

We reviewed the relevant legislation and informed Vital Statistics that it did not have the legal authority to reject the complainant's request for correction of her marriage certificate. After some consideration, Vital Statistics agreed with our interpretation and gave the complainant a new marriage certificate, spelling her name correctly. The Ministry also assured me that from now on, the Branch will follow this new practice. (CS 83-088)

If you want action, go to the top

A woman got the runaround by Vital Statistics when she tried to register her son's birth. She asked us for help.

Her problem started when she wanted to know why Vital Statistics required information on her marital status to complete the birth registration. She asked a clerk to provide her with the rationale behind the request but the clerk did not know.

In a letter to Vital Statistics, she outlined her concerns and asking for an explanation. She promptly received a reply, characterizing her actions as "unco-operative" and telling her that she must supply the information. No reasons were offered.

My staff contacted the Director of Vital Statistics who immediately agreed to call the woman to provide the explanation. He also agreed that the letter sent by his office in response to the woman's query was unnecessarily abrupt and uninformative.

He promised to review the matter with his staff and develop a more rational style of communication. (CS 83-089)

PUBLIC COMMITMENT

In my 1980 and 1982 Annual Reports, I stated that Ministry officials undermined the implementation of a Minister's commitment to a citizens' group.

This year I received a complaint involving government commitments to students and difficulties encountered when the program ran out of money.

Beware of governments bearing gifts

A health sciences student who qualified for a government bursary complained when he did not receive the bursary because the program "ran out of money."

The Health Bursary Program was established by the Ministry of Health and is administered by the Ministry of Education to provide financial assistance to students enrolled in Health Care Programs.

The pamphlet printed by the Ministry of Education and distributed to students states that "an amount of up to $50 per week is available for every week the student is in training."

Both Health and Education informed me that as a result of the increased number of students requiring financial assistance in the Health Care Program, the funds allocated by the Ministry of Health were quickly used up. And although the students had submitted their applications on time and had qualified, the Program was unable to provide funds.

In my opinion the pamphlet stated that all health care students who qualified for the financial assistance would receive up to $50 per week. I found that the Ministry had acted improperly by not living up to this representation. I recommended that the government fulfill its obligation to the students by providing additional funds to grant bursaries to qualified students.

The Ministries replied that the application for the bursary was intended to determine eligibility for the program and that the educational institution made recommendations. The decision to grant or not to grant a bursary remained with the Ministry of Education. Therefore, the government argued, until the Ministry of Education had made a decision, a student was only "eligible for" but not "entitled to" the bursary.

The government was playing with words. The matter appeared straightforward. The pamphlet has stated "an amount . . . is available" but by the end of August 1982 the funding was not available.

The public should be able to rely on the government's word. If there are limits to government statements, those limits should be specifically stated. While the Ministries did not agree to provide additional funding for the program, they agreed to review the terms of reference to the program and the pamphlet representations to ensure that conditions related to eligibility, entitlement and program funding, are more clearly stated.

I could only conclude that the students had been treated unfairly but that I was unable to persuade government to provide a satisfactory resolution. (CS 83-090)

MINISTRY OF HUMAN RESOURCES

Declined, withdrawn, discontinued	411
Resolved: corrected during investigation	328
Substantiated: corrected after recommendation	8
Substantiated but not rectified	0
Not substantiated	237
Total number of cases closed	984
Number of cases open December 31, 1983	165

The number of complaints concerning the Ministry of Human Resources jumped from 705 in 1982 to 984 in 1983, an increase of 40 percent. Compared to 1981, complaints in 1983 increased by 150 percent.

There were several reasons for this development. As a result of the bad economic times, the number of applications for income assistance rose by 30 percent in 1983 and many people were confused by the significant changes in the Ministry's programs.

There were not as many complaints as I had expected about delay and inadequate services. The reason for this is perhaps the genuine commitment by the Minister and Ministry staff to meet the people's needs wherever possible.

Unfortunately the problem of resolving complaints that cannot be dealt with by line staff remains. In some cases, I am still waiting for the results of a "priority review of policy" that began two years ago.

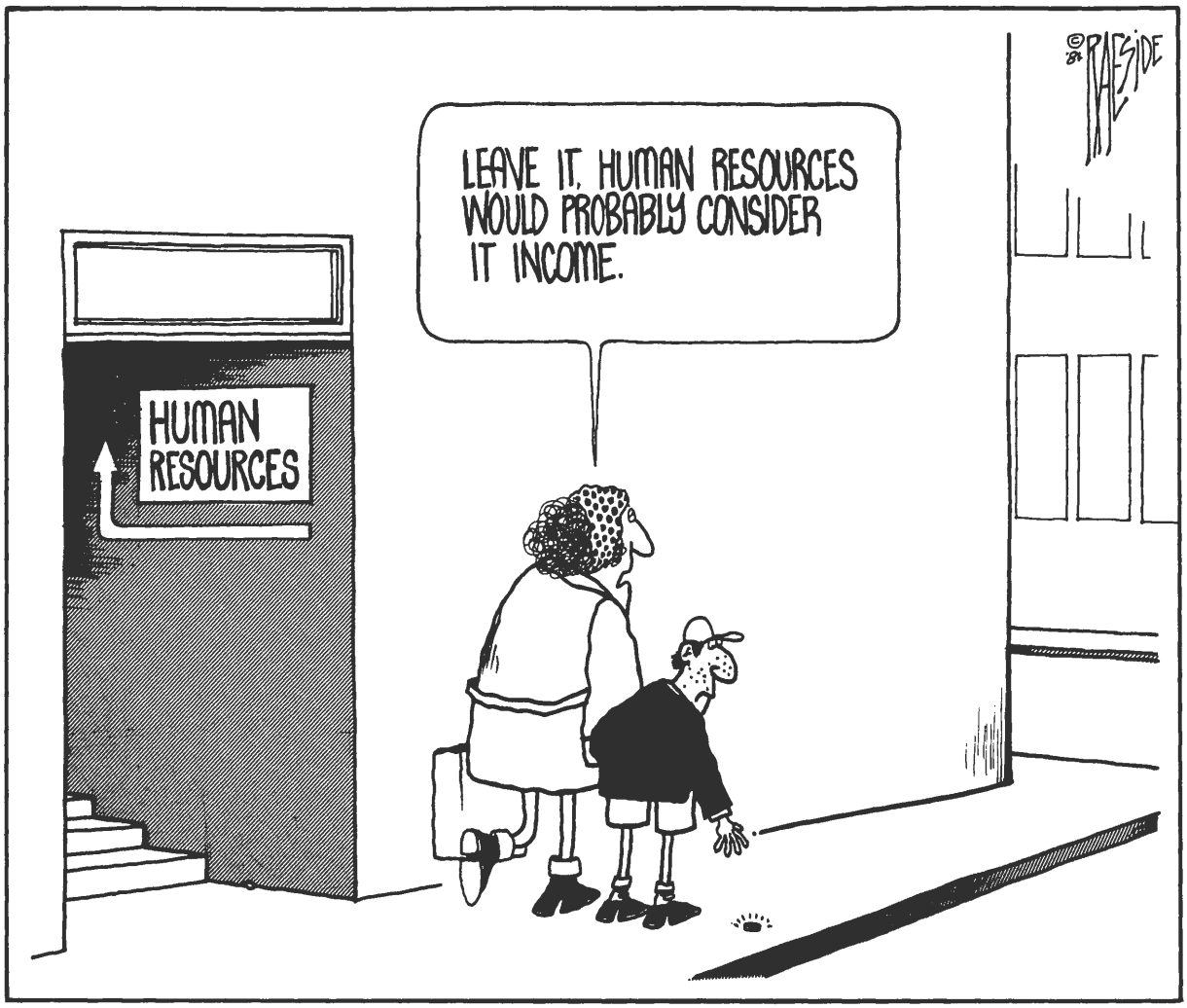
INCOME ASSISTANCE

The Ministry's Income Assistance Program involves the expenditure of a significant amount of money each year. The Ministry has the responsibility to ensure that those funds go to people who qualify for benefits.

To prevent abuse, the Ministry employs inspectors who investigate allegations of "welfare fraud." It is important that a person under investigation for fraudulent claim of welfare funds is treated fairly. When such fairness is lacking, we are sometimes asked to help.

Ministry apologizes for allegations

A young woman was cut off income assistance because the Ministry assumed wrongly that she lived with her ex-spouse who had an income. When a Ministry fraud inspector made what the woman considered an inappropriate comment



about the gravity of the allegation against her, she complained to me.

My investigator advised her of her right to appeal the cancellation of her income assistance. She did so and her appeal was successful.

My investigator also confirmed that the fraud inspector had indeed made some offensive remarks during a heated discussion with my complainant. Regardless of the circumstances, I considered the inspector's conduct inappropriate and asked the Ministry to apologize to the woman. The Ministry agreed to do so. (CS 83-091)

Not told of her rights

A woman who was under investigation for possible misuse of income assistance benefits raised two concerns with me, both of a very serious nature.

The Ministry did not inform my complainant that she was suspected of misuse of public funds. She learned about the investigation when the Ministry contacted an acquaintance of hers. The woman felt this was unfair because she had not been given an opportunity to state her position and defend herself. When the Ministry finally confronted her with the allegation she was not informed of her rights.

Shortly after I voiced my concerns, the Ministry designed a new set of procedures to prevent the kind of problems my complainant had experienced. The new procedures include reminders to investigators not to assume a person's guilt; to conduct interviews in a courteous manner; to inform clients af any allegation as soon as possible; to give clients an opportunity to respond to allegations of fraud, and to inform a client of his or her right to remain silent. (CS 83-092)

In some cases, the problem with income assistance complaints can be found with a different agency.

Entitlement does not buy food

A young man complained that the Ministry had denied him income assistance because he was eligible for Unemployment Insurance benefits.

He agreed that he was technically eligible but did not get any money because the Unemployment Insurance Commission was withholding all his cheques to recover a previous overpayment. And although U.I.C had first agreed to recover the money by withholding only half his benefits, each time a cheque was due, he received notice that the full amount had been deducted. Since he was without any funds, despite his eligibility for U.I.C. benefits, he felt he was entitled to income assistance from Human Resources.

The Ministry agreed to meet the man's emergency needs but refused to grant him regular assistance, suggesting that the problem be solved by U.I.C. I agreed with that view and although I have no jurisdiction to investigate U.I.C., I asked the Commission why it had not lived up to the agreement to recover the previous overpayment by withholding only half the complainant's benefits.

It turned out that a computer error had caused the problem. To help the man out of his immediate financial predicament, U.I.C. issued an initial cheque for his full entitlement and programmed its computer to deduct only half his benefits until the overpayment had been recovered. (CS 83-093)

Sometimes the problem is not the absence of a policy but the fact that an existing policy is not clear. The following two cases are examples of problems with the interpretation of the Ministry's policy on shelter benefits.

The staff did not know

The 64-year-old mother of a mentally handicapped son who received income assistance for the mentally handicapped, found herself continuously in dire financial straits because the Ministry refused to pay her son a shelter allowance.

We found that the local Human Resources office had denied him shelter benefits on the assumption that Ministry policy would not allow them to do so. The shelter benefits were immediately authorized when we pointed out that the Ministry staff had misunderstood the policy.

Normally we would have closed our investigation at that point but I feared that other ministry employees might also be unfamiliar with the policy, a fear which was substantiated when we polled a number of workers throughout the province, asking for their response to an identical situation. A significant number shared the misunderstanding of the policy.

When I brought my concerns to the Ministry's attention, officials assured me that they would clarify the matter with ministry staff. (CS 83-094)

Family did not have to separate

A single mother who had been raising her son on her own for several years with the help of income assistance, came to me for help when a Ministry rule threatened to break up her family.

The benefits — based on a two-person family (herself and her son) — enabled her to pay rent and purchase the bare necessities.

When her son turned 19, the Ministry informed both mother and son that he was now an adult and would have to apply for his own income assistance, even though he was still going to school. They filled out the forms, convinced that while the paperwork was necessary it would have no practical effect on their lives. They were wrong.

The Ministry cited a "rule" stating that an income assistance recipient living with a parent was not eligible for shelter benefits, with the result that the family's shelter benefits were immediately reduced from $340 to $200, the amount for which the mother was eligible. To the family it was a crushing blow. The two were no longer in a position to pay the rent and feared they would be evicted. When they brought this to the attention of Ministry officials, the Ministry advised the son to move out and find his own accommodation. Neither the mother nor the son considered this an acceptable solution.

Although the Ministry does have a "no shelter rule" which applies to adult children boarding and rooming with their parent, we argued that the mother and son might better be described as sharing accommodation, in which case the "room and board" rule need not apply.

The Ministry agreed that the arrangement could be looked at in this light and reinstated full shelter benefits, enabling the family to stay together. (CS 83-095)

Even though the Ministry has developed a detailed written policy to guide line staff with regard to eligibility for income assistance, situations not covered by those guidelines, do occur. In the following cases, we were able to provide assistance.

Spouse gone and so is the money

A woman who had recently separated from her spouse complained that the Ministry tried to collect from her a sum of money which her spouse had spent.

Before their separation, the spouse had been issued income assistance benefits for both himself and his wife. She alleged that the spouse took the money, all of it, and left the province. Now single, she went back to Human Resources and

asked for enough benefits to pay her rent and buy food. She received a cheque but was told she would have to repay half the money her spouse had already received. The woman felt this was unfair, since she had had no control over her spouse's actions. The Ministry insisted that the initial benefits were issued to both of them and, therefore, both were responsible for the loss.

I agree that under normal circumstances recipients are equally responsible for benefits provided in their name, no matter whose name is on the cheque. In this case, however, the complainant never had an opportunity to exercise that responsibility. Both the spouse and the money were gone.

Ministry officials agreed to review the matter with the spouse who had since returned to British Columbia but was not in contact with the complainant. He did not refute the complainant's contention that she had not benefitted from the first cheque, and the Ministry decided to recover the money from the spouse, rather than from her. (CS 83-096)

That's not income

A woman complained that her income assistance benefits were unfairly terminated when she received an insurance settlement for furniture destroyed in a house fire.

When the complainant separated from her husband she temporarily stored her household goods in the basement of his home, planning to move them when she was settled elsewhere. Before she had a chance to do so, however, the contents of the house were destroyed in a fire. Fortunately, her furniture was insured and she received a settlement shortly after.

Human Resources said the insurance settlement constituted "unearned income" which should be used to meet the complainant's day-to-day living expenses, and suspended her income assistance benefits.

My investigator discussed the case with Ministry officials, pointing out that the insurance settlement was to enable the complainant to replace allowable assets, namely the furniture destroyed in the fire, and could, therefore, not be considered unearned income.

The Ministry reviewed the case, reversed its earlier decision and reinstated the complainant's income assistance benefits. (CS 83-097)

Cash no, ticket yes

A man on income assistance complaind that Human Resources had threatened to discontinue his benefits if he accepted money from his father to take his daughter on a trip to Quebec to visit the girl's mother from whom he was separated.

There appears to be a difference between a cash gift and a gift in kind. The Ministry agreed to our suggestion that the father give his son, our complainant, a bus or airplane ticket. The son's income assistance benefits continued, despite the gift and the girl was able to visit her mother. (CS 83-098)

Sometimes an individual complaint will bring broader procedural problems to my attention. Resolving such cases and procedural problems is particularly useful because it prevents similar problems from occurring in the future. The following two cases fall into this category.

Confusion over camp fees

A Ministry worker complained that Human Resources did not allocate the funds it had for summer camp fees in an equitable manner. Children were unable to register for available programs. Many managers rejected requests for camp fees on the grounds that the Ministry's budget estimates had not been debated in the Legislature.

We found out from Ministry officials that camp funds were available and suggested that this information be immediately relayed to managers throughout the province. The Ministry agreed to do so and the misunderstanding was cleared up.

With the immediate problem out of the way, we pointed out that the Ministry had no criteria for deciding who was to receive camp fees, nor did it have a system of informing clients that the program was available. Thus, clients familiar with the system had access to a benefit other clients lost out on by default.

We urged the Ministry to develop a fair and systematic approach to the disbursement of camp fees, pointing out that a "first come, first served " system can be equitable, provided all clients are aware of the existence of the program and the advantage of early application.

The Ministry has since agreed to have the necessary guidelines in place before the 1984 camp season. (CS 83-099)

The waiting game

A man on income assistance brought to my attention a loophole in the Ministry's appeal procedure which had been causing unreasonable delays.

My complainant pointed out that Ministry procedures provide for time limits at each stage of

an appeal, except the last one. There was no time limit on rendering a decision. This, he claimed, sometimes resulted in unreasonable delays before a client is notified of the outcome of an appeal.

A review of the procedures showed that my complainant was correct. Appeal decisions did not have to be rendered within a specified time frame. I recommended that the Ministry review its appeal procedures with an eye on unreasonable delays.

As a first step, the Ministry decided to implement a monitoring system to identify the delays and then find ways to rectify the problem. (CS 83-100)

HEALTH CARE SERVICES

I also received a range of complaints about various requests for medical help. Many people seem to be under the impression that Human Resources pays all medical expenses for people on G.A.I.N. which is not the case.

While many Ministry workers are flexible in suitable cases, the policy is sometimes rigid. Persons classified as "employable" are not eligible for medical coverage which means their families are not covered either. Medical coverage is the responsibility of the "employable" person.

In most instances, this does not pose a problem because employable clients may be referred to the Temporary Premium Assistance Program of the Ministry of Health. The real dilemma is often the need for dental care, prescription eyeglasses, or similar requests. Help of this nature is often granted only if the client faces an emergency or cannot be expected to get a job without the requested help.

The unemployed have toothaches, too

A young man whose wife needed emergency dental work phoned our office in utter frustration when the Ministry refused to provide dental coverage.

He said his wife was in great pain. She desperately needed all her teeth removed and replaced with a complete set of dentures but the Ministry had refused their application for medical and dental coverage because it considered them "employable." The man said he hoped to get seasonal work in the next few months and would gladly repay the Ministry at that time, if only he could get immediate relief for his wife.

The Ministry agreed with our investigator that the woman required emergency treatment and after being reassured that the couple would try to pay for at least part of the cost, the Ministry granted medical-dental coverage on the basis that she was temporarily unemployable. Within a month, the work was done and the woman was no longer in pain. (CS 83-101)

Try volunteers first, then come to us

A mother whose five-year-old daughter had to undergo cancer treatment in Vancouver needed financial assistance to help pay for medical transportation and travel expenses.

The woman told us that the Ministry had rejected her request for assistance and even though the Canadian Cancer Society had offered to help, it wasn't enough because the family of four was living on the limited income of unemployment insurance benefits.

The Ministry explained that it had given the woman the names of various service organizations which might be willing to provide financial assistance. If these sources couldn't provide sufficient help, the Ministry was prepared to pay whatever was needed to enable the mother and her girl to take the trip to Vancouver.

I passed this information on to the woman advising her to try the other organizations first and then, if necessary, contact Human Resources again. (CS 83-102)

Ministry helps baby

A young mother came to us for help because her baby needed medical attention and the doctor who had examined the infant without charge before, would not do so again.

The woman had moved to British Columbia only recently and had not yet been able to get an appointment with the Ministry to discuss her need for income assistance. For the time being, she was living with her relatives but felt that she could not ask them to pay for her child's medical expenses. The doctor, meanwhile, would not honour the woman's medical coverage from another province.

The Ministry told us that it could pay for a prescription or an over-the-counter remedy immediately but also pointed out that the doctor could accept the woman's out-of-province medical card, should he choose to do so.

We passed this information on to the mother and later were able to convince the doctor to honour the woman's out-of-province medical coverage. (CS 83-103)

Sometimes we are able not only to identify problems but pinpoint information gaps between clients and the Ministry or between Ministries themselves and to repair the damage by filling these information gaps and communication problems.

B.C. agrees to surgery in Alberta

A woman on income assistance asked for our help when the Ministry refused to pay transportation costs for urgently required out-of-province surgery.

The woman had been in a serious accident some time ago and, while still living in Alberta, had received extensive treatment for her condition. Surgery was considered at the time but postponed until she regained her health. She then moved to B.C. to be closer to her family.

Several months passed but her condition did not improve. Her B.C. physician felt that surgery was required and recommended that it be performed by her Alberta specialist who had treated her originally and was most familiar with her case. The Alberta specialist agreed and a date for the surgery was set. Since she had no funds to make the trip, she asked the Ministry for assistance. Her request was turned down on the basis that the surgery could be done here.

She was also informed that the Medical Services Plan covers non-emergency surgery outside the province in exceptional cases only, provided the patient obtains prior approval. No such approval had been sought by either the woman or her physician.

We phoned the woman's physician and urged him to ask Medical Services for the necessary approval. We then informed Medical Services that the doctor would be in touch with them and asked that they give the request priority consideration because the date of the surgery was approaching fast. Medical Services agreed and within a day the request was approved on the basis of medical necessity.

Armed with this decision, we approached Human Resources. We pointed out that according to Medical Services experts, the surgery was best undertaken in Alberta. Based on this information, the Ministry not only provided transportation costs but also authorized payment of the increased Alberta user-fee premium for the hospital stay. (CS 83-104)

Recipients of the province's Handicapped Persons Income Assistance continue to have problems. Often they believe that their monthly cheque is a pension, rather than part of the G.A.I.N. program. If, for instance, a client wins money in a lottery or earns more than a certain amount of money, his or her H.P.I.A. benefits will be reduced.

Ministry workers generally give special consideration to requests from H.P.I.A clients but my staff are still called upon quite often to give people information on H.P.I.A. benefits and policies, as well as appeal procedures.

Red tape causes delay

An income assistance recipient applied for Handicapped Persons Income Assistance and was given an application form by his Financial Assistance Worker to take to his doctor for completion.

After the physician had sent the form to Victoria, according to the written instructions, our complainant found out that his case worker should have filled in part of the application before giving it to the physician. The complainant told us he feared that the Ministry might not deal with his application for some time because of the mixup, a fear that was reinforced by his case worker's determination to wait until the form was returned to her for completion, rather than trying to track it down right away.

My investigator informed Victoria's Income Assistance Division of the problem and the application was located and returned immediately to the Financial Assistance Worker for completion. An official in Victoria also said he would remind the case worker of the proper procedure to follow in future applications. (CS 83-105)

Ministry helped and probably saved money

A woman complained that Human Resources was going to discontinue paying her Handicapped Persons Income Assistance while she underwent medical treatment for two to three months.

The woman lived with her elderly mother who was on a fixed, low income. The loss of the daughter's contribution towards shared expenses would almost certainly have meant that the mother could no longer afford the apartment.

The problem was solved to everybody's satisfaction when the Ministry agreed to continue paying the shelter portion of the handicapped daughter. The woman's brother, in turn, agreed to care for the mother while the daughter was in hospital.

By agreeing to this arrangement, the Ministry probably saved a considerable amount of money. Not only would Human Resources have had to hire a homemaker or pay for the placement of the mother in a senior citizen home, but might also have had to assist financially with moving and storing both women's belongings, had they been forced to give up the apartment. (CS 83-106)

On occasion, more complicated issues arise. Among them is the problem of assignments which the Ministry has not always handled fairly. The frequency of complaints I have received about assignments, prompted me to ask Human Resources to resolve the problem.

Ministry employees have often been unwilling to become involved in anything resembling a "loan" situation with clients. They have repeatedly told me that they are considering the whole question of assignments but have never brought the matter to a conclusion.

It is questionable whether the Ministry has the legal right to take assignments or to enforce collection afterwards. If it does, the treatment of both the client and relevant documentation should be consistent.

Fairness and consistency are important

A Human Resources client whose wife was on Handicapped Persons Income Assistance was injured in a car accident. While fighting it out in the courts with I.C.B.C., the couple had received income assistance from the Ministry. When the court finally awarded the man a large sum of money, the Ministry demanded deduction of all the benefits he had received while awaiting the court decision.

The funds were frozen in a trust account with ICBC's lawyer. The man and his lawyer maintained that only those amounts for which specific assignments had been signed should be repaid. Delays occurred when the matter was referred to the Attorney General for legal advice. When the complainant asked me to intervene, I asked the Regional Manager of Human Resources to consider my contention that the man should have to repay only those amounts specified in assignments.

Even though the Regional Manager was convinced that the Ministry's intent had been to ask for a general assignment, he admitted that there was a lack of consistency in the way these assignments had been handled. He arranged for a meeting shortly after between local staff and the client and a settlement was reached. After reviewing the assignment documents for administrative reasons only, I agreed that the arrangement was fair. (CS 83-107)

FAMILY AND CHILDREN'S SERVICES

The Ministry's Family and Children's Services division generated complaints in five general areas: Child Protection, Adoption, Fostering, Day Care and Family Services, and Contracted Services.

PROTECTION

Most of the complaints I investigate under the general heading of Family and Children's Services concern child protection. Parents are overwhelmed by the Ministry's authority to investigate abuse allegations and to apprehend their children when officials determine that children are "at risk."

Sometimes parents call my office, denying that the Ministry had grounds for its actions, even though the matter has already been reviewed in the court, and a judge has determined that the children should be taken out of their parents' care. These parents often refuse to recognize the seriousness of the problem, and will not accept the decisions found necessary by a judge to protect the children.

Other parents invoke our intervention, recognizing the Ministry's authority to apprehend children but they would like the Ministry to modify its approach to investigating the allegation, for both the parents' and children's sake. It is important to protect children. It is also important to protect the family, should it be in the children's best interest to remain with their parents. In the following case, the Ministry appeared to ignore the need to protect the family.

Abuse investigation delayed and dismissed

A father who shared custody of his two boys with their mother called us in a panic when Human Resources informed him that it had received an allegation of child abuse and intended to investigate immediately.

For most of the year, the boys lived with their father. Only during the summer, they spent several weeks with their mother. He wanted the Ministry to wait with its investigation until the children returned to his care. The mother lived outside of Canada and he feared that regardless of the outcome of the investigation, she would take legal action to change the custody order and not return the children to his care if the Ministry interviewed the boys while they lived with her.

He assured us that he did not want to block the investigation in any way. He was simply worried about the complications of getting his children back, considering that they lived in a foreign country.

The Ministry agreed to delay the investigation until the boys returned home. The father later called us to say that the boys were interviewed the day after they returned home and that the Ministry had dismissed the allegation of child abuse. (CS 83-108)

Some parents are desperate because they feel their children are not protected enough, when, for instance, their children live on the streets.

Young girl at risk

A woman who considered her daughter to be at extreme risk complained about a delay in getting the girl admitted to a mental health centre for teenagers.

The health centre could not accept the girl, unless she had first been assessed by a psychiatrist but the girl refused to co-operate with the psychiatrist. Meanwhile, the girl was living on the streets and the mother didn't know what to do.

As a result of our intervention, the Ministry clarified the woman's options. She could either ask the Ministry to apprehend her daughter because she was at risk, or charge her with theft (she had stolen money), which would give the police the authority to arrest her. Once the girl was apprehended by the Ministry or arrested by the police, she could be admitted to hospital by the mother for a psychiatric assessment.

The woman decided to charge her daughter with theft and the police arrested the girl. An assessment was done and the girl was admitted to the mental health centre the following week. (CS 83-109)

In another case, the Ministry did not agree with the professional assessment of a child's problem and thought it was in the child's best interest to return home, but the child's mother disagreed.

Mother concerned about son's welfare

A woman called us, concerned about her son's welfare. Her son had serious emotional problems and had been at the Maples mental health centre for teenagers for an assessment, as a result of which some professionals advised against placing him back in his community.

The family lived in a small town, and some experts at the mental health centre feared that the boy would continue to be stigmatized because of his problems. The woman suspected that Human Resources was ignoring the advice of the professionals and intended to place the boy back with his family. She feared that this would not be in the boy's best interest.

In discussions with my investigator the Ministry's District Supervisor pointed out that a resident psychologist at the centre had no objection to the boy returning to his home but he also acknowledged that other professionals did not share this opinion.

He said he would try to find a home for the boy in another town, close to his family. That way, the boy could live in a different environment and still maintain contact with his family. He agreed to prepare a list of options and leave it up to the woman to make the final choice. If she did not find any of the options acceptable, she would be free to reject them and her son would return to her home.

I believe the Ministry did a good job in recognizing the two different approaches to assessing "the best interests of the child," and suggesting an effective compromise. (CS 83-110)

Usually complaints about the Ministry's actions in child protection matters suggest either too much or too little involvement on the Ministry's part. In the cases below, one person complained that the Ministry did too little to respond to his protection concerns, while another claimed that the Ministry did too much.

Too little

A man complained that the Ministry refused to apprehend his children, even though they were at risk. The children lived with their mother, from whom he was divorced. He also complained that it took seven days before the Ministry investigated his protection concern.

After investigating the matter, I realized that the man's protection complaints were an expression of hostility towards his divorced wife. It was obvious that he continued to disagree with the way she cared for the children.

I found that the Ministry conducted an investigation each time the man or a member of his family had called with a protection complaint concerning his children. A seven-day delay, however, was too long, in my opionion, even if the man's motives for complaining were suspect.

The Ministry acknowledged that a seven-day delay was too long, regardless of the circumstances, and the district office changed its administrative procedures to enable social workers to respond to abuse allegations within 24 hours.

I commend the District Supervisor for his willingness to consider the broader administrative procedures. (CS 83-111)

Too much

A woman complained that the Ministry was monitoring her home, even though she considered it unnecessary. She also complained that the Ministry would not transfer her family's file to another district office closer to her new home.

The Ministry alleged that the woman's children were at risk because they had an abusive father, and that monitoring the family was necessary to protect the children. And since the woman had not indicated her objections, the Ministry continued monitoring her family.

We found that there was no court order compelling the Ministry to monitor the children's placement in the home, and I concluded that in view of the woman's objections the Ministry had no authority to continue monitoring. I informed the woman that the Ministry could monitor her fam-

ily only if she either agreed to the visits or if her children had been apprehended and then placed back in her care under a court order giving the Ministry the authority to supervise the children's placement. If neither of these conditions existed, she did not have to continue accepting the Ministry's monitoring service.

I also pointed out that the Ministry usually transfers files without any difficulty, unless the child or family are in a crisis. In her case the Ministry's refusal to transfer the file made no sense. The children were home and there was no court decision pending.

Eventually, the Ministry agreed to transfer the woman's file and to discontinue monitoring her family. (CS 83-112)

And finally, for the first time last year, I heard from children concerning their rights in protection complaints. At long last, children are beginning to realize that they can and should speak out when they disagree with what's happening to them.

Cruel treatment in hospital

One of the most disturbing cases concerned cruel and insensitive treatment by hospital staff of a 15-year-old girl who had been sexually abused.

I first became aware of the case when a woman phoned my office on behalf of a girl she was counselling, charging that the girl, who was in the temporary care of Human Resources, had been physically assaulted by several male staff of a hospital where she was placed to overcome the terrible trauma associated with years of sexual abuse. The girl had become a temporary ward of the Ministry when her parents refused to believe that she was being sexually abused by a family friend.

The girl had been granted leave from the hospital to see the Queen during her visit to Victoria last year and was declared absent without leave when she failed to return at the designated time. The hospital's policy in such cases called for punishment, followed by a serious discussion of the problem.

The girl was told she had to change into her pyjamas before the matter would be discussed. She refused to comply with the instruction, saying she had done nothing wrong. Trying to explain why she was late, she said she had waited in vain for her social worker who was to have met her at a prearranged place.

Rather than listening to the girl, the staff proceeded to implement the hospital's policy, warning her that if she did not get into her pyjamas, they would put them on her. When she continued to refuse, several male staff forcibly restrained the girl and began undressing her. Midway through the stripping, she agreed to finish undressing herself. Incredibly the staff continued to strip the girl, telling her that she had missed her chance to undress herself.

Since the girl was a ward of the Ministry, I asked the Ministry to investigate the complaint. The hospital eventually revised its policy. Sexually abused children are now no longer to be forcibly undressed. Instead, they are to remain in a room with their pyjamas until they comply.

This policy change is certainly appropriate but it is hardly sufficient to allay my fears. In my view, no child should be subjected to physical force as a disciplinary technique. The only time children should be physically restrained is when their behaviour is a danger to themselves or others. To date, only sexually abused children have the benefit of this change in policy, but the Ministry is still considering the issue. (CS 83-113)

Conflict of interest

A ward of the Ministry of Human Resources complained that the Ministry had apprehended her baby at birth and that she did not know the reasons for the action.

She felt she was in a precarious position because the same Ministry which had parental authority over her, also took action against her to apprehend her child. She wondered who could give her legal advice and who would pay for that advice. At 15 years of age, she was not eligible for legal aid.

When I raised the matter with Ministry officials, they understood the conflict of interests and agreed to obtain legal counsel (separate from the Superintendent's legal counsel) for the girl. The Ministry also assured me that it had not made any decision about the girl's ability or inability to parent her own child. To support this, the Ministry pointed out that it had arranged for her to have easy access to her child on a daily basis so that she could participate in her baby's care. (CS 83-114)

ADOPTION

During these times of restraint, services to the family which are not of an emergency nature, may get a low priority with overworked Ministry staff. The following is a case in point.

A child in need of care

A family which had applied for the adoption of a child in special need of care became concerned

when the Ministry appeared to delay unreasonably the placement of a child with them.

The family had successfully completed an adoption application and wanted to welcome a child as soon as possible. In fact, the woman had canvassed the Ministry's bulletin for a child in need of special care and had her heart set on a particular three-year-old.

When she informed Human Resources of their interest in adopting the child, she was told that the Ministry was short of staff in that District and had its hands full looking after emergency services to families. She was warned that it would be some time before a Ministry representative could consider the child's placement with her family.

Frustrated and worried, the woman called us saying that "some time" could mean many months, if not a year.

When we raised the matter with the Ministry, we found that adoption placements were not considered a lower priority than emergency services to families. If a District office was strapped for personnel, someone from the Region would handle this woman's problem. The Ministry agreed to assess the child's potential placement with the woman's family and reach a final decision within five weeks.

A few weeks later, the woman called to tell us that there had been an addition to the family — a three-year-old child in very special need of love and care. (CS 83-115)

Another interesting issue in the area of adoption is the eligibility of common-law couples to adopt. The *Adoption Act* does not recognize common-law relationships and therefore does not enable a common-law couple to adopt a child. The Ministry's eligibility criteria supported the *Adoption Act* requirement to the point of not even accepting applications from common-law couples who wished to adopt a healthy baby.

I considered the Ministry's policy improperly discriminatory. While I understood that the *Adoption Act* did not recognize common-law relationships, I did not think that the Act precluded common-law couples from applying to the Ministry to adopt, or the Ministry from accepting their applications. I felt common-law couples should be able to apply to adopt with the understanding that they needed to be married at the time they sought their adoption order for their child.

The Ministry acknowledged my point and changed its policy so that it would accept applications from common-law couples with the understanding that they would be married by the time the Ministry was prepared to start a home study. In this way, the Ministry could accept applications from common-law couples and still uphold the requirements of the *Adoption Act*.

FOSTER CARE

Most complaints about foster care come from foster parents. They continue to have problems with Ministry decisions affecting their ability to foster or their eligibility to continue fostering a particular child.

In my 1982 Annual Report, I set out the Ministry's review mechanism for these decisions. I said that if after a Ministry review, the foster parents are still unhappy with the Ministry's decision, I would take another look at the matter, which is what I did last year for a few foster parents.

In one case, a woman called my office because she was worried that the Ministry would place her foster child in an adoptive home without considering the natural mother's wishes.

Baby stays, for now

For nine months, a woman looked after a baby which had been placed in the Ministry's temporary custody through a voluntary agreement with the natural mother. The complainant learned that the natural mother had signed a consent form that would enable the Ministry to place the baby for adoption.

The foster mother was told that the Ministry planned to take the baby from her. She understood that the natural mother intended her to adopt her child. She questioned the Ministry's plans.

To add to the problem, the Ministry could not locate the natural mother. To resolve the complaint, the Ministry agreed to recommend that a court action be adjourned until the natural mother could be located to clarify her wishes regarding her child's placement with adoptive parents. In the meantime, the baby would not be taken from the foster parent's care. This agreement met the needs of the Ministry, the foster parents, and the natural mother. (CS 83-116)

DAY CARE AND FAMILY SERVICES

Most day care complaints are about a person's eligibility for day care or the Ministry's late payment to a person providing day care services.

Subsidy continues

A woman complained that she had been denied a day care subsidy because her husband owned a business. She said the Ministry had calculated her eligibility on the assumption that her husband had earned at least a minimum wage through his company.

Since the company was new and business slow, and her husband had in fact received no income from his company, the woman said that the Ministry had created a hardship for her family by calculating her family's income incorrectly.

To meet the woman's short-term needs for day care, the Ministry agreed to give her a subsidy until the end of the school year. In this way, her children would receive day care for the next few months, during which her husband would have to decide whether it was worth to continue his self-employment. (CS 83-117)

Special service for handicapped care

When the Ministry denied a single parent "respite service," designed to provide relief from the unique pressures associated with having a handicapped child, she complained to us.

The Ministry had told the woman that she did not qualify because her income was too high but she knew of other parents with similar earnings who were receiving the service. We looked into the case, and the Ministry readily agreed to provide the woman with respite care for her son. (CS 83-118)

Quick response

A woman complained that the Ministry owed her wages for two months of daycare work and would not pay her.

When she informed the Ministry that she had complained to us, payment for her services arrived the following week. (CS 83-119)

CONTRACTED SERVICES

In last year's Annual Report, I pointed out that I received complaints from people who work on a contract basis with an independent society at arm's length from the Ministry. I stated that this arrangement seems to be acceptable to both the Ministry and the contract worker until the Ministry becomes concerned about the worker's ability to do his or her job. At that point, it seemed to become unclear to the worker, as well as the society how to address the Ministry's concerns.

The Ministry recognized the need to clarify its relationship with independent societies and devise a new procedure which would enable independent societies to discuss the Ministry's concerns with the worker, before taking any actions with regard to contracts.

