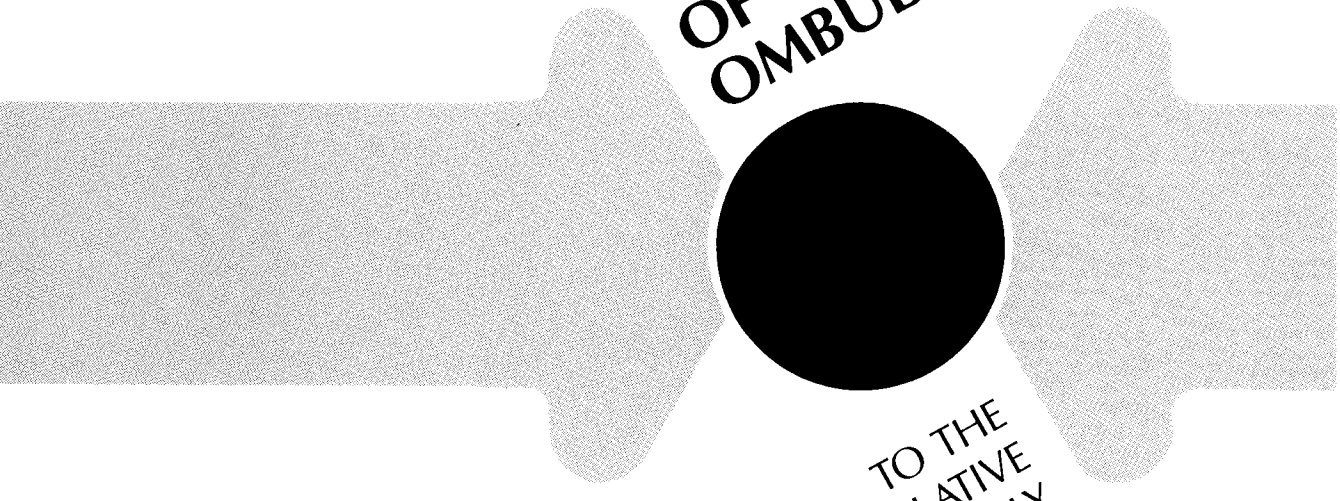
1984 ANNUAL REPORT OF THE OMBUDSMAN



TO THE LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

British Columbia Cataloguing in Publication Data

British Columbia. Office of the Ombudsman.
Annual report of the Ombudsman to the Legislative Assembly of British Columbia. — 1981-

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

1. British Columbia. Office of the Ombudsman - Periodicials. 2. Ombudsman - British Columbia - Periodicals.
I. Title.

JL429.5.04B74 354.711009'1

Legislative Assembly
Province of British Columbia

OMBUDSMAN

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

June, 1985

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 Sixth Annual Report covers the period of January to December 1984.

Respectfully yours,

Karl A. Friedmann
Ombudsman

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PART I

GENERAL COMMENTS

A. ADMINISTRATIVE JUSTICE IN REVIEW

1. REFLECTIONS ON THE OMBUDSMAN'S MANDATE

The British Columbia *Ombudsman Act* was passed by the Legislative Assembly in 1977 and proclaimed in 1979. I have been both honoured and fortunate in being chosen by the Assembly in 1979 to implement the legislation and to establish this new institution in the fabric of British Columbia society. This report deals with the fifth full year of operation of the Ombudsman. It also causes me to reflect on the first five years of work as I near the end of my term of office.

Five years is not very long in the life of a public institution. Yet the first years of an institution will always be of special significance. Many people will have different and conflicting ideas about the mandate of the new Ombudsman office, its mode of operation and its place in political life. Differences of opinion must be expected, and some controversy is not in itself unproductive. I respond to the ideas of the public and the Legislative Assembly in finding a course of action agreeable to most if not all.

Being at the centre of the new institution, called upon to give it direction, I am hardly in a position to provide an objective analysis of either achievements or failures over the first five years. The following "reflections," therefore, represent my subjective account.