I believe this issue is becoming more important now that the Ministry will turn even more to the private sector for contracted services. As a result of a complaint I investigated, the Ministry drafted a policy to be included in its future contracts. It reads in part: "the contractor should be given the opportunity to address the Ministry concerns regarding the performance of a child care giver employed by a contractor before the Ministry takes any action to terminate the contract without prejudice to the Ministry's duty to immediately terminate any child care arrangement where a child is at risk".

People in agencies who contract with the Ministry should be aware of the procedure that applies whenever the Ministry has concerns about a particular person's performance.

Occasionally I receive complaints from Ministry employees or former public servants. The following is an example.

Woman entitled to remuneration

A former public servant who had appeared in court on behalf of the Ministry on four separate occasions was later informed that she would receive no pay for her efforts.

The woman complained to me, pointing out that she had spent a lot of time in court, as well as preparing herself for the court appearances and travelling to and from court. After discussing the matter with my investigator, the Ministry agreed to pay the complainant for the hours in question. (CS 83-120)

MINISTRY OF LABOUR

Declined, withdrawn, discontinued	45
Resolved: corrected during investigation	31
Substantiated: corrected after recommendation	4
Substantiated but not rectified	1
Not substantiated	23
Total number of cases closed	104
Number of cases open December 31, 1983	41

Services provided by the Ministry of Labour touch on numerous aspects of life in British Columbia, including the collection of unpaid wages, the safety of an apartment heating system, the proper running of a hairdressing school, and the provision of courses to keep trades persons abreast of developments in their fields.

I report here on my contacts with just some of the Ministry's operations.

SAFETY ENGINEERING SERVICES DIVISION

The Safety Engineering Services Division is responsible for a safe and healthy living and working environment in B.C. This is accomplished through standards development, education programs and inspection activities related to the operation of boilers, pressure vessels, elevators, amusement rides, electrical and gas systems and occupational environments.

The Executive Director of this Division has again been very helpful this past year, as the following case illustrates.

Death trap

A man in an Interior town had been waging a long battle with the Division over the safety of the refrigeration plant in a combined ice arena-curling rink.

The plant had been installed in 1973. In 1980, my complainant, a retiree with experience in refrigeration systems, was invited to inspect the plant and noticed several deficiencies. This was the start of a lengthy exchange of correspondence between the complainant and the Division. Eventually, the complainant referred to the arena as a "potential death trap."

While I had no jurisdiction to investigate his concerns about the construction and use of the facility, I was able to look into his complaint about inadequate inspections of the arena.

I found that the Safety Division had not ignored the complainant's concerns. In correspondence with other authorities, the Division conceded that "some of the matters he raised as contravention of the standards were valid." But then, according to the Division, "steps were taken to have the non-compliance rectified." Division officers met with the complainant on a number of occasions to discuss his concerns. Originally the complainant considered there were 31 items which did not meet the requirements of the applicable regulations. By the time he complained to me, these had been reduced to sixteen.

The issues involved were so technical that it was not easy for me to determine the merits of the complaints and I accepted the Director's proposal to appoint a panel of experts who were not connected with the government or the arena and had experience in the field of ammonia refrigeration. I selected from a list of suitable candidates the Division provided.

The Panel concluded that the refrigeration plant was "as safe as any in the world" but that there were several deviations from the Code which required some adjustment to the operation.

The Division accepted my recommendation to deal with the more critical deficiencies immediately and rectify the remaining deviations from the Refrigeration Code within a year.

The complainant unfortunately was not satisfied with these answers and now complained about the Ombudsman. (CS 83-121)

APPRENTICESHIP AND EMPLOYMENT TRAINING PROGRAMS

The Apprenticeship and Employment Training Programs of the Ministry are chiefly responsible for apprentice and pre-apprentice training, tradesman qualification certification, and journeyman upgrading.

Right to privacy

I received a letter from a person who felt that he was caught between "a citizen's right to privacy and a bureaucracy's self-ordained right to know". At issue was the rejection of his application for an electrician's certificate ostensibly because he had not provided his Social Insurance Number.

"S.I.N. means Social Insurance Number, what I fear it is coming to mean is State Identity Number" the complainant wrote. Our investigation showed that the Apprenticeship Branch was not so much interested in the Social Insurance Number. It needed a method of differentiating between tradesmen with the same name. This was particularly important since requests for information about an individual's certification might be received from another province to which the tradesmen had relocated. Unless the Branch had some means of distinguishing between persons with the same name, it might give out misleading information.

Since such a differentiation was the stated goal, the Director agreed to consider an appropriate and alternate system to determine the identity of specific individuals. This would help protect the privacy of individuals who had contact with the Employment Training Division. (CS 83-122)

Nobody there to make decisions

With the co-operation of a local community college, a factory employee set up a trades qualification upgrading course for heavy duty mechanics who wished to obtain their provincial certification.

Those enrolling in the course paid a registration fee of $20. Funding for the instructor was expected to come from the Apprenticeship Training Programs Branch. But two weeks before the

course was to start, the local Branch representative advised course organizers that funding was uncertain though he would keep checking.

Four days before the starting date, he recommended that the course be cancelled because he had been unable to get confirmation of funding. To make matters worse, the Branch would not refund the $20 enrollment fee because participants could actually write the examination without taking the course.

I discovered that the application for funding had been forwarded to the main office in mid-December, about five to six weeks before the course was to get underway. The problem was that too many people were on holiday and there was a major reorganization of the Ministry's Employment Training Division in progress. Result: nobody made a decision.

As it turned out there were no funds left in the budget to finance projects, such as the one our complainant had proposed. But that still leaves the question of proper administrative procedures. The complainant should have had an answer to his application for funding much earlier. The delay was clearly unreasonable.

I still was concerned over the refusal to refund the examination fee. The Branch felt that the *Apprenticeship Act* gave it the authority to keep the fee. I disagreed.

In the end the Branch agreed to refund the $20 examination fee to any applicant who requested reimbursement in writing before taking the examination, and to apologize to the course organizers.

The Branch also agreed to participate in the funding of a heavy duty mechanic upgrading course at the community college the following month and to clarify administrative procedures to ensure quicker decisions in the future.

In addition, the Branch agreed to have a subcommittee of the provincial Apprenticeship Board review the pertinent statutory provisions of the *Apprenticeship Act*. (CS 83-123)

Another part of Apprenticeship and Employment Training Programs involves the Trades Schools Regulation office. This office monitors the operation of private trades schools in the province, approves procedures and teaching personnel and issues registration certificates.

Bridge closed — exam flunked

A secretarial student at a private business college encountered a closed swing bridge on her way to a final examination. She was late.

By the time she arrived in class the instructor had left. The young woman attempted to press her claim for course credit with the operator of the business school but was told that under the circumstances, no certificate would be issued for the course. The woman complained to the Trade Schools Administration Branch which investigated on her behalf, and suggested to the trade school operator that the complainant be given an opportunity to write the examination. The operator of the trade school refused.

The woman then complained to me about the failure of the Trade Schools Administration Branch to obtain satisfaction for her. I had no authority over the trade school itself, but considered the actions of the Branch. I discovered that although the Trade Schools Administration Branch has the authority to regulate trade schools in administrative matters, such as registration, health requirements, advertising, tuition fees, etc., it has no authority to deal with the type of dispute presented by this student, which was academic in nature. The Branch's mandate appears restricted to offering protection to students as consumers, not as students.

I did not make a recommendation in this case because there was no evidence of administrative wrongdoing. I proposed that the Trade Schools Administration Branch become an appeal body to adjudicate disputes between students and trade schools.

The Ministry of Labour initiated a detailed review of the trade schools legislation and regulations with a view to revising these. The issue I had raised was to be examined within the context of the overall review. (CS 83-124)

I began my remarks with reference to the co-operation I have received from some ministry officials. At times, however, there is a complete lack of co-operation at the highest level, as the following case illustrates.

Minister has no comment

The Canadian Union of Public Employees, Local 2278 (Teaching Assistants at the University of British Columbia), complained that the Minister of Labour had imposed mediation on them during a critical period in their contract negotiations with the employer.

The Union claimed the action was inappropriate and designed to prevent a strike or the threat of a strike during the Christmas 1981 examination period, thereby depriving the Union of a right guaranteed under the B.C. Labour Code.

Section 69(2) of the Labour Code allows the Minister to appoint a mediation officer to confer with parties at any time during the course of

collective bargaining "where he is of the opinion that the appointment is likely to contribute to more harmonious industrial relationships between the parties." The Union members had approved strike by vote. The Union was about to serve strike notice to the employer.

According to Section 81 of the Code, strike action was no longer possible until the mediation officer had completed his work and reported to the Minister. Mediation sessions were conducted between December 11 and December 23, which coincided roughly with the Christmas examination period. The Union maintained that the Minister's actions had effectively deprived them of a critical bargaining tool.

An earlier decision of the Labour Relations Board had dealt with a related issue. In the case of the College of New Caledonia and the Association of University and College Employees, Local No. 5 and Faculty Association of the College of New Caledonia, Decision No. 9/82, Mr. Rod Germaine, Vice Chairman of the Board, pointed out that Section 69 of the B.C. Labour Code confers a very broad discretion on the Minister of Labour concerning the appointment of a mediator. He went on to say that there is nonetheless a minimal standard of fairness to which the Minister must adhere.

In the New Caledonia case, an application for appointment of a mediator was made by the employer. The Minister complied with the request. Mr. Germaine held that in such a situation, administrative fairness required the Minister to confer with the other party involved before appointing a mediator.

It appeared to me that the same reasoning applied to the case at hand. If the Minister has the responsibility to confer with the parties when one side has requested the appointment of a mediator, that responsibility applies equally or perhaps more so when neither party has requested a mediator.

As Mr. Germaine suggested in his decision, even in the face of opposition from either of the parties, the Minister may decide to impose mediation. I felt that input from the parties could only help the Minister to reach a more informed decision. Such consultation would also alleviate the Union's perception of the appointment of a mediator as a tactic to postpone lawful job action.

I advised the Minister that according to Section 69(2) of the B.C. Labour Code, the failure to permit the views of the parties to be heard before the appointment of a mediator, constituted an unfair procedure.

In accordance with Section 16 of the *Ombudsman Act*, I advised the Minister of my intention to recommend that prior to the imposition of mediation, pursuant to Section 69(2) of the B.C. Labour Code, the Minister advise the parties affected of his intention to impose mediation and consider their response in making his final decision.

The Minister acknowledged receipt of my letter and tersely concluded: "I wish to advise you that I have no comment."

The Minister's response left me no choice but to proceed to the next step under the *Ombudsman Act* — to formally make the above recommendation to the Minister.

I emphasized that the implementation of this recommendation would in no way restrict his authority under Section 69(2) of the Labour Code. He would not be required to commit himself to a particular course of action, nor would I as Ombudsman review the substance of a decision made under that Section.

I also stressed that implementation of my recommendation would provide the Minister with more information on which to base his decision whether or not to appoint a mediator. I also stressed that both parties would be more likely to view the Minister's decision as fair.

The Minister's reply was even more terse than the first, stating only: "Please be advised that I have no further comment on this matter."

Pursuant to Section 23 of the *Ombudsman Act*, I requested that the Minister state his reasons for not following my recommendation. The Minister acknowledged my letter and stated:

"I wish to advise that I have no further comment."

I found the complaint of the Teaching Assistants Union substantiated. The Minister refused to implement my recommendation. The complaint, therefore, remains not rectified. The Minister has also refused to comply with the *Ombudsman Act* which requires that he give reasons when he refuses a recommendation duly made under Section 22 of the *Ombudsman Act*. (CS 83-125)

MINISTRY OF LANDS, PARKS AND HOUSING

Declined, withdrawn, discontinued	50
Resolved: corrected during investigation	56
Substantiated: corrected after recommendation	2
Substantiated but not rectified	0
Not substantiated	55
Total number of cases closed	163
Number of cases open December 31, 1983	41

We were relatively successful last year in our dealings with the Ministry of Lands, Parks and Housing, closing 24 more complaints than we did in 1982. More importantly, 56 cases were resolved during investigation in 1983 which is 22 more than in 1982. We were also able to reduce by 30 percent the number of open cases against the Ministry. As in previous years, most complaints against the Ministry involved Lands and Housing Regional Offices and the Home Purchase Assistance Branch.

LANDS AND HOUSING REGIONAL OFFICES

Lands and Housing Regional Offices have the responsibility for allocating and managing Crown lands in British Columbia. Crown land is an increasingly scarce resource. The high demand for Crown land by competing interests often forces the Ministry's regional offices to make difficult decisions. The complaints my office receives concern only a small percentage of the Crown land decisions the Ministry makes but they raise some interesting issues.

Recession hits Crown land buyers

A man who had bought Crown land with the help of a mortgage from the Ministry of Lands, Parks and Housing wanted to cancel the deal when he encountered financial difficulties, but the Ministry would not take the land back, unless he paid the accrued interest of $6,000.

The man had bought the property through a public lot draw, and land purchased in this manner must be paid for within one year. For that period the government is holding the mortage. When the comlainant was unable to complete the purchase because of financial problems, he tried to relieve himself of this debt by offering to reconvey the property to the Crown.

The Ministry was willing to resume ownership of the land but insisted on the payment of the accrued interest, approximately $6,000. The complainant could not afford to pay the interest and came to us for help. I soon learned that many others had the same difficulties. They had bought the lots at a time when interest rates were high and the economy was just beginning a downturn.

Advised of the situation, the Minister of Lands, Parks and Housing agreed that the province should resume clear title of the land and waive interest charges. Only the down payment would be forfeited. With this assurance by the Minister, I considered the complaint resolved. (CS 83-126)

Everybody can make a mistake — and does

A man who held a lease on Crown land complained that the Ministry would not let him exercise an option to purchase the property at the originally agreed-upon price.

The lease had been assigned to him by a third party on May 11, 1981 and contained a purchase option at the price of $2,630. That option would expire, unless he built a habitable dwelling on the land before September 7, 1981, according to the lease. Since my complainant did not have a habitable dwelling completed by this date, the Ministry maintained he could not exercise his option to buy.

The problem apparently arose as a result of a statement by the third party that the complainant would have one year in which to complete the construction of the habitable dwelling. The third party had acquired this information in response to a letter she had sent to the Ministry of Lands, Parks and Housing in April of 1980, asking about the conditions for assigning a lease. The Ministry replied that the assignee will have one year from the date of consent for the assignment of the lease in which to complete the construction of this habitable dwelling and exercise the option to purchase.

When the Ministry gave out that information there was, of course, more than one year left to complete the construction requirement, but by the time the lease was actually assigned in 1981, only a few months remained until the option to purchase expired. The complainant accepted the lease, in the belief that he had one year to build a habitable dwelling on the property and he was surprised when his application to purchase the land was rejected because he had not met the development requirement prior to September of 1981.

Initially the Ministry insisted that it was not legally required to allow the purchase of this lease at the original option price. The Ministry's position was that if the complainant had carefully

read the lease document, he would have realized that the option to purchase expired in September of 1981. Unfortunately, the complainant had been unable to do so, because the third party had lost her copy of the lease.

Informed of all these details, the Ministry agreed to have its solicitors review the file. The review concluded that fault lay with the Ministry, the third party and with my complainant but the Ministry agreed that it was unfair to place the burden of all the errors on the complainant and allowed him to exercise the option to purchase at the original price. (CS 83-127)

In some cases the Ministry is able to point to facts which clearly show that a complaint is not substantiated.

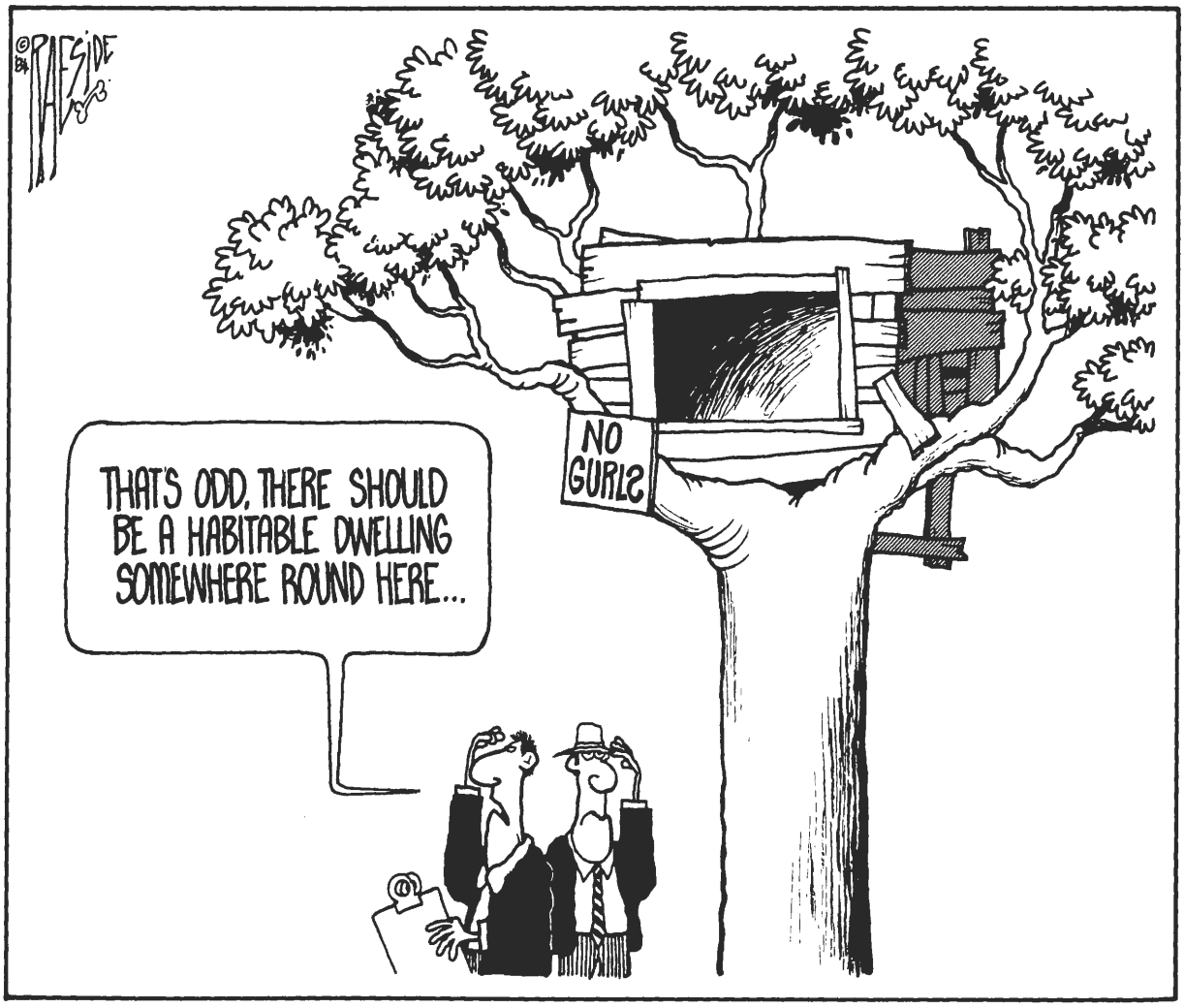
No door, no john, no option

A man who held a Crown lease with an option to purchase the land complained that he was denied the opportunity to exercise his option because the Ministry decided that he had not met the requirements of the lease agreement.

The key element in the dispute was whether or not my complainant had constructed a habitable dwelling on the land, as required by the agreement. It was clear that he had built a dwelling of some description, but the debate arose over whether or not it was habitable.

The word habitable is a rather vague adjective, open to a wide range of interpretations and it appears that the Ministry had not set any precise standards for what could be considered habitable. In view of this, I wrote to the Deputy Minister and suggested that the Ministry take another look at my complainant's case. The Ministry replied that the dwelling in question had neither a door nor a sewage system and could not be considered habitable by any reasonable person. In addition, the lease document stated that the lessee was required to make reasonable and diligent use of the Crown land for residential purposes, and clearly this requirement had not been met.

It appeared to me that the Ministry had a very strong case and I decided the complaint was not substantiated. (CS 83-128)



Many decisions made by a Regional Director may be reviewed through the Ministry's appeal system. I referred a number of complainants to this remedy since it appears to deal with complaints generally in a fair and effective manner. In exceptional circumstances, however, my staff will investigate complaints which the appeal system could deal with.

She took a chance and won

A woman complained about the high purchase price of Crown land she leased from the Ministry of Lands Parks and Housing.

The Ministry's appeal procedure requires the appellant to hire a second appraiser to determine the value of the land, a route my complainant said she could not afford to take.

Recognizing the time and effort she had put into developing the piece of property, I proposed that the Ministry prepare a list of six appraisal firms from which the complainant would be able to choose. If the new appraisal of the land was more than 10 percent below the Ministry's appraisal, the Ministry would pay for it. If, however, the new appraisal came in at less than 10 percent below the Ministry's, the complainant would pay the bill.

The Deputy Minister agreed to my proposal and had the Regional Director responsible provide me with a list of appraisal firms. The complainant was quite sure that the new appraisal would be more than 10 percent below the Ministry appraisal and readily accepted this suggestion.

Since both the Ministry and the complainant accepted my proposal, I considered this complaint resolved. Several months later, the complainant informed us that the appraisal had come in at more than 50 percent below the Ministry's original appraisal. (CS 83-129)

Some complaints involve much more than just the administration of the province's Crown land resources. In these cases we can only help the complainant with the part of the complaint that is relevant to the administration of this resource.

Ministry dams export of water

A young entrepreneur, who had developed a proposal to export fresh water from British Columbia to countries with a great need for this commodity, came to us when he felt his ambitious plans were threatened by red tape.

To proceed with this enterprise, the complainant required a foreshore lease. The Ministry rejected his application on the basis that the government planned to establish a policy relative to the export of fresh water from British Columbia. If the government decided in favour of bulk export of water, he could again submit an application for a foreshore lease. The man considered the denial of his application premature and asked us for assistance.

The problem was complex and essentially political. It is not my role as Ombudsman to decide what resources the province of British Columbia should or should not be exporting, or even offer advice on this matter. Such decisions rest with Cabinet.

We referred the complainant to the appropriate Ministers, so that he might present his proposal for exporting fresh water. And while matters regarding foreshore leases are within my jurisdiction, the Ministry has a procedure in place to handle appeals. I declined further investigation. (CS 83-130)

Ministry admits delay

During my visit to Fort Nelson in November of 1982, a man registered a number of complaints against the Ministry of Lands, Parks and Housing and several other government agencies.

His basic complaint was that the Ministry of Lands, Parks and Housing had delayed the processing of his application to purchase Crown land, causing him serious financial difficulties and problems with other government agencies. His financial problems were substantial and he presented a detailed plan of compensation to my office which he believed would provide an adequate remedy for his complaint.

Time was of the essence if his compensation plan was to succeed. He requested that I provide him with my findings as quickly as possible, so that he could avoid bankruptcy.

From my initial investigation of his complaint it appeared that the processing of his application might have been delayed by about 18 months. Although I did not make a formal recommendation, the Ministry agreed that there was some delay and offered my complainant the land in question at a substantially reduced price.

My investigation also revealed that the delay in processing the application was not responsible for the majority of the company's financial problems. A poor market for the company's products had led to massive debts with a number of creditors. Further investigation by my office could not have helped the complainant with these debts.

The Surveyor General's Branch is not directly connected with the Lands and Housing Regional Offices, but surveying issues often arise in land complaints. The Branch is frequently asked for expert advice on surveys and not everyone is satisfied with the results. (CS 83-131)

Complainants are not always right

A man complained to me that he was not getting any co-operation from the Surveyor General with regard to a number of surveys, the validity of which he had questioned.

My investigator found that the Surveyor General had responded to my complainant's enquiries and had made a decision on the validity of the surveys in question. I considered the complaint not substantiated. (CS 83-132)

HOME PURCHASE ASSISTANCE BRANCH

The Home Purchase Assistance Branch administers First Home Grants and B.C. Second Mortgages under the *Home Purchase Assistance Act*. On July 7, 1983, grants were suspended by Order-in-Council. Anyone who purchased a home after that date was not eligible for a grant. The suspension of the grants has reduced the number of complaints against the Branch.

The cost must be weighed

A couple registered a complaint against the Ministry for unreasonable delay in the processing of their B.C. Second Mortgage application. The Home Purchase Assistance Branch received their application on June 3, 1982 and sent them a letter of intent on June 10. On August 19, the Branch received the necessary mortgage documents from the applicants and forwarded them to the New Westminster Land Title office for registration on August 30. The Branch contacted the Land Title office on October 4 and discovered that the application had been lost. Another mortgage document was sent from the Branch with instructions to rush the registration of the mortgage. The mortgage was registered by the Land Title office on October 12 and the applicants received a cheque from the Ministry of Finance on November 2.

Since it normally takes about two weeks for a Land Title office to register a B.C. Second Mortgage, it appeared that their application had been delayed by approximately one month. Had they received the B.C. Second Mortgage at the beginning of October, they would have paid the lower rate of 15% interest for October instead of the higher bank rate. Unfortunately, the regulations of the *Financial Administration Act* do not allow for the payment of interest on money owing by the Province under the *Home Purchase Assistance Act*.

Since it seemed that government officials had made the error which cost my complainants a higher interest rate, I would ordinarily have recommended compensation for the difference. But there was another consideration. The actual loss came to about $25, whereas it would cost hundreds of dollars for my staff and Ministry staff to review the matter and for government lawyers to prepare the necessary documents for an ex-gratia payment to the complainants.

I concluded that the complaint was substantiated because the complainants had suffered a loss through no fault of their own. I brought the error to the Ministry's attention but pointed out to the couple that I could not justify spending hundreds of dollars worth of staff time to rectify this matter. I offered to pay personally if the complainants felt strongly about the issue, but they did not call on me to pay up. (CS 83-133)

SIN number is voluntary information

A woman complained that the form for a family First Home Grant asked for the applicant's social insurance number. It was her understanding that this information could only be required by the federal government.

We discussed the complaint with the Home Purchase Assistance Branch officials who agreed that she did not have to answer this question. Like many provincial agencies which provide grants to individuals, the Home Purchase Assistance Branch considers the social insurance number useful information and requests it on application forms. I recommended that the Ministry make it clear to applicants that this information is voluntary. (CS 83-134)

Home, sweet home

A man asked us to help him find out as quickly as possible whether his brother's application for a First Home Grant would be approved.

He said it was essential that he get written confirmation of the decision immediately to enable his brother, who lived in a different town, to complete the house purchase and get all documents to the bank the next day.

Ministry officials co-operated by quickly processing the application. Written confirmation of approval was provided the same day to our complainant who forwarded the letter to his brother by courier for immediate presentation to the bank.

Although initially reluctant, the bank agreed to accept the official government letter as proof and covered the difference in funds until the Ministry had processed payment of the grant. The purchase was concluded and the complainant's brother was able to move into his first home. (CS 83-135)

Lodge put to new use

On January 18, 1983, I heard a report on CBC Radio about the difficulties a community association on Hornby Island experienced trying to purchase, lease or otherwise receive Tribune Bay Lodge from the Ministry of Lands, Parks and Housing. I was interested in the report and initiated an investigation into the problem to see if I could be of assistance in resolving it.

Tribune Bay Lodge consists of a number of charming old buildings in a picturesque setting which had deteriorated over the years but were still structurally sound. The provincial government owned the Lodge, which was located in Tribune Bay Provincial Park, but it did not wish to maintain the buildings. Consequently the government had put out tenders for the destruction and/or removal of the buildings with a return date of January 27. In view of the closing date of tenders, it was clear that prompt action was necessary if the Lodge was to be saved.

My solicitor discussed the situation with both the Ministry and the Hornby Island residents who were interested in saving the Lodge, and the lines of communication were established. The Hornby Island Educational Society subsequently made a proposal to the Minister of Lands, Parks and Housing.

As a result, the Minister postponed any decision for 45 days and invited the Educational Society to work out details of its proposal for the use of the Lodge. I viewed this concession as a positive step in dealing with the issue and discontinued my investigation, pending the outcome of discussions between the Ministry and the Educational Society. (CS 83-136)

MINISTRY OF MUNICIPAL AFFAIRS

Declined, withdrawn, discontinued	17
Resolved: corrected during investigation	7
Substantiated: corrected after recommendation	0
Substantiated but not rectified	1
Not substantiated	16
Total number of cases closed	41
Number of cases open December 31, 1983	6

I received good co-operation from the Ministry of Municipal Affairs. At the same time, I am still unable to help many complainants who have trouble with municipalities or regional districts. Since I do not have the authority to investigate these levels of government, my only recourse is to refer people with complaints against them to the Inspector of Municipalities.

The Inspector's office often refers these complainants to their civil or criminal remedies, a course which poses serious problems. In attempting to initiate criminal proceedings, complainants often find Crown Counsel unwilling to prosecute infractions of municipal by-laws, while civil action can be financially out of the question.

The following cases represent a cross section of the complaints I received against the Ministry last year.

Double jeopardy

A homeowner in the Okanagan complained that in addition to being assessed for domestic water supply, she was charged an irrigation fee on her residential property, even though she was not supplied with irrigation water.

The Ministry said it was looking into the matter. Negotiations were underway to rectify the situation and make the system of assessment more equitable for domestic water users.

Because the Ministry of Municipal Affairs cannot order an irrigation district to pay back taxes which might have been unjustly assessed, I concluded that the Ministry did all it could to rectify the situation. I could not take further action. (CS 83-137)

It's the fault of the post office

I received several complaints from people who mailed their property tax payments to the appropriate municipality before the due date but were assessed penalties for late payment because their cheques did not arrive until after the deadline.

In at least two cases the payment was mailed one week before the due date, but was not received until approximately one week after the deadline.

Based on legal opinion, the Ministry has taken the position that the date of receipt, rather than the post-marked date, determines timely payment.

After reviewing this problem, I proposed that the Ministry consider seeking an amendment to the *Municipal Act* which would allow the Ministry to consider the post mark of the payment as the payment date. I was concerned that municipalities were imposing penalties for delays that were at least in part the fault of the post office.

The Ministry said it would consider seeking an amendment to the Act and would inform me of the results of its review. (CS 83-138)

The back and forth by-law

A resident of a small community complained on behalf of a Committee fighting a proposed local development.

The man complained that after deferring approval of two by-laws which would allow the proposed development, the Ministry had returned the by-laws to the Regional District Board with a letter explaining that the Minister was reluctant to approve the by-laws before the official settlement plan of the area was finalized.

According to the complainant, the Ministry instructed the Regional District Board a few weeks after the by-laws were returned to send them back to Victoria for reconsideration. The Committee questioned the procedures followed by the Ministry in recalling the by-laws with no explanation, particularly in view of the original decision to await completion of the official settlement plan.

When I informed the Ministry of the Committee's concern, I was told that the by-law in question had, once again, been returned to the Regional District and that the Ministry was still awaiting reconsideration by the Regional District of the by-laws along with the official settlement plan. This resolved the complaint and I took no further action. (CS 83-139)

Once is enough

A member of the Greater Vancouver Association of the Deaf was concerned that some municipalities in British Columbia required people with impaired hearing to obtain new medical certificates each year when applying for the handicapped portion of the homeowners grant.

The Ministry told my investigator that it had recently addressed the problem in the Homeowner Grant Guide and Administration Manual which stated that handicapped persons are not required to provide new certificates for each tax year, and that municipalities should retain certificates on file and re-use them as necessary.

It appeared that an appropriate policy was already in place and I asked the association to get in touch with me in case of further problems. (CS 83-140)

Glaring error rectified

A Community Association complained that the Ministry took too long to respond to a request for adjustment of the northern boundary of a benefitting area of the Regional District.

Apparently the by-law which defined the area had been in error from the start, and the Association felt that such a glaring error should have been corrected immediately.

The Ministry explained that according to its legal advisors, readjustment of the boundary required the same procedure that was used to establish it.

For this reason, the Order in Council issuing Supplementary Letters Patent had been delayed for some time.

The boundary adjustment was eventually accomplished and the complaint was resolved. (CS 83-141)

A matter for the courts

A man complained that the Inspector of Municipalities had incorrectly interpreted legislation concerning the payment of a sewer levy by benefitting areas within a Regional District.

My complainant alleged that his electoral area had been illegally charged and had paid for the sewer function for approximately ten years. The area, he said, could not be considered a "benefitting area," particularly since the Regional District had recently decided not to service the area with a sewer.

My staff reviewed the complex series of Supplementary Letters Patent and by-laws which purported to authorize the Regional District to collect a sewer levy from the man's electoral area. The Inspector of Municipalities explained that, in his view, the cost-sharing formula provided in the Supplementary Letters Patent directed payment of a small levy by areas in the Regional District not directly served but deemed to benefit from general environmental enhancement. The Inspector stated that my complainant's area was not a "benefitting area" but was nevertheless obliged to pay a small levy.

I concluded that the appropriate forum for my complainant's objection would be the courts. I advised him that I was satisfied with the Inspector's explanation, and that he may wish to seek legal advice concerning a challenge to the by-law.

I also informed the complainant that the Inspector was willing to discuss the issue with him. (CS 83-142)

Inspector acted properly

A young man complained that his local Improvement Distsrict refused to provide him with a water connection and standpipe for his small cabin, sending a copy of his complaint letter to the Inspector of Municipalities.

The Inspector wrote back to the property owner, saying that the Ministry of Municipal Affairs was not empowered to order the Trustees of the Improvement District to provide him with a standpipe. The letter also stated that the District's apparent reason for denying the connection was based on a health rule which required a septic field before any further connections were allowed.

We contacted the local public health inspector and learned that the connection of an outdoor standpipe is a matter solely within the jurisdiction of the Improvement District. The Secretary-Treasurer of the Improvement District, however, told us that as far as she knew, a septic field was reqired by the health inspector for the connection of a standpipe.

I wrote back to the Inspector of Municipalities and pointed out that there appeared to be some confusion over whether or not a septic field was actually required for the connection of an outdoor standpipe. I also pointed out that Section 849 of the *Municipal Act* authorizes the Inspector to hear appeals resulting from an Improvement District's refusal to supply water to any person, and allows the Inspector to "make any order in the matter that he considers just and reasonable".

I asked the Inspector to investigate the complaint, clarify the basis for the District's refusal, and if the problem could not be resolved informally, inform the complainant of his right to an appeal.

The Inspector re-opened his investigation and issued an order to the Improvement District in favour of the complainant. The Deputy Inspector of Municipalities sent a copy of the order to the complainant and informed him that if the Improvement District refused to comply with the order, he would have to take legal action to have it enforced.

I was satisfied that the Inspector's office had fulfilled its mandate under the *Municipal Act* to investigate the complaint and to make an appropriate order to the Improvement District and closed my investigation. (CS 83-143)

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES

Declined, withdrawn, discontinued	10
Resolved: corrected during investigation	5
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	3
Total number of cases closed	19
Number of cases open December 31, 1983	4

As the figures listed above show, I receive few complaints against the Ministry of Provincial Secretary and Government Services. Officials have been very willing to resolve any problems and issues my complainants raise.

Retroactive grant approved

A woman took her education degree at the University of British Columbia in the firm belief that she would receive sponsorship from the First Citizen's Fund.

She was, in fact, eligible and received one grant but nobody told her that she would have to apply for the grant at the end of each year. Unfortunately she waited until she had completed her degree, before applying for funds retroactively and her application was refused.

I urged the First Citizen's Branch not to penalize the woman because of a requirement of which she was unaware. Nothing on the application form or pamphlet indicated that retroactive grants would not be given. The Ministry reversed its decision and awarded the woman an $1,800 grant. I also recommended that the Ministry clearly state the deadlines for applications in its information pamphlets. (CS 83-144)

And the winner is

A local charity held a lottery to raise money. It was the kind of lottery where weekly prizes are announced for the year following the draw, and where each ticket could win more than once. A ticket holder felt that the lottery strayed from the terms of its licence and complained to me that the Lotteries Branch did not fully investigate these concerns.

I do not have the jurisdiction to investigate the charitable Society but I investigated whether the Branch monitored the charities to ensure that they knew and complied with the law. I discovered that the Branch was itself in the midst of a review of the regulations governing ticket lotteries. Branch officials were unhappy to follow any suggestions I might have.

When it comes to lotteries, many of the charities are "amateurs." They hold lotteries infrequently, and in between lotteries their staff or volunteers change. This poses a problem for the Branch. On the one hand it must try to assist charitable organizations; on the other hand it must make sure that everything is legal and above board.

The first problem I discovered was that the lottery tickets often did not show the time, date and place of the draw, as required by law. Because of the time constraints under which the lotteries were operating, the Branch could not insist that the organizations provide sample tickets for vetting.

The Branch offered a compromise. It will require sample tickets as part of the post-facto audit and closely monitor any group which submits a sample that is in breach of the law. The Branch also circulated to all printing firms in the province a list containing the information required to be on all lottery tickets.

The second problem was the regulation which states that the duration of a lottery must not exceed four months. The Branch would sometimes grant an extension, if, for example, a society was having trouble selling enough tickets to break even.

I did not believe that such extensions were legally possible and notified the Ministry of that opinion. Even though the Ministry's lawyer disagreed with my opinion, its staff agreed that the issue should be clarified. As a result, the Branch will propose an amendment to the regulations that will make it obvious who has the power to extend a lottery licence and on what, if any, conditions.

I was pleased by the Ministry's co-operation. The Ministry obviously shared my belief that administrative practices should conform to the requirements of the legislation. (CS 83-145)

MINISTRY OF TRANSPORTATION AND HIGHWAYS

Declined, withdrawn, discontinued	102
Resolved: corrected during investigation	64
Substantiated: corrected after recommendation	1
Substantiated but not rectified	5
Not substantiated	91
Total number of cases closed	263
Number of cases open December 31, 1983	95

HIGHWAYS DIVISION

Complaints about the Ministry's Highways Division fell into a number of categories, including land acquisition and expropriation, subdivision approval, road construction, maintenance and repair, and hiring practices.