Justice and Fairness

Justice and fairness are social values central to democratic societies, precious in fact to our hearts and minds. Being treated fairly and justly by public officials is to the citizen of our democratic society like oxygen is to the body. Without fairness and justice democracy cannot breathe and live. The system would lose the support of its members if injustice and unfairness were endemic and went uncorrected. In many respects I see the Ombudsman as contributing with others to maintaining our democratic system of government by ensuring in individual cases that the system operates the way it should, on the basis of our democratic values.

Dr. I.E. Nebenzahl, Comptroller-General and Ombudsman of Israel, pointed out in a speech to the First International Ombudsman Conference:

> "Today's Ombudsman is a profoundly democratic institution. With the right to complain, the individual citizen is given a means of directly influencing the administration, more specifically and, in its own time and place, more powerfully, than by casting his vote as one of many in an election. This element of direct democracy may account for some of the appeal of the Ombudsman idea.
>
> But here again the citizen is not only interested by what affects him personally. It is part of a good man's well-being and peace of mind to know that the society to which he belongs does justice to his fellow men also."

I was often surprised at how important it is in practice to people in our society to be treated fairly, correctly and justly by public officials. Even when

there is no material benefit at stake, British Columbians seek and need confirmation about the rights and wrongs of the treatment they have received at the hands of public authorities. A small but significant number of complainants are motivated by an altruistic desire to ensure that their fellow citizen not suffer from an inappropriate form of official conduct they themselves had to endure.

Many private societies and organizations interact with public officials and authorities around their special interest, be it the care of the mentally handicapped, prisoners in the corrections system or professional and marketplace organizations. In representing their members, or caring for a particular group of people, they act in an ombudsman-like capacity when they intercede with authorities. Professional mediators, arbitrators and lawyers represent clients in dealings with authorities.

Elected representatives at all levels of government traditionally have performed a similar role, being in a position of influence over policies to be adopted in their area of government.

Some complainants feel that the treatment they received from officials may not be correct, but being unsure, they seek the opinion of the Ombudsman; most are ready to accept the Ombudsman's reasoned decision that an authority acted correctly and appropriately. Their trust and confidence in public authority is then restored and their relationship with our institutions of government is repaired. It does not always work that way. Even when an authority comes around to changing its decision affecting a particular complainant, he may remain convinced that the authority meant to be unfair and would never have changed its ways except for the Ombudsman's intervention. In my communications with complainants, I give due credit to officials who willingly, co-operatively, and frequently on their own, correct a wrong. But sometimes that is not enough to undo the scepticism of a complainant who suffered an injustice. We must hope that time will do the healing.

I must emphasize consistency in government's treatment of the public. A citizen's lifetime exposure to official contacts may leave accumulated scars. Fairness and justice must be important and continuing concerns for all public officials, not something that can be turned off or on with changing political fashions. We need a continuing com-

mitment to these important, civilizing and eminently democratic values. As Ombudsman I can only remind officials of the need for a consistent commitment to fairness. Everyone in public office must contribute to the justice commitment.

The Ombudsman Act

The then Attorney General, the Honourable Garde Gardom, claimed during second reading debate of the Ombudsman Bill: "I think that we've been able to produce the best bill of its kind in Canada." (77-08-15, Hansard p. 4603). He also reported getting that kind of opinion after consulting other provincial Ombudsmen: ". . . in discussions with the Ombudsmen throughout the country I think they are universal in their approach that this is the finest bill of its kind in the country." (Hansard, 77-08-15, p.4610) I recall being very impressed even with the first Bill produced in 1976 and recording my first impressions (". . . it is a very good bill incorporating many improvements . . .") in a paper I prepared as an academic participant in the First International Ombudsman Conference held in Edmonton, Alberta, in September 1976. The Attorney General and his advisers also attended that conference and with the advice received there and from other sources submitted later a revised and improved bill to the Legislative Assembly in 1977. I am also on record, before being sworn in as Ombudsman, as stating with reference to the *Ombudsman Act* passed in September 1977, that I consider it to be the best Ombudsman legislation in Canada if not the entire Commonwealth.

Having now worked with and under this legislation for a little over five years, I can state unequivocably that I continue to be of that opinion. There are two or three areas which might be improved somewhat but in general I can state that the legislation itself has stood the test of time, does not need any major revisions, and still is, in my view, the best Ombudsman legislation in the Commonwealth, something I believe the Government, the Legislature and British Columbia can take pride in.