The acquisition and expropriation of land by the Ministry continues to generate complaints. I am concerned that the underlying deficiencies exist in the Ministry's method of notification and negotiation. I intend to give this area close attention in 1984.

Designated officials of the Ministry act as approving officers for subdivision proposals. Before a property owner can subdivide land to obtain separate titles to the newly-created parcels, a subdivision plan must be registered at one of seven Land Title Offices in the province. From time to time, we get complaints about the decisions made by approving officers. On most occasions, the complainant or his agent is the subdivider but occasionally complainants accuse the Ministry of having been wrong in approving other people's subdivisions without imposing certain conditions.

Back to the Regional Board

When the Ministry would not approve a proposed subdivision because it contravened a section of the *Municipal Act*, one of the property owners complained.

The complainant and his wife owned the property jointly with another couple, while the latter were sole owners of an adjacent parcel of land. The owners had started construction on the property without first getting the necessary approval from the Ministry for the redefinition of the boundaries.

The Ministry rejected the proposal because one of the new lots would have had less than the ten percent highway frontage, required by the *Municipal Act*. The Act, however, also permits a waiver for the frontage requirement which can be obtained by a vote of the Municipal Council or Regional District, or by delegation of an exempting power to the approving officer. In this case, the Regional District had refused to waive the frontage requirement until the complainant met certain conditions with regard to density.

The complainant said the Regional District should have relaxed the ten percent perimeter frontage requirement without imposing conditions. He also argued that his proposed redefinition of property boundaries did not constitute a subdivision and should, therefore, not be subject to approval by the Ministry of Transportation and Highways.

I sympathized with the complainant but was unable to substantiate his complaint. The *Land Titles Act* defines subdivision as "the division of land into two or more parcels whether by plan, apt descriptive words, or otherwise". The complainant's intention to divide the lot he owned in common with the other couple into two lots and merge one of these new lots with another parcel owned by the other couple, fell within this definition.

The Ministry's approving officer had acted properly in refusing the application. The issue of whether or not the Regional District had acted reasonably was not investigated because Regional Districts are not within my jurisdiction.

I recommended that the complainant continue negotiating with the Regional District, and also suggested that he get in touch with the Inspector of Municipalities or a solicitor, if he believed that the Regional District had treated him unfairly. (CS 83-146)

Section 4 of the *Highway Act* provides when public money has been spent on a road which was not previously dedicated for public use, that road is deemed to be public. Disputes over whether a road is public have often arisen. The courts have ruled on this issue in a number of cases. My office has also investigated complaints in which the applicability of section 4 was the key issue.

Whether a road is public under the provisions of section 4, is a determination which in the final analysis can only be made by a court, although the Ministry may certainly have an opinion on the question. Following my investigations of complaints involving the application of section 4 of the *Highway Act*, I have concluded that this statutory provision is unjust and oppressive, and have recommended that it be phased out in favour of other established mechanisms for creating public roads.

The following case illustrates the problems that arise over the application of section 4 of the *Highway Act*.

Fight over lakeshore access

The developers of some lakeshore properties and two persons who had purchased land from the developers complained that the Ministry of Transportation and Highways had not properly met its responsibility to establish public access to their lands.

They based their claim to public access on statements made by Ministry officials to one of the complainants some years earlier that the road which provided access to the lakeshore properties owned by the developer was public, according to section 4 of the *Highway Act*.

A few years after they had purchased the property, a dispute arose between one of the complainants and a third party, who owned property to the south of the complainants. The dispute focused on whether or not section 4 of the *Highway Act* applied to the road which provided access for the complainants, through the land of the third party. The third party blocked the complainants' access, claiming that the road crossing his property was private access.

Litigation ensued, and the Supreme Court of British Columbia decided in 1976 that the road at issue was private access. That decision was subsequently affirmed by the Court of Appeal, and this left the complainants in the unenviable position of having no legal access by road, to their properties.

Because of the previous statements by Ministry officials that the road was public, the Ministry decided to take responsibility for establishing public access to the lakeshore properties. But there were problems. The road ran through Indian lands, and the property owner who had been successful in court, did not want a public road on his land and refused to sell to the Ministry.

After some negotiation, access across Indian land seemed assured but the successful litigant would not budge. At one stage it appeared that the provision of access to lands beyond could be made a requirement of a planned future subdivision by the third party but unfortunately for the complainants, the subdivision application was abandoned after the third party was informed of the Ministry's requirements of road dedication.

Having run out of every other option, the complainants urged me to recommend expropriation. My views on expropriation are clear. The Ministry should not expropriate land from one individual to provide access for another individual, just to rectify a misrepresentation by Ministry officials.

I decided that further investigation would not benefit the complainants. In my view, the Ministry was taking reasonable steps to remedy the situation, even though they had not yet been successful. The developer, who also required access for a subdivision further along the lake, continued to feel unjustly treated and pressed for the establishment of public access through further representations to my office and to the Ministry. (CS 83-147)

A significant number of complaints were made about the Ministry's damage claim procedures which I discussed in my 1982 Annual Report. Unfortunately the recommendations I made with respect to several individual complaints have not been implemented. In other cases I have been successful in persuading the Ministry to make full or partial payment to complainants.

A number of complaints about the Ministry's diverse interests and responsibilities cannot be categorized. Certain cases demand individualized and in-depth analysis, particularly when the complaint has a lengthy background and includes interactions with other individuals and government agencies.

An important investigation carried out by my office this year concerned complaints from a number of residents in Lions Bay about delays in the release of a report commissioned by the Ministry of Transportation and Highways. The report dealt with hazards on Highway 99 between Horseshoe Bay and Britannia. My investigation of this complaint is discussed above with my review of complaints against the Ministry of Environment.

Occasionally I get complaints which raise the issue of the Ministry's responsibilities as a land owner. The question then is whether the Ministry is a good neighbour.

Ministry goofs and apologizes

A Lantzville resident complained about the spraying of pesticide on portions of Highway 19 between Nanaimo and Parksville by the Ministry of Transportation and Highways.

The complainant had learned of these spraying plans from a public notice in the newspaper and had written to request a copy of the permit from the Ministry. The Ministry informed the complainant about the purpose of the spraying but did not provide her with a copy of its permit.

By chance, the complainant met an official of the Ministry of Environment who told her that the permit was on display at the Ministry of Transportation and Highways' regional office in Nanaimo. By failing to mention that fact, he

said, the newspaper notice was in contravention of explicit Ministry of Environment directions. The complainant was concerned that the appeal period might expire before she had an opportunity to challenge the decision to allow the spraying. She was also concerned by the Ministry's failure to inform her of the proposed spraying and of her right to appeal.

The Ministry of Environment asked the responsible Highways official to apologize and to provide the complainant with a copy of the permit. Eventually the Highways official met with the complainant and discussed her ecological concerns about the proposed spraying. At that meeting it was agreed that the complainant and her environmental protection group would get ten days' notice before any spraying took place and that a member of the group could be present during the spraying. (CS 83-148)

MOTOR VEHICLE DEPARTMENT

For the third consecutive year, I am pleased to report that I have received excellent co-operation from the Superintendent of Motor Vehicles and his staff. Senior Department officials have met with my staff on a number of occasions and I believe these meetings have contributed to a greater mutual understanding of the goals and function of each organization. My investigator now deals directly with several designated senior Motor Vehicle Department officials on all complaints, a procedure which has proven both efficient and effective.

The Acting Superintendent of Motor Vehicles and his staff have a duty to protect the interests of the travelling public. Attempting to reach an acceptable balance between the public interest and the rights of an individual driver can often be extremely difficult, particularly in medical cases.

Although I appreciate the great volume of work handled by the Motor Vehicle Department, I would like to emphasize again the need for courtesy and individual consideration in the Department's dealings with the public. Matters concerning driver's licences, may seriously affect people's lives.

On occasion, the Superintendent of Motor Vehicles may have to take drastic action with respect to a particular driver but he should not forget that decisions about driver's licences have serious consequences for the individual.

I have stated on several occasions that affected drivers should be provided with notice of the intended action and an opportunity to respond to adverse information. I believe my office continues to play an important role in ensuring that these principles of administrative fairness are upheld in individual cases. I look forward to the continued co-operation of the Motor Vehicle Department in achieving this goal.

Release of information not illegal

Just days after she was involved in a car accident, a complainant received an unsolicited telephone call from the body shop of a local car dealership.

Annoyed by this intrusion on her privacy and interested in finding out how the company had obtained her name and telephone number, she questioned the body shop manager who told her that an employee had seen her damaged car in a parking lot and taken down the licence number, along with those of other damaged vehicles in the lot. The employee had then asked a private information search organization to obtain the relevant names and telephone numbers from the Motor Vehicle Department.

The complainant argued that the Motor Vehicle Department had committed a serious breach of trust by releasing information to a business which intended to use it for commercial gain.

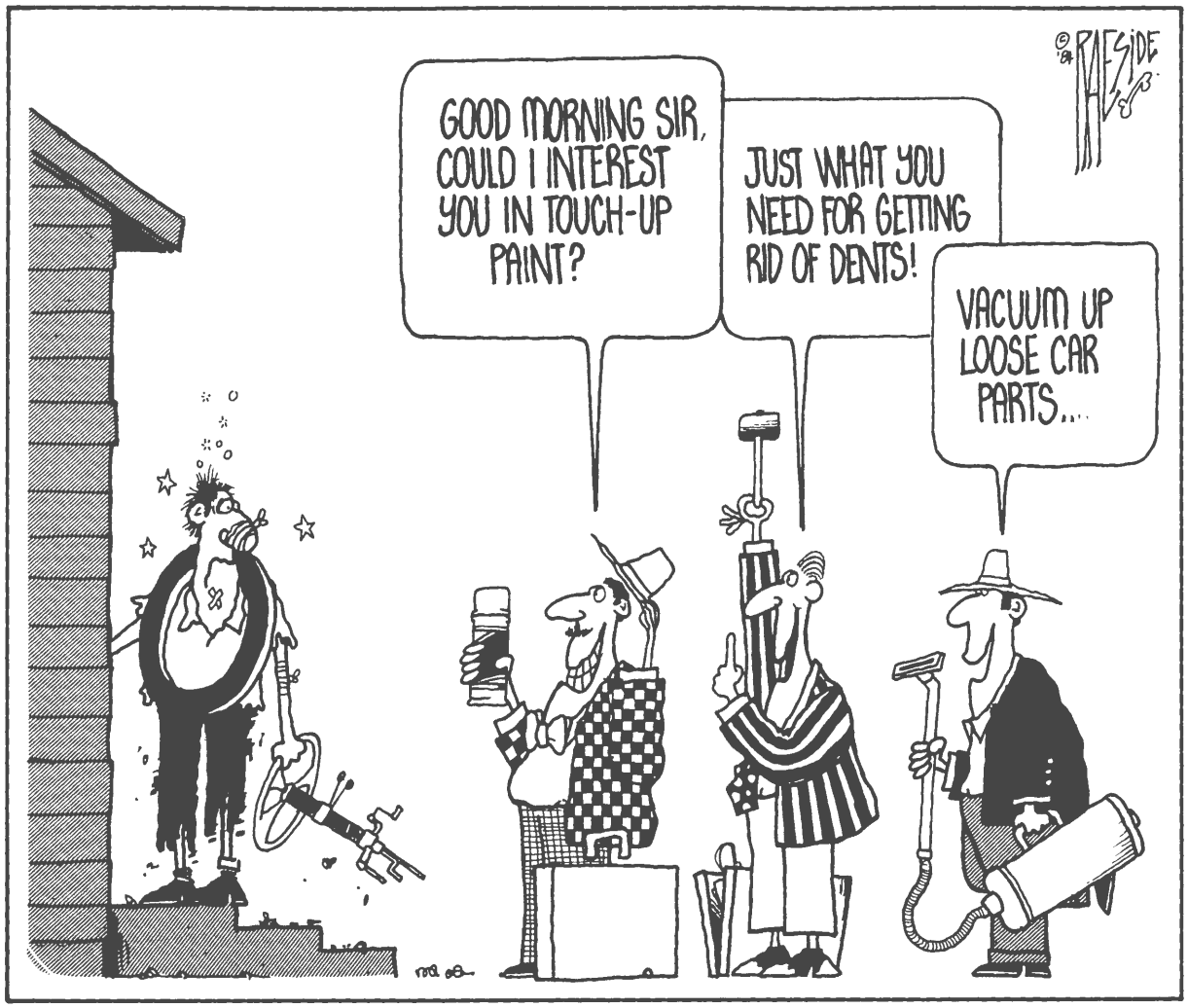
Determining what controls should be placed on the release of information individuals are required to give to government agencies is not easy. There are legitimate reasons for the release of information contained in motor vehicle records. For example, organizations engaged in financial transactions involving motor vehicles may need to ascertain facts relevant to these transactions, e.g. liens. The value of access to public information is balanced against the individual's right to privacy.

Present legislation pertaining to the release of driver and vehicle records does not, in my view, adequately allow for these interests to be balanced. Currently, the *Motor Vehicle Act* prescribes that such information be released, when it is requested by a member of the public and a $2 fee is paid.

At present, the Motor Vehicle Department cannot legally refuse to release driver or vehicle records, even if it believes that the information will be used for what might be considered improper purposes — i.e. the solicitation of business. This is not to say that Ministry officials never refuse to release this information.The point is that if and when they do, they do so in violation of the law.

After discussing my concerns with the Superintendent of Motor Vehicles, I believed that both problems — the need for legislative reform and the complainant's specific concerns about privacy — would be addressed.

The Superintendent agreed to recommend to the Minister that the *Motor Vehicle Act* be changed to give the Superintendent the legal discretion to refuse to release driver or vehicle records, if he



believes such release would be contrary to the public interest. As soon as this legislative authority is obtained, the Department will develop and implement a policy to prevent the release of information for improper purposes. This now requires the attention of Cabinet and Legislative Assembly. (CS 83-149)

Complainant keeps on trucking

A complainant who earned his living by driving heavy commercial vehicles faced a bleak future when the Motor Vehicle Department revoked his Class 1 driver's licence after he suffered an aneurism in his brain, causing partial paralysis of his right arm and leg.

The complainant admitted that he could no longer operate a standard Class 1 vehicle but he had located a tractor-trailer with a fully automatic transmission which he was capable of operating. The Motor Vehicle Department, however, told him that he was not eligible for a Class 1 licence restricted to the use of a vehicle with fully automatic transmission because his loss of strength and movement would render him incapable of putting chains on the vehicle's tires in winter conditions or in an emergency.

This issue appeared to have no relevance to whether the complainant was "unable or unfit to drive a motor vehicle or to hold a driver's licence of a certain class," the only criteria to be considered under these circumstances by the Superintendent of Motor Vehicles, under the *Motor Vehicle Act*.

When we pointed out that there had been some improvement in the complainant's condition, the Motor Vehicle Department agreed to review the case and referred him to a senior supervisor in Burnaby to discuss any change in his medical condition. At this point, I withdrew from the case, hoping that a fair resolution would result.

Following the review, however, the complainant still did not get the licence he needed but he was told that he could take his case to one of the Motor Vehicle Department's Medical Appeal Boards. I did not consider such an appeal an appropriate remedy. The only way to test the

complainant's ability to drive a commercial vehicle with fully automatic transmission was to give him a road test.

In earlier discussions, the Chief Examiner indicated that he was not aware of any Class 1 vehicle with fully automatic transmission which would accommodate the complainant's handicap but that he was willing to take into consideration any information we could provide. We obtained the necessary documentation through the complainant's solicitor and forwarded it to the Motor Vehicle Department.

After reviewing the correspondence and documentation, establishing that the vehicle the complainant would operate required no manual gear selection changes while in motion, the Assistant Chief Examiner agreed to issue the complainant an instructional licence and the medical appeal was put "on hold." Subsequently, the complainant was given a road test and was successful in demonstrating his ability to operate the vehicle safely.

At long last, the complainant received the licence he needed to earn his livelihood. Needless to say, he was very happy with the outcome. (CS 83-150)

Driving school struggles to survive

The owner-operator of a driving school complained that some procedures and practices of the Motor Vehicle Department with respect to driver's examinations were improperly discriminatory.

My complainant had several objections. He said the B.C. Safety Council had been permitted to display posters at the Motor Vehicle Department, advertising its services, whereas other driver training schools were not permitted to do so. Such posters had indeed been displayed at the Department but were removed when they were found to be in contravention of regulations to the Motor Vehicle Act.

My complainant was proud of his record for thorough and safe driver training, particularly with respect to the operation of motorcycles, and wished to obtain certification from the Motor Vehicle Department permitting him to issue motorcycle driver's licences directly. He said it was unfair that the B.C. Safety Council, a non-profit society funded in part by the provincial government, had the right of motorcycle certification, while his business which was operating in competition, did not.

After some discussions with my staff, senior officials at the Motor Vehicle Department were satisfied that the complainant's motorcycle training and examination service met Department standards, and granted him motorcycle certification. (CS 83-151)

No damaging information

I received a complaint from a driver whose industrial air ticket had been suspended by the Motor Vehicle Department, following an accident, but was returned after he successfully appealed the suspension. The only condition was that he enrol in a driver improvement program.

The complainant believed that this result was fair but objected to procedures he believed were used by the Department. He was under the impression that the Motor Vehicle Department retained damaging company reports of industrial road infractions on Ministry files, without giving notice to the employee. He was concerned that unsubstantiated and undisclosed management reports could be used against a driver as evidence of an alleged poor driving record.

The complainant's suspicions were aroused because a Motor Vehicle Department inspector had told him a few days after the accident that he would probably not lose his "air ticket." The subsequent change in the Department's position led him to believe that damaging reports had been submitted to the Department by company representatives. He thought he had reason to believe his employer would provide damaging information, because he had been suspended from his job after the accident.

I found the complaint not substantiated. No damaging reports of the nature suggested by the complainant were included in his driving record. Moreover, a special projects officer for the Ministry, directly responsible for overseeing suspension actions involving industrial roads, was in the process of drafting a policy memorandum addressing precisely the concerns my complainant had raised.

The governing premise of the new policy was that there should be nothing on a person's industrial road driving record about which he was unaware, as is the case with ordinary driving records.

According to this policy an individual would have access to the report of any accident, compiled by an impartial Ministry inspection. The driver would have the right to appeal the decision to the Superintendent of Motor Vehicles. If a company reported an employee's allegedly poor driving habits, the draft policy stated that it would not be included in the Ministry's files, unless the company's report of the incident was

clearly signed and dated by the employee involved. (CS 83-152)

Complaints about other divisions of the Motor Vehicle Department and the Ministry's Standards and Compliance Branch were not numerous. Fewer than 30 of the complaints closed by my office this year involved vehicle licensing and records, inspections and weigh scale procedures. This is, no doubt, due in part to the fact that the Ministry's Motor Vehicle Inspection station function has been largely dismantled.

Of the personnel complaints against the Ministry, I'll just list the following case.

Citizenship a criterion

A landed immigrant complained to me that her application for employment had been rejected by the Ministry of Highways, even though she had all the qualifications for the position.

My complainant had been told that despite her qualifications she could not be hired because she was not a Canadian citizen. I had to inform her that the Ministry's rejection of her job application was in accordance with the *Public Service Act*. Under the Act, only Canadian citizens can be appointed to permanent public service positions. Non-Canadians may be appointed on a temporary basis but only if no qualified Canadian citizen applies. (CS 83-153)

BOARDS, COMMISSIONS, TRIBUNALS AND CORPORATIONS

AGRICULTURAL LAND COMMISSION

Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	1
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	10
Total number of cases closed	17
Number of cases open December 31, 1983	0

Good co-operation and few complaints marked my experience with the Agricultural Land Commission last year. In neither of the two cases that follow, did I find the Commission at fault.

Poor advice leads to rejection

A woman came to me after the Agricultural Land Commission rejected her application to subdivide her property.

The woman had purchased one piece of property in 1980 and the second, adjoining parcel, in 1981. Apparently on the advice of her real estate agent, she consolidated the two parcels and later sought leave of the Commission to subdivide the combined property into three separate farms.

Although the woman may have received poor advice from her real estate agent, I was unable to substantiate her complaint against the Commission. The Commission's decision was consistent with its mandate under the *Agricultural Land Commission Act* to preserve agricultural land.

When I explained my conclusion to the complainant and she told me that she wanted to construct a second residence on the property, I referred her back to the Commission and the Regional District for information about the construction of a permanent residence on her land. (CS 83-154)

Deletion not crucial

A woman complained that the tape recording of her hearing before the Agricultural Land Commission had been edited and that favourable comments made to her and her husband by the Commissioners had been omitted.

To investigate the complaint, my staff asked the woman to send us the allegedly edited tape. After listening to the entire recording, my investigator was unable to detect any sound on the tape or any gaps in the continuity of the dialogue which would indicate editing. The recording did, however, come to an abrupt ending although there was still room on the tape for further recording.

My investigator discussed the reason for this abrupt ending with a Commission staff member and was told that on the original recording, the tape ended during the woman's closing comments about her family which were not relevant to the subject matter of the hearing.

Although it was clear from my investigation that part of the hearing was missing from the tape, I closed my investigation. I was satisfied that there was no intentional editing of the tape, and that the Commissioners had all the relevant information concerning the woman's application on which to base their decision. (CS 83-155)

B.C. ASSESSMENT AUTHORITY

Declined, withdrawn, discontinued	11
Resolved: corrected during investigation	7
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	15
Total number of cases closed	33
Number of cases open December 31, 1983	10

I received fewer complaints about the B.C. Assessment Authority in 1983 than during the previous year. I believe this decrease is partly due to the fact that property owners found fewer surprises in their 1983 assessment notices than they did in 1982, and perhaps also partly because of increased familiarity with the assessment appeal system.

In general I have found the Assessment Authority very co-operative. When my investigators request information, it is provided quickly and efficiently, and when it appears that an error has been made, Assessment Authority officials usually act very quickly to correct the problem.

The types of complaints I received during 1983 were similar to those I received in previous years — complaints that assessments were too high, that the property was classified incorrectly, or that there were problems with assessment notices.

HIGH ASSESSMENTS

Most of the people who complain to me about high property assessments are primarily concerned about the implications for their taxes. In some cases, I found actual errors in the assessments. These were quickly corrected. In other cases, the property assessments were very high, but no errors had been made; some of these complainants found themselves in very difficult circumstances with large property tax bills.

Revision benefits homeowner

One complainant was very upset when his property taxes jumped from $850 in 1982 to $901 in 1983 and all the municipality would tell him was that the increase was the result of higher assessment.

In 1982, the assessed value of his property was $75,000 and in 1983 was increased to $80,150 but he never received a copy of the assessment notice. When he tried to appeal the assessment increase, he was told that the appeal deadline had expired.

At my request the Area Assessor reviewed the complainant's file and found an error in the 1983 assessment. The 1983 value should have been $64,950 instead of $80,150. He authorized a supplemental assessment for the property which would trigger a corresponding reduction of property taxes. And if the complainant still felt the revised assessment was too high, he could appeal the new value at the 1984 Court of Revision. (CS 83-156)

Rich and yet poor

An elderly couple complained that the property they had bought in the 1930s for $600 was assessed at $327,650 in 1983.

Based on the 1983 assessment, the property taxes came to just under $2,000 after the application of the $630 Home Owner Grant. The couple live in a mobile home on the property and during July and August rent out four small cabins which they own. The rent from these cabins and Canada Pension benefits are their only income. With property taxes approaching $2,000.00 per year, the couple felt they would soon no longer be able to afford to live on their property. They felt their property must have been assessed at too high a rate in order to have resulted in such high taxes.

I was unable to find any error in the Assessment Authority's information about the property nor in the Authority's assessment of its value. The 30-acre property included more than a kilometre of beach, and although the property had been bought for approximately $600, it had obviously increased in value during the past 50 years and the value placed on the property by the Assessment Authority appeared to be in line with the market values of comparable properties.

Unfortunately, the almost inevitable result of such high assessment is high taxation and in this case, the couple were responsible for paying nearly $2,000 in property taxes. I could only refer them to a statute which allowed them to defer their taxes until the property is sold or until their deaths. This would allow them to continue living on their property, even though the taxes would eventually have to be paid. I do not know whether they followed this advice. (CS 83-157)

Assessment in line with market value

A 72-year-old pensioner complained that the B.C. Assessment Authority had substantially increased the assessment of his property over the past few years.

He had bought the property, a little more than an acre, in early 1960. His family had grown up there. More recently his wife had become handicapped and he had made the home accessible for a wheelchair.

In 1981 the property was assessed at $71,600; in 1982 at $105,200; in 1983 it climbed to $240,800. The rapid rise in assessments had resulted in a significant increase in property taxes as well. After applying the $630 Home Owner Grant, his 1983 tax bill came to more than $2,100. He blamed the Assessment Authority for the tax increase because he felt the assessment of the property was too high.

I found the Assessment Authority had not erred or acted unfairly in assessing the complainant's property. His lot is located in a rapidly developing area outside Victoria. The zoning of the area had been changed from residential to commercial a number of years ago and as a result, market values of the properties in that area increased significantly. His property was one of several parcels in a commercial area fronting on a busy street. He had had several offers on his property, some as high as the value placed on the property by the Assessment Authority, but he refused to sell because he preferred to live in the house.

In my view the assessment placed on his property was in line with market values of similar properties and I was unable to substantiate his complaint but I provided him with information on the tax deferral program. (CS 83-158)

CLASSIFICATION OF PROPERTY

For assessment purposes property is generally classified according to its use. In some cases, such as farm classification, certain criteria must be met and certain procedures followed. Since farm classification often brings other financial benefits, property owners who feel they qualify for this classification feel unfairly treated when the classification is denied. Sometimes I agree with them and sometimes I do not.

A rancher is no clairvoyant

A rancher was denied farm classification for 1983 because he had missed the December 31, 1982 application deadline.

The rancher blamed the Assessment Authority, claiming that he had not received an assessment notice for the property until after the deadline and had had no way of knowing that the property was classified as residential rather than farm.

The property in question was an agricultural lease which the complainant had obtained in 1981. He received neither assessment notices nor tax notices for the agricultural lease in 1981 or 1982.

In January 1983, he received an assessment notice and found that the lease had been classified as residential. Since the agricultural lease was being used as part of his ranching operations, it qualified for farm classification but the Assessement Authority advised him that it was too late to apply for farm classification for 1983 because he had missed the December 31, 1982 deadline.

My staff discussed the matter with the Area Assessor who agreed that the complainant could not possibly have known that the property would be classified as residential and had been unable to appeal the classification in time. The Area Assessor authorized a supplementary assessment which changed the classification from residential to farm use. (CS 83-159)

When is a farm not a farm?

A couple complained to me that the Assessment Authority had unfairly denied them farm classification on their property for the year 1982.

When they acquired the property late in 1979, they also owned a smaller lot on which farm classification had been granted. Their request that farm status be extended to the new lot for the year 1980 was rejected because the land was not in farm use at that time. After discussing the matter with Assessment Authority officials, the complainants established a development plan for the new lot and in the fall of 1980 applied for classification of the new lot as an 'emerging and developing' farm.

This application was approved, and the new lot was given farm classification for 1981. Late that year, the Assessment Authority inspected their new farm operation and on the basis of that inspection rejected farm classification for 1982. The complainants felt that this rejection was unfair and came to us.

After reviewing the case, I could not agree with the complainants. The development plan they had filed in November of 1980 specified a number of steps they intended to take in 1981 and in each of the succeeding four years to develop the new lot as a farm. Yet the inspection conducted in the fall of 1981 showed that there had been no production on and no use made of the new lot. In my view, since they had not followed their development plan, the Assessment Authority had acted correctly in rejecting their application for the following year. (CS 83-160)

ASSESSMENT NOTICES

It is through the assessment notices that a property owner learns of the assessed value and classification of his property. If that notice does not reach the property owner, or arrives late, problems often occur — sometimes because appeal deadlines are missed, but sometimes because other deadlines are also missed.

Three years nothing and then, whammo

In 1980, a young woman moved to a new home and notified the Assessment Authority of her change of address but she never received her 1980 assessment and tax notices.

Wanting to avoid penalties and interest charges for late payment of taxes, the woman contacted local Assessment Authority officials again and again to remind them of her address change.

For more than three years she kept phoning and writing, phoning and writing — to no avail. The Assessment Authority always responded with polite reassurances but never with delivery of assessment notices. Finally, in mid-1982, she discovered that the Assessment Authority still listed her name under the old address. It was not until 1983 that she received all her assessment and tax notices. By this time penalties and interest charges had accumulated and the application deadline for the home owner grant had expired. The woman was presented with a bill of more than $1,000.

To add insult to injury, she also received a forfeiture notice on the property for failure to pay taxes. At this point, the woman came to my office, complaining that the penalty and interest were unfair and that the home owner grant application deadlines should have been extended.

My investigator discussed the matter with the Assessment Authority, which was immediately willing to accept responsibility for the error. The Surveyor of Taxes forgave the penalty and interest charges and extended the application deadline.

The woman received the homeowner grants and paid the revised outstanding amount of about $200. Forfeiture action was withdrawn and the matter was resolved. The only thing left to say is that shortly after, the woman courageously moved once more to a new address. (CS 83-161)

Complainant missed deadline for appeal

I received a complaint from a man who wanted to appeal both his 1982 and his 1983 assessments.

Just as his 1982 assessment notice arrived, his son had become seriously ill and required a lot of attention. Although he felt the assessment was too high, he missed the appeal deadline because of the family difficulties. His 1983 assessed values were similarly high but when he wanted to appeal both the 1982 and the 1983 assessments, he was advised that the court of revision would review only the current year's assessment.

After a number of discussions with the Area Assessor we realized that a field card, which contained the information on his property, had been missing for some time. It was not clear what information the Assessment Authority had used as the basis of its 1982 assessment of his property. The Assessment Authority reinspected the property and found that in 1982, it had been assessed as if it were a zone-conforming property, when in fact, it was non-conforming.

This information was passed on to the taxing authority in the complainant's municipality, which could then consider adjusting his tax account. (CS 83-162)

OTHER PROBLEMS

I also received a variety of other of complaints — specific problems that resulted from a particular set of circumstances, and caused difficulties for complainants. Again, when the Assessment Authority had made an actual error, it was quick to correct the problem.

Assessment adjusted after home burned down

A woman whose home was destroyed by fire on August 4, 1980, complained that the Assessment Authority had not taken this fact into consideration when it assessed her property.

She brought along copies of her assessment notices which showed that in 1981, after the home had been burned, a building was valued at $24,450.00. On the basis of this assessment, the municipality had sent her a tax bill for 1981 for $586.25.

The Area Assessor told us that he had not been aware of any fire and promised to do what he could to correct the error, if the complainant could provide him with a written document proving that the house had burned down in 1980. The taxing municipality subsequently assured her that the mistake would be corrected and the tax bill adjusted. (CS 83-163)

No persecution indicated

A complainant who owns some rental property had received a letter from the Assessment Au-

thority requiring him to provide details about the revenue and expenses associated with that rental property.

He felt that since the Assessment Authority had never asked him for this information in the past, they had no right to require him to provide it now. He was also concerned that the request might have been in retaliation for an assessment appeal he had made to the Court of Revision in 1977.

The complainant did not have any information linking his appeal of five years ago with the Assessment Authority's current request for information. Moreover, the request for information was fairly standard procedure. The *Assessment Act* states that the Assessment Authority must determine the actual value of land and improvements and that in order to determine the actual value, the Authority may take into consideration a number of factors, such as present use, location, original cost, cost of replacement, revenue or rental value, etc.

I advised the complainant that I was unable to substantiate his complaint because the Authority has the right to request rental information when assessing his property. (CS 83-164)

B.C. FERRY CORPORATION

Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	8
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	3
Total number of cases closed	19
Number of cases open December 31, 1983	3

Nineteen complaints against an authority that transports hundreds of thousands of passengers every year cannot be considered high by even the strictest standards. Co-operation from B.C. Ferry officials was generally good during 1983. Every so often, however, a case comes along that defies justice or logic. I can well understand the resentment the complainant harbours for the bureaucracy that has caused his problems. The following is such a case.

Management and union gang up on complainant

A young man began working for the B.C. Ferry Corporation in 1972 and quit in early 1974 to work somewhere else as a swamper. On that job, he suffered a back injury and received Workers' Compensation benefits. When the benefits stopped, he considered himself ready to go back to work and he, once more, applied for a job with B.C. Ferry. A question on the application asked why he left his previous job. He stated that his reason for leaving was "injury."

Everything went well for a few years. He worked as a probationary oiler and as an oiler trainee, but not on a permanent basis. In 1978, he applied for a permanent oiler position with B.C. Ferry. The application form contained the following question: "Is your ability to perform your duties likely to be affected due to a current or previous illness or disability?" He answered "no." He got the position.

That was in June 1978. Some time later, his back started to bother him. He thinks his back pains were caused by the steady bending that goes with an oiler's job. Between June 1979 and January 1980, he had to take 18 days off from work because of his back. He believed it would be better if he worked in a different occupation and asked whether he could work as a seaman or terminal attendant.

The response was not negative. The employer sent him to Occupational Health for an assessment of his back problem.

In September 1979, the Occupational Health doctor wrote to the employer. It appears from the doctor's letter that the employer had provided him with inappropriate information. He stated that when the employee applied for the permanent job in 1978, he did not "provide evidence that he had sustained a severe injury earlier on." The doctor said that in his opinion, it would not be possible for the employee to continue in his position as oiler without suffering from back problems.

The result of the complainant's request for a different job was not at all what one would expect. In September 1979, he received a letter from his employer telling him that he was fired. The reason given was that he had deliberately falsified the application form on which he had applied for the permanent job, by answering "no" to the question whether a current or previous illness or disability was likely to affect his ability to perform his duties.

The complainant tried to meet with senior B.C. Ferry officials to explain that he could not know

in 1979 that his 1974 injury might ever become a problem again and that, therefore, he had not falsified his application form and certainly was not deliberate about it. After all, he had worked as an oiler trainee and probationary oiler for about four years without problems. Also, he had been under the impression that when his Workers' Compensation benefits ended, the Workers' Compensation Board considered him fully recovered and able to work.

When nobody at the Corporation was willing to talk to him, he filed a grievance with the union but got no help. He saw a lawyer and found out that all he could do was complain to the Labour Relations Board about the union's failure to help him. The lawyer asked him for a $1,000 retainer to start proceedings but because he was unemployed, he did not have $1,000.

Not until 1982, did the complainant hear that there is an Ombudsman who can investigate complaints such as his and in December of that year, he came to me. I investigated and found the complaint substantiated.

I recommended that the Corporaton reinstate the complainant in his job. After a lot of writing back and forth, I met with the Chairman of the Board of the Corporation. He agreed that the the man should be reinstated and be given three years' seniority, provided he was medically fit for work and the union agreed to the reinstatement.

No such luck. Instead of agreeing to the arrangement, the union filed a policy grievance. The union's rationale was that, if there is a permanent job available, people already working for B.C. Ferry should have first crack at it. The union also did not want the complainant to get seniority.

My staff talked to union officials a number of times. Earlier on, I had advised the complainant to also complain to the Labour Relations Board about the union, and a Labour Relations Board investigation had, at this point, been in progress for some time. On withdrawal of the L.R.B. action the union finally agreed to the complainant's reinstatement, including his seniority. On November 1, 1983, the complainant went back to a job with the B.C. Ferry Corporation. (CS 83-165)

Broken ankle cuts short holiday

The owner of a shop in the Okanagan phoned my office on behalf of a German couple who were touring western Canada, using Edmonton as their base.

They had booked and paid for a ferry trip from Port Hardy to Prince Rupert. Five days before the planned trip the husband fell and injured his ankle. When they told the Edmonton travel agent that the husband would have to spend two or three days in hospital and would be in no condition to travel, they were informed that the B.C. Ferry Corporation would refund only half of the $185 fare.

The shop owner who had phoned us felt that British Columbia ought to do better than that for its tourists. She also pointed out that the couple would have to cut their holiday short because of large medical bills. Their insurance could not be claimed until they returned to Germany.

B.C. Ferry officials were very sympathetic. Even though according to the Corporation's tariff a full refund is made only with 30 days' notice, they agreed to bend this rule as long as they received confirmation of the medical emergency. Because the refund had to go through the travel agent the couple did not get their refund until they were back home in Berlin. (CS 83-166)

Publisher taken for (ferry) ride

A small company which publishes a magazine contracted to run four advertisements for B.C. Ferry, one in each of its quarterly editions. The first one was paid promptly when a statement of the account was submitted.

The problem began with the second bill. For several months the publisher just sent a monthly statement. Six months went by, the third advertisement had been published, but no payment was received. The publisher began to add interest to the amount owed. Eventually she received a letter from the Corporation stating that no bill could be paid on the basis of a statement. The Corporation needed an invoice and would also like a copy of the contract for the ads because it could not find one in its own files.

The publisher provided the invoice and a copy of the contract and got her money two months later, but without interest for the nearly ten-month delay. She continued the battle on her own for nearly another year, before complaining to me. She felt interest was due because there was no rational explanation why the payment was late. The debt was not disputed, nor was the quality of the service she had provided. No one had told her at the outset to submit an invoice, rather than a statement.

On my recommendation the Corporation agreed to pay the interest which came to $180. (CS 83-167)

B.C. HOUSING MANAGEMENT COMMISSION

Declined, withdrawn, discontinued	3
Resolved: corrected during investigation	9
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	17
Total number of cases closed	29
Number of cases open December 31, 1983	1

The B.C. Housing Management Commission is an independent commission but responsible to the Minister of Lands, Parks and Housing. The Commission handles subsidies for approximately 8,000 tenancies. It generates very few complaints, no more than two or three a month. The Commission has shown great interest in resolving any complaints that come to our attention.

Confusion over subsidies

A couple who had purchased a home with the help of federal and provincial housing subsidies asked us to clear up some confusion which arose when they refinanced the mortgage six years later.

The subsidies had reduced their monthly mortgage payments but six years later, they had an opportunity to refinance their mortgage with a credit union at a lower interest rate. To their surprise, the Central Mortgage and Housing Corporation required the payout of the provincial subsidy, then $2,400, to the B.C. Housing Management Commission. The couple felt this was wrong and wrote to C.M.H.C., pointing out that they had an original contract which required repayment of the subsidy only when they sold or moved out of their house.

We learned from B.C. Housing that C.M.H.C. had not passed on the couple's letter of complaint. B.C. Housing had assumed that the couple wished to pay out the subsidy and remove the government's lien from the title. B.C. Housing agreed to replace the lien and returned the $2,400 with interest. (CS 83-168)

Pay up or else

Five months after a woman moved out of a B.C. Housing Management building into a private apartment, she received a letter demanding that she pay $30 or the account would be turned over to a collection agency.

The complainant felt this was unfair because the payment demand was for damages she did not do. She also questioned the five-month delay and, most importantly, she was upset because the Commission had sent her a demand letter out of the blue, with no prior attempt to settle the matter amicably.

The Commission agreed to cancel the charge and wrote a letter of apology for the "tone" of the demand letter. The Commission also designed a new formletter to be sent to all vacating tenants, informing them that they will be contacted later if any damage is found. (CS 83-169)

B.C. HYDRO AND POWER AUTHORITY

Declined, withdrawn, discontinued	51
Resolved: corrected during investigation	85
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	23
Total number of cases closed	159
Number of cases open December 31, 1983	18

In 1983 I handled about 18 percent more complaints against B.C.Hydro than I had in 1982. This increase probably would have been greater had it not been for the strike of unionized Hydro employees during the latter part of the year.

B.C.Hydro staff have continued to respond promptly to my requests for assistance in resolving those complaints which are well founded. In fact, among all Hydro complaint files closed in 1983, there is not one instance in which I had to recommend formally that corrective action be taken. All resolutions were achieved during investigation.

COLLECTION OF OVERDUE ACCOUNTS

In my 1982 Annual Report I suggested that Hydro could prevent many complaints if the Corporation's collections staff were more sensitive to the customers' ability to pay. Hydro could be a lot more helpful in suggesting alternatives to disconnection. Instead Hydro tries to collect overdue accounts by threatening disconnection and refusing to negotiate payment. During 1983 I continued to receive complaints of this type on a regular basis.

There were no apparent procedural or policy problems underlying these complaints. It seemed to be more a matter of attitude and approach on the part of B.C. Hydro.

From my discussions with complainants I have come to the conclusion that with very few exceptions there are reasonable alternatives to disconnection. In fairness I must also mention that when I bring disconnection problems to the attention of senior Hydro staff, they respond quickly.

I do not suggest that Hydro refrain from issuing disconnection notices and proceed with disconnection when a customer fails to pay an overdue account or does not respond to disconnection notices. I believe, however, that Hydro collections staff have a duty to be fair and helpful to all customers, particularly to those who make an effort to resolve their payment problems with Hydro. In my opinion, Hydro staff are quite capable of resolving more of these matters without my intervention.

FROM WHOM TO COLLECT?

One of the more frequent types of complaints about Hydro's collection practices concerns attempts to collect overdue accounts from individuals who did not consider themselves responsible for the debt. Hydro accounts are usually listed in the name of a single individual, but frequently there are co-residents who benefit from the service.

Collection problems arise when customers and their co-residents move, and otherwise re-order their living arrangements, without settling their Hydro account and then try to establish a Hydro account at their new location. There have been several instances in which Hydro may have acted improperly in attempting to collect those previous arrears from the spouse or alleged co-resident of the former customer. The following cases display several variations on this theme:

Brother's debt, not sister's

Hydro transferred the arrears from the closed account of my complainant's brother to her ac-

count since the brother was now living with her and benefitting from Hydro service. Hydro threatened to disconnect the complainant's electricity, which would also affect the occupants of a self-contained upstairs suite, if she refused to pay her brother's arrears. The complaint was resolved when Hydro agreed that it would not be proper to disconnect the complainant's service under these circumstances and that the brother should be billed directly. (CS 83-170)

Never lived there

Hydro threatened to disconnect a complainant's service when she refused to pay the account of a former co-tenant in a residence the complainant had not shared with that individual. Hydro agreed to drop the collection effort when it could not be proven that the debtor lived with the complainant. (CS 83-171)

Did not live there at the time

Hydro threatened to disconnect another complainant's service when she failed to pay the account of her former common-law husband at a residence she had previously shared with him. Hydro agreed to discontinue its efforts to collect from the complainant after it was confirmed that the common-law couple had been separated during the period in question. (CS 83-172)

My investigation of the following complaint revealed that the practices of some collections staff was contrary to existing written Hydro policy.

Questionable collection method

A man who had always paid his account on time complained that B.C. Hydro had disconnected his electricity to force payment of his lady friend's arrears which she had accumulated at other addresses.

My investigation revealed that Hydro had taken this action on the assumption that the woman was living with the complainant and was benefitting from Hydro's provision of electric service to the house. The local Hydro supervisor acknowledged that the man whose power had been disconnected had not resided with the woman at any of the other premises at which she had accumulated her debt to Hydro.

After discussing the matter with my investigator, the supervisor acknowledged that the disconnection action was probably not legally supportable. It was also acknowledged that there may have been instances when a similar approach was used to collect overdue accounts. To correct the matter, the complainant's power was immediately reconnected and the supervisor agreed to discontinue the practice of attempting to collect overdue accounts by pressuring customers who could not be considered legally responsible for paying those accounts. (CS 83-173)

FAILURE TO CORRECT CREDIT RECORD

When Hydro is unable to collect an amount due from a person who is not currently receiving Hydro service, the bill is sometimes referred to a collection agency. In the following two cases referrals were apparently made in error, but the complainants were unable to pursuade Hydro to correct the problem.

Hydro's fault

Because of a clerical error Hydro failed to notify a customer of the amount owing for service to his previous residence. Hydro referred the account to the Vancouver Credit Bureau, and the complainant first learned of the arrears as a result of a credit investigation done by the institution to which he had applied for a mortgage.

When the complainant pointed out the problem, Hydro acknowledged the error but refused to correct the record at the Credit Bureau. The complaint was resolved when I brought the matter to the attention of a senior collections manager who confirmed the source of the error and promised to have the derogatory notation removed from Credit Bureau records. (CS 83-174)

Hydro set record straight

A man who had been denied a loan and a credit card as a result of information given to the Credit Bureau by Hydro, complained that Hydro had not properly considered all of the evidence that was available to show that he was not responsible for the amount Hydro claimed.

Following my investigation, Hydro reconsidered the facts and agreed to ask the Credit Bureau to delete the complainant's records on the basis that the account may have been referred in error before the dispute over the amount owing was settled. (CS 83-175)

SECURITY DEPOSITS

B.C. Hydro's Electric Tariff and Gas Tariff are public documents approved by the B.C. Utilities Commission. They contain the terms, conditions and rates under which service is provided. The Tariffs authorize the collection of security deposits from non-residential customers.

The Tariffs state that "The amount of such security deposit will be the greater of $50 or three times the

customer's maximum monthly bill, as estimated by the Authority." A deposit is not required if a customer has maintained a good payment record for the preceding two years, or if Hydro determines that a new applicant for service has established a satisfactory credit rating with credit reporting agencies.

"Security deposits may be in the form of cash or, with to the approval of the Hydro, in any of the following forms of security: a) Negotiable Bearer Bonds that are Government Guaranteed at face value; b) Insurance Indemnity Bonds; c) Bank Guarantees; d) Corporate Guarantees; e) Personal Guarantees; f) Bank Term Deposits."

Hydro prefers cash

During 1983, I received complaints from several small businesses concerning Hydro's request for a security deposit. Typically, complainants raised two main issues: they questioned Hydro's authority to collect such deposits and they objected to the fact that Hydro's requests seemed to imply that only cash deposits would be acceptable.

I found that virtually all of these complaints could be resolved by providing the necessary information and explanations contained in Hydro's Electric and Gas Tariffs.

My investigator raised this point with a senior manager in Hydro's Credit Administration Department. He confirmed that many non-residential customers are not informed of the alternative forms of providing a security deposit, unless they request further information from Hydro. The official said Hydro deliberately omitted this information to encourage customers to make cash security deposits.

I brought to Hydro's attention a principle of administrative fairness, according to which people ought to be fully informed of their entitlements and obligations before making any decision an authority can require of them. The Hydro representative acknowledged that it would be fairer to inform customers of all their options when the first request for a security deposit is made.

The Hydro official promised to modify the content of Hydro's letter requesting a security deposit. He also agreed to include a brief statement explaining Hydro's authority to collect such deposits.

I expect this procedural change to contribute to a better business relationship between B.C. Hydro and its non-residential customers. (CS 83-176)

PROPERTY ISSUES

Following are a few brief examples of complaints received about Hydro's acquisition and use of property for establishing transmission lines.

The $17,000 difference

Hydro offered $25,000 in compensation for a transmission line easement over the complainant's property, even though Hydro's appraiser had apparently valued the easement at $8,000. The agent of a property owner claimed that he was unable to make any progress in his negotiations with Hydro because Hydro's land representative would not explain the basis for the additional $17,000 in the offer.

After discussing the agent's information needs with my investigator, the Hydro land supervisor agreed to meet with the agent to explain the basis of the offer. The agent subsequently confirmed that he was satisfied with the information received and could now proceed with negotiations. (CS 83-177)

Where do those poles come from?

A man discovered that the back quarter of his recently purchased 18-acre property was severed by five Hydro power poles without a registered easement.

The man complained that when he applied for electrical service to his new dwelling, a Hydro employee told him that he would not be connected until he signed an easement for the pole line. He also complained that he received conflicting messages from other Hydro personnel concerning this demand.

In discussions with my investigator Hydro acknowledged responsibility for the problem. It had neglected to investigate the original subdivision application when it was sent to the District Office for approval. The complaint was resolved when Hydro offered the complainant written confirmation that the pole line would be moved to the public road in front of the complainant's property and that no easement across his property would be required. (CS 83-178)

Hydro agrees to pay

A man who already had electric service complained that Hydro was in the process of relocating its distribution line to the other side of his property and required him to clear the access route at his own expense.

At my investigator's request, Hydro made an on-site inspection, reviewed its decision, and subsequently agreed to bear the full cost of clearing the public right-of-way. (CS 83-179)

B.C. TRANSIT

Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	2
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	1
Total number of cases closed	7
Number of cases open December 31, 1983	1

B.C. Transit is not among the authorities that generate a lot of individual complaints. The following case was one of the few received last year.

What price a beautiful view?

A property owner felt that B.C. Transit should compensate him for impairment of his view by the rapid transit line.

In reviewing the complainant's documents my investigator noted that the Chairman of the Rapid Transit Committee had asked one of his staff members to discuss the issue with the property owner. I suggested to my complainant that he contact the staff member and arrange a meeting.

Finally, after several phone calls from my staff to the Chief Executive Officer for A.L.R.T., a representative of that agency met with my complainant to discuss his concerns. I was disappointed that B.C. Transit was not more responsive to requests from both my complainant and my office to contact the property owner but I could not recommend that B.C. Transit compensate the man since present law provides for compensation only when property is expropriated and not when views are detrimentally affected. (CS 83-180)

B.C. UTILITIES COMMISSION

Declined, withdrawn, discontinued	2
Resolved: corrected during investigation	0
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	2
Total number of cases closed	4
Number of cases open December 31, 1983	3

The B. C. Utilities Commission performs a wide range of functions specified in the *Utilities Commission Act*, including the certification and regulation of energy projects and public utilities in the province. The Commission may make orders concerning the standards, terms, conditions and rates under which service is provided and may hold hearings on the adequacy and quality of service on its own initiative or on a complaint.

I do not receive many complaints against the Commission, probably because it has little direct contact with the public, apart from its exposure at public hearings. Most people are probably unaware that the Commission has a mandate to handle complaints against any public utility under its jurisdiction.

Nevertheless, the Commission's decisions and actions affect most residents of the province indirectly through approving utility tariffs, conducting public hearings into major energy projects and through the performance of its other supervisory functions.

I believe it is important that the work of the Commission be visible to the public. It was this concern that prompted me to take up the following issue on my own initiative.

Annual Report must be submitted by law

During discussions with Commission staff on other matters, it came to my attention that the Commission had not submitted its Annual Report to the Lieutenant Governor in Council for the 1981 calendar year, as required by Section 15(1) of the *Utilities Commission Act* and did not appear to have any intention of doing so. Section 15(1) reads:

15. (1) The commission shall, in each year, make a report to the Lieutenant Governor in Council for the preceding calendar year, setting out briefly
    (a) all applications and complaints to the commission under this Act and summaries of the commission's findings on them.
    (b) other matters that the commission considers to be of public interest in connection with the discharge of its duties under this Act, and
    (c) other information the Lieutenant Governor in Council directs.
    (2) The report shall be laid before the Legislature as soon as possible after it is submitted to the Lieutenant Governor in Council.

In my opinion the Legislature clearly intended that this information be published annually in the public interest, and I wrote to the Commission that its failure to submit a 1981 Annual Report before the end of 1982 appeared to be contrary to law. On December 23, 1983, the Commission informed me in a letter that Annual Reports for both 1981 and 1982 had now beer submitted as required. (CS 83-181)

(The above complaint was rectified at the end o 1983 but since the file was not closed until 1984 it is not included in the 1983 statistics.).

DISTRICT OF TUMBLER RIDGE

Declined, withdrawn, discontinued	2
Resolved: corrected during investigation	3
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	1
Total number of cases closed	6
Number of cases open December 31, 1983	0

While the *Ombudsman Act* does not currently authorize me to investigate complaints against locally elected municipal governments, I do have the authority to investigate newly created municipalities whose interim councils are appointed by the Lieutenant Governor in Council. The District Municipality of Tumbler Ridge was incorporated on April 9, 1981 and a Commissioner was appointed with all of the powers and duties of a Mayor and Council under the *Municipal Act*, pending the election of the first Council no later than 1987.

One of the main duties of the appointed Commissioner of Tumbler Ridge was to facilitate the construction of the townsite in sufficient time to accommodate the arrival of permanent residents to ensure that there would be a socially cohesive and well planned community conducive to attracting and retaining a stable work force.

The only complaints I have received against the District of Tumbler Ridge related to the accommodation problem, and the main issue concerned the District's development of a mobile home community.

Of new homes and small dogs

Three prospective tenants of the mobile home community complained about the eligibility requirement which stated that only mobile homes less than five years old would be accepted into the park. They said the requirement was so unreasonably strict that they would probably not be able to move their existing homes to Tumbler Ridge and, therefore, might not be able to continue their employment with the mining company which was moving its operations to the new townsite.

They also complained that many of the terms in the proposed standard tenancy agreement for tenants of the park were unfair or unreasonable, including the following excerpts: ". . . tenants are not allowed to sublet their mobile homes; . . . tenants must supply the manager with postdated cheques to cover a period of at least six months; . . . the tenant is solely responsible for and must bear the entire cost of installing his mobile home on the lot. This will include the cost of preparing the foundation; . . . tenants are not permitted to install radio or T.V. antennaes in their yard or on the exterior of their mobile home; . . . no large pets or dogs are permitted . . . Dogs are restricted to a maximum of 18 inches high . . ."

After consulting the Rentalsman, and several other sources of specialized knowledge concerning construction standards for mobile homes and the management of mobile home parks, my investigator and I discussed the complainants' objections with the Commissioner and his Special Project Manager responsible for setting policy for the park. I am pleased to say that they could not have been more accommodating.

First, while explaining that the intention of restricting eligibility to relatively new homes was to create an aesthetically pleasing, high quality, mobile home community, the Commissioner acknowledged that this was beginning to look like an unrealistic objective since some people who had no other accommodation possibilities were not in a financial position to replace their existing mobile homes with newer ones just to gain entrance to the park. The Commissioner agreed, therefore, that the eligibility standards for mobile homes entering the park would be no higher than the standards required in other mobile home parks in the province.

Second, following our discussions on the terms of the proposed standard tenancy agreement, significant changes were made to ten of the items. These changes bring the terms of the tenancy agreement into conformity with the *Residential Tenancy Act* and should contribute to a better working relationship between the tenants and their landlord. (CS 83-182)

I.C.B.C.

Declined, withdrawn, discontinued	310
Resolved: corrected during investigation	325
Substantiated: corrected after recommendation	24
Substantiated but not rectified	4
Not substantiated	147
Total number of cases closed	810
Number of cases open December 31, 1983	78

The relationship between my office and I.C.B.C. yielded good results for my complainants in 1983.

With regard to most complaints that I found to be substantiated, I based my decision on the individual set of facts and on my application of the principles of administrative fairness to these facts.

I.C.B.C. — KNOW YOUR LAW

Unfortunately, I still have reason to be concerned about cases in which employees of the Corporation either fail to follow statutory procedures when they attempt to enforce I.C.B.C. rights, or make misleading statements to policy holders concerning the Corporation's statutory powers.

These complaints usually arise in the context of debt collection and recovery of claim payments, and are probably the result of ignorance of relevant legislation, rather than wilfull disregard for the law.

In my view, the minimum standard of fairness in administration is knowlege of and compliance with the appropriate law. There is no excuse for conduct which fails to meet this minimum standard. The following cases illustrate this point.

Woman happy with compromise

A woman complained that I.C.B.C. refused to renew her insurance coverage unless she reimbursed the Corporation approximately $5,000, the amount it had paid the other party to an accident for which my complainant had been responsible.

The woman said her insurance had expired at midnight on the day before the accident, and although she agreed that the accident had been her fault, she felt that I.C.B.C. should extend coverage for a few days after the expiry of her policy. She pointed out that she had not received her renewal notice, and that all other types of insurance permit a period of grace from the policy expiry date unless a renewal notice has been sent to the insured.

The Regulation, however, states that it is incumbent on an insured to renew his or her I.C.B.C. policy, even if no renewal notice has been received.

On further investigation, we found that I.C.B.C. had failed to notify the woman of the Corporation's intention to recover the $5,000 from her, as required by the *Insurance (Motor Vehicle) Act*.

Although I.C.B.C. refused to waive the debt, I was able to persuade the Corporation to accept 50 percent of the amount owing as full settlement on the grounds that I.C.B.C. had erred in not sending the statutory notice to my complainant.

The woman was quite willing to agree to the settlement and accepted the compromise. (CS 83-183)

Look Ma, no licence

In 1981, a foolish young lad of 15 took his father's car without permission. The inexperienced, uninsured and unlicenced driver had an accident, reducing the car to a total wreck. I.C.B.C. paid the father's claim but later tried to recover the amount from the son.

More than two years later, the Motor Vehicle Branch refused to replace the young man's lost driver's licence because I.C.B.C.'s records showed a large outstanding debt. This promptec his complaint to the Ombudsman.

If I.C.B.C. pays a claim which results from the negligence of an uninsured driver, the Corporation is subrogated, that is, I.C.B.C. is substituted to the policy holder's right to sue the negligent person. This gives I.C.B.C. the right to take legal action against the uninsured driver for recovery of the money it has paid out.

In this case, an examination of the records showed that the Corporation had failed to initiate a legal action within the statutory time limit of two years from the date of the accident. I.C.B.C. wrote off the entire amount. (CS 83-184)

Rights more clearly defined

I received a complaint concerning a statement in I.C.B.C.'s demand letter that the Corporation could "deny any claim for loss or damages to a vehicle insured under policies in your name." I reviewed the sections in the *Insurance (Motor Vehicle) Act* Regulation and found that I.C.B.C. is not authorized to deny claims of policy holders where a debt is owing, but has the more limited right to offset a debt against any claims settlement payable to an insured.

In response to my enquiry, I.C.B.C. advised me that the billing letter which was the subject of the complaint was no longer being used, and had been replaced with a billing notice which would state that I.C.B.C. could recover the amount of the debt directly from a claims settlement. In view of the proposed change, I considered the complaint resolved and closed my investigation.

A few months later, I heard from another person who had received the same letter that had triggered the first complaint. This complainant questioned I.C.B.C.'s authority to deny any future claims which he might have, even though the amount payable under a future claim may exceed the amount of his debt.

Once again we contacted I.C.B.C. I was annoyed when I learned that my two complainants had received letters from different departments of the Corporation, and that, although the Customer Service Department had changed its form letter, the Collections Department had not.

After alerting I.C.B.C. to the problem, I was assured that the Collections Department form letter would be altered in the same way, and I considered the second complaint resolved as well. (CS 83-185)

No authority to collect this debt

A young man complained that I.C.B.C. would not allow him to renew his insurance, unless he

first paid his debt of $397. That was the amount it had cost to repair the damage to a car, which I.C.B.C alleged, he and some friends had vandalized and the driver of which he had assaulted.

My complainant had been convicted of assault in connection with the incident, and one of his friends had been convicted of vandalism.

The young man stated that he had in no way been responsible for the damage to the vehicle and felt that I.C.B.C. should not be billing him for the damage. Although I was not very sympathetic towards the complainant, I questioned I.C.B.C.'s authority to take collection action on a debt without first obtaining a judgment, particularly since the complainant was not a policy holder at the time of the accident.

After considering the issue for approximately five months, the Corporation agreed that it did not have the authority to collect this debt, and the man was permitted to renew his insurance. (CS 83-186)

Chance to dispute was denied

A complainant had been involved in an accident in 1980, as a result of which he was charged and convicted of an offence under the Criminal Code of Canada. Under the *Insurance (Motor Vehicle) Act* Regulation, the conviction amounted to an automatic breach of his insurance contract and the Corporation was empowered to seek recovery of costs paid out for damages and injuries resulting from the accident.

The Act states that when the Corporation has the right to recover costs, it must notify the person by registered mail, and that person then has the opportunity to dispute the Corporation's position.

Because my complainant was related to an I.C.B.C. employee, the Corporation had followed its usual policy of placing the matter in the hands of an independent adjuster. By the time the complainant contacted me in 1983 about a bill he had received from I.C.B.C. for several thousand dollars, the independent adjuster's file had been destroyed.

When I discovered that the independent adjuster had talked to my complainant but had not notified him in accordance with the Act, I found the complaint substantiated. As there were no grounds on which to dispute the man's conviction and breach, I did not make a recommendation in this regard.

Since too much time had passed, he had lost the right to commence legal action. Thus my substantiation of the complaint served only to stress, once again, that the Corporation must follow proper procedures. (CS 83-187)

With malice aforethought

A man complained to me after a motorist, who was unknown to him, intentionally damaged his fence by driving his vehicle into it, not once but twice, fortunately failing to hit it on his third attempt.

I.C.B.C. told my complainant on the telephone that the Corporation could not accept his claim because the damage had resulted from a criminal act, not an accident.

This information was wrong. Whether the damage was deliberate or accidental, my complainant suffered a loss as a result of the operation of a motor vehicle and was, therefore, protected under the *Insurance (Motor Vehicle) Act*. When we pointed out the error, the claim centre paid the claim promptly. (CS 83-188)

Pay up or we won't fix your car

I received two similar complaints almost simultaneously. In both cases, a Lower Mainland Claim Centre had refused to process claims because in each instance a member of the claimant's family owed money to I.C.B.C. This overzealous approach to debt-collecting was the result of a misinterpretation of Corporation policy. The refusal to accept these claims was contrary to law. I.C.B.C. is not authorized to collect from policy holders money owed by other members of the family. Relatives of policy holders are not liable for I.C.B.C. debts of the policy holder, except when a vehicle has been transferred from one family member to another for the purpose of evading the debt. Both complaints were resolved within an hour or two, and the claims were accepted. (CS 83-189)

You can't do that

I received a complaint that I.C.B.C. had refused to settle the claim of an insured vehicle owner because at the time of the accident the vehicle was being driven by her son who owed money to I.C.B.C. for penalty point premiums.

I found that I.C.B.C. had no authority to collect from the vehicle owner a debt owed by the driver, unless ownership of the vehicle has been transferred from the driver to the owner to avoid the debt.

In this case the complainant's son had never owned the vehicle. I.C.B.C. agreed with me that it was improper to collect the debt from the owner and her claim was settled. (CS 83-190)

PROCEDURAL CHANGES

Investigation of the following complaints led me to make recommendations to I.C.B.C. for changes in procedures which, I hope, will eliminate future problems in dealings between the public and the Corporation.

We do it all for you

A woman complained that an I.C.B.C. adjuster treated her rudely after she gave him a brand new calculator and $19 to take his children to a fast-food restaurant.

My investigator contacted an I.C.B.C. manager who promised to look into the situation. He could establish no evidence of rudeness on the part of the adjuster which I found hardly surprising, considering that his allegedly rude remarks were made over the phone. The adjuster said he had accepted the calculator and the money at the woman's insistance, adding that he had labelled and stored them in his desk for two years with the intention of returning them to the woman after her claim was settled. Unfortunately, he forgot to return the gifts.

The Corporation's policy forbids employees to accept presents when this would give the appearance of impropriety, and the adjuster returned the presents after his manager brought the matter to light. Although the calculator was a little worse for wear and the money was returned in different denominations, my complainant did not wish to press the matter further.

I discontinued my investigation but not before informing the president of the Corporation of the incident and suggesting that he clarify the Corporation's policy on the subject of accepting gifts. (CS 83-191)

The difference between some and most

A woman complained to me when I.C.B.C. stopped paying her housewife disability benefits despite her continuing inability to perform her household duties.

In terminating the woman's benefits the Corporation had relied on medical reports which stated that she was able to do "some" of her housework. I pointed out to the Corporation that the woman was entitled to receive benefits until she could perform "most" of her household tasks. The Corporation's decision to terminate her benefits was not based on adequate medical support in my opinion.

I recommended that the Corporation request a report from the woman's doctor about her condition. The Corporation contacted the doctor who confirmed that the woman was still unable to perform most of her work. On the strength of this information, the Corporation continued paying the benefits. (CS 83-192)

More of the same

When another housewife also complained about I.C.B.C.'s decision to cut off her disability benefits while she was still unable to do housework, I realized that the Corporation's adjusters were having difficulty interpreting the standard set by the Regulation, namely that housewives be paid benefits for as long as they are "substantially and continuously disabled from performing regularly most of (their) household tasks and duties".

Although it did not look like I.C.B.C. had erred in terminating this woman's benefits based on the available medical evidence, I nevertheless recommended that I.C.B.C. develop a policy guaranteeing the consistent application of the Regulation regarding housewife disability benefits.

The Corporation accepted my recommendation and will be distributing a bulletin instructing adjusters to ask the attending physician for a report addressing the standard specifically set out in the Regulation. (CS 83-193)

Sloppy practices

When a vehicle is extensively damaged in an accident, I.C.B.C. must decide whether to write it off or to repair it, selecting the least expensive option after determining the pre-damage value of the vehicle, the salvage price of the damaged vehicle, and the cost of repairs.

If I.C.B.C. decides to have the vehicle repaired, the Corporation often stipulates that the body shop do all repairs at a set contract price to ensure that the cost of repairs does not exceed the difference between the pre-damage value of the vehicle and its salvage price. I.C.B.C. expects all hidden as well as apparent accident-related damage to be repaired for the contract price.

The complainant in this case came to me after his vehicle had been repaired for a contract price. He was dissatisfied with the body work and the mechanical repairs to his vehicle. I.C.B.C. had allowed a small increase in the contract price to persuade the repair shop to improve the body work but refused to further indemnify the complainant for additional expenses he incurred in an unsuccessful effort to make the vehicle driveable. My complainant was told that he should sue the repair shop because it had agreed to repair all accident-related damage for the contract price.

I found that I.C.B.C. did not use a special document for contract price repairs. The contract price was merely scrawled on the face of the estimate. I questioned whether the complainant could successfully sue the repair shop for unrepaired hidden damage on the basis of an estimate form which made no reference to hidden damage. I recommended to I.C.B.C. that the Corporation provide a supplementary estimate to indemnify my complainant for the repairs required to restore his vehicle to its pre-accident condition. I also recommended that I.C.B.C. prepare a proper contract price document.

I.C.B.C. disagreed that a special contract document was necessary. The Corporation did, however, issue a bulletin instructing its field employees to explain fully the nature of the contract price agreement to vehicle owners who were having their vehicles repaired under such an agreement.

Eventually, I.C.B.C. agreed to provide a supplementary estimate to cover the cost of the additional and necessary repairs to my complainant's vehicle. (CS 83-194)

The white rabbit syndrome

With no prior warning to its customer, I.C.B.C. withdrew a finance contract instalment from my complainant's bank account. The withdrawal was made many months after the scheduled date, and reduced his balance to a few cents.

The finance contract does allow the Corporation to make withdrawals after the scheduled date. I.C.B.C. had, therefore, no way to undo the damage but I was still concerned that excessively late withdrawals, with no prior warning, could cause hardship to many other customers and tentatively recommended that I.C.B.C. send a written warning to customers when it planned withdrawals more than three months after the scheduled date.

The Corporation did not accept this recommendation and instead proposed a new procedure which would prevent any excessively late automatic withdrawals. Billing statements would be sent to customers whose payments had not been withdrawn. This procedure is now in place. I will monitor the situation by way of complaints received, but it will affect a dwindling number of customers, because the Corporation is not providing financing of premiums in 1984. (CS 83-195)

STRIKE PROBLEMS

The strike caused quite a few problems and consequently triggered complaints to my office. The following is a selection of strike-related complaints resolved in 1983.

They split the difference

I investigated two complaints about unreasonable interest charges levied by I.C.B.C. against motorists who had paid their insurance premiums in instalments.

In each case, the complainant's debt was caused by the Corporation's failure to withdraw the appropriate instalment finance note from the complainant's bank account. The problem had arisen because of the difficulties created by the 1981 strike.

It wasn't until 1982 that the complainants were informed of their debt and were billed for more than a year's interest. Both of them felt this was unfair, and said they would have made arrangements to pay the debt, had they been notified earlier. Both complainants had moved, and the notification had apparently been sent to the wrong address.

One of the complainants had even given the Corporation a change of address form and had subsequently received other Corporation documents but, at the time, change of address information was not transferred from one department of the Corporation to another. That problem has now been overcome by the installation of a new computer system which provides the same data base to all departments.

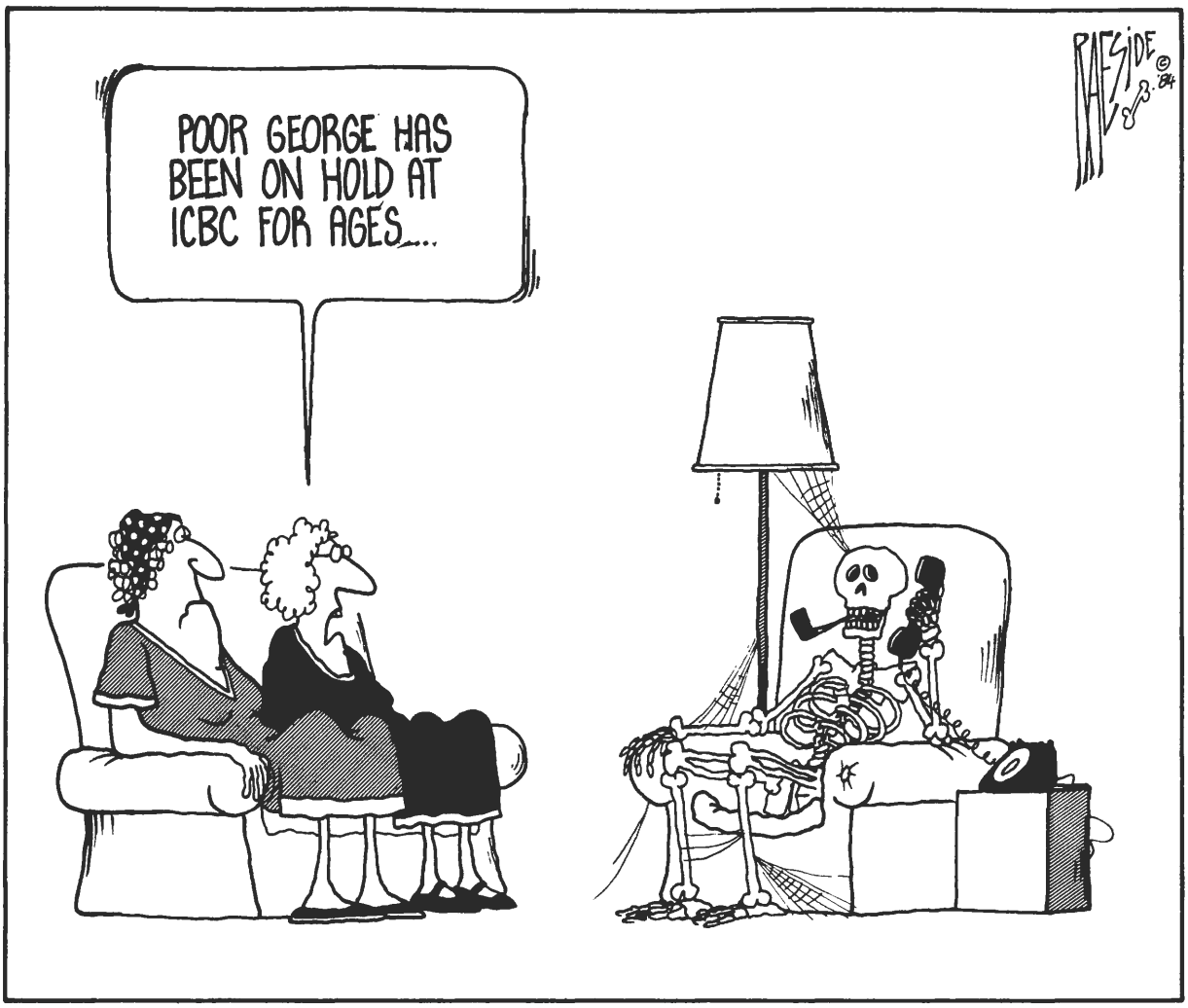
One complainant had been charged interest totalling $50, the other was charged $28. Since both had collected interest on their money while it remained in their bank accounts, I suggested a compromise which was accepted by both complainants and I.C.B.C. The Corporation reduced the bill for the interest charges to half. (CS 83-196)

Reimbursed for high interest

I received a complaint from a man whose motor cycle was damaged beyond repair by another driver during the I.C.B.C. strike in 1981.

Unable to settle his claim with I.C.B.C. at that time, the man was forced to borrow money at an interest rate of 22 percent to replace his motorcycle. Seven months later, the man received compensation from I.C.B.C. for the value of his motor cycle but the Corporation refused to reimburse him for the interest on the money he had to borrow to replace his motor cycle.

We investigated his complaint and concluded that I.C.B.C. could reasonably have foreseen the effects of a prolonged strike on claims against its policy holders. I concluded that the Corporation



was acting oppressively in refusing to consider the man's claim for interest payments and in insisting that his only recourse would be to sue the driver of the vehicle responsible for the accident. I also considered it unreasonable that I.C.B.C. had not set up a mechanism for handling claims of this type during the strike.

I.C.B.C. finally agreed to pay the complainant the interest incurred during the strike. (CS 83-197)

Effects of strike still lingered

A man complained to me that his car had been vandalised shortly after the conclusion of the I.C.B.C. strike in the fall of 1981. Although the man immediately registered a claim at an I.C.B.C. claim centre, he did not get an appointment until approximately one month later. During this time, the man's car was undriveable and his efforts to meet with an adjuster prior to his appointment date were unsuccessful.

After investigating this complaint, I concluded that I.C.B.C. unreasonably delayed estimating the damage to the complainant's car. I was also critical of I.C.B.C. for not continuing its special strike provisions for some time after the strike, in view of the fact that a backlog should have been anticipated and steps taken to give priority to claims for undriveable vehicles.

Based on the fact that the man's car was not in use for approximately one month, I recommended that I.C.B.C. give the man a rebate on his third party liability coverage, equal to one twelfth of his annual premium.

In spite of the small amount of money involved in my recommendation, I.C.B.C. at first refused to co-operate and maintained that the Corporation had done its best to process claims as quickly as possible after the strike. Finally, I.C.B.C. agreed to refund $13 to the complainant, based on the particular facts of his complaint, and on the understanding that the decision would not be cited as an example in the future. (CS 83-198)

RECOMMENDATIONS FOR LEGISLATIVE CHANGE

The following cases are indicative of situations which, I believe, call for legislative changes.

Getting their acts together

I received a complaint from a man who had been involved in a car accident in which his daughter suffered a spinal injury for which she required regular chiropractic treatment for a month following the accident.

Unfortunately, the man had failed to apply for no-fault benefits, which would have covered the treatments not covered by medical insurance. By the time he came to us, the one-year time limit for applying for benefits on behalf of his daughter had expired.

Many limitation periods for commencing legal actions are governed by the provisions of the *Limitation Act*. This Act provides that the usual time period for commencing an action does not begin to run until the person who is entitled to make the claim has reached the age of majority. The provisions of this Act, however, did not apply to the girl's situation because the *Insurance (Motor Vehicle) Act* Regulation sets out a specific limitation period which does not allow for the suspension of the limitation period until an individual attains majority.

Although it appeared that there was no legal solution to the complainant's problem, all was not lost yet for the injured daughter. The *Limitation Act* did apply to her right to sue the driver of the vehicle responsible for the accident. I referred her case to the Public Trustee for follow-up, and continued my investigation into the absolute one-year limitation period for accident benefits.

When I recommended that I.C.B.C. amend the limitation period set out in its Regulation to conform to the *Limitation Act*, I.C.B.C. responded by increasing the limitation period from one year to two years. Even though this change was an improvement, it fell short of my recommendation concerning the suspension of the limitation period for minors and other persons under legal disability.