The British Columbia Court of Appeal and the Supreme Court of Canada have been called upon to interpret the British Columbia Ombudsman legislation and have found the wording entirely satisfactory and consistent with the policy intent of the Government and Legislative Assembly at the time the legislation was enacted. The Supreme Court of Canada stated:

> "Read as a whole, the *Ombudsman Act* of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad, purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil."

The Ombudsman bill was approved by all Members of the Legislative Assembly. The only concerns expressed in debate dealt with the adequacy of the powers given to the Ombudsman in terms of access to documents and ability to report findings. Mr. Alex Macdonald, M.L.A., in welcoming an appropriate amendment to the Bill, stated:

> "I think it's very important that the Legislature should watch this very carefully; that the ombudsman, to be effective, must be able to divulge and disclose and expose, just as a judge does when he hears a court case. He reveals the evidence and gives his reasons and conclusions.
>
> "The drafting of this Act still gives me concern in that respect, but I see this as an important step forward, and this was a section that really worried me above all in terms of secrecy. It's essential that this ombudsman not be impeded in his investigation and that he be able to reveal to the public the grievance or the wrong, and that includes the evidence, because that's the best protection. It's much better than any decision, finding, exposure or publicity about the workings of government. That's the way to help aggrieved persons and that's the best way to help society generally. So I strongly support and endorse this amendment. I'm glad the Attorney General brought it in." (Hansard 77-08-30, p. 5078)

In response the Honourable Garde Gardom summarized the following essential features of the Ombudsman's powers:

> "I would like to sum up nine essential points here that we have within the statute. The British Columbia ombudsman: (1) will be able to investigate; (2) will be able to report; (3) can complain; (4) can comment publicly; (5) can publicize; (6) can bring his findings to the attention of the authority concerned; (7) can bring his findings to the attention of the person who is aggrieved; (8) can bring his findings to the attention of cabinet; (9) can bring his findings to the attention of the Legislature. . . .
>
> "It really couldn't be any more open than that. It's the most open bill of its kind in the country." (Hansard 77-08-30, p. 5078)

A great deal of the acclaim this legislation received at the time of its enactment was due to the comprehensiveness of its "Schedule of Authorities" included in the Ombudsman's jurisdiction. It not only included all government ministries but also Crown corporations, boards, commissions and persons appointed by government; in addition it could include municipalities, regional districts, the Island Trust, public schools, colleges, universities, hospi-

tals and professional societies established by legislation. The latter group of "authorities" are not within my jurisdiction at present as those sections of the Schedule have not been proclaimed. At various stages in the past I reported to the Legislative Assembly that I was ready to implement additional scheduled authorities if it was the wish of the Government and Legislative Assembly. In retrospect it was perhaps a blessing in disguise that I was not called upon to investigate complaints against these additional authorities, speaking purely from the selfish point of view of being able to cope with the workload to be expected in the event of proclamation. The public, however, continues to be disappointed when I must decline to investigate complaints in those areas. Proclamation has some serious cost implications. I advised Treasury Board several years ago that proclamation of all remaining sections of the Schedule might well mean a doubling of staff and budget of the Ombudsman. Perhaps the best strategy would be to proclaim a section per year, thus allowing for adjustments while maintaining the commitment to extend administrative justice to these other areas of public life.

Mandate of the Ombudsman

The *Ombudsman Act* does not directly or explicitly delineate a complete mandate for the Ombudsman, although many aspects of the mandate may be inferred from the powers and duties assigned in the statute. The latter task has recently been undertaken by the Supreme Court of Canada. Later in this report I am reviewing the Supreme Court's interpretation, and shall therefore not dwell at length here on my own interpretation of the statutory mandate. Instead, I propose to look back to the interpretations considered in the legislative debates leading to the adoption of the *Ombudsman Act*. The Honourable Garde Gardom, then Attorney General, speaking for the Government, outlined the following broad mandate for the Ombudsman:

> ". . . I foresee that this legislation will, by its very existence, ensure that our citizens will, to a greater degree than ever before, enjoy a fair, a just, an equitable relationship with the institutions of governing authorities. The presence of the ombudsman and the potential exercise, Mr. Speaker, of the powers I have mentioned will be an additional incentive to those who administrate to very carefully fulfil their duty to the general public.
>
> ". . . [W]ith the establishment of an ombudsman in British Columbia, we will have a person who can represent the conscience of the state and provide additional service for our citizens, move aside the bureaucratic roadblocks, wade through the red tape, approach the unapproachable and recommend improvements to administrative practice and administrative procedure.
>
> "Government and regulation, order and edict, law and bylaw, and the rules and the roadmaps that are constantly being imposed upon society today, obviously illustrate the need for a citizen champion independent of the civil service, independent of the system, independent of the administrator and independent of politics, to wade through administrative hurdles, to cope with crises and to recommend betterment, as well as to defend against unjustified and uncalled-for criticism — or in short, to render every man his due, I'd say, both for those within the organizational structure and for those who are dealing with it.
>
> "This is obviously a very personalizing trend in government. As the late Kennedy said, the job of government is to accommodate the citizen rather than the other way around." (Hansard, 77-08-15, p.4602-3)

I would like to discuss these thoughts about the Ombudsman's mandate under four separate titles:

(1) Ombudsman mandate: To serve the citizen

I believe these goals are both the most obvious and the most important. The Ombudsman primarily serves the citizen with a problem or complaint. He removes bureaucratic roadblocks and hurdles. He is a citizen's champion by intervening in crises. The Ombudsman assists the citizen in getting fairness, justice and equity. He personalizes government and represents the conscience of the state, in the words of the Minister.

I believe my office has always attended to this immediate task in the mandate, namely serving the public and exacting fairness, justice and equity where it is due. This and previous annual reports document our work sufficiently to allow the Legislative Assembly and the public to judge for themselves. The reports also print correspondence from complainants which eloquently testifies to the citizens' satisfaction with the service they received from this office. Many of the complimentary comments give us more credit than we would claim in specific cases, and we pass on the good will to officials who helped resolve individual problems. Critical comments are, of course, also included in the correspondence when we receive them.

I am a little less sure about the Ombudsman representing the "conscience of the state," as suggested enthusiastically by the Honourable G. Gardom. I think the shoulders of an Ombudsman are not broad enough to carry such a burden, or to carry it alone. I endeavour to do my best but government and every single public official must contribute his or her share to this enormous task.

Inger Hansen, formerly a British Columbia lawyer, who pioneered successively three specialized federal Ombudsman offices (Correctional Investigator, Privacy Commissioner, and now Information Commissioner) eloquently expressed the importance of the complaint work of Ombudsmen in the following terms in a lecture at the Second International Ombudsman Conference (1980):

> "I still think the primary duty of an ombudsman is to serve those who have bothered to complain. I know this makes for disjointed reports and recommendations that do not come forth in an orderly progression. Of course, it is far more satisfying intellectually to develop broad policy recommendations, but that is not the ombudsman's job. I firmly believe that ombudsmen should take care not to set themselves up as policy advisors to government, or indeed policymakers. What are politicians and administrators for? What are royal commissions for? There is no other institution in society but the office of the ombudsman that can say to the individual: 'You have a problem with bureaucracy? Well, I have been given resources to look into it; I'll do my best to see that you are treated fairly . . . and my office is beholden neither to the bureaucracy nor to the politicians.'"

(2) Ombudsman mandate: Improve administrative practice and procedure

The Ombudsman contributes to the betterment of our society by seeking improvements in the procedures, practices and attitudes of the public service. I have always considered this role as very important, second only to the task of helping individual complainants. It is a service to all citizens of the province, not just complainants. I have sometimes described this as "preventative bureaucracy care." Complaints may show patterns of malfunctioning in some area of procedure, practice, regulation or policy. I seek to bring these shortcomings to the attention of responsible public officials to work co-operatively for improvements. An improved procedure will eliminate unfairness before it causes an injustice to an individual. The Ombudsman thus functions secondarily almost like a permanent administrative reform commission initiating reconsideration of practices and procedures that have shown themselves to be problems for complainants and the public.