In the meantime, I.C.B.C. has advised me that it intends to seek an amendment to the *Insurance (Motor Vehicle) Act* which will bring all limitation periods into line with the *Limitation Act*. I will continue to monitor the situation until these recommendations have been implemented. (CS 83-199)

Moving in the right direction

In my 1982 Annual Report, I discussed my concern over I.C.B.C.'s use of a short-rate table in calculating refunds to policy holders on cancellation of a motor vehicle policy.

I found at the time that I.C.B.C. retained approximately 10 per cent of the total premium to cover administrative costs, and, in addition, retained 4 percent of the premium for each 15 days or less that the coverage was in effect before cancellation. I also found that I.C.B.C. would only refund a maximum of 86 percent of a policy holder's premium, even if the cancellation took place one day after the purchase of the policy.

I notified I.C.B.C. of my intention to recommend that the Corporation amend its regulation, abandon the short-rate cancellation table, and calculate cancellation refunds on a daily basis, after deducting the appropriate percentage of the premium for administrative costs. My proposed recommendations were based on my finding that the system used by I.C.B.C. was improperly discriminatory because it forced policy holders who had cancelled their policies to subsidize the Corporation.

I.C.B.C. has now advised me that, as of January 1, 1984, the 15 day rate periods have been reduced to four-day periods, thereby moving towards my recommendation that refunds be calculated on a daily basis. Previously, the difference between rate periods was 4 percent. This has now been reduced to one per cent. The maximum 86 percent refund on cancellation has now been increased to 89 per cent.

I am pleased that I.C.B.C. is moving towards a more equitable cancellation refund system. (CS 83-200)

Disability benefits not indexed

The *Ombudsman Act* entitles me to conduct investigations on my own initiative. Pursuant to this authority, I decided to investigate the fact that accident or "no fault" benefits paid to an insured who is injured in a motor vehicle accident are not indexed in any way to provide for the rising cost of living.

I was particularly concerned about the fact that individuals who were injured in motor vehicle accidents prior to 1977 are still receiving only $50 a week if they remain totally disabled, although those disabled after January 1980 receive $100 per week for the same level of disability.

In response to my enquiries, the Corporation stated that the benefits reflect the premiums the individuals had actually paid. In other words, since premiums were much lower prior to 1977,

those injured at that time would be entitled to a smaller weekly payment than those injured when premiums were higher. I considered the Corporation's position but felt that, in the absence of an indexing system for accident benefits, the purpose behind the creation of these provisions was being eroded, particularly in cases of long-term disability.

My proposed recommendation was that the Regulation be amended so that all total disability benefits be brought to the current level for recent disabilities. I.C.B.C. reiterated its position that the Corporation operates on the basis of funded liability, and that indexing of benefits of future payments to disabled individuals would not be quantifiable at the time premiums were assessed. The Corporation also offered to ask its actuary to study the impact of indexing weekly benefits. To facilitate a more informed dialogue about the impact of revising the regulations, I requested that this study be undertaken and that I.C.B.C. notify me of the results.

Unfortunately I.C.B.C.'s actuary left the Corporation shortly after my recommendation was made, and the study was not undertaken. I.C.B.C. stated that, in its view, the motoring public would resist any move to index no fault benefits as these payments are primarily made to individuals who do not have the right to sue another driver for the results of an accident.

The Corporation also pointed out that my recommendation touched on the issue of no-fault compensation versus the traditional tort system and that this subject was currently being considered by the Automobile Accident Compensation Committee and by the Government. I decided to accept the Corporation's position that it would not implement any policy changes to the accident benefits scheme, in view of possible changes that might result from the Committee's report. I learned that the Committee report also recommended an increase in accident benefit payments. (CS 83-201)

NOT SUBSTANTIATED

It would be inaccurate to leave the impression that all complaints investigated by my office are substantiated or warrant some action by I.C.B.C. to resolve. Here are some cases in which I could not agree with the complainants' claims that I.C.B.C. acted improperly.

I.C.B.C. smashes glass scheme

When I.C.B.C. and some glass repair shops were engaged in their glass discount war, I was caught in the cross fire.

By agreement with the glass shops, I.C.B.C. paid a set tariff for windshield replacements. Under the Autoplan scheme, vehicle owners paid a $50 deductible and I.C.B.C. paid the balance of the windshield tariff. To attract new customers, some shops began offering discounts on the price of windshield replacements but since reducing I.C.B.C.'s share of the cost would do nothing to attract new clients, they offered discounts on the customer's deductible. Fearing that windshield claims would escalate at great expense to the Corporation, I.C.B.C. reacted negatively to the scheme and instituted a policy of decreasing payments to glass shops in areas where discounts were being offered. The reduction in payment to the glass shops was at least equal to the discounts they offered.

When I received a complaint from a glass shop that I.C.B.C.'s practice was oppressive and unfair to businesses attempting to engage in healthy price competition, I initiated an investigation into the matter.

The requirement that a policy holder must pay a certain portion of a claim known as the deductible is a basic tenet of the insurance business. I.C.B.C. is empowered by law to pay claims subject to the deductible amounts. The purpose of the deductible is to discourage claims by requiring a contribution from the claimant.

I.C.B.C. argued that it was improper for the glass shops to discount the deductible required by law. I agreed with the Corporation and found the complaint not substantiated. (CS 83-202)

System wrong, not I.C.B.C.

I received a complaint from a man who had been permanently crippled when he was run down by an off duty taxi cab driver who had mistaken him for someone else. The injured man's claim was settled in 1980 for approximately $57,500, of which $24,000 was paid to lawyers and creditors. The remaining amount was used by the man to complete the construction of his partly finished home, since he was no longer able to do the work himself.

Three years later, the man was considered unemployable as a result of his injuries. He had no means to support his wife and four children. Although he had worked for the Indian Band Council prior to his injury, the job which he had held was no longer available to him as his qualifications were no longer considered adequate.

My investigation concluded that I.C.B.C. was not guilty of any wrongdoing in its handling of the man's claim. But I asked I.C.B.C. President Thomas Holmes to take a second look at the case

with a view to providing retraining assistance to my complainant.

In his response to me, Mr. Holmes cited the report of the Automobile Accident Compensation Committee as identifying imperfections in the system for compensating victims of motor vehicle accidents. He stated that this man's case was an example of the imperfection of that system.

Mr. Holmes advised me that it would not be appropriate to substitute a "No Fault" system in compensating my complainant merely because the tort system had not provided adequate compensation for him.

As there were no grounds for making a formal recommendation to I.C.B.C., I took no further steps in this case. (CS 83-203)

Corporation acted fairly

The owner of a fleet of motor vehicles incurred debts of more than $13,000 when the company he had leased the vehicles to defaulted in its insurance premium payments to I.C.B.C. He complained that he should not be held liable for the debt of another company, one which was completely unrelated to his own company. The debt imposed on him by I.C.B.C. threatened to force him into bankruptcy.

I.C.B.C. pointed out that both the vehicle owner and the fleet operator were responsible for fleet insurance premiums under the *Insurance (Motor Vehicle) Act*. The Corporation argued that this provision was necessary to cope with unscrupulous fleet owners who could close down the lease company and withdraw the vehicles, leaving I.C.B.C. with an uncollectable insurance account. My investigator then discovered that the complainant had been a principal in the lease company which had incurred the debt to I.C.B.C. He had withdrawn himself and his vehicles from the company when it encountered financial difficulties.

In the circumstances, I concluded that I.C.B.C. had acted fairly when it held both fleet operator and vehicle owner responsible for the insurance debt. The complaint was not substantiated. (CS 83-204)

Tow goes wrong, driver is nailed

A motorist owned two motor vehicles, one of which was not in working condition. He purchased an operating permit and temporary insurance for $12 from I.C.B.C. in order to move the inoperable vehicle. While he was towing the vehicle, the tow bar on the automobile he drove sheared and the vehicle he was towing went out of control and smashed into a road-side property, causing some damage.

I.C.B.C. paid the property owner's claim from the insurance on the tow vehicle.

The motorist complained to me that the consequent loss of his Safe Driver Vehicle Discount on the functional vehicle was unfair because I.C.B.C. should have met the claim from the insurance on the disabled vehicle. The loss of the discount on that vehicle's insurance would have been minimal.

I.C.B.C. argued that the temporary insurance on the disabled vehicle provided coverage only if that vehicle caused damage while not attached to another vehicle. If, for instance, the disabled vehicle had been badly parked and rolled out of control, its insurance coverage would have paid for any resulting damages.

The Corporation cited the Regulation to the *Insurance (Motor Vehicle) Act* as legislative authority for satisfying the home owner's claim from the insurance on the vehicle which had towed the other vehicle.

While I sympathized with the complainant for the loss of his Safe Driving Vehicle Discount, I was unable to conclude that I.C.B.C. had acted unfairly. I found the complaint not substantiated. (CS 83-205)

Hit it again, Sam

In 1981 a woman was involved in a heated dispute with two other people. After she was physically assaulted, she left the premises, got into her car and hit the vehicles of the two other participants in the dispute.

The damage to the vehicles of the third parties was covered but I.C.B.C. refused to cover the damage to the complainant's vehicle. The reason provided was that the complainant's actions were intentional. That meant the damage did not result from an accident and was not covered by her insurance policy.

The complainant denied that her actions were intentional. She stated that she was emotionally upset and not aware of what she was doing at the time.

My investigator spoke to the Constable who was involved in the investigation of the case. He stated that shortly after the accident he had had discussion with the complainant who admitted that she had been angry following the altercation in the house. According to the police officer, she stated that she initially hit one of the vehicles accidentally. Because it felt so good, she rammed it a few more times.

She then saw the other person's truck in the driveway and hit it several times. The Constable stated that when he spoke to the complainant she appeared regretful but was very straight-forward in her recital of the facts. She did not appear to be under the influence of drugs or alcohol and was quite aware of what she was saying.

Although the complainant denied making any such a statements to the police officer, there appeared to be no reason to doubt the officer's credibility. I concluded that based on the available evidence, I.C.B.C.'s decision was reasonable. I did not substantiate the complaint. (CS 83-206)

Camper theft not covered

A complainant operated a business selling trailers. From March 1979 to 1980 the complainant was insured under an I.C.B.C. comprehensive garage policy. In 1979 a trailer he had sold was stolen from his lot before the purchaser could take possession of it. The trailer had been sitting on jacks outside the main business premises.

The complainant relied on his coverage with I.C.B.C. and gave the purchaser a replacement camper. In March 1980, I.C.B.C. refused the complainant's claim for approximately $5,600. The complainant commenced a law suit against I.C.B.C. and his insurance agent. He settled with his insurance agent for the sum of $2,800 and did not proceed with his law suit against I.C.B.C.

He anticipated recovering the balance of his loss from the proceeds of a law suit the purchaser had initiated against his insurance company. But the purchaser lost his law suit and the complainant was never compensated for his full loss. The complainant felt he should have been compensated by I.C.B.C. for the theft of the camper from his trailer lot.

I concluded that the complainant's comprehensive garage policy did not extend to a loss which resulted from the theft of a camper that was detached from a motor vehicle and stood outside the insured premises. The complainant had coverage for customers' motor vehicles but this coverage did not extend to campers or canopies. Since I.C.B.C.'s refusal to reimburse the complainant for his loss was based on a proper interpretation of his policy, I was not able to substantiate the complaint. (CS 83-207)

MISCELLANEOUS COMPLAINTS

Aside from the specific categories of complaints dealt with on the preceding pages, there are many complaints which cannot be classified. The following case summaries fall into that "miscellaneous" category.

This guy needs a haircut

While investigating a complaint against I.C.B.C., one of my staff members noticed a completed form on the complainant's I.C.B.C. claim file in which the adjuster had rated him on the basis of, among other things, his appearance, dress, education, couth, and general attitude.

I immediately notified I.C.B.C. of my concern about prejudicial and irrelevant information on a claimant's file and asked the Corporation to justify the use of this type of form.

Mr. Thomas Holmes, President of I.C.B.C., replied that the form was not used with the approval or knowledge of I.C.B.C., and that its use would be discontinued forthwith. (CS 83-208)

Paint job not free

A woman was involved in a motor vehicle accident for which she was not to blame. When I.C.B.C. charged her 25 percent of the cost of repainting her vehicle because it was now that much nicer than before the accident, she brought her complaint to us. She also complained that I.C.B.C. refused to pay for a number of out-of-pocket expenses which she had incurred as a result of the accident.

I was able to convince I.C.B.C. to reduce its charge for betterment to 15 percent. This was viewed as a satisfactory resolution by the claimant. I also succeeded in convincing the Corporation to compensate the woman for the out-of-pocket expenses. (CS 83-209)

Ten cents on the dollar

This complainant had not had a driver's licence for some time but when he applied for a new one, his application was rejected under a provision of the *Motor Vehicle Act*, according to which the Superintendent may refuse to issue a licence to a person who owes I.C.B.C. money. The computer record showed a debt of $1,000 for Penalty Point Premiums.

Penalty Point Premiums are based on a person's driving infractions as recorded by the Motor Vehicle Branch, and the premiums are levied on the premise that there is a correlation between a driver's convictions and a propensity to become involved in motor vehicle accidents. The premiums are payable to I.C.B.C. if the driver has a valid licence, and regardless of whether or not he or she owns and insures a vehicle. Billings extend over a three-year period, with three points being deducted from each of the first two years.

If, however, a driver's licence has been surrended voluntarily, premiums are not charged

for the period of suspension or surrender. This complainant's licence had been surrendered for almost three years, and when the billing was prorated, his total debt was reduced to $100. He paid I.C.B.C and received his new licence. (CS 83-210)

Premature disposal

A man's vehicle had been badly damaged in an accident, and he accepted I.C.B.C.'s figure for the total loss of the car. During discussions regarding the value of his car, he had signed a salvage release form and was given written authority to remove some personal belongings from his car within a seven-day period.

When he went to the salvage yard, however, the car had already been disposed of. I.C.B.C. refused to reimburse him for the value of his belongings, saying he had signed a release.

After my investigator pointed out that the confusion appeared to originate with the Corporation, rather than with its customer, I.C.B.C. agreed to compensate him for his loss. (CS 83-211)

Corporation honours agreement

A lawyer acting on behalf of an I.C.B.C. policy holder, who was suing the Corporation following the denial of his vandalism claim, came to me with a complaint.

The lawyer said she had discontinued her client's original action in County Court with the full knowledge and consent of I.C.B.C.'s lawyer and recommenced the action in Small Claim Court because the amount involved was under $2,000. Much to her surprise, I.C.B.C. tried to defend the action on the basis that the Small Claim Court action was commenced more than two years after the damage occurred and was, therefore, statute barred.

I.C.B.C. told my investigator that the original lawyer acting for the Corporation had indeed agreed that the action be transferred to Small Claim Court. There was, however, no record of a discussion concerning the limitation date. In the end, I.C.B.C. agreed to instruct its lawyer not to use the limitation date as a defence to the action.

I passed along this undertaking to the lawyer and she proceeded with her client's case. (CS 83-212)

Motorist keeps safe driving discount

A construction worker complained to me that he lost his safe driver's discount as a result of an accident caused by the negligence of a person who had been driving his car without his consent.

We researched the relevant law and found that, if the owner did not know about or approve of the use of his car by the driver responsible for the accident, it would not be appropriate for I.C.B.C. to revoke the owner's safe driving discount.

From the claim file it appeared that I.C.B.C. had not fully investigated the issue of whether or not the vehicle owner had authorized the driver to use the car. The owner said he had lent his truck to a friend, who had handed over the keys to another person without his knowledge.

In view of the circumstances, I notified I.C.B.C. that the assessment of liability against the vehicle owner may have been based on a mistake of law, and that I was considering a recommendation that his safe driving discount be refunded.

I.C.B.C. reconsidered its position and decided to reinstate my complainant's safe driving discount. (CS 83-213)

Good guys don't always finish last

Driving on the highway, a motorist saw that two cars had just collided and both drivers were badly injured.

He stopped to lend assistance and while doing so his clothing sustained severe damage from battery acid which was all over the ground as well as in the hair of one of the injured persons.

When the good samaritan wanted I.C.B.C. to reimburse him for his damaged clothing, the Corporation took the position that damage to property, such as buildings, land or shrubs, would have been covered, but personal property (clothing) was not.

In the course of investigating this complaint, I came across the following description of a rescuer's role:

> "Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperilled victim; it is a wrong also to his rescuer . . . The risk of rescue, if only it be not wanton, is born of the occasion. The emergency begets the man. The wrongdoer may not have foreseen the comings of a deliverer. He is accountable as if he had". (Cardozo, J. in Wagner v. International R. Co. (1921), 232 N.Y. Rep.176)

I asked the Corporation to consider the motorist's claim for the loss of his clothing in light of the above principle. The Corporation subsequently reimbursed the good samaritan for his losses. (CS 83-214)

Snow plugs fan, engine seizes

A complainant who lives in Central B.C. was driving home following a heavy snow storm when a logging truck appeared on his side of the road. To avoid being hit, he swerved off the road and drove into a snow bank.

With the assistance of another motorist he was able to pull his vehicle out of the snow bank. As the vehicle appeared to be in good condition, the man brushed off the snow and resumed his journey. He had driven only a short distance when his engine started to hesitate. When the oil light flashed on, he stopped and checked the oil level which appeared to be normal. He waited for his engine to cool down and continued on his way. A while later, the oil light flashed on again and shortly thereafter his vehicle stopped moving. The driver discovered that the engine had seized.

I.C.B.C. denied the complainant's claim on the grounds that the seizing of the motor was not the result of the earlier collision. It was the Corporation's opinion that the problem was caused because the complainant drove the vehicle while the radiator fan was plugged with snow.

A letter from the Corporation's mechanic, however, stated that the fan did not operate properly because of a broken wire. This damage, which caused the engine to overheat, could have been caused by the vehicle's impact with the snow bank.

When my investigator presented this evidence to I.C.B.C., the Claims Review Committee reconsidered the claim and decided that it should be covered under the complainant's collision coverage. (CS 83-215)

1983 repairs paid for at 1982 rates?

When a man's vehicle was vandalized in September 1982, I.C.B.C. estimated the cost of repairs at approximately $900.

The complainant disagreed with the assessment and negotiated with I.C.B.C. for a better settlement. In October 1982, he obtained estimates from several repair shops, all of which set the cost of repairs substantially higher than the figure calculated by I.C.B.C. In November 1982, I.C.B.C. sent the complainant a letter suggesting he pursue arbitration. But negotiation with the complainant and his lawyer continued. In February 1983 the Corporation again suggested that the complainant pursue his complaint through arbitration. Then, on Feburary 23, 1983, I.C.B.C. gave the complainant a new estimate which calculated the cost of repairs at $1,400.

The car was repaired in March 1983 but I.C.B.C. paid for the repairs at 1982 rates. I.C.B.C. justified this decision by stating that the delay in effecting the repairs was caused by the complainant. I recommended that the repairs be paid at 1983 rates. While it was true that the delay was caused by the complainant, his reasons turned out to be valid, as was substantiated by I.C.B.C.'s second, substantially higher estimate.

Even though the Corporation felt that some of the delay was the complainant's fault, it agreed to my recommendation and paid the complainant's labour costs at 1983 rates. (CS 83-216)

Husband takes car, wife gets billed

A woman who had been separated from her husband for more than a year complained to me that I.C.B.C. was billing her for a premium underpayment of $79. She stated that her husband had taken her car without her consent and had forged her signature when he renewed the insurance policy. The woman had already obtained legal advice but was unable to sue her husband to get the car back because she did not know where he was and had no money for a lawyer.

The complainant had also tried to charge her husband with the theft of the vehicle but the R.C.M.P. had advised her that she could not do so because she was still legally married.

When my investigator notified I.C.B.C. of this complaint, she was informed that the premium underpayment would only be waived if either theft charges had been laid or a separation agreement been entered into by the parties under which the car was to be the responsibility of the husband.

Although no separation agreement had been entered into, and theft charges had not been laid, I.C.B.C. discovered in the course of the investigation that the car in question was no longer registered in the complainant's name. Apparently, her husband had sold the car to a third party without her knowledge or consent, and I.C.B.C. had failed to send her the refund owing on the cancelled policy.

We proposed that the refund be applied against the $79 underpayment, and that the difference be sent to the complainant. This was done, and the complainant's debt to I.C.B.C. was cancelled. (CS 83-217)

Another compromise

A woman who was involved in a car accident in March 1981, complained to me that I.C.B.C. attempted to recover from her approximately $5,000 which it had paid out for repairs to her vehicle and to the other party involved in the accident.

Although the woman had been charged with offences under the Criminal Code which would entitle the Corporation to collect its payments from her, she was not informed by the Corporation that it intended to take this action until approximately nine months after the accident.

By that time, the woman had been convicted of failing to provide an adequate breath sample, and her time to appeal the conviction had passed. The woman told me her lawyer had advised her that although she would likely be successful on appeal, his legal fees would far exceed the fine of $150 the Court had levied against her. He apparently also advised her that since the repairs to her car had been paid for by I.C.B.C., there would be no adverse consequences of the conviction with respect to her insurance coverage.

In view of the fact that I.C.B.C. did not inform the woman of the consequences of her Criminal Code conviction, and of the Corporation's intention to recover the money from her, I proposed that I.C.B.C. accept partial payment of the debt, and waive the remaining amount.

After some discussion, I.C.B.C. agreed to my proposal, and approximately half of the debt was waived. (CS 83-218)

I.C.B.C. goes one better

I received several complaints from people who had made claims to I.C.B.C. for paint damage to their vehicles resulting from the sealcoating of Lake Cowichan Highway in the summer of 1980.

When I investigated the complaints, I learned that I.C.B.C., at the time, had applied a "per

panel" deductible to these claims. For this reason, some motorists who might have been entitled to compensation from I.C.B.C. did not pursue their claims.

I concluded that I.C.B.C.'s procedure of applying deductibles in this way was arbitrary and unfair and recommended that the Corporation apply only one deductible per claim. I also recommended that I.C.B.C. consider any claims for paint damage which had been reported to either the I.C.B.C. claim centre, the M.L.A.'s office, the Ministry of Transportation and Highways, or my office.

I.C.B.C. accepted my recommendation and even agreed to consider claims from those who had not previously reported their paint damage to any of the above agencies, as long as they could provide some evidence that the damage was repaired before the end of 1980.

I notified all those who had contacted any of the above agencies of my recommendation and directed them to the Duncan claim centre for reconsideration of their claims. I understand that of the 28 claims presented, 27 were paid, and only one denied. (CS 83-219)

The Corporation goofed

A woman's pick-up truck was vandalized on August 31, 1981. She reported the damage one month later, and I.C.B.C. prepared an estimate. Due to a delay in ordering parts and because the complainant worked out of town, the repairs were not completed until October 28, 1982.

When the repair shop submitted its invoice to I.C.B.C. for payment, the Corporation denied the claim because more than one year had passed since the incident. Two weeks after the repair shop had seized the truck to enforce its mechanic's lien, I.C.B.C. reversed its decision and paid the claim for the cost of repairs. The Corporation, however, refused to reimburse my complainant for $496.80 she had paid to a bailiff for seizure and storage fees.

I found that I.C.B.C. was negligent when it informed the repair shop that the claim was statute barred. Section 9.57 of the Regulation to the *Insurance (Motor Vehicle) Act* provides that no action can be brought against I.C.B.C. for indemnity more than one year after the policy holder's vehicle is damaged. This provision, however, does not prevent the Corporation from settling claims after one year, as was recognized by I.C.B.C. when it settled the claim two weeks after the initial denial. I recommended that I.C.B.C. reimburse my complainant for the seizure and storage costs. It did. (CS 83-220)

Small cause, big effect

Because his driver's licence was under suspension at the time of the accident, I.C.B.C. denied a motorist's claim for indemnity.

The complainant insisted he had not known that his licence was suspended. He also complained that I.C.B.C. had only denied the claim after the repairs had been completed. Because the complainant could not afford to pay for the repairs himself, the body shop seized his truck and sold it to satisfy the debt.

My investigation revealed that the complainant received notification more than one year before the accident that he owed a $25 driver record fee to the Motor Vehicle Department because he had accumulated more than ten penalty points for driving infractions. Four months later the Motor Vehicle Department informed him that his licence would be suspended unless he paid the fee.

The complainant believed that he then paid the fee but the Motor Vehicle Department records showed no such payment. In any event, the complainant's licence was suspended by the Department. The complainant subsequently renewed his insurance and paid penalty point premiums to I.C.B.C. He was not told by I.C.B.C., nor did he receive any further notice from the Motor Vehicle Department, that his licence had been suspended.

Following his accident, the complainant filed his claim with I.C.B.C. which prepared an estimate and submitted it with the vehicle to a repair shop. Two weeks later, after the repairs had been completed, I.C.B.C. checked its records and found that at the time the claim was made the complainant's licence was suspended, a fact the Corporation had overlooked when it prepared the damage estimate.

After my complainant's claim was denied because he had breached the insurance regulations, he found himself liable for the cost of repairs which had been authorized by I.C.B.C. or himself on the understanding that he was insured.

The Regulation to the *Insurance (Motor Vehicle) Act* stipulates that no person shall operate a motor vehicle while not "qualified and authorized by law" to drive. My complainant was not authorized to drive because his licence was suspended. The breach by the policy holder of this provision entitled I.C.B.C. to refuse to pay indemnity in the claim. The Act also provides, however, that where the forfeiture of a claim would appear inequitable, the Corporation may relieve a person from the forfeiture of the insurance money.

I discovered during my investigation that I.C.B.C. routinely waives forfeiture when a policy holder has never held a driver's licence or holds an expired licence, provided he is able to drive and obtains a licence within ten days of making the claim. I.C.B.C. does not waive forfeiture when a policy holder's licence has been suspended by the court or the Superintendent of Motor Vehicles in consideration of his poor driving record.

I argued with I.C.B.C. that in my complainant's case, forfeiture should be waived for several reasons. His licence was suspended because he had failed to pay a $25 fee, not because of poor driving habits which would have exposed the insurance company to greater risk. The complainant believed that he had paid the debt and it seemed unlikely that he would meet the expense of reinsuring his truck and paying off his penalty point premiums only to jeopardize his insurance by not paying a $25 fee. Furthermore, I.C.B.C. failed to notify the complainant that his claim would not be paid until after the repairs to his damaged truck had been completed. When he learned of the suspension, the complainant paid the fee and the Motor Vehicle Department restored his licence.

My investigation of the complaint and discussion with I.C.B.C. continued for more than two years. Finally, the Corporation agreed that the forfeiture of the complainant's claim was inequitable and settled his claim. (CS 83-221)

PUBLIC SERVICE COMMISSION

Declined, withdrawn, discontinued	11
Resolved: corrected during investigation	3
Substantiated: corrected after recommendation	2
Substantiated but not rectified	0
Not substantiated	4
Total number of cases closed	20
Number of cases open December 31, 1983	0

The number of complaints I receive about the Public Service Commission remains small, but I should note that the Commission's jurisdiction is limited to the recruitment, selection, and training of public service staff.

Complaints about the multitude of things than can and often do go wrong during the course of a public servant's employment with the government are directed against the employing ministry, rather than the Commission. The following are a few examples of the complaints I received last year about the Public Service Commission.

Commission honours commitments

The old maxims of negotiating in good faith and honouring a commitment were brought into sharp focus by a complainant who had experienced difficulties with the Public Service Commission.

Late in November of 1980, the Public Service Commission wrote to my complainant and offered him a position. In its letter, the Commission quoted a starting salary and also informed my complainant that he would get a merit increment on October 1, 1981. He accepted the offer for employment and was looking forward to his merit increase. It did not materialize when it should have.

He complained to his Ministry and to the Public Service Commission. The Commission informed him that he could not have the increase until six months later. The mixup, the Commission said, had occurred because the person who wrote the offer letter had assumed that my complainant would start work before the end of the year, when, in fact, he did not start until early in the new year, which meant a change in increment dates.

During my investigation, I found out that the complainant had been encouraged by his Ministry to start his new position after the Christmas holidays and after he had moved his family to his new work location. I found that nobody in the Ministry or in the Public Service Commission had cautioned him that doing so would make a difference to his salary.

When I reported my preliminary findings to the Public Service Commission, I pointed out that its letter of November, 1980, constituted an offer of employment, containing reference to specific salaries effective at certain dates. The offer did not stipulate that the salary amounts might change, depending on the complainant's starting date. I stressed that the complainant had accepted the offer in good faith and suggested that the Commission honour its commitment and pay the complainant his proper salary retroactively.

The Public Service Commission agreed, and the complainant is now receiving the salary he was originally promised. (CS 83-222)

Damaging information removed

A former public servant complained to me that all his applications for public service jobs were being rejected. He suspected that his personnel file contained material which he considered incorrect and potentially damaging to his chances for future employment.

My investigator inspected the complainant's personnel file and came across two detrimental documents. One was a poor employee appraisal the complainant had never signed and which had led to his resignation. The other was a report compiled after he had left the public service.

We asked both the Public Service Commission and the ministry for which the complainant had worked to remove the two documents from their files. They did. (CS 83-223)

The case of the erased tapes

This case of an erased tape doesn't rival the Watergate scandal, but it did prompt one public servant to become very irate, and justifiably so.

The public servant in question complained to me about the outcome of a job competition which, he said, had been unfair. He had already filed an appeal with the Public Service Commission but felt that the appeal body had made a wrong decision.

My investigator examined relevant materials and listened to a tape recording of the appeal proceedings, on the basis of which I decided that the complaint was not substantiated. I informed the complainant of my finding and also told him that the Public Service Commission would make a transcript of the tape recording available to him on request.

A short while later, I heard from the complainant again. He had written to the Public Service Commission and asked for a transcript of the magnetic tape. The Commission told him that for budgetary reasons, it had erased the recording of his appeal hearing and re-used the tape at a subsequent hearing.

The incident was unfortunate and the Public Service Commission decided that, in future, it would retain tape recordings of this nature for three months after the apparent conclusion of appeal proceedings. The Commission also agreed to apologize to the complainant. (CS 83-224)

SUPERANNUATION COMMISSION

Declined, withdrawn, discontinued	1
Resolved: corrected during investigation	7
Substantiated: corrected after recommendation	1
Substantiated but not rectified	1
Not substantiated	6
Total number of cases closed	16
Number of cases open December 31, 1983	8

In 1983, we dealt with 16 complaints about the Superannuation Commission. Measured against the large number of people who contribute to pension funds administered by the Commission, and who already receive pensions, the volume of complaints is minute. The examples that follow are fairly typical of the complaints I received against the Commission.

Retirement a little more secure

A public servant whose retirement future was in jeopardy because of an incident that took place 18 years ago came to me for help.

The complainant had been working for the Liquor Control Board for about ten years when, in late 1965, he was forced to resign over an argument with a customer. He told me he swore back at the customer who was very intoxicated and abusive. When the Liquor Control Board heard about the incident, it gave him a choice of resigning or being fired. He resigned, even though he was convinced that the Liquor Control Board had treated him very unfairly. Because he had no income and a large family to support, he had to withdraw his pension plan contributions.

To get his job back, he applied pressure through the media and finally, in 1973, with the help of the Premier, he once more became an employee of what is now the Liquor Distribution Branch of the Ministry of Consumer and Corporate Affairs.

He resumed his pension plan contributions but soon realized that his pension would not be very substantial. The 10 years he had worked before, no longer counted towards his entitlement because he had taken his money out of the plan when he resigned. If, however, he could somehow pay back the amount he had taken out, his eventual pension would be much higher.

I did not investigate the incident that had led to his involuntary resignation in 1965 because I thought it would be difficult to determine what

exactly happened so long ago. Rather than initiating a formal investigation, I wrote to the Deputy Minister of Consumer and Corporate Affairs and informed her of the complainant's problem.

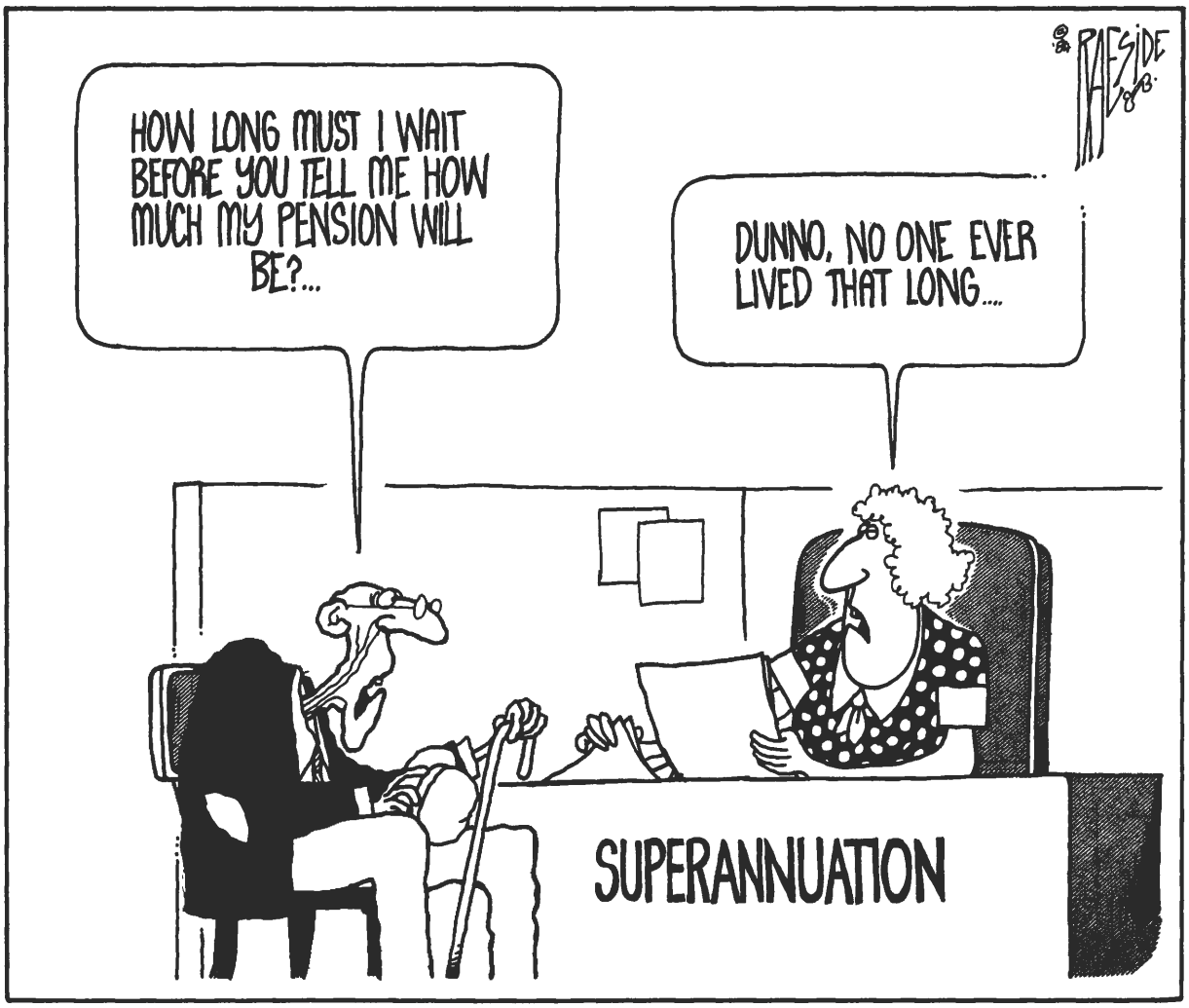
The Ministry got in touch with the Superannuation Commission and the two agencies quickly found a way of helping my complainant. He has now repaid the money he took out in 1965, together with interest, and once he retires, his pension will be based on all the years he served, including those before his involuntary resignation. He no longer has to look towards his retirement with apprehension. (CS 83-225)

Commission dragging its heels

A woman complained that she was unable to retire as planned because the Superannuation Commission would not tell her in time how high a pension she could expect.

The woman who was covered by the municipal pension plan wrote to the Commission in April, requesting an estimate of the pension she could expect if she retired in June. When she received no reply, she tried to get the information by telephone. On several occasions she was told that for a number of reasons the information was not yet available.

When she finally came to me in mid-June, it was already too late for my complainant to hand in her resignation as she had planned. My investigator phoned the Superannuation Branch which promised to respond to the complainant immediately. The Commission kept its promise. (CS 83-226)



WORKERS' COMPENSATION BOARD

Declined, withdrawn, discontinued	319
Resolved: corrected during investigation	66
Substantiated: corrected after recommendation	32
Substantiated but not rectified	2
Not substantiated	63
Total number of cases closed	482
Number of cases open December 31, 1983	182

I continue to enjoy a good working relationship with the Commissioners of the Board. This relationship, which has had very useful results for my handling of Workers' Compensation Board complaints, began when Mr. Art Gibbons was Chairman of the Board. I was sorry to learn of Mr. Gibbons' departure from the Board this past year, but the early portents are that this helpful relationship will continue under his successor, Mr. Walter Flesher.

This co-operation is extremely important in an area where I receive a high volume of complaints and complaints of great difficulty and complexity. In accordance with the *Ombudsman Act,* I must channel a large number of these complaints into the appeal system — the Boards of Review, the Commissioners and the Medical Review Panels. But the complaints I investigate are highly technical, involving a lot of professional judgments and medical issues, and per case take up a disproportionate amount of my staff's time.

CLAIMS DEPARTMENT

To most injured B.C. workers, the "face" of the Workers' Compensation Board could be perceived as its Claims Department. It is here that the workers' claims are initially adjudicated, and payments of wage loss benefits and pensions is processed.

Board believes worker

A worker applied to the Board for compensation on the basis that he had injured his back while repairing a truck for his employer.

The company said the worker was not in its employ on the date of the injury. The last day he had worked for the company was approximately three months earlier. The company said it had asked the worker to drive the truck from B.C. to Alberta but was later told that he had a sore back and could not work. The worker, on the other hand, supplied receipts for repairs to the truck, as well as a statement from a witness that he was injured while installing a truck spring.

The adjudicator denied the worker's claim, saying the Board was unable to establish that he was working for the employer at the time of his injury and could not conclude that he was injured in the course of employment.

I found the decision of the Board unjust. On the one hand, the company insisted that the worker was not in its employ; on the other hand, the firm indicated that it had asked the worker to drive one of its trucks. Although he ultimately did not drive the truck because of his injury, he had repaired the vehicle and injured his back while doing so because he intended to drive it for the company.

In deciding whether the worker was in the course of employment when he was injured, the Claims Adjudicator apparently had also failed to consider whether the injury occurred in the process of doing something for the benefit of the employer or whether it occurred in the course of using equipment or material supplied by the employer. The Adjudicator had neither asked nor answered the obvious question: How could the company assert that the man was not in its employ when it had already admitted that it had asked him to drive the truck from B.C. to Alberta?

Before I even made a recommendation, the Board agreed that the decision of the Claims Adjudicator to deny the claim was not a reasonable one and decided to allow the claim. (CS 83-227)

Pacemaker no impediment to claim

A man complained to me that since he had had a pacemaker implanted for a heart condition, he had been unable to obtain employment. Apparently, prospective employers were concerned that because he had a pacemaker, the Board would automatically deny any claim for compensation the man might have, leaving the employer liable.

My investigator explained the situation to a claims adjudicator in the complainant's local Workers' Compensation Board office and was informed that any claim the worker might submit to the Board would be evaluated on its own merits. The fact that the worker had a pacemaker would not automatically determine the decision.

The adjudicator offered to write a letter to the worker, clarifying the Board's position and enabling him to present the letter to any prospective employers who were concerned about the situation. After receiving a copy of the letter, I took no further action. I would like to add that I was

impressed with the adjudicator's prompt and helpful response. (CS 83-228)

To make correct decisions it is critical that the Board have both complete and correct information before it.

Medical reports support woman's claim

I investigated a worker's complaint that the Board had erred in not assessing her for a permanent partial disability award.

The complainant, a nurse, had contracted pulmonary tuberculosis while working in a hospital in 1943. The claim had been accepted by the Board and she had received wage loss payments until 1948. She returned to work for a short time in 1950. In 1951 a phrenic crush was performed on her right lung and in 1954 it was decided that she was fit to work full-time again. There was no further information in the Board's files after this date.

I did not find that the Board had erred in not assessing her for a pension because it had no evidence at the time that the woman was permanently disabled. But I obtained medical reports on her past and present condition from doctors who had treated her. Some of these reports supported her contention that she was permanently disabled as a result of her previous tuberculosis and phrenic nerve crush.

I suggested that the Board review this material and obtain any further information necessary to assess her for a permanent partial disability award. The Board agreed to have the Claims Department investigate her condition from the time her benefits were terminated in 1954.

The Claims Department found that the woman was 100 percent disabled due to tuberculosis and that this disability had existed since 1973. She received a retroactive payment of $59,710.64 representing pension payments between 1973 and 1983, and will receive $756.33 a month in the future. (CS 83-229)

Board reinstates benefits

A man complained that the Workers' Compensation Board terminated his partial disability benefits after promising to pay the difference between his pre-injury earnings and the earnings he was able to make after his injury.

The Board had cut off his partial disability benefits on the grounds that his inability to perform his pre-injury work was due to personal and economic factors, namely an alcohol problem and a work shortage in the area where he lived. The Board's belief that the worker had an alcohol problem was based on a statement allegedly made by his employer.

The employer told my investigator that the worker had been doing a very good job and that he had had no plans to fire him. The fact that the worker had immediately sought employment out of province after his worker's compensation benefits were cut off, made it irrelevant whether work was available where he had lived. When I submitted these facts to the Board, it agreed to reinstate the workers's benefits. (CS 83-230)

Sometimes the Board will accept claims for compensation, even though the accident did not occur in the worker's actual employment situation. The circumstances, however, must be closely linked to his or her work.

All's weld that ends weld

A man was injured when he lost control of the tractor he used to remove dead-fall branches and leaves from a site on which he eventually planned to build a welding shop.

The Board denied his claim for compensation on the basis that he was cleaning up his property when the injury occurred, which was not considered to be part of his work.

My findings suggested that the complaint was substantiated because the clearing of combustible debris constituted necessary maintenance. Even though he was clearing his property of debris in preparation for building a workshop, American case law suggested that he was in the course of his employment because he was in the process of moving his business from another province to B.C. as a calculated business act. The construction of a workshop was in furtherance of his established business.

The Board agreed with my findings and my recommendation that it accept the man's claim for compensation. (CS 83-231)

Many claims are complex to begin with and the passage of time, coupled with further complications caused by subsequent injuries, will throw adjudicators off the track of what rightful entitlement the injured worker has.

Disabled but no pension

A worker was injured in 1961 when he was struck by a sapling and thrown 25 feet, landing on his hip. His application for compensation at the time of injury specifically mentioned backache.

Approximately 15 years later, his chiropractor informed the Board that the worker was suffering pain in his lower back, a problem he, the worker, attributed to his 1961 injury. The worker told the Board that he had been complaining continuously about the back problem to his doctor who

apparently had not forwarded this information to the Board. The Board's adjudicator informed the worker that no further action could be taken until he provided medical reports covering the period from 1961 to 1976, linking his back problems to the 1961 injury. In 1981, the Board received a report that the worker was suffering from a serious degenerative disc condition of his lumbar spine and was in constant pain.

My investigator asked the worker's physician whether the degeneration of the complainant's back was a result of or related to his 1961 accident. The doctor replied that the severity of trauma in 1961 would certainly accelerate the degenerative process. I forwarded this new medical evidence to the Board which agreed to refer it to the claims adjudicator for further consideration. The Board also agreed to have my complainant examined by its orthopaedic consultant to determine whether the adjudicator's earlier decision was correct.

The same worker suffered injuries in 1969 when his right forearm and hand were crushed by a load of lumber weighing approximately four and a half tons. He subsequently received a pension for the injury to his right arm at the elbow but his claim for compensation based on problems with his right shoulder was rejected for two reasons: The Board said he did not mention any pain in his shoulder until several months after the accident, and the Board's physician said that although the shoulder problems could be related to the injury, there was no way to prove it. The Board's reasoning was partly based on a report by the complainant's doctor which mentioned the shoulder problems and even gave dates of when they were mentioned but did not specify the year or who reported them, i.e. the doctor to the Board or the patient to the doctor.

I clarified this statement with the doctor and learned that the worker had, in fact, first mentioned his shoulder problems to him approximately two weeks after the accident.

The Board's position was, therefore, based on a mistake of fact and I tentatively recommended that it reconsider its decision not to accept the worker's 1969 claim for his shoulder condition. I also pointed out that the Board had failed to apply Section 99 of the *Workers Compensation Act*. This section states that where the evidence is evenly balanced, the decision shall be made in favour of the worker. The Board agreed to reconsider.

The same worker also injured his knee in 1971. He complained that although he received wage loss compensation for approximately eight months, he did not receive a disability award. I reviewed the file and noted that the rehabilitation consultant for the Board had assisted the worker in changing his occupation from logger to bookkeeper. The basis for this assistance was that the worker's combination of injuries had made it impossible for him to work as a logger. I felt that this statement should have alerted the Board to assess the worker for any residual disability, which it failed to do. I considered this failure unjust and recommended that the Board assess the worker for a disability pension in relation to his knee claim and/or a combination of any of his compensable injuries, taking specifically into account his loss of earnings.

The Board agreed to refer the matter to a disability award officer for a permanent partial disability assessment, once the worker had been examined by the Board's orthopaedic consultant for his opinion on whether his current complaints are related to the 1971 injury. (CS 83-232)

Nineteen years later, worker gets pay

A worker injured his right knee and lower back in November, 1964, and an x-ray taken the day of the accident showed pre-existing disc degeneration in the lower back.

Initially the worker received full wage loss benefits. In May, 1965, an operation was performed on his knee. From July to September 1965, his benefits were reduced by 50% and then stopped. The claimant appealed to a Medical Review Panel which examined him in March, 1966. The Panel certified that he was not fit for work, and that his poor condition was partly due to the lower back disc degeneration and post-operative weakness of the right knee.

The Panel was of the opinion that the Board had discharged its responsibility as far as the disc degeneration was concerned but also felt that the claimant had received insufficient post-operative treatment for his knee operation and should be granted a further six to 12 weeks rehabilitation for his knee.

The Board, however, refused to pay him full wage loss benefits for his knee disability from the time he attempted unsuccessfully to return to work in July, 1965, until the decision of the Medical Review Panel in March, 1966. Neither did the Board compensate the worker for any permanent disability to his lower back as a result of the disc degeneration.

In 1982, the Commissioners were asked by the worker's advocate to reconsider the Panel's decision. This request was on the basis that the Board had a duty to consider whether the injury had aggravated, accelerated or activated a disease or

condition existing prior to the injury, and to allow compensation for such proportion of the disability as may reasonably be attributed to the personal injury.

The Commissioners declined. Since the Medical Review Panel had made a final determination that the worker's complaints were wholly the result of his pre-existing condition (the disc degeneration), the question of apportionment did not arise and there were no grounds to reconsider the Medical Review Panel decision.

I found that by not answering the question of whether the worker's injury aggravated, accelerated or activated his pre-existing condition, the Medical Review Panel failed to address the main issue. I also found that without resolving the main issue, the Panel was wrong in stating that the question of apportionment did not arise.

The Commissioners' 1982 decision that there were no grounds to reconsider the Medical Review Panel's findings was based on a mistake of fact because it proceeded on the assumption that the disability was unrelated to the injury. I recommended that the Board either consider the question of whether the worker's disc degeneration was aggravated by his work accident in 1964, or that it refer this question to a Medical Review Panel.

I also found that the Board made an unjust decision in refusing to pay the worker full wage loss benefits for his knee disability for approximately eight months preceding the Medical Review Panel decision. His own doctor had stated that he was disabled due to his back injury and knee disability in the period between the termination of his claim and its pre-acceptance by the Medical Review Panel. I recommended that the Board pay the worker full wage loss benefits with interest for the eight-month period, deducting any partial payments made at the time.

The Commissioners agreed that a Medical Review Panel be convened to determine whether the 1964 injury had aggravated, accelerated or activated the worker's degenerative disc disease. They also agreed to pay him wage loss benefits for the eight-month period in question which came to $1,872.83 plus $9,125 interest.

The Medical Review Panel later found that the worker's injury aggravated his pre-existing condition and that he was disabled until January, 1969. (CS 83-233)

Board takes another look

In 1979 the complainant injured his arm, chest and back. He attributed the injuries to a 10-foot fall from a water tower on his logging truck. His claim was denied on the basis that there was not sufficient evidence that the medical attention he sought at that time was the result of the alleged accident. Prior to this accident, the complainant had suffered a similar injury to the same arm, which was considered compensable.

The Board disallowed the 1979 claim on the grounds that the complainant's account of the accident was not credible. That decision was based on several significant inconsistencies in his story. I found that these inconsistencies were justifiable. The complainant had very poor hearing and some difficulty with the English language.

There had been some confusion whether the complainant fell from his logging truck or from a water tank. I concluded from my investigation that he fell from a water tower on his truck. The complainant's story was supported by the first-aid assistant who said that the worker's hand had been swollen. A few days following the accident the man had visited his doctor who observed contusions on his chest and back and diagnosed a sprained left wrist. In my opinion, all these observations supported the complainant's claim and the few ambiguities in his evidence were not significant enough to justify disallowing the claim.

A second part of my recommendation related to the possibility that the complainant's 1979 symptoms were a continuation of the consequences of his 1977 compensable accident. According to medical reports, his condition had never totally returned to normal, following the 1977 accident. The Commissioners also stated in their decision on the 1979 claim that the injury of 1977 had never totally resolved itself, which left open the possibility that the complainant's continuing symptoms related to the 1977 injury. The Commissioners rejected my first recommendation, saying they had based their decision on the credibility of the complainant's evidence but they agreed to perform a permanent partial disability assessment on the complainant to determine the extent of his continuing disability and whether this disability was related to the 1977 injury. (CS 83-234)

"There is nothing new under the sun" would be a fitting adage to describe most of the claims that come before the Board. But from time to time an unusual situation requires a new approach.

Itching for justice

A worker complained to me when the Board refused to pay for medical aid and lost wages which he related to a dermatitis condition he had contracted in the course of his work involving cement.

The Commissioners relied on a section of the *Workers Compensation Act* which allows the Board to reduce or suspend compensation when a worker persists in unsanitary or injurious practices which tend to imperil or retard his recovery. It was my opinion that this section allowed the Board to suspend compensation if a claimant wilfully prolongs his recovery in order to prolong payment of compensation benefits.

I did not agree that this section was intended to apply to situations in which the particular disability creates a compulsion (such as itchiness) which is relieved by injurious behaviour (such as scratching). I pointed out that this worker scratched to relieve his immediate symptoms. To refrain from scratching would require a constant exercise of his will. I did not consider it reasonable for the Board to make the payment of medical aid contingent on the strength of a claimant's willpower when the claimant was suffering from a legitimate work-related condition.

In response to recommendations from me, the Board agreed to continue paying the worker medical aid, and wage loss benefits during periods when his dermatitis became so severely aggravated as to prevent him from working. As it turned out medical evidence did not show the claimant to have actually been disabled from working by his dermatitis. However, medical aid continues to be provided by the Board. (CS 83-235)

The veteran's affair

A worker complained to me when the Board refused to award him a pension for his knee disability because he was already receiving a pension from the Department of Veterans' Affairs.

The worker had received an injury to his knee in the war, for which he was awarded a pension. Years later when he fell down some stairs at work and aggravated his knee disability, it became necessary to fuse his knee. A Section of the *Workers Compensation Act* obliges the Board to award a pension based on the difference between a pre-existing disability and a disability after a compensable injury. Although the Board acknowledged that this worker's disability had increased as a result of his compensable injury, it refused to award him a pension because when it compared the Department of Veterans' Affairs' measure of the worker's war-related disability with its own measure of the worker's post-injury disability, it decided that no difference existed.

It was my opinion that the Board was making an unauthorized delegation of its authority to assess pre-existing disabilities and I recommended that an independent assessment of workers' pre-existing and post-injury disabilities be carried out by the Board. It was not reasonable to compare pre and post-injury disabilities by using different standards of measurement. The Board agreed to my recommendation and issued a new policy instructing that pre-existing and post-injury disabilities be calculated independently of other agencies' assessments. The worker was awarded a pension by the Board in addition to the pension he was already receiving from the Department of Veterans' Affairs. (CS 83-236)

Sometimes when the physical effects of an injury have become insignificant, another injury remains — the injury to the individual worker's psyche.

Decision not supported by evidence

A worker was injured when he fell from a lumber stack. His condition was diagnosed as a sprain of the cervical spine with hysterical right leg and right arm paralysis.

The man returned to work a few months later but was forced to quit because of dizziness and pain in his neck. A second accident six months later and continuing physical problems prevented him from returning to work for several months. A year after the first accident, the Board informed the worker that his on-going symptoms were not considered related to the initial accident. It was the medical consensus that a main component of the complainant's continuing disability was an emotional problem.

The issue I investigated was whether the complainant's continuing emotional disability was a work-related problem. According to the man's family doctor, he had been in perfectly good health prior to the accident. All the psychological problems, the doctor stated, had developed after the accident. A psychiatrist who examined the complainant had little doubt that the man suffered from depression but could not say with certainty when the problem had started. Depression, the psychiatrist said, was usually a result of an interaction between physiological, psychological and social factors.

After considering this and other evidence, the Board concluded that the probable cause of the complainant's psychiatric problems were matters other than his work injury. It was my opinion that this decision was not supported by the weight of the evidence. I recommended that the Board perform another psychological assessment on the complainant to examine further the connection between his psychological disability and the first accident. The Board agreed to this recommendation. The matter is now back before the Commissioners for consideration. (CS 83-237)

The initial compensation provided by the Board takes the form of some sort of wage loss benefits. Should the worker's injury be permanent, once his or her condition has stabilized to a point where no appreciable improvement or deterioration is foreseen for the immediate future, the Board considers what entitlement the worker might have to pension benefits for a continuing disability.

No pension despite injury

A mill worker who was unable to return to his former job after a 1977 work injury, complained that the Board refused to pay him any pension or retrain him for lighter work. He also told us that he was completely confused by the appeal procedures he had been asked to follow.

The worker had been incorrectly advised by the Board that he could appeal directly to the Commissioners a decision made by a disability awards officer. We also found that the Commissioners had failed to consider the correct issue in deciding the worker's appeal.

I advised the Board that I contemplated a recommendation asking the Commissioners to obtain a further assessment of the worker's condition, including an employability assessment, and that the worker's pension entitlement then be reconsidered.

The Commissioners admitted they should have considered the worker's pension entitlement. They agreed to further medical examination of the worker and to reconsider his pension entitlement. At this time the final results of this review are not yet known. (CS 83-238)

The commutation of Board pensions, the paying out of a pension in a lump sum, once and for all, or for a given period of time, has in the past proven to be a matter of some contention as contrary objectives were often evident in the consideration of this issue. In many cases, workers felt that if they could have access to the funds set aside to pay for the pension in future, they could make better use of them than could the Board. The Board's overriding concern has always been the financial protection of the disabled worker. I have detected a trend by the Board to treat these matters less rigidly than was the case in the past.

More information is essential

A policeman who was injured when his motor cycle was hit by an oncoming car complained to me that the Workers' Compensation Board gave him insufficient information.

The accident was the result of the other driver's negligence and the policeman had a right to elect either to sue the other driver on his own, or to claim compensation from the Workers' Compensation Board. The policeman claimed compensation but was not aware that the money obtained by the Workers' Compensation Board on his behalf from the driver of the other vehicle was not automatically his. Instead, more than half of the settlement was set aside as a reserve for a disability award to be paid out to him in monthly amounts.

I concluded that the Board was negligent in failing to give the complainant sufficient information about the consequences of his choice. I recommended that the Board allow the policeman a full commutation of his pension, i.e. that the reserve set aside for his pension be paid to him in a lump sum. I also recommended that the Commissioners provide complete information to all workers in similar situations, including the following:

a. An explanation of the Board's right to decide whether or not to sue a third party on behalf of the worker, and whether or not to settle the action.

b. An itemized list of the amounts which may be deducted by the Board from any settlement or judgment obtained on behalf of a worker, and an explanation of how the amount of pension reserve is calculated.

c. Reference to the Board's policy for allowing commutation of pensions, and advice on how to obtain more information.

d. The non-transferability of the pension reserve to dependants who may survive the worker.

e. The result of electing to pursue an action against a third party rather than to claim compensation, where less damages are recovered than the compensation to which the worker would have been entitled to under the Act, i.e. the Board is obliged to pay the difference to the worker.

After some discussion, the Workers' Compensation Board implemented both recommendations. The policeman received full commutation of his pension reserve, and the Commissioners agreed to prepare a pamphlet containing the above information.

I hope the provision of this information to workers in situations similar to that of the policeman will prevent the recurrence of this type of misunderstanding. (CS 83-239)

Court decisions in recent years have allowed workers access to their Board files whenever they are engaged in an appeal of a Board decision. In some cases, this has caused distress when workers read the highly personal and often unsupported comments placed in their files by Board officials or

professionals. I believe that the type of disclosure of files now permitted will demand a higher level of objectivity in the preparation of Board reports.

Stick with the facts

A complainant had suffered a lower back injury which resulted in the award of a pension. During the course of the investigation, the Board had prepared an industrial assessment of the worker.

Some comments in the assessment inferred that the complainant was a lazy worker with certain attitudinal problems who might benefit from some visits to a psychiatrist. Another Board employee took these comments to mean that the worker was unco-operative, manipulative and lazy. Eventually the alleged attitudinal problems boiled down to the pronouncement that "the worker does have a psychological problem".

When the worker became aware of the comments, he complained to me. He said the comments were completely unjustified and damaging to his reputation and credibility. He produced several recommendations from former employers which described him as a hard and conscientious worker, reliable and well liked by his fellow employees.

The Board agreed to allow the references to be included in the complainant's file. And although the Board did not consider the comments in this particular case irrelevant, it agreed to issue a directive instructing staff to confine their comments to personal observations, or matters relevant to the claim for which there was supporting evidence, and not to make general and speculative comments concerning a worker's personality. (CS 83-240)

The vast majority of claims handled by the Board are dealt with in a straightforward manner. The claim is honestly stated and the remedy is expeditiously applied. Occasionally the Board will encounter a claim in which it has reason to suspect that the claimant has been less than forthright about the essential facts of the matter. My concern is that such a person should not be penalized unduly because of the Board's suspicions when his or her case has not yet been fully determined.

Recommendation rejected but problem solved

A man was injured at work in 1978. He received wage loss benefits for most of the time between the date of his injury and August, 1982, when his wage loss benefits were suspended by the adjudicator who suspected that the claimant might have been working.

The suspension was to remain in effect until an investigation into his entitlement to wage loss benefits had been concluded. The suspension was made in accordance with the Board's usual practice when a worker's continuing eligibility is questioned.

After receiving a complaint from the worker, I informed him of his appeal rights concerning his medical eligibility but I investigated the Board's practice of suspending wage loss benefits until an investigation is completed. I found that there was no specific authority in the *Workers Compensation Act* for the Board to suspend wage loss benefits pending an investigation.

The Commissioners did not agree with my finding. They felt that the real problem in this case was not the Board's legal authority to withhold payments pending an investigation, but the fact that the investigation had taken nine months. The claims adjudicator reached a decision on the claim two weeks after the Commissioners responded to my tentative recommendation. The decision was that the claimant had been capable of working at his occupation from 1980 until his benefits were suspended.

Even though the claimant's case had been decided, I was of the opinion that the Board had no authority to withhold benefits, between an original decision that a claimant is eligible and a later reversal of that decision. I recommended that the Board reinstate the claimant's wage loss for the period under suspension, and change its procedure to conform with the *Workers Compensation Act*. This would require that the Board not suspend or terminate any benefits until it has redetermined or re-heard a case on its own merits.

The Commissioners did not agree with my reasoning or conclusion. They obtained a legal opinion, according to which the Act provides that compensation is payable only as long as the disability lasts; before making each payment, the Board must determine if the disability exists. If the Board is not satisfied that the disability exists, no further payments are made. If the Board suspects that a worker is no longer disabled, it will have to adjudicate the claim before he receives further payment.

The Commissioners do not consider this a suspension of benefits but rather an adjudication-related delay. They argue that this is a purely administrative decision over which there is no appeal.

Even though the Commissioners disagreed with my analysis and recommendations, they felt I had raised valid concerns which required a remedy. They decided to institute administrative

controls that would prevent undue delays of payments during investigations. In future, if four weeks have passed since the last payment of benefits to a claimant, and no definite decision has been reached, the claims adjudicator must refer the file to his administrator.

If the administrator considers the reasons for stopping payment not valid, he will instruct the claims adjudicator to reinstate payments retroactive to the date on which they were stopped. If, on the other hand, he considers the reasons valid, he will instruct the claims adjudicator to complete his investigation as quickly as possible. The Commissioners expect most investigations will be completed within two weeks of the administrator's review.

Although I did not necessarily agree with the legal opinion obtained by the Board, I decided that the procedural changes implemented as a result of my recommendation will provide a partly satisfactory remedy to the problem. (CS 83-241)

VOCATIONAL REHABILITATION SERVICES

Vocational Rehabilitation Services utilizes a number of programs to return injured workers to productive employment. The department has been quite successful in achieving its goal. Not in every case, however, does the worker agree with what Vocational Rehabilitation Services determines on his or her behalf.

Rehabilitation decisions can be appealed

I started an investigation on my own initiative into the question of whether the Workers' Compensation Board was acting contrary to law in not allowing workers to appeal to the Boards of Review decisions concerning rehabilitation.

According to the *Workers Compensation Act*, a worker may appeal to the Boards of Review any decision made under the Act by an officer of the Board with respect to a worker. Since rehabilitation decisions are made by rehabilitation consultants who are officers of the Board, and since these decisions are made with respect to workers, it was my opinion that the Act provided an appeal to the Boards of Review with respect to rehabilitation decisions.

The Board eventually agreed with me and published a policy decision which instructed that appeals to the Boards of Review be allowed on rehabilitation matters. (CS 83-242)

ASSESSMENT DEPARTMENT

To raise the funds to pay for injuries to workers, employers are assessed according to their payroll and the risk category of their type of work. On occasion, an employer will dispute an assessment decision.

Feed for thought

A businessman complained to me about the classification of his firm as a feed and farm supply dealer when, in his opinion, it more closely resembled a hardware store. This distinction was important because it resulted in the businessman paying assessments at a much higher rate.

The Board's criteria provided in part that feed and farm supply dealers could be classified as retail stores if they did not carry bulk feed or large farm items. The businessman confirmed that he would not carry these items in future and the Board reclassified the firm as a retail store. The reclassification was not retroactive. I decided against recommending to the Board that the reclassification be made retroactive because the firm had in the past sold the occasional load of bulk feed and had, therefore, not met the Board's criteria. I considered the sale of bulk feed to be a reasonable standard for distinguishing between a feed and farm supply dealer, and a retail store. (CS 83-243)

Forever in their debt

A man complained to me when the Workers' Compensation Board refused to sell him coverage because he owed the Board money from previous years.

As an employer, the man had failed to pay his assessments for two years, resulting in a debt to the Board of $7,000. He subsequently declared personal bankruptcy and the B.C. Supreme Court eventually granted his trustee in bankruptcy an absolute discharge. Years later he applied again to the Workers' Compensation Board for personal coverage. His application was denied because of the $7,000 outstanding on his account.

It seemed to me that once a trustee in bankruptcy is discharged, the bankrupt is released from all debts, except those named in the *Bankruptcy Act*. I proposed that the Board refer the question of the legality of its position to its legal department. The Commissioners agreed to my proposal with the result that the man was granted the coverage he had requested, although the Board did insist on an advance payment. (CS 83-244)

INDUSTRIAL HEALTH AND SAFETY

The Industrial Health and Safety Division is concerned with the prevention of accidents and industrial disease in the work place. To that end it con-

ducts inspections, educational programs and medical research.

Prevention is the best cure

A man who was badly burnt when a pressurized tank exploded, complained to me that his employers had failed to provide him with adequate protective equipment.

The Board informed me that it expects face protection equipment to be available at all times and expects it to be worn during potentially dangerous situations. On my suggestion, the Board agreed to communicate its views regarding the provision of face protection to the employer in question, and have the investigating officer instruct the employer with respect to the proper procedures for face protection. I considered this an adequate resolution of the complaint. (CS 83-245)

Chemical quandary

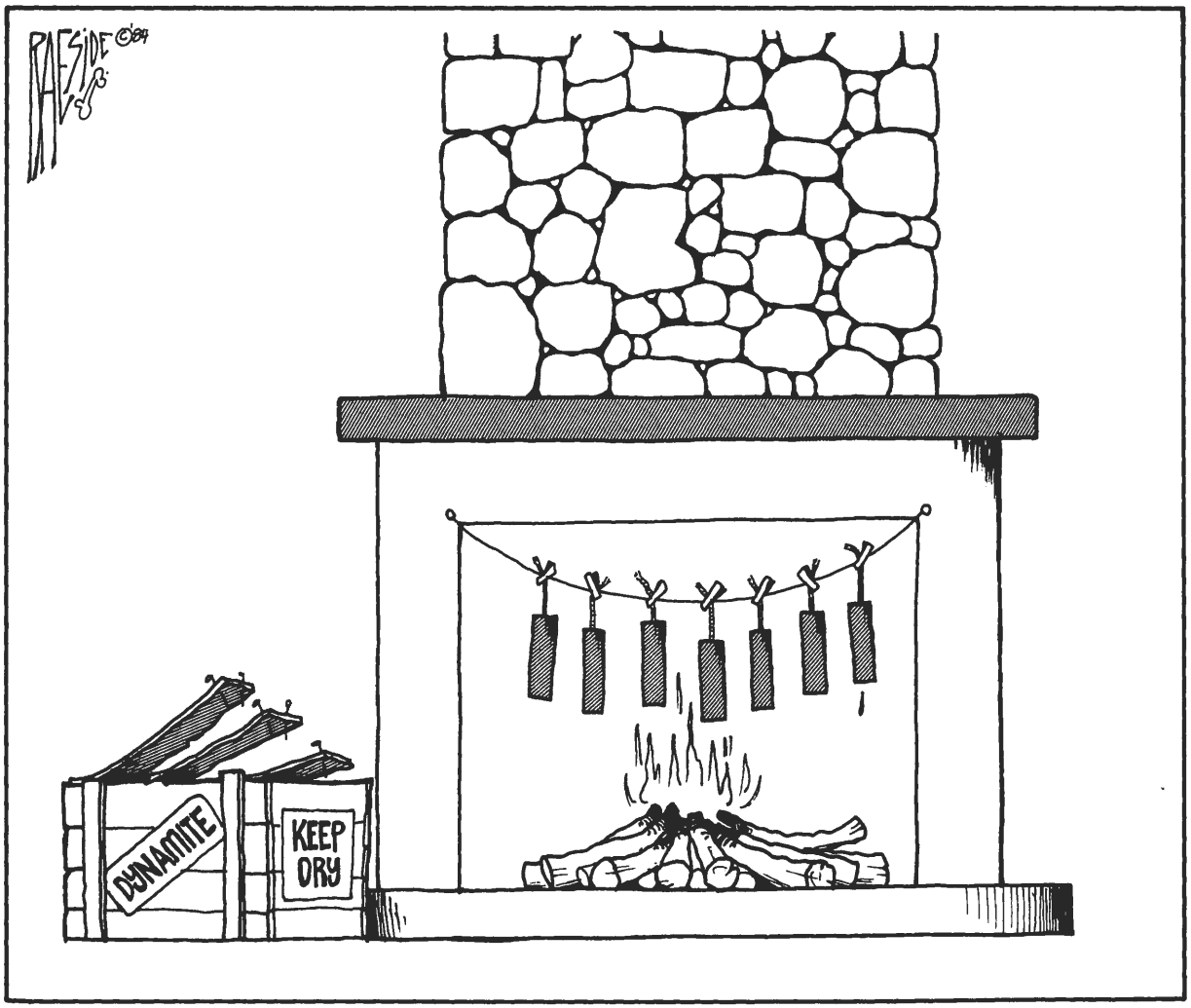
A worker complained about the Board's refusal to compensate him for symptoms he believed were the result of exposure to chlordane.

The man had worked on a roof which had been treated with a two percent solution of chlordane two hours earlier. He experienced a number of symptoms which he attributed to the exposure. The Occupational Health Department of the Board concluded that the worker's symptoms were not compatible with chlordane exposure.

As part of my investigation I consulted several sources of information regarding the symptoms that result from chlordane exposure. Although some of the worker's symptoms corresponded to those listed by the sources I consulted, there was not a sufficient coincidence of symptoms to let me conclude that the Board had erred in rejecting the claim for compensation. I found the complaint not substantiated. (CS 83-246)

Explosive situation

A worker complained about a number of practices for blasting and storing explosives used at his place of work. He considered them unsafe and was concerned about the Board's lack of response to the conditions.



The Board advised me that an industrial safety officer had travelled to the worksite in question to investigate the worker's allegations. He found that blasting operations had been temporarily suspended and that the regular driller-blaster was away from camp. The officer discussed the worker's allegations with the supervisor at the site.

In my opinion, the Board's investigation of the worker's allegations was inadequate. I felt the officer should have taken the following steps:

1. Inspected the bunkhouse drying room where wet explosives were allegedly being stored;
2. Inspected the desk drawer in the camp office where caps, fuses, and detonating cord were allegedly being stored;
3. Questioned workers on the site about the alleged incident of unauthorized personnel using explosives in the camp area to remove a broken axle with no signs posted or other warnings given to workers in the area;
4. Questioned the supervisor and any witnesses regarding an incident in which the supervisor, who is not a qualified blaster, allegedly loaded a rock face and fired charges without warning;
5. Questioned workers about the alleged practice of transporting powder and blasting caps together in a plastic garbage bag to the blasting site on a caterpillar tractor;
6. Questioned the mechanics, fallers, and other workers in the area at the time a large blast was allegedly ignited without posting warning signs, blocking off the road, or giving audible warning signals;
7. Examined pick-up trucks on the site for unattended blasting caps and powder and also questioned workers about this alleged practice;
8. Questioned workers about the alleged absence of a lock on the main explosives magazine for a 30-day period;
9. Questioned workers about the alleged practice of transporting powder and blasting caps in the baggage compartment of the company aircraft;
10. Revisited the premises if the above investigations could not be carried out on the day of the first visit because of the suspended operations.

In response, the Board maintained that a physical examination of the bunk house, camp offices and vehicles had been carried out and that they had been found free of explosive materials. In addition both workers and supervisors had been questioned confidentially.

When the Board agreed to have the entire operation re-inspected once operations resumed, I considered the complaint resolved. (CS 83-247)

If two doctors disagree, ask a third

I initiated an investigation into the information given to miners by the Workers' Compensation Board and the Ministry of Energy, Mines and Petroleum Resources once a miner has been issued a Certificate of Fitness under the *Mines Act* and the *Workers Compensation Act*.

I initiated this investigation after a retired miner complained to me that his disability award, effective in 1980, should have been backdated to 1970. He had recently learned that x-rays taken in 1970 showed early signs of silicosis. He had retired from mining in 1971 after having mined for 41 years but had not learned until 1975 that he had silicosis.

After reviewing the complainant's record I found that the examining physician had reported to the Board as early as 1956 that the miner had early silicosis. These reports, which formed part of the miner's Certificate of Fitness, were sent to the Board until 1971. The Board doctor (Silicosis Referee) disagreed with the examining physician's interpretation of the x-rays for all these years.

Although the Board referee had been aware all along of the difference between his interpretation of the x-rays and that of the examining physician, the miner was never informed of this difference of opinion. In fact, he did not learn until after he had retired from mining that he had silicosis.

I was concerned that a situation could arise where a worker is not advised by either the examining doctor or the Board physician of the x-ray findings or any difference of opinion. Although the Board would advise a worker if its interpretation of the x-rays suggested early silicosis, nothing would be done if the examining doctor felt there was possibly early silicosis but the Board doctor disagreed.

This of course could lead to the possibility of miners, such as my complainant, working for many, many years in the mines, having signs of early silicosis or at least possible early silicosis without being advised of this possibility by any doctor.

According to Section 19(7) of the *Mines Act*, administered by the Ministry of Energy, Mines and Petroleum Resources, a medical practitioner must give a person he examined a report of the

examination, if requested to do so. There is, however, a strong possibility that a miner would reasonably assume when given a Certificate of Fitness that he is free from disease of the respiratory organs, and may not be aware of his right to request and receive a report from the examining physician.

I recommended that the Ministry develop a mechanism for informing miners of their right to such a report and seek an amendment of the legislation that would require an examining physician to provide a copy of his report to each miner examined. Failing that, the examining physician should at least be required to ask the miner whether he wants a copy of the report.

The Ministry has agreed to ask all mine managers to inform workers in dust exposure occupations of their right to a report from the examining physician. That information is to be transmitted to the workers whenever they are notified of a periodical medical examination. The Ministry will also write to the various labour unions whose members include miners reminding them of the workers' right under Section 19(7) of the *Mines Act*.

By failing to bring to a miner's attention, either directly or through his examining physician, that a Certificate of Fitness does not necessarily mean his respiratory organs are free from silicosis, the Workers' Compensation Board had been negligent.

I recommended that in cases of disagreement between the examining physician and the Board doctor, the physician inform the miner of the difference of opinion. I also recommended that the Board doctor ask the examining physician to refer the miner to a specialist for a third opinion. The Board agreed with those recommendations. (CS 83-248)

MEDICAL REVIEW PANELS

The Medical Review Panel constitutes a last line of appeal of Board decisions on purely medical issues. This body is an independent panel of medical experts whose conclusion is binding on the Board, unless and until significant new medical evidence comes to light. Despite the high level of expertise on such panels, I have found instances in which the failure to consider all relevant factors has decreased the likelihood that the right decision is made.

Panel takes another look

A worker twisted her back at work and the Board accepted her application for compensation. The woman received wage loss benefits for two months, after which the claims adjudicator considered her fit to return to work.

When she subsequently attempted to reopen her claim on the basis that the weakness in her leg had caused her to fall and that she had a worsening back disability, the Board rejected her request because it did not consider her problem to be the result of the injury. Nor did the Board believe that her problem was interfering with her work.

The woman appealed this decision to a Medical Review Panel which certified that she did not have a disability with respect to her back and stated that the weakness of her leg might warrant further medical investigation. The Panel was not asked, however, nor did it say whether the claimant was disabled as a result of her leg problems.

The Board agreed with my recommendation that the Medical Review Panel be reconstituted to specifically address the question of whether the worker's problems with her left leg were related to her compensable injury and if she was unable to work as a result of these problems.

The Panel found that the problems with her left leg were not related to her injury. (CS 83-249)

Irrelevant questions unfair

A complainant who had driven a city bus for more than two years, felt a sharp pain in his left arm near the elbow one day, while releasing the handbrake.

He reported the incident to his employer, but since the pain did not interfere with his driving, he continued to work. The problem started about three months later. His bus did not have power steering and the necessary exertion gradually increased the pain in his arm, until he became concerned about his ability to control the bus and consulted his physician.

His own doctor and a specialist told him to stay off work, and after six weeks of rest, his arm healed. The Workers' Compensation Board refused his claim for wage loss, arguing that the amount of exertion required to release the hand brake was not significant enough to account for the strain. No assessment was made of the effort needed to steer the bus. Getting nowhere with the Board, he appealed to a Medical Review Panel.