My annual reports have documented in both complaint summaries of individual cases and in a separate section (Part IV) my emphasis on reaching beyond individual complaints to effect betterment in administration. This year, for example, 17 percent of all jurisdictional cases in which a change was warranted, led to some improvement, in practice, procedure or policy.

(3) Ombudsman mandate: Defend officials against unjustified criticism

This part of the Ombudsman's mandate is an important side-product of the first or primary mandate. While it is not unintended, it cannot, however, become the Ombudsman's main role. Public officials themselves usually have sufficient resources to ward off unjustified criticism. Nevertheless, complainants are not always right; they are sometimes unreasonable and occasionally do not act in good faith. A public official may end up being abused. The Ombudsman will state his opinion and give his reasons. In the words of the Supreme Court of Canada:

> ". . . he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned."

Substantiation of a complaint depends on objective criteria, and is based on published standards of administrative fairness and justice. These standards are based on general notions of fairness and justice shared by all members of our society. The Ombudsman becomes a complainant's justice advocate only if the complainant has objectively suffered a wrong. If an official has acted properly and fairly according to these standards the Ombudsman will state so clearly to the complainant and the official, thereby exonerating the public official. About one fifth to one quarter of all jurisdictional complaints in past reporting years were "not substantiated," thus upholding and defending an official decision.

My annual reports contain summaries of complaints in which the administration's position has been sustained. Perhaps such cases are somewhat underepresented among the cases selected for reports. This is not entirely unintentional. The Ombudsman is a "citizen champion," in the Minister's words, not a government apologist. His primary emphasis must be on increasing fairness, justice and equity for the public. Nevertheless, the nature of the mandate requires an even hand in deciding the merits of a complaint and that means public officials will be defended by the Ombudsman against unjustified complaints from the public.

Ombudsmen are often called upon to perform a precarious balancing act between complainants and officials. I would like to call again on Inger Hansen who summarized Ombudsman attitudes to both in the speech to which I just referred:

> "My self-image does not require a white horse, and I do not want to be a rubber stamp for government actions. I try to treat complainants and bureaucrats with equal respect. I constantly remind myself not to go on a witch-hunt against

the bureaucracy and not to put down complaints as trivial. If the complaint were trivial in the mind of the complainant, the complainant probably would not have bothered. I try to remember that "frivolous and vexatious" is often in the eye of the beholder.

"We do have our share of chronic complainers. I am not so naive as to think they do not exist. But even they deserve to be heard. Even a chronic complainer may have valid complaints, and our office tries to listen to them, to decide firmly and fairly, and to let them down gently if we cannot help them."

(4) Ombudsman mandate: Independence from the civil service, the system, politics

This part of the Ombudsman's mandate is perhaps not a direct goal, but more in the nature of an instrumental goal. Independence is necessary, or a precondition, for the achievement of the other parts of the mandate. Without independence from the civil service the Ombudsman could probably not be an effective citizen's champion. He would also, in the eyes of the public, lack the necessary credibility when he defends public officials against unwarranted attacks.

Independence, of course, is a somewhat elusive or imprecise concept. The Ombudsman is not absolutely independent of the world around him. I must ask "the system" for financial support to carry out my mandate, and I must, on a few occasions, venture onto the thin ice of politics when compliance with fairness principles is not forthcoming from an authority. The Supreme Court of Canada gave recognition to this occasional prospect, in commenting on the powers conferred by Sections 23, 24 and 30 of the *Ombudsman Act*:

"It is these sections that ultimately give persuasive force to the Ombudsman's conclusions: they create the possibility of dialogue between governmental authorities and the Ombudsman; they facilitate legislative oversight of the workings of various government departments and other subordinate bodies; and they allow the Ombudsman to marshal public opinion behind appropriate causes."

Independence is essential for effective ombudsmanship. It also carries an important obligation and commitment to objectivity and impartiality. I have tried to live up to these requirements by ensuring a maximum of public accountability for the positions and actions I have taken as Ombudsman. I have developed principles of administrative justice, elaborated again later in this report, which guide my judgment about the correctness of official decisions. By making these principles explicit and by publishing them I believe I have contributed to increasing the accountability of the Ombudsman to civil servants, the Legislature and the public. My decisions and recommendations can be measured against those principles declared in my "Administrative Justice Code."