The Board's solicitor provides the panel of physicians with sets of questions that must be asked and answered. In our complainant's case, most of the questions were relevant to workers still disabled at the time of the hearing. Only one question specifically referred to his condition: Could the original handbrake incident have caused the disability? The panel did not have an opportunity to ask if steering the bus had aggravated an initial, minor injury, which was the

issue raised by our complainant. Once again, he lost.

We found that the Panel should have been asked whether or not there was a relationship between the initial injury and the later disability. The limitations of the questions precluded any discussion of the real issue. I found the decision of the panel unfair and recommended that a new set of questions without the original limitations be formulated. I also recommended that the complainant be allowed to appear before a new Medical Review Panel for reconsideration of his claim. The Workers' Compensation Board agreed to those recommendations.

A completely new Review Panel was convened and the worker was awarded three months pay. (CS 83-250)

CRIMINAL INJURIES COMPENSATION BOARD

The Workers' Compensation Board administers the *Criminal Injuries Compensation Act* under which victims of crime in British Columbia may be compensated. The number of complaints I received in this area has not been large, but the subject matter of these complaints and the results obtained demonstrate the importance of this area for Ombudsman involvement.

Board adds to woman's ordeal

In the summer of 1982, a woman was beaten and sexually assaulted as she crossed the parking lot of the hospital where she was due for work as a nurse on the late shift. She sustained head injuries and shock, and had to spend some time in hospital but does not appear to have suffered long-term complications. Her assailant was never identified or caught.

On the advice of the British Columbia Nurses Union, she immediately applied for Criminal Injury Compensation, which is administered by the Workers' Compensation Board. A few weeks later, she was informed that her claim could not be processed by the Criminal Injuries Section of the Board because she was entitled to benefits under the *Workers Compensation Act*.

The solicitor for the Criminal Injuries Section and the woman's union representative both felt that she would be more appropriately compensated under the *Criminal Injuries Act*. They were concerned about her need to have the matter resolved quickly and asked for a speedy decision, but the Board Adjudicator remained convinced that it had been a work-related injury, insisted that she re-apply for Workers' Compensation, and kept the file for Board investigation until three months after the incident had occurred.

At this point he rejected her claim as not being work related and advised her to re-apply to the Criminal Injuries Section. She did so and was ultimately awarded some $5,000. But it took five months before she received any compensation for her ordeal.

She and her union representative contacted my office because they felt that the three-month delay before the Board rejected her claim had been both insensitive and unreasonable, not only prolonging the stress she was under, but adding to it.

In my opinion, the existing Board procedures were inadequate. There was no mechanism for speedy decisions regarding jurisdiction, and no policy directives for distinguishing various work and non-work situations. Therefore a very unreasonable practice developed in her case. I also found the delay unnecessary and unreasonable.

The Commissioners agreed to take steps to ensure that claimants are made aware of their rights, and to develop procedures to avoid unnecessary delays in deciding for which form of compensation claimants are eligible. The Commissioners have also instituted a system of internal referrals, so that claimants who have incorrectly applied to one of the agencies do not have to spend additional time going through a second application procedure. (CS 83-251)

The double standard of proof

When a citizen complained to me that the Criminal Injury Compensation Board denied his claim that he was a victim of crime and did not compensate him for his injuries, I initiated an investigation into the issue of standard of proof for compensation of criminal injuries.

I found that the standard of proof requires the Board to find on a balance of probabilities that a crime occurred and that the applicant is a victim of that crime. This standard of proof is of a higher degree than that required by the Workers' Compensation Board, which is contained in Section 99 of the *Workers Compensation Act* and states that where the disputed possibilities are evenly balanced, the issue shall be resolved in favour of the worker.

There is no specific reference in the *Criminal Injury Compensation Act* to the standard of proof required to determine whether the applicant is a victim of crime. I believe that compensation for criminal injuries is a scheme which has some major features in common with workers' compensation. Each attempts to compensate the victim for his direct economic losses arising out of an injury sustained in the performance of a vital

social role, either as a worker or as a citizen. In each scheme, the victim faces the same difficulty in proving the loss and its cause. The fact that in British Columbia the Workers' Compensation Board administers both schemes is a strong indicator of their similarities.

It seemed anomalous that the policy of the Board regarding the burden of proof should differ between workers' compensation and compensation for criminal injuries. In my opinion, the Criminal Injury Compensation Board had adopted an inappropriate standard of proof for determining claims.

I recommended that the Criminal Injury Compensation Board alter its practice of requiring a standard of proof based on a balance of probabilities, and instead adopt the standard used by the Workers' Compensation Board which gives the worker the benefit of the doubt when the possibilities are evenly balanced.

The Board disagreed, stating that there is no provision in the *Criminal Injury Compensation Act* that would authorize such a standard of proof. Pursuant to Section 27(f) of the Act, however, the Lieutenant Governor in Council is empowered to pass regulations making any provision of the *Workers Compensation Act* applicable to the *Criminal Injury Compensation Act*. I recommended, therefore, that the Workers' Compensation Board request the Lieutenant Governor in Council to make Section 99 of the *Workers Compensation Act* applicable to applications under the *Criminal Injury Compensation Act*.

The Commissioners replied that the balance of probabilities is the standard of proof under Criminal Injuries Compensation legislation in all other provinces of Canada and, as far as is known, in all other countries. They also felt that there were significant differences between the two Acts which might entail a different standard of proof.

In view of that information I decided not to pursue my recommendation at the present. (CS 83-252)

NOT SUBSTANTIATED COMPLAINTS

The following case summaries are examples of complaints I found not substantiated.

No medical evidence

A widow complained because she did not receive a widow's pension. The woman believed that her husband's death was related to his compensable injury.

I found that the Board had never accepted o rejected a claim for compensation from the woman. In fact, she had never submitted ar application form, nor supplied medical information to support her claim.

I got in touch with the physician who had treated the woman's husband. He obtained a copy of the autopsy report relating to the deceased and after reviewing this report, as well as the details of the claim, it was his opinion that the death was not related to his previous compensable injury.

In the absence of any medical evidence to support my complainant's contention that her husband's death was related to his compensable injury, I was unable to substantiate the widow's complaint. (CS 83-253)

Review panel was right

A woman strained her lower back at work in 1948. An x-ray taken 12 days after the accident showed minimal disc degeneration. By 1969, there was further disc degeneration and the woman underwent back surgery.

The Board did not accept the argument that this operation was related to the woman's 1948 injury. In 1973 she again twisted her lower back at work. The Board accepted the claim and paid the woman wage loss benefits for 10 months. In 1974 she underwent a further back operation. This time the Board did not accept it as related to either the 1948 or 1973 injuries.

In 1975 the claimant appealed to a Medical Review Panel. The Panel certified that she had a back disability, but added that it was not caused by the 1973 accident. The Panel also found that the 1948 accident had aggravated the pre-existing disc degeneration, but that the aggravation was minor and limited to the time loss granted. The major cause of her disability, the panel stated, was the pre-existing degenerative disc disease.

The complainant obtained a letter from her doctor stating that in March, 1946, an x-ray of her lower back was taken and was interpreted as normal. She felt this evidence should be considered by the Medical Review Panel.

As the 1948 x-ray showed disc degeneration, the question now was whether the degeneration shown in the x-ray 12 days after the injury would likely have occurred after the injury or whether it is more likely that the degeneration had developed over a longer period than 12 days. The complainant's doctor stated it was his opinion that this type of degenerative change would not likely occur in 12 days. It was more likely that the degeneration developed following the 1946 x-ray. Therefore, the probability was that this de-

generation was pre-existing as interpreted by the Medical Review Panel.

The letter from the woman's doctor constituted significant new evidence but it did not refute the finding that the woman had degenerative disc disease prior to her 1948 accident. The woman's complaint could not be substantiated. (CS 83-254)

Decision based on evidence

A complainant injured his right hip in November 1977 when he slipped and fell on a walkway, twisting his right leg. He received compensation until August 1978.

The complainant was diagnosed as suffering from low back pain with possible disc involvement of a nerve root. The evening before his hip injury, a foreman saw him limping as he walked around his place of work. When questioned about this, he stated that an old injury of November 1976 was bothering him. The complainant continued to to be off work from August 1978 until March 1979 but was refused compensation for that period.

I investigated this decision and concluded that the Board's decision to terminate benefits in August 1978 was correct. At this time the preponderance of medical opinion established that the complainant's back condition was no longer disabling. A neurological consultant stated there were no hard signs of pathology and electrodiagnostic studies were negative. It was his opinion that there was no objective evidence of root compression and that the major findings were hysterical and histrionic.

The complainant's personal physician stated there was no evidence of scoliosis of any etiology at the time. The Board's medical advisor observed:

"I do not feel that this man has any residual disability inherent to the incident. There is no evidence of any nerve root irritation and there is evidence on examination that this man is likely exaggerating his problem as evidenced by his guarded movement and inability to forward flex from the standing, but when caught off guard in a lying position there is a good arc to his lumbar back, reaching to about his ankles."

I considered these opinions and concluded that the Board's decision was based on the preponderance of evidence. I did not substantiate the complaint. (CS 83-255)

Responsible decision

In August 1980 a complainant broke his right arm in a work related accident. At that time he did not earn an hourly rate but was paid on a piece-work basis.

At the time of the injury, he had been working for his employer for about four and a half hours. The Board paid the complainant wage loss benefits based on the Board minimum of $179.39 per week, considerably less than what he was earning at the time of injury.

The reason given by the Board was that he had worked at the job in which he was injured for only four and a half hours. Before that he had been unemployed for approximately ten months. This resulted in his average earnings being reduced to the minimum wage loss rate then provided by the Board. The complainant felt that his compensation should be based on his rate of pay at the time of injury.

Section 33(3) of the *Workers Compensation Act* states that if a worker is a new entrant into the labour force, his wage rate may be calculated on his rate of pay at the time of injury. But it was my opinion that the complainant did not fall into this category. Before his injury he worked for several years. The fact that he had worked in several provinces during this period and had just recently entered the British Columbia work force did not make him a new entrant into the labour force in the sense referred to in Section 33(3).

This section also applies to workers who have entered a new job or line of work but have not established an earnings record at the time of injury.

The complainant would have fallen into this category, had he been able to prove that he had a permanent job at the time of injury. The evidence on file, however, showed that he was working on a contract basis and that there had been no guarantee of permanent employment.

It was the opinion of the Boards of Review that "without strong evidence indicating that Mr. ——, would in all likelihood have received steady employment as an insulator he could not be given the benefit of his new earning rate after approximately four hours on the job."

To confirm whether the complainant's employment had potentially been permanent, my investigator spoke to his former employer. He stated that at the time of the accident he could not have said with certainty how much longer he would have employed the complainant. With the benefit of hindsight it was his opinion that since the company had an average amount of work in 1980, and since the complainant had very little seniority with the company, he would not have had much more work with the company in that particular year.

On the basis of this information it was my opinion that the Board had made a reasonable decision when it decided to base the complainant's wage rate on his average earning over a period of several years rather than his rate of pay at the time of his injury. I did not substantiate the complaint. (CS 83-256)

Payment correct

A man complained that the Board had been deducting part of his monthly pension. He said the deduction was based on the Board's belief that he was able to do some type of work.

I discovered that the worker had been awarded a 100 percent disability pension for an injury he received in 1957. Because part of the pension was commuted to the worker, on his request, $1.28 per month was deducted from his regular pension cheques.

I found that the worker received the maximum pension available based on his average earnings. I did not substantiate his complaint. (CS 83-257)

NON-JURISDICTIONAL COMPLAINTS

For many people 1983 was a year of despair, marred by difficult economic times and crippling financial problems.

Seeking to escape the misery caused by the hard times, many sought our help. Loss of employment, tenant-landlord disputes, consumer ripoffs and bankruptcies, conflicts with lending and collection agencies . . . these are just some of the concerns that prompted people to come to us, "the last resort".

When a complaint does not involve a provincial government ministry, a Crown corporation, a board or agency in which the majority of Directors is appointed by the provincial government, I have no authority to investigate. It is a non-jurisdictional complaint.

That does not mean we cannot or will not help. Often a simple referral to the proper resource is all a distressed person needs. In other cases, a brief discussion of the complaint and a little help finding all available options can steer the person in the right direction.

We encourage people with non-jurisdictional complaints to practise self-help, confining our role to providing initial advice and guidance.

If a person is unable to pursue a complaint because of some handicap or other limiting circumstances, my staff will provide the necessary help. If a complainant has taken all reasonable steps to achieve a benefit to which he or she is entitled and does not get anywhere, my staff will speak to the person responsible for the administration of the program, and often justice is won.

Unfortunately, not all complaints are brought to a happy conclusion. Sometimes laws, policies or a peculiar set of circumstances will preclude a solution to the complainant's problem. In these cases, a sympathetic ear can often ease the burden.

Have car, won't travel

For most people a car is absolutely essential. Without a car, it is often impossible to find a job, or hold onto one. Those with limited means can often not afford to buy a reliable vehicle and must, instead, do with cheap used cars.

I have received numerous complaints from people who bought inexpensive used cars, only to find out that repair bills were playing havoc with their already stretched budgets. In some cases it was obvious that the previous owner had sold the vehicle because it was a lemon.

Unfortunately, there is little we can do, unless the purchase is backed by a warranty. "Buyer Beware" are still the key words when purchasing a used vehicle. In the absence of a warranty, we advise the complainants to speak to the manager of the business or the individual from whom they bought the vehicle and attempt to settle the matter. If this doesn't result in positive action, we suggest that they seek legal advice, often through the Lawyer Referral Service, where they can get a 30-minute interview with a lawyer at a nominal charge.

The Ministry of Consumer and Corporate Affairs has many excellent publications called "Fast Facts." A booklet called "Buying a Used Car" lists a number of precautionary steps, including the suggestion that a prospective purchaser test-drive the vehicle and take it to a mechanic of his choice for a thorough inspection before buying it. We recommend these publications at every opportunity. (CS 83-258)

I can investigate a corporation or board only if the majority of its members is appointed by the provincial government, but there are a number of private insurance companies about which I have received complaints. In some cases I refer the complainant to the Superintendent of Insurance. In other cases

my staff will make a phone call to clarify the progress of an insurance claim, and when the insured person might expect payment.

Both make mistake

A woman who had received dental services from a specialist asked us to help her get fully reimbursed by the dental plan to which she belonged. She had been trying in vain via long distance telephone calls and letters to get satisfaction.

When we inquired, we found that the dentist had made an error when he billed the dental plan, resulting in under-payment to the woman. The error was corrected and the insurance company accepted the bill for reimbursement.

My complainant, however, was still not fully reimbursed because her policy provided coverage for the services of a specialist at only 10 per cent above the fee schedule of a general practitioner. She received the proper insurance benefits and now understands why she was not entitled to full reimbursement. (CS 83-259)

Dual files cause delay

A woman complained that six months after she had had an accident, the insurance company had still not paid her wages for the four weeks she was unable to work, causing her considerable financial difficulty.

We found that the insurance company, for some reason, had opened two files on her claim which created an administrative problem and resulted in the delay of payment. We provided the company with detailed information on the claim, the woman's files were consolidated and a cheque went in the mail soon after. (CS 83-260)

Unfortunately, not all insurance problems are satisfactorily resolved. A number of marine insurance claims through companies not registered in British Columbia have come to my attention. It appears that several of these companies have gone bankrupt or cannot meet all the claims that have been made and British Columbians who had insured with them end up as the losers.

The question of rules for debt collection and the rights of the debtor and the collector have given rise to numerous inquiries and complaints.

The *Debt Collection Act* spells out unreasonable collection practices and serves as a useful guideline to anyone involved in this area. The Debtor Assistance Act is designed to provide help to debtors trying to work out a satisfactory repayment schedule.

Home saved from foreclosure

A family of six living in northern British Columbia had just purchased a home with the help of the Canada Mortgage and Housing Corporation's Assisted Home Ownership Program, when the father became unemployed and could not make mortgage payments.

Foreclosure proceedings had already been started by the time the mother phoned us for help and we lost no time notifying the Debt Counsellor of the family's predicament.

As a result of the advice and help provided by the Debt Counsellor, the family was able to stay in the home. (CS 83-261)

Debt collector stops harassment

In another case, a young man whose business had been wiped out by the recession was being harassed by a debt collection agency.

The man had been self-employed but increased costs and fewer customers had destroyed his livelihood. He was not eligible for Unemployment Insurance because he was self-employed and he couldn't find any other work. By the time he finally found a job, he had many outstanding debts.

The collector's bullying tactics were also annoying the man's family, his employer, friends and associates. We advised him to meet with the debt collector and demand that the harassment stop. He obtained a copy of the Debt Collection Act from us and was able to begin repaying his debts in an orderly fashion without the irritating tactics of the collector. (CS 83-262)

Repayment of student loan deferred

A university graduate who had an outstanding Canada Student Loan of $2,800 complained that the bank which handled his federal government-backed, interest-free loan, had sent his file to a debt collector.

Normally, students are required to start repaying their loans six months after they complete their studies. But because so many graduates have been unable to find jobs, the federal government has granted them a one-year extension, of which our complainant was unaware. His worries were over, at least for the moment, after we advised him to get the appropriate deferral form from the bank. Whether he or any of the other graduates will be better off at the end of the 12-month extension is, of course, another question. (CS 83-263)

Did you hear this one?

A man called to enlist our help in getting a free hearing aid for an elderly lady friend who is hard of hearing and lives in a Long Term Care home.

We phoned Human Resources and found that free hearing aids are provided under special circumstances only. When someone is at risk, has no funds, is unable to obtain work or cannot safely care for children, the Ministry may provide a hearing aid. None of these circumstances applied to the case at hand.

We were, however, able to refer the woman, via her friend, to a nearby Hearing Clinic for an assessment. The clinic would help her get the best price for whatever hearing aid she needed. We also suggested the possibility of paying in instalments. (CS 83-264)

Backhoe invasion threatened

Anything B.C. Hydro can do, a small private utilities company can do better, judging from the complaint of a man who had locked horns with the firm that supplied his water.

The man's trouble began when the company refused to accept monthly or quarterly payments from him, even though it had done so the previous year. To add insult to injury, the company simply sent his instalment cheques back, ripped in half, without any accompanying notice or letter.

By the time we were brought into the picture, the cold war between the man and his water supplier was about to turn into an armed conflict. The service had been disconnected, interest charges on the annual fee were piling up and now the company was threatening to invade the man's property with a backhoe and rip his water line out. He was about to go on a trip and more than just a little worried what he might find on his return home.

We tried our best to cool tempers and pointed out that the man had shown good faith by making some form of payment which the company had rejected without explanation. Eventually, the company agreed to accept payment, provided it was for a full year and to waive any interest and reconnection fees. (CS 83-265)

Snake oil anyone?

A woman bought a health drink in a container at a home-sales party, the kind where neighbours and friends gather to listen to a sales pitch.

The woman realized that the product was expensive but didn't mind the cost, if she could be assured of the validity of claims in the company's promotion material, which suggested that use of the product would result in increased vitality, purified blood, and help the body's healing capacity. The liquid was manufactured in the Southern United States and the word "Canada" was printed on the front of the pamphlet.

The woman questioned some of the alleged benefits and wanted us to find out more. A member of my staff agreed to phone the Health Protection Branch of Health and Welfare Canada, and request that a representative talk to her. The woman was asked to send in all the relevant information and was told it would be assessed within the legislation which protects consumers against exaggerated claims, particularly with regard to health and safety.

In two other instances, we suggested that complainants send the bottles they had purchased to the Health Protection Branch for tests. In one case, foreign matter was found in the liquid and appropriate steps were taken to ensure it would not happen again. With the other sample, the Health Protection Branch could not determine whether the mold in the bottle had formed before or after the product was purchased. (CS 83-266)

Rubber cheques were not her fault

A woman who moved from the northern to the southern part of Vancouver Island had arranged for the transfer of her bank account and was told that she could write cheques on her new account, only to find out that the cheques were bouncing.

To add to her annoyance, the bank debited her account with a service charge for each bounced cheque. She cleared up the matter with the people to whom the cheques had been made out and received a promise from the bank that the service charges would be cancelled.

But that was not to be the case. The charges appeared on two subsequent bank statements. Because she was handicapped, she had to have someone drive her to the bank, so that she could straighten out the mess. When she asked to see the manager, the staff declined her request.

By the time the woman came to us, she was exasperated and did not know what to do. One of my investigators phoned the office of the bank's regional manager who got immediate results. The manager of the branch which had caused the woman's problems showed up at her home the very next day to get all the information he needed to rectify the problem. And like magic, the charges disappeared from the woman's next bank statement. (CS 83-267)

The knot that was not tied

Modern times and their alleged permissiveness nothwithstanding, a complainant was rather shocked when she found out that, although she and her "husband" had gone through a marriage ceremony, they had never actually been married.

The ceremony was performed in an Okanagan city, where the couple lived for a few months. Before moving to Alberta, the woman heard rumours that the person who had performed the ceremony was not at the time registered with Vital Statistics and could not legally solemnize marriages. Anyone performing a marriage ceremony must hold a valid licence issued by the Province of British Columbia and this licence must be renewed at specified times.

Eventually the love affair came to an end, the couple separated and the woman returned to British Columbia. She now wanted to find out what her marital status was but did not know where to go for the information.

My staff spoke to a representative of Vital Statistics and found out that after the marriage ceremony, the papers had been sent to Vital Statistics in Victoria where it became apparent that the pastor's licence had lapsed before he performed the marriage ceremony. That meant the marriage was not registered and, therefore, not legally recognized.

We also learned that soon after the error was discovered, the church, the pastor and the couple had been notified. Unfortunately, it was the "husband" who was informed that the marriage had to be solemnized a second time, and he never passed the information on to his "wife."

We referred all the information to the woman and while it appeared that she had remained a single person, we advised her to see a lawyer to be absolutely sure of her status. (CS 83-268)

PART IV

CHANGES IN PRACTICES AND PROCEDURES

A. MINISTRIES

MINISTRY OF ATTORNEY GENERAL

1. The Ministry's Court Services Division agreed to apply a standard, uniform throughout the province, for counting the seven day appeal period on traffic ticket disputes.
2. Court Services agreed to develop a policy for sheriffs searching members of the public who are attending trials where security is important.
3. The Ministry agreed that before and after prisoners are escorted, the sheriff and the prisoner will sign a form listing the possessions held at both ends of the trip.
4. The Attorney-General asked the Minister of Consumer & Corporate Affairs to review the legislation and procedures which allowed an improper enforcement of a Rentalsman's order for possession.
5. The Ministry issued new guidelines which removed the confusion surrounding the enforcement of Rentalsman orders for payment of debts between landlords and tenants.
6. A Registry agreed to send copies of Rentalsman orders to all people who appeared before the Registrar without a lawyer.
7. A Registry agreed to implement a system to note changes of address in its court files.
8. A Registry agreed to inform the public of the normal time they could expect a sheriff to take to serve court documents.

CORRECTIONS BRANCH

1. The Lower Mainland Regional Correctional Centre removed protective custody inmates from the East Wing and provided a separate unit for them which reduced harassment during laundry change, food lineups, phone calls and recreation periods.
2. The East Wing of the L.M.R.C.C. increased the amount of tobacco issued to inmates, thus resolving a complaint of unfair distribution to qualifying inmates.
3. The West Wing of the L.M.R.C.C. provided a daily exercise period at noon-hour for protective custody inmates awaiting trial.
4. The L.M.R.C.C. completed a feasibility study for the distribution of medication to inmates by medically qualified staff. A review by the College of Physicians and Surgeons also supported a provincial standard regarding the distribution of medication which was submitted for the approval of the Commissioner.
5. The L.M.R.C.C. clarified procedures to handle the purchase of special diet foods for the hospital.

6. A secure Correctional Centre reviewed and revised the list of personal possessions which an inmate may keep on his person while in custody. The objective was to reduce theft and inmate conflicts.
7. The Kamloops Regional Correctional Centre, forced by overcrowding to utilize its segregation area for different types of inmates, developed a work program out of the segregation unit.
8. The Kamloops Regional Correctional Centre reduced the number of complaints from the segregation area that food was being adulterated. Close supervision and local resolution of complaints contributed to the reduction.
9. The Prince George Regional Correctional Centre kept a promise to return sentenced inmates, transferred from Prince George after the riot, back to in Prince George after five or six weeks, where they would be close to their families.
10. The Vancouver Pre-trial Service Centre agreed to post a recreation schedule in each unit, giving all inmates equal access to the recreation facilities.
11. The Vancouver Pre-Trial Service Centre restored the practice of allowing all-night use of a radio by an inmate in his cell.
12. The Corrections Branch's program analysis and evaluation section reviewed existing policies and regulations concerning regular and family visits as a first step towards developing consistent guidelines and policies for family visits.
13. The Corrections Branch instituted a procedure by which a prior written agreement would be prepared stating the inmate's costs of new dentures.
14. The Branch developed standard policy and procedures governing disbursement of funds from inmate trust accounts and agreed to incorporate this policy in its Operations Manual.
15. The Corrections Branch included in the temporary absence program inmates who are in custody as a result of civil contempt of court, failing to comply with a civil court order, or failure to pay maintenance under the *Family Relations Act*.

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

1. The Ministry agreed to reconsider conflicting provisions in the Credit Reporting Act and in the Regulations, pursuant to the Act, concerning the requirement to notify a prospective borrower that a credit report about him or her will be obtained.
2. The Ministry's Liquor Distribution Branch agreed to sell all liquor products at their sticker price, even if the sticker price is lower than it should be.

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES.

1. The Ministry of Energy, Mines and Petroleum Resources agreed to ask all mine managers, whose employees are required to undergo medical examinations, to inform their employees that they have the legal right to a report of the medical findings. The Ministry also agreed to remind labour unions of workers' right to such reports.

MINISTRY OF ENVIRONMENT

1. The Ministry clarified its policy concerning the issuance of sustenance permits for hunting out of season, so as to avoid the confusion which had arisen the previous year.
2. The Ministry agreed to change the regulatory requirements for exporting wildlife carcasses, in order to minimize problems for hunters who detoured outside the province with game they had killed in B.C.
3. The Ministry agreed to review the legislation and administrative guidelines pertaining to disaster relief, so as to clarify citizens' eligibility for compensation.

MINISTRY OF FORESTS

1. The Ministry, in cooperation with the Ministry of Environment, agreed to develop a new system whereby trappers, who might be adversely affected by timber harvesting in the area of their traplines, would be notified in advance.

MINISTRY OF HEALTH

1. The Community Care Facilities Licensing Board agreed to inform prospective licensees that operating a day care centre in a family home will result in a higher B.C. Hydro electrical service rate.
2. The Provincial Adult Care Facilities Licensing Board agreed that, prior to cancelling a Long Term Care facility licence, it will notify the licensee of the impending hearing by letter, followed by a telephone call. The Board will also inform the licensee of his or her right to legal counsel and will provide the licensee with documents supporting the recommendation for cancellation.

3. The Forensic Psychiatric Institute agreed to clarify its policy about visiting privileges, detailing the grounds on which visiting privileges can be suspended or modified.

4. The Forensic Psychiatric Services Commission agreed to establish a policy, in cases of alleged sexual abuse of a resident of the Forensic Psychiatric Institute by a staff member, requiring that the patient be immediately examined by a doctor and the police to be notified.

5. The Chairman of the Review Panel, established under the *Mental Health Act* to review the committal of patients to Mental Health facilities, agreed to receive patient applications for hearings at his home address for the duration of the 1983 provincial government labour dispute.

6. The Ministry of Health agreed that when transferring residents from Riverview Hospital to Valleyview Hospital, it would not move a patient to an environment where the patient would be less independent.

7. The Ministry agreed to remind Medical Services Plan staff that persons applying for premium assistance, who are over 65 years old and who have not been in the workforce, need not obtain Social Insurance Numbers.

8. The Ministry finally implemented a previous agreement (see my 1980 Annual Report, at page 77) that Canadian citizens returning from the United States would not be required to surrender their U.S. Alien Registration Cards in order to qualify for medical coverage here.

9. The Division of Vital Statistics agreed to relax its requirements of proof in order to amend a birth registration in certain cases.

10. The Division of Vital Statistics agreed to permit persons, whose name was spelled incorrectly on their birth registration, to sign their marriage licence using the correct spelling of their name.

MINISTRY OF HUMAN RESOURCES

1. The Ministry agreed to reword its policy explaining the eligibility requirements for adult applicants residing with their parents but who do not live in a "room & board situation". The rewritten policy dispells the formerly mistaken impression that such applicants were not entitled to shelter benefits.

2. The Ministry agreed to discontinue its practice of printing clients' social insurance numbers on income assistance cheques.

3. The Ministry will no longer refuse to grant shelter benefits to applicants, who are waiting for unemployment insurance benefits, until after an eviction notice has been served on the applicant by his or her landlord.

4. A District Office changed its intake procedures to ensure that child abuse complaints, received on the Help Line, are investigated immediately.

5. A District Office agreed that a tribunal can only rule on questions of current eligibility, except in cases involving a current recapture of a past "excess" payment.

6. A Regional Office agreed to notify appellants automatically when a Ministry representative has been appointed to an appeal tribunal.

7. The Ministry agreed not to withhold a security deposit because it disagrees with a client's choice of residence.

8. A District Office agreed to make rent payments directly to landlords on behalf of clients only when the client has demonstrated an inability to handle finances, and not simply because the landlord finds it convenient (as had been their practice).

9. The Ministry agreed to establish a procedure that will ensure appeal tribunal decisions are implemented without unreasonable delay.

10. The Ministry agreed to develop policy to specifically address the question of how shelter benefits for co-op housing members are to be calculated.

11. A District Office agreed to notify clients when benefits are terminated, rather than stop sending the cheques and waiting for the client to ask why benefits were not received.

12. The Ministry, which is responsible for billing the federal government for the cost-sharable portions of the Legal Services Society's client billings, agreed to restrict its requests for information to non-identifying data. Thus, solicitor-client privilege is better protected.

13. The Ministry agreed to implement the following guidelines governing internal requests for information:

    a. Confidentiality for clients and informants must be maintained.

    b. All letters alleging income assistance abuse must be retained on file.

    c. Information requested must be specific and relevant to a case; the reason for the request must be clearly stated.

    d. All income assistance fraud investigations must be reported to the Inspector.

    e. Clients under investigation for income assistance fraud must be informed of the investigation as soon as possible, be given the opportunity to defend themselves, and be informed of their rights.

14. The Ministry agreed to allow common-law couples to apply for adoption; for the adoption to proceed, the couple must, however, be married.

15. The Ministry agreed to refer any concerns it may have about child care workers working on contract for independent societies to these societies for review. Only after that review will the Ministry consider terminating a child care worker's contract. The only exception is when a child appears to be at risk.

MINISTRY OF LABOUR

1. The Ministry's Apprenticeship Training Programmes Branch agreed to stop asking applicants for examination and certification for their Social Insurance Number.

2. The Apprenticeship Training Programmes Branch agreed to change its administrative procedures to speed up decisions on the funding of courses for journeyman upgrading.

MINISTRY OF LANDS, PARKS AND HOUSING

1. The Ministry agreed to reduce delays in the processing of applications for B.C. Second Mortages from approximately one month to between seven and 10 working days.

2. The Ministry agreed to foregive the overdue mortgage interest on a number of Crown land parcels that were being returned to the Crown because of various problems associated with that specific subdivision.

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES

1. The B.C. Lotteries Branch agreed to amend its regulations to legalize the practice of extending the period of time during which a lottery licence is valid.

MINISTRY OF TRANSPORTATION AND HIGHWAYS

1. The Ministry agreed to improve internal communications between its Commercial Transport Division and weigh stations so that when a truck's actual weight is found to be less than its estimated weight, a refund can be processed without delay.

2. The Superintendent of Motor Vehicles agreed to recommend *again* (see my 1981 Annual Report at p. 102) that the *Motor Vehicle Act* be amended to give the Superintendent the discretion to refuse to release personal information about drivers and their vehicles. At present, anyone may require the Superintendent to divulge information about another driver, upon payment of a two dollar fee.

3. The Superintendent of Motor Vehicles agreed to recommend changes to the *Motor Vehicle Act* which would exempt out-of-province students attending provincial colleges and institutes from having to register and insure their vehicles in B.C. (if they have coverage from their home province). At present, the *Motor Vehicle Act* only extends this benefit to university students.

B. BOARDS, COMMISSIONS, ETC.

BRITISH COLUMBIA FERRY CORPORATION

1. B.C. Ferry agreed to remove restrictions on the number of motorcycle riders permitted on northern routes.

2. The Corporation agreed to develop and implement a reservation system for northern residents travelling between Skidegate and Prince Rupert.

3. B.C. Ferry agreed to reserve twenty-five percent of staterooms on northern ferry routes for residents, up to seven days prior to sailing.

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

1. A local manager agreed to remind his staff that persons outside the local geographical area are still eligible to apply for housing.

2. The Commission agreed to send a form letter to vacating tenants, stating that if any damage was found, the Commission would contact the tenant for payment.

B.C. HYDRO AND POWER AUTHORITY

1. B.C. Hydro agreed to alter the content of its initial letter requesting security deposits from non-residential customers. Now all non-residential customers are informed of Hydro's authority to collect such deposits and of the various forms in which security deposits may be made.

2. A collections staff supervisor agreed to comply with existing Hydro policy and discontinue his office's practice of collecting overdue, inactive accounts from a customer's spouse or ex-spouse.

3. B.C. Hydro reworded its notice of disconnection to landlords whose tenants' rent includes the cost of electric and gas service so that the remedies available to tenants under the *Residential Tenancy Act* are more clearly stated.

DISTRICT OF TUMBLER RIDGE

1. The Commissioner of the District of Tumbler Ridge agreed to withdraw the requirement that only mobile homes less than five years old are allowed in the new municipally owned mobile home park.
2. The terms of the proposed standard tenancy agreement for the municipality's mobile home park were changed to conform to the provisions of the *Residential Tenancy Act* and to eliminate unfair or unreasonable requirements and restrictions.

INSURANCE CORPORATION OF B.C.

1. The Corporation agreed to send computer printouts of rehabilitation expenses to affected policy holders on a regular basis.
2. The Corporation agreed to distribute a bulletin instructing its adjusters to frame their questions to doctors, regarding the disablement of housewives, in terms of the specific wording of the Regulation as it pertains to housewife disability benefits.
3. The Corporation agreed to allow policy holders at least ten working days to consider offers of settlement.
4. The Corporation agreed to distribute a bulletin instructing its adjusters not to record irrelevant comments on file.
5. The Corporation agreed to the following improvements in its procedure for terminating accident benefits:
   a. When accident benefits are to be terminated, I.C.B.C. will send written notice of the termination to the claimant one week in advance of the termination.
   b. The written notice will include one of two reasons for termination (either medical evidence indicates recovery; or medical information is lacking).
   c. A pamphlet outlining the appeal procedures will be enclosed with each notice of termination.
   d. The name and phone number of the adjuster to contact if further information is required will also be included in the notice.
   e. A copy of the notice will be sent to the claimant's lawyer if the Corporation knows that the claimant is represented.
6. The Corporation agreed to remind its claim centre staff that only the debt of the registered owner of a vehicle involved in a claim may be set off against a claim.
7. The Corporation agreed to implement a first step towards calculating cancellation refunds on a daily basis. The short-rate table periods have been reduced from 15 day periods to 3 or 4 day periods, and the difference between the refunded amounts for each period has been reduced from 4 percent to 1 percent. The maximum refundable percentage of a policy holder's premium has been increased from 86 percent to 89 percent.
8. The Corporation agreed to amend its Regulation concerning the limitation period for claiming no-fault benefits. The limitation period has now been extended from one year to two years from the date of the accident, or from the date I.C.B.C. made the last benefit payment.

PUBLIC SERVICE COMMISSION

1. The Commission agreed to keep tape recording of appeal hearings for at least three months in case questions about the hearing are raised later

WORKERS' COMPENSATION BOARD

1. The Commissioners agreed to remind consultants and the Board's medical staff to confine their remarks on claimants' medical history strictly to medical matters or other information of medical relevance, and to present all information fairly and courteously.
2. After reviewing a questionnaire placed before Medical Review Panels, the Commissioners agreed to revise the questions because they did not address the possibility of "multi-factorial" causation for claimants whose injuries are healed by the time of the hearing.
3. Because of delays in the approval of claims which could be covered by either the Workers' Compensation Board or the Criminal Injury Compensation Board, the Commissioners agreed to a change in procedures. Claimants now have access to better information and there is a better mechanism to determine which agency is responsible for a claim.
4. The Workers' Compensation Board agreed to cease the practice of asking the Employer's Adviser to suggest the specialist to be nominated to a Medical Review Panel when the employer has ceased to carry on business or the worker is a partner in or member of the firm that is the employer. In such cases, the Board will make the choice, as provided by the legislation.

5. The Board agreed to establish a new procedure for claims, which had been accepted but which subsequently became suspect, resulting in a cessation of payments. In such cases, the Claims Adjudicator must refer the file to his Administrator if no decision on whether to continue payments has been made four weeks after the last payment. If the Administrator does not consider the reasons for not making payments valid, he will instruct the Claims Adjudicator to commence payments retroactive to the date they were stopped.

6. As a result of a complaint and its resolution, the Board agreed to the following: when the Board's doctor disagrees with the examining physician's opinion that a miner has signs of silicosis, the examining physician will be asked to inform the miner of the difference of opinion. The Board doctor will also ask the examining physician to refer the miner to a specialist for a third opinion.

7. The Commissioners agreed to publish a directive instructing all Board staff to confine their comments regarding claims to relevant matters which they have personally observed or for which there is supporting evidence.

8. The Board agreed to publish a pamphlet advising employers of equipment operators of their responsibility to ensure the competency of operators, and apprising them of Section 26.24 of the Industrial Health and Safety Regulations (Competency and Testing of Operators).

9. The Board agreed to allow decisions regarding rehabilitation to be appealed to the Boards of Review.

10. The Board agreed to assess pre-existing and post-injury disabilities independently of other agencies for purposes of applying proportionate entitlement.

11. The Board reversed its policy of refusing to grant personal optional coverage to independent operators who previously declared bankruptcy while owing the Board money.

12. The Board agreed to prepare a pamphlet for claimants who have a right of action against some person other than an employer or worker covered by the *Workers Compensation Act*. The pamphlet would provide full information on the implications of choosing either to sue that party for damages or subrogating that right to the Board and then claiming compensation.

13. The Board agreed to require Medical Review Panels to also determine, in all cases coming before the Panels, whether the worker's injury had aggravated, accelerated or activated his or her pre-existing condition.

TALK BACK: CORRESPONDENCE FROM COMPLAINANTS AND OTHERS

"We now wish to acknowledge your letter of September 8, 1982 and to thank you and Elaine Rivers for the comprehensive investigation which was done.

The ranchers' problems with the Forest Service probably have more to do with the provisions of the Range Act itself than with personnel, though our local range officers are apparently more difficult to deal with than those in some other areas. At least, ranchers in the Okanagan say they have good co-operation with their Forest Service officers and cannot understand why we have problems. . . .

The struggle I have had to prove my point about the range has cost me many wasted dollars and a great deal of valuable time. If the Forest Service had listened to the local range users in the first place and had taken the trouble to verify our contentions as to the standard of our range management, this whole mess could have been avoided, and furthermore the thousands of dollars spent on the appeal board might not have been necessary. What worries me the most is the fact that Forest Service people will not listen.

The work done on this problem by yourself and by Elaine Rivers is deeply appreciated. Our very good wishes for a rewarding year in 1983."

Midway
December 31, 1982

"We sincerely appreciate the expeditious manner in which your office handled our grievance. Thank you.

The difference in the tax classification halved our assessment; a fact which will keep our marginal business alive."

Sechelt
January 18, 1983

"Thank you for setting us straight on the matter of Medical Services. It has troubled me for some time. I do not wish to evade payments when they are needed. Which in my case were not, as I think you know now. I have no income besides my pension, am in my 82nd birthday, and have so far not required medical services, except for a few prescriptions."

Burnaby
January 19, 1983

"We would like to thank you and your office for all the help you have given to us in our problems with the Workers' Compensation Board. I indicated in the enclosed copy that your efforts were fruitful in this matter. I will notify your office as to the outcome of the findings at the hearing."

Vancouver
January 23, 1983

Letter to "KINESIS", Vancouver, B.C. — February 1983 Issue

"A victorious slash through B.C. government 'red tape' was achieved after I was represented by the Office of the Ombudsman in a case involving the Department of Vital Statistics.

In May of 1982 as a single parent, I completed the required birth registration for my daughter, not questioning the statement on the form which told me to complete within 30 days.

I felt rushed and concerned (for legal and personal reasons) because my daughter's father, at that time, was not prepared to sign the 'Acknowledgement of Paternity'. However, I rushed off the papers, minus father's particulars and paternity signature.

A month later, 'father' stated he was willing to acknowledge paternity and have his particulars listed on our daughter's birth registration. What ensued was an example of the bureaucratic stance taken by the Department of Vital Statistics.

When I requested that paternity papers be added to the birth registration, I was told that that was impossible. Later, I spoke with an MHR social worker who, after looking into the matter for a couple of weeks, reported back to me, 'Impossible'.

I was not prepared to accept this refusal and so telephoned the Office of the Ombudsman, wrote a letter outlining my situation and a month later received a phone call from their Victoria office. They would take on my case and deal with the Department of Vital Statistics.

I don't know all of what went on between these two parties but I was frequently kept up to date by a considerate and knowledgeable woman investigator from the Office of the Ombudsman.

Finally, in November, after having to send additional medical and personal information and a second set of registration papers plus a paternity paper, I received a welcome phone call telling me that the additional paternity information had been noted on the birth registry and witnessed by an Ombudsman office staff.

'It's over for you,' I recall the Ombudsman staff saying, 'but not for Vital Statistics.' It seems that ours was a test case and that the Department will have to look at policy changes and perhaps, changes in the provincial Act.

I have written the facts concerning this situation but, as important, are the feelings I experienced throughout. As I recall, anger and powerlessness are what I most felt trying to deal in a system that deals with paper and policies and forgets that there are real people 'out there'.

Perhaps there are other women 'out there' who are up against similar bureaucracy. Let me encourage you to make your anger and powerless feelings work for you. Don't believe that your situation is 'impossible'. Every dent in the 'paper politics' helps."

Ms. Patricia Green
Vancouver

". . . I would like to add, on behalf of my family and myself, that the prompt and efficient action instituted by your Department is most commendable. You certainly have our sincerest gratitude for a job well done."

Vancouver
February 3, 1983

"Thank you for your letter of January 17, 1983 outlining our dealings with the Lands, Parks and Housing.

We received copies of the lease last week which we signed and returned at their request.

We settled for the last proposal of $5,500 being a fair market value as we are sick and tired of the whole thing, these people can't seem to look at things in a business-like manner and get quite offended if anybody questions their decisions. Even after settling on their last figure they did not bother sending a copy of the lease until Ms. Williams got back on the case.

However, we are more than satisfied with the efforts put forth by your office on our behalf and feel that without your help we would have gotten nowhere.

Thank you for all your time and trouble, we really appreciate all you have done. It is good to know your office is there to deal with matters of this kind. We would appreciate receiving a copy of your 1982 Annual Report."

Mackenzie
February 13, 1983

"In my personal opinion your refusal and/or failure to appropriately address this complaint of miscarriage of justice or authority is an abominable mistreatment of your public position and a serious disservice to all the people of this province."

Saanichton
February 25, 1983

"We wish to express our gratitude to the Ombudsman and staff for their efforts on our behalf.

With reluctance we must agree with you, further investigation would be quite useless, nevertheless we feel a need to express our view, if for no other reason than to get it off our chest.

1. *The Minister did allow Mr. M. to subdivide with no physical access.*
2. *Ministry has no idea what lies beyond our yard. We did ask them to look.*

To say the least, at taxpayer's expense our politicians are spending enormous dollars to shuffle the Crown Corporations and maintenance back into private sectors. Since there will be no added traffic, 40 ft. strip will be left for their so-called future develop-

ment when this time comes and till then we maintain our own road.

We are well aware that the Ministry is towing us to the line of the Land Title Act, but we are also aware that they compromise to different situation."

Nelson
March 11, 1983

"This letter is simply to express my thanks for your efforts on my behalf in the above matter. Even though the results were not exactly as I had hoped, but still, hopefully had the effect of letting I.C.B.C. know that the ordinary citizen is interested in their activities. Only yesterday I received a letter from them acknowledging my earlier correspondence with them. Again, thank you for your efforts on my behalf, you represent the only vehicle by which the average person can hope to receive satisfaction from many government agencies."

Port Alberni
March 27, 1983

"This is to acknowledge a letter from your office dated March 18, and also to thank you for your efforts on behalf of my brother, . . .

I'm sure that your inquiries helped to speed [his] transfer from the Forensic Institute to Riverview Hospital. While there hasn't been any startling improvement, [he] has settled into a routine and seems much more stable emotionally as well as physically.

Once again, from my whole family, thank you for your work."

Vancouver
April 6, 1983

"In reference to your letter to me dated April 5, 1983 File No. 82 . . . ., regarding my difference of opinion with the Ministry of Highways: I wish to thank you personally, and wish my thanks be made known to Mr. Cooper and Mr. Tuokko for their efforts on my behalf in this matter.

Even though you are not able to do anything definite I feel that your efforts and particularly, the Public Report #3 that you sent to me with your comments will be a genuine help when the Ministry of Highways comes to me again, as they will have to do in the future. It gives me some ideas on how to better deal with the negotiator.

Thank you once more, I have not decided just what to do but I intend to go over my file once more and read your Public Report thoroughly. Then I must decide if it is worth the effort to seek legal advice, I rather think not."

Golden
April 9, 1983

"As you will note from the enclosed letter we have accepted the terms offered by the B.C. Ferry Corporation.

We are fortunate to be in a financial position to obtain a new bicycle despite the low sum offered. There seemed little point in prolonging the matter especially as my daughter does need a bicycle.

As I mentioned on the phone I am glad that the Corporation has at least acknowledged that some gesture had to be made. It is important for young people that they not become cynical (too soon at least) about the responsiveness of bureaucracy.

Thank you very much for routing us in the proper direction and monitoring our experience. We are most appreciative of your efforts."

Vancouver
April 14, 1983

"It would appear that it is time for the provincial government to evaluate the relationship between the cost to the taxpayers of the Office of the Ombudsman, and its usefulness. My own impression is that it is just another means of providing incompetence with large salaries and pension funds."

Clearwater
April 19, 1983

"First of all, thank you for your letter of March 16th regarding my problems with the S.A.F.E.R. program. Words can't express my gratitude for the work done by your office on my behalf.

This letter should have been written a long time ago but health problems which were aggravated by the SAFER incident have upset my life a great deal, and am not yet quite back to normal. . . .

Thank you again for doing the work you are doing not only for me, but for so many others. I have sent some of your reports to friends and relatives in Sweden and will pick up some more the next time I'm in the neighborhood of Bastion Square."

Victoria
April 23, 1983

"Many thanks for your letter of April 22, 1983 advising the outcome of your investigation of my complaint about the Ministry of Finance . . .

I am very appreciative of the efforts you have taken in this regard and, naturally, very pleased with the result. It does, indeed, make one realize that there are times when justice will still prevail — even though one really has to persevere and fight for it. In our democratic society this should not have to be necessary but it seems that more and more our Governments are taking unfair advantage of the people and if they are permitted to get away with it I shudder to think what the future holds.

Again, I thank you for your interest, co-operation and successful effort."

Salmon Arm
April 28, 1983

"I am afraid I must apologize for not contacting you sooner to express my appreciation personally, and on behalf of the B.C. Association for the Mentally Retarded for the practical and valuable assistance which your office gave to us . . . At the time that I contacted your office I was literally grasping at straws and found two reasonable and practical initiatives to follow after talking with Ms. Libby Britneff and Mr. Parfitt. . . .

" British Columbia Association for the Mentally Retarded, Vancouver
A.B. Etmanski, Executive Director
May 2, 1983

"I wish to thank you very much for your efforts on my behalf which resulted in my getting back holiday pay that was owed me by the Department of Education.

Perhaps to many the sum of two hundred plus does not sound much, but for me it is very useful indeed, although it was the principle that really mattered.

I hope the department of education will remember the others whom they have overlooked on this matter."

Victoria
May 8, 1983

"Thank you for your letter of May 2, 1983. We have been very pleased with the manner in which your office has dealt with our complaint. It is comforting to know that there is this means to tackle injustice without the complications of a court battle."

Victoria
June 5, 1983

"We have received a reply from Dr. Friedmann indicating that he has investigated quite thoroughly our complaints. We have shared the letters with our parents and naturally we are disappointed that such out and out contraventions of several Acts are tolerated by government officials but I am sure this will not ever really rectify itself. We will of course, respect the fact that every effort was made by your office to correct the situation and our appreciation for all your efforts is shared by all of us here.

I wanted to end our correspondence with an interesting story. . . . So in spite of all the letters and Dr. Friedmann slapping the hands of these officials, the problems remain, so I am just as convinced as ever that these indiscretions will continue simply because they are permitted to do so. . . . You have acted as middle man in this and we feel that your efforts have been very commendable and all of us here would like to express our appreciation for that. Your job is not an easy one but you have lent a patient ear and that is more than we have received from other sources."

Coquitlam
June 8, 1983

"I am writing in regards to your recent letter where you outlined the outcome of your discussions with the Ministry of Health. I cannot say I am entirely surprised at the outcome of this affair.

I would like to personally thank you and your staff for your obviously considerable efforts on our behalf. I am glad to hear that this unfortunate situation will not be repeated.

Once again, thank you very much.

P.S. Perhaps it is time I read Machiavelli's 'The Prince'."

Vancouver
June 9, 1983

"Enclosed is a copy of the letter received yesterday regarding our medical coverage.

We want to thank you for understanding and caring and are very grateful for all your assistance."

Kelowna
June 20, 1983

"I would like to thank again, you and your staff, notably Bill Trott, for your kind assistance last summer in dealing with the Dental Care Program. I am grateful that your office exists and actually provides the service intended."

Vancouver
June 26, 1983

"I want to thank you. You got I.C.B.C. moving and we have settled with I.C.B.C. Thank you for your work in the matter. We could not get them to move. Thank you again for a job well done."

Clearbrook
July 6, 1983

"I appreciate the investigation you undertook on my behalf last year and hope that the recent government cutbacks do not seriously impair your work."

Salmo
July 8, 1983

"I am most appreciative and grateful that you have the decency to reply to my 'trying' letters and you do show action and a real concern in the public's problems. Thank you again for whatever action you may deem necessary."

Trail
July 12, 1983

"I would like to bring to your attention that your office staff was unable to handle a simple straightforward complaint against I.C.B.C. with any results. To compound matters, one has the distinct feeling after reading your letter from May 10, 1983, that

your office and I.C.B.C. is working hand in hand. It appears to be a waste of time and money for any ordinary citizen of B.C. to think that help is forthcoming from your department."

New Westminster
July 15, 1983

"Just a note to thank you and to let you know that I really appreciated all the assistance you gave me in regards to B.C. Hydro. With Jill out of town, I really was in trouble, and I was convinced in my own mind that the power should never have been cut off. I related Friday's events to Jill in great detail on Monday morning. She loved it. Said something like 'you started out a secretary, became an assistant and now a paralegal.' What's in a name? It's all the same work, hey? But, I was pleased. She also mumbled something like 'go outta town for half a day and my secretary takes on B.C. Hydro.' However, I did tell her that it was really you who brought about the very favourable end result."

Prince George
August 9, 1983

"This is a very belated thank you for your letter regarding the Ministry of Environment's comments and your qualifications re the above.

It has been our understanding that the milfoil has not been the problem but we appreciate any effort to control the flooding. It has appeared that part of the problem was lack of communication between those controlling the flow by computer and those who could observe the actual lake. It is important that residents be included in any plans and that they be able to make suggestions. . . .

We personally feel your department was of benefit to those of us along the shore of Vaseux Lake and we do thank you for your assistance.

We also wish you well in general and sincerely trust your department will be allowed to continue its good works. You and the department are much needed."

North Vancouver
August 9, 1983

"I received your letter of August 2, 1983 and wish to thank you for it. I also wish to thank you for all the help that you have given me with regards to property I own in the Coquihalla Pass. I especially wish to thank you and your assistant Ms. Holly Williams for the meeting that was arranged with Mr. W. of the Ministry of Transportation and Highways in Kamloops.

I would like to inform you that the meeting between Mr. W., my lawyer and myself went well and that an amicable settlement is being discussed. I have enclosed a copy of the letter I received from the Honourable Alex V. Fraser, Minister of Transportation and Highways."

Vancouver
August 23, 1983

"Thank you very much for your letter regarding the problem I had some time ago with the Human Resources. I appreciated very much the help and the courtesy I received from your staff, especially Susan, after the embarrassment and humiliation I had suffered at that time from the social worker concerned.

The outcome of it all was rather tragic. The party to whom I had been giving temporary shelter disappeared on the day that I told him that the social worker had ordered me to have him out of my place by the end of June. He was reported missing on June 2nd and his body was found seven weeks later in the Vedder river!

Please convey my thanks to Susan for her help, perhaps you can fill her in as to the outcome of it all. When I presented myself for my annual review on July 11, there was a marked change in the attitude of the social worker towards me.

It is a great comfort to know that there is help and advice available from people like you when one feels that there has been an injustice."

Sardis
August 30, 1983

"On behalf of Mayor Douglas Pollock and the Council of the Village of Lions Bay, I would like to convey my thanks to you and your staff for the concerned assistance you have given the Village of Lions Bay over the past few months regarding the release of the Thurber Report."

Lions Bay
August 30, 1983

"I received your letter on the question of road 39F in which you state that the Dept. of Highways have in fact treated me and the situation before me reasonable. In my opinion your investigation, after six years of the bull . . . . you, S . . . ., P . . . . and Alex Fraser has handed Mr. B . . . ., Mr. V . . . . and myself, if I was a man in your position and could do no more I would be thoroughly ashamed of myself in siding with a gov't. dept. against the common man. I hope to God Bennett fires you and your whole damned staff for you and your staff are useless to the common man as tits on a boar. You take the people's money, sit in a nice office, have hot and cold running secretarys and you along with all your buddys and depts. don't give one . . . . about

me down here in the bush, the guy that helps pay you . . . . wages. I shall take care of the problem myself."

[three expletives deleted]

Wardner
August 30, 1983

"My husband and I wish to thank you for your help and advice with our problems with Workers' Compensation. The knee operation was done by microsurgery, and David had the most wonderful care and treatment by the doctors, specialists and also the staff at Nanaimo Hospital. We trust that your good deeds and caring will be returned to you and wish you health and happiness."

Lantzville
September 6, 1983

"On behalf of the Valley residents in the flood plain of Tuc-el-Nuit Lake, I would like to sincerely thank you for your efforts and cooperation in bringing a difficult problem to an end."

Oliver
September 15, 1983

"I have for acknowledgement your letter dated September 30th, 1983, and wish to state that I am very gratified with the manner in which you have managed to exert reasonable pressure on an otherwise dogmatic government agency. . . .

In closing your file it is hoped that you will feel that the dispute was worthy of your effort, if only to acquaint the bureaucracy with the need to recognize reason and fair play.

Thank you again and I do hope that you will be able to continue in your present capacity for many more years of service to the people of British Columbia, in particular a renewal of your term of office which will expire all too soon."

Castlegar
October 6, 1983

"We wish to express our thanks to you and your staff in this instance Mr. Michael LaBrooy for his great assistance in helping us to obtain second Water Rights from government land adjacent to our property.

You can well imagine our appreciation in obtaining water, we are both senior citizens and have been fighting for water since 1978.

Mr. LaBrooy did a thorough investigation and brought before the Water Board, facts which they had previously ignored, leading to a water measurement which proved that there was sufficient water for both parties.

We wish you and your department continuing success in helping those who believe that they are being denied the justices to which they are entitled; once more, thank you."

Egmont
October 12, 1983

"I received a satisfactory pension thanks to your skill and understanding on knowing what to do. May I quickly say along with my wife Marian that the Lord used you to help me as I really did deserve a settlement of substance. You advised me and I took your advice and things got going even though at times things got rough."

Burnaby
October 13, 1983

"Please accept this letter as an expression of our sincere gratitude for your efforts on R . . . .'s behalf. We also wish to take this opportunity to recognize and express our appreciation for the very capable performance of your Vancouver Office staff, with special thanks to Michelle Gelfand and Judy Bronfman, who were a pleasure to deal with and who, in their professional manner, represented your office so well.

Although you were unsuccessful in your efforts to assist in this matter, Mr. C . . . . is grateful for your endeavours."

Kamloops
October 13, 1983

"This is a quick note to thank you for your prompt and courteous attention to my verbal complaint imposed on you yesterday. Further, may I tell you, that consistent with the medical department responses to you I saw the doctor this morning. The doctor advised me that "he was glad I contacted your office" as he felt some examinations of the department handling of situations was healthy. He also apologized to me for the erroneous course of events, and took appropriate measures to ensure my medication was given for an indeterminate period, as well as weekly evaluations by him to be done.

I am most pleased with the end results of your inquiry and am surprisingly pleased with the high standards you exhibit as an individual as well as the quality of the Ombudsman's office in general."

Vancouver
October 23, 1983

"This is just a short note to let you know how efficient, and very helpful, are the staff you employ. A bouquet for Angela Hamilton, Helen Hughes, Susan Doyle, and Libby. Also our warm and sincere thanks to all your people, who have helped me in the many dealings, I have had with them.

There were two occasions that I would like to thank you for. Laurence A.; for his driver's licence has been returned to him; Mrs. Florence C. for the help we received with Human Resources; and for the retroactive payment that was made to her.

Keep up the good work, as you have a very friendly, helpful staff. Also thanks to you and your office."

Chetwynd
November 1, 1983

"I am now (finally!) in possession of Province of British Columbia cheque #53. . . . in the amount of $594.36. After the length of time it took to obtain it, you can be sure it was a welcome sight.

I simply want to thank you once again for your invaluable aid in oiling the creeky wheels of bureaucratic process and cutting the red tape involved in obtaining this replacement of my stolen cheque. It's nice to know that the "little guy" can win once in awhile, thanks to people like you."

Vancouver
November 15, 1983

"Thank you for your letter of November 14th together with the authorization form which I have duly signed and enclosed with this letter. I find myself at a loss for words to properly express my sincere gratitude and appreciation for the effort, the amount of time and the patience you have shown me on these trying matters. Thank you and God bless. I hope and pray the Office of the Ombudsman will survive the test of time and maintain the independence from political interference. To thousands of people as myself it is a pillar of strength and hope."

Nanaimo
November 18, 1983

"I would like to express my appreciation for work done by your staff on my behalf. Special thanks to Mr. Rick Cooper who, after much discussion with . . . ., myself, and I'm sure many others, resolved this matter in our favor.

I believe changes made in the truck hire list produced a fairer, more clear cut set of rules that everyone can live by.

After numerous frustrating attempts at a local level failed to change anything, I'm grateful that there was another avenue of complaint to pursue, namely your office.

I sincerely hope that in the name of restraint, this most valuable service is not going to be significantly reduced. Thank you."

Lumby
November 21, 1983

"I would like to say a big 'thank you' for your help and encouragement in this matter, with the Workers' Compensation Board. Once the Board was advised of the correct information, Mr. Gunn was very helpful. Also, a thank you, to the lady, that visited Quesnel, Mrs. Holley, I believe. Naturally, I am very pleased that this matter has been resolved at last. I believe your office and your sincere personal interest was a big factor in this case, as I was getting, pretty well, fed up with their ill-founded threats, as I saw it."

Quesnel
November 24, 1983

"Please accept my gratitude for the efforts your office did on my behalf in resolving my dispute with the Surveyor of Taxes.

It is only when you have a situation where you seem to be getting nowhere that you realize how valuable your office's function is."

Coquitlam
December 3, 1983

"Guess what I got in the mail today! Yep it was a letter from the Motor Vehicle Branch, and I've got a copy enclosed, for you to read. As you see they've given me back not only my class 2 driver's rights, but also increased it to my original class 1 again. Not only that, but they've deleted the stipulation that the licence was to be good only for driving for Pacific Coach Lines.

I can't be happier at the way things turned out, and I know I have you and your office of the Ombudsman to thank for this unforgettable experience. I know I couldn't have gotten a better Christmas present than this, to go back to my job and provide for my family like all other people.

I thank you again, Rick and hope some day we'll meet in person so I can shake your hand, but for now me and my family would most sincerely like to wish you and yours, and your superiors, and staff, the very best Christmas ever."

Merville
December 9, 1983

"I wish to thank you and your staff for your assistance in dealing with my claim. I have received payment for 75 percent of my claim and interest for the period that had elapsed while dealing with my claim. This has been a satisfactory settlement. I have been most grateful for your help. Without the help of you and your staff, I realize that this claim would have remained unresolved."

Kaslo
December 19, 1983

"Just a note to thank you for taking time to effectively deal with my complaint. I didn't feel that I explained it well to you, but you obviously managed to find out whatever you needed to know. . . . I always felt that your service was an excellent idea, but this was my first experience that it actually works."

Ganges
December 19, 1983

SOME "OFFICIAL" TALK BACK

"I have appreciated your fair minded approach to the few Corporation issues which have reached your office."

B.C.B.C.
Peter Dolezal

"A note of thanks for sending me a copy of the Annual Report. I shall be photo-copying the section related to Ministry of Human Resources and distributing it to staff for review and discussion. A good learning tool.

Some of the more optimistic news is that we still have a photo-copier. This is somewhat over-shadowed by the Ombudsman Office's continuing ability to turn out an interesting and informative Annual Report. A rarity among reports that pound one into boredom."

Ministry of Human Resources
District Supervisor
July 21, 1983

Memo to Staff:

"The Ombudsman, Karl Friedmann, recently submitted his report for 1982 to the B.C. Legislature. It is a rather lengthy report giving numerous examples of how his department has assisted people with complaints about government. Despite the fact he had much to say about many ministries, there is only one short paragraph on Page 49 about this office, as follows:

> 'I have always received the good co-operation of the Superintendent of Brokers, Insurance, and Real Estate, and I have not substantiated a complaint against him in the past two years.'

I consider this to be one of the highest compliments the staff of this office has ever received. It indicates we have served our public well despite the fact we have faced such problems as staff and budget cuts, reorganization, moving computerization, etc.

Keep up the good work!!!"

Rupert L. Bullock
Superintendent of Brokers,
Insurance and Real Estate
July 15, 1983

"I want to compliment you on the Annual Report itself. It is not only informative but readable and even entertaining."

Labour Relations Board of British Columbia
Stephen Kelleher, Chairman
July 15, 1983

"I wish to thank you and your staff for the prompt attention given Mrs. T.'s complaint, once it had been actioned.

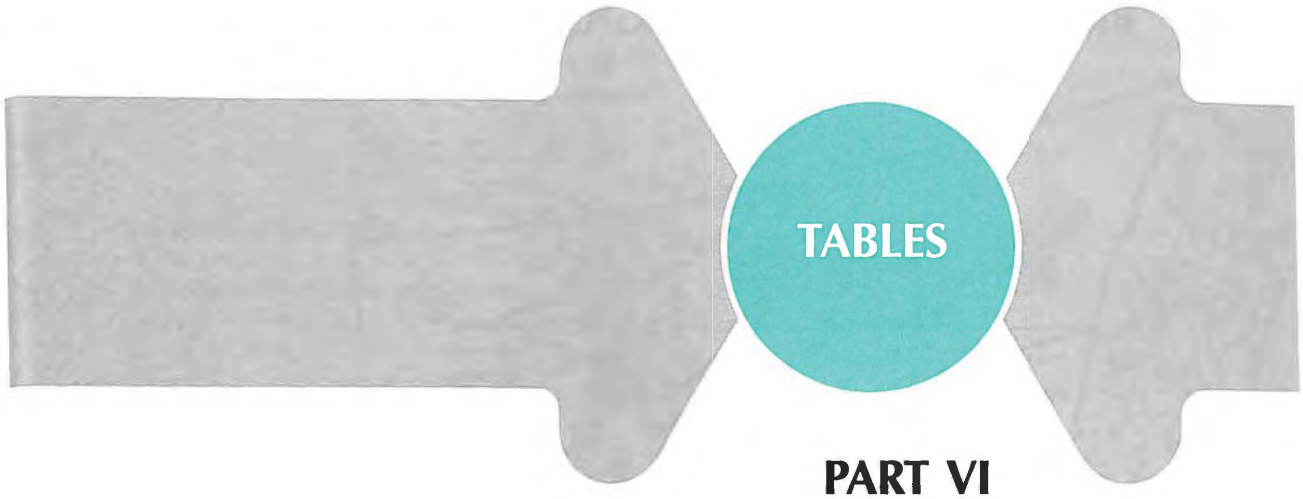
I also wish to commend Ms. D. Hayward, Investigator, on her astute handling of the casework material. Having had previous ownership, I was aware of several complaint clarifying points. Ms. Hayward shifted, sorted and independently identified the same pertinent information."

J.V. Cain, Director
Inspection & Standards Corrections Branch
Ministry of Attorney General
September 22, 1983

"In two of my previous letters to you I have asked that you advise if you are prepared to attach my correspondence to you when you make a report to the legislature. You have not replied one way or the other. I raise this because I note in your previous annual report you have never bothered to give to the Legislature or the Lieutenant Governor in Council the 'other side of the story' as required by Section 24. I would like an answer before you table your next Annual Report in the Legislature so that if the Boards of Review are going to be mentioned, I can consider a response to the Legislature and the Lieutenant Governor in Council or alternatively to arrange that my responses are tabled by a Member of the Legislature.

I request your assurance that there will not be a repetition of the cartoon, or anything similar to that which appeared on Page 21 of your 1982 report. Ridicule is the crudest form of humour and does not belong in any publication printed under the aegis of an Ombudsman. The group of people whom I administer are hard-working and conscientious."

Gerald S. Levey
Administrative Chairman
Boards of Review
March 22, 1984



PART VI

TABLE 1

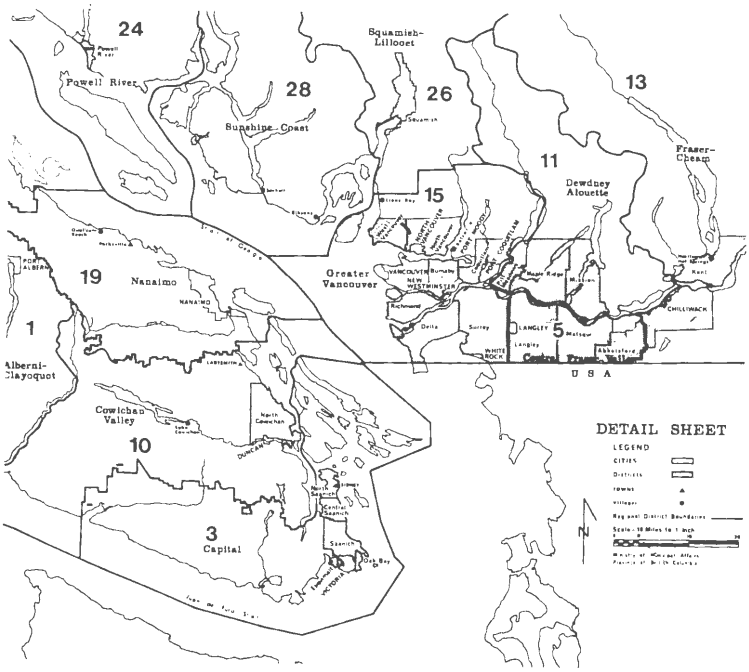
Profile of Complainants, and Complaints Closed Between January 1, 1983 and December 31, 1983

		Number	Percent
COMPLAINANT GROUP	Individual/Family	9,386	96.15
	Business	201	2.06
	Union	16	.17
	Group	95	.97
	Public Servant	8	.08
	Others	56	.57
	TOTAL	9,762	100.00
COMPLAINT INITIATOR	Aggrieved Party	8,802	90.17
	Relative/Friend	687	7.04
	M.L.A. and M.P.	19	.19
	Professional	118	1.20
	Ombudsman	65	.67
	Public Servant	27	.28
	Others	44	.45
	TOTAL	9,762	100.00
INITIATOR'S GENDER	Male	5,567	57.02
	Female	3,971	40.68
	Family	103	1.06
	Group/Other	121	1.24
	TOTAL	9,762	100.00
FIRST CONTACT	In Person	829	8.49
	Letter	875	8.96
	Telephone	7,993	81.88
	Not Applicable	65	.67
	TOTAL	9,762	100.00
COMPLAINT INITIATED AT	Victoria Ombudsman Office	6,478	66.36
	Vancouver Ombudsman Office	3,012	30.85
	Local Visit	272	2.79
	TOTAL	9,762	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



Percentage of Complaints Closed by Regional District as of December 31, 1983

Regional Districts	Percentage of Total B.C. Population (October 1980)	Percentage of Total Ombudsman Complaints Closed (as of Dec. 31, 1983)
1. Alberni-Clayoquot	1.2	1.1
2. Bulkley-Nechako	1.4	1.8
3. Capital Region	9.2	16.5
4. Cariboo	2.2	2.7
5. Central Fraser Valley	4.1	2.7
6. Central Kootenay	2.0	2.7
7. Central Okanagan	2.9	2.3
8. Columbia-Shuswap	1.4	2.0
9. Comox-Strathcona	2.5	3.1
10. Cowichan Valley	1.9	2.1
11. Dewdney-Alouette	2.2	1.4
12. East Kootenay	2.0	2.7
13. Fraser-Cheam	2.0	2.6
14. Fraser-Fort George	3.3	3.6
15. Greater Vancouver	42.8	27.2
16. Kitimat-Stikine	1.4	2.0
17. Kootenay Boundary	1.2	1.8
18. Mount Waddington	.6	.7
19. Nanaimo	2.7	3.5
20. North Okanagan	1.9	2.5
21. Central Coast	.2	.2
22. Okanagan-Similkameen	2.1	2.1
23. Peace River-Liard	2.1	4.7
24. Powell River	.7	.7
25. Skeena-Queen Charlotte	.9	.7
26. Squamish-Lillooet	.7	.6
27. Stikine Region (Unincorporated)	.1	.1
28. Sunshine Coast	.6	.5
29. Thompson-Nicola	3.7	4.2
Out-of-Province	N/A	1.2

TABLE 3

Disposition of Complaints (Proclaimed Authorities)
Closed Between January 1983 and December 1983

	Declined Withdrawn Discontinued	Resolved: Corrected during Investi-gation	Substan-tiated: Corrected after Recommen-dation	Substan-tiated but Not Rectified	Not Substan-tiated	TOTAL
A. MINISTRIES						
Agriculture and Food	3	3	0	0	4	10
Attorney General	154	138	18	0	118	428
Consumer and Corporate Affairs	109	40	3	1	60	213
Education	13	12	1	0	9	35
Energy, Mines and Petroleum Resources	8	3	1	0	1	13
Environment	21	38	5	1	47	112
Finance	13	41	1	0	48	103
Forests	19	13	2	2	14	50
Health	54	83	19	0	53	209
Human Resources	411	328	8	0	237	984
Industry and Small Business Development	5	1	0	0	3	9
Labour	45	31	4	1	23	104
Lands, Parks and Housing	50	56	2	0	55	163
Municipal Affairs	17	7	0	1	16	41
Provincial Secretary	10	5	1	0	3	19
Transportation and Highways	102	64	1	5	91	263
Tourism	1	0	1	0	0	2
SUB-TOTAL	1,035	863	67	11	782	2,758
PERCENT	37.52	31.29	2.43	.40	28.36	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	6	1	0	0	10	17
B.C Assessment Authority	11	7	0	0	15	33
B.C. Board of Parole	2	2	0	0	4	8
B.C. Buildings Corporation	2	2	1	0	2	7
B.C. Ferry Corporation	7	8	1	0	3	19
B.C. Housing Management Commission	3	9	0	0	17	29
B.C. Hydro and Power Authority	51	85	0	0	23	159
B.C. Railway	6	0	0	0	2	8
B.C. Transit	4	2	0	0	1	7
Criminal Injuries Compensation	8	1	1	0	0	10
Environmental Appeal Board	3	0	0	0	2	5
Insurance Corporation of B.C.	310	325	24	4	147	810
Labour Relations Board	14	5	0	0	10	29
Medical Services Commission	1	2	0	0	2	5
Motor Carrier Commission	6	2	0	0	3	11
Municipal Police Boards	23	3	0	0	4	30
Public Service Commission	11	3	2	0	4	20
Superannuation Commission	1	7	1	1	6	16
Tumbler Ridge	2	3	0	0	1	6
Workers' Compensation Board	319	66	32	2	63	482
WCB Boards of Review	35	3	7	1	5	51
OTHERS	47	18	3	1	17	86
SUB-TOTAL	872	554	72	9	341	1,848
PERCENT	47.18	29.98	3.90	.49	18.45	100.0
TOTALS A and B	1,907	1,417	139	20	1,123	4,606
PERCENT	41.41	30.76	3.02	.43	24.38	100.0

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities
(Sections 3–11 Schedule of the *Ombudsman Act*)
Closed between January 1983 and December 1983

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Municipalities (Section 4)	8	175	29	212
Regional Districts (Section 5)	1	65	14	80
Public Schools (Section 7)	1	41	19	61
Universities (Section 8)	0	2	0	2
Colleges and Provincial Institutes (Section 9)	0	0	3	3
Hospital Boards (Section 10)	2	31	6	39
Professional and Occupational Associations (Section 11)	1	8	4	13
TOTAL	13	322	75	410
PERCENT	3.17	78.54	18.29	100.0

TABLE 5

Extent of Service

Non-Jurisdictional Complaints
Closed between January 1983 and December 1983

	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	28	764	169	961
Marketplace matters — requests for personal assistance	70	2,268	456	2,794
Professionals' actions	8	234	37	279
Legal and Court matters	23	316	58	397
Police matters	1	86	31	118
Miscellaneous	5	145	47	197
TOTAL	135	3,813	798	4,746
PERCENT	2.85	80.34	16.81	100.0

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		43	2.26
2. Abandoned by Complainant		271	14.21
3. Withdrawn by Complainant		295	15.47
4. Statutory Appeal (Section 11 (1) (a))		255	13.37
5. Solicitor (Section 11 (1) (b))		5	.26
6. Discontinued by Ombudsman (Discretionary)		1,038	54.43
(a) Over 1 year old	5		
(b) Insufficient personal interest	9		
(c) Other available remedy	711		
(d) Frivolous	5		
(e) Investigation unnecessary	120		
(f) Investigation not beneficial to complainant	188		
TOTAL		1,907	100.0

TABLE 7

Level of Impact

Resolved and Rectified (Jurisdictional) Complaints
Closed between January and December 1983

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	1,277	79	54	5	2	1,417
Rectified Complaints	60	33	40	3	3	139
TOTAL	1,337	112	94	8	5	1,556

TABLE 8

Budget and Expenditure Information

	Budget Estimates				Actual Expenditures		
	1980/81	1981/82	1982/83	1983/84	1980/81	1981/82	1982/83
Salaries	631,203	955,405	1,251,497	1,110,744	709,166	970,199	1,227,378
Operating Expenses	387,000	504,720	508,843	508,000	430,826	482,406	463,378
TOTAL	1,018,203	1,460,125	1,760,350	1,618,744	1,139,992	1,452,605	1,690,756
Salaries paid from Contingency Vote					109,004	100,229	9,825
Cash benefits					41,214	35,466	53,948
Summer Student Program (paid by Ministry of Labour)					26,903	—	—
TOTAL					1,317,113	1,588,300	1,754,529

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