Independence allows me to pursue the Ombudsman mandate vigorously. I have never thought of it as exempting me from public accountability for my actions or decisions. Being a responsible public official I have sought to account for my stewardship of this office in reports to the Assembly and public reports. Independence gives the Ombudsman also the rare privilege to advocate for fairness and justice, and those values alone. The Ombudsman has no other business and no other interests.

(5) Ombudsman mandate: Providing an effective remedy against unfairness

If a complainant has been wronged by some official action or process, I believe strongly that he is entitled to a remedy, entitled to effective redress of the wrong. That is important for at least two reasons. The first of these reasons I have touched on earlier: to live in peace with his community a citizen needs to be sure that he has been treated fairly and justly. Effective reversal of an injury is the best assurance of that. The second reason has to do with the official or authority who may have wronged the citizen. They too should not feel at peace as long as an uncorrected wrong continues. Officials must know also — so as to conduct themselves properly in the future — that society will insist that a wronged citizen will receive just compensation. The greater the chance for actual reversal of an error, the greater the probability that fairness lessons will sink in, and the greater the chance that in future people will be treated fairly, correctly and tactfully.

I am open to discussing the seriousness or severity of an administrative error I may find. We may debate what exactly constitutes an appropriate remedy for a specific wrong. But I cannot accept that mere recognition of the wrong is acceptable or sufficient instead of a proper individual restitution.

When I have pointed out individual errors or wrongs, officials have sometimes suggested that I should be content with their promise that it won't happen again, and that I should not press them in addition for restitution to the wronged individual or even an apology. The seduction of such arguments is quite powerful. My relationship with officials would be smoother if I went along with that line of thought. It would also, however, betray the integrity of the Ombudsman's mandate, which is to fight for justice if necessary even when that is not popular with authorities. At this stage a complainant only has the Ombudsman as his hope for getting justice. I must argue the best case for restitution to the individual. It is still up to the authority to grant relief. As Ombudsman, I recommend. The government in the end decides. When I cannot convince the government I must bring important cases to the Legislative Assembly, the final arbiter in our representative system of government.

2. JUSTICE IN INSTITUTIONS

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.

Article 10, International Covenant on Civil and Political Rights

A community is often judged by how it treats its less fortunate citizens. Those forced to live in institutions certainly fall into that category.

Over the past year, my office has reassessed the communications problems that residents of provincial institutions have with the outside world including my office. We became acutely conscious of the fact that we had to go out of our way to hear their complaints. Difficult as it was under present circumstances, I nevertheless decided that we had to allocate more resources to meeting the needs of institutional residents.

These residents are more directly affected by official action than any other segment of the population. Their daily existence is controlled by regulations, policies, procedures, practices and conduct of the bureaucracy. Most of the residents in institutions are there pursuant to a law which directed an official to take charge of their "person." Others are there because no family, person or agency is willing to care for them.

I examined the past activities of my office and noted that except for residents of adult correction centres, the number of complaints I received about institutions was not commensurate with the problems that normally crop up in institutions. Bearing in mind the extent of government intervention in their lives, I felt my office had to become more accessible to this group of citizens. In order to do so and to meet the special needs of residents, my staff and I began a program of regular visits to institutions.

The institutions we visit include adult and juvenile correctional centres, facilities for the mentally ill and criminally insane, institutions for the developmentally handicapped and homes for the aged.

The experience has been both rewarding and, at times, frustrating. For me it was an uncharted course, an experience which required a great deal of learning and insight. In many ways, institutions are like small communities with a distinct subculture of their own and a rigorously defined power structure.

While there may be internal and external audits of their operations, institutions function, for the most part, independently from the communities in which they are placed. It has not always been easy for my staff to gain the confidence of residents and staff. Even though my office clearly has the authority to investigate complaints from and about institutions, we are regarded with apprehension and the official welcome mat seems to be out as long as we accept the status quo as given and unchangeable.

In some institutions, for instance, my staff's presence was questioned with statements such as "you can't possibly understand how the institution works and the problems we have to cope with day after day," or "you are soliciting complaints," or "you are just another group of do-gooders that monitors our activities and wastes our valuable time which is better spent doing our job."

I know that many staff at institutions are genuinely concerned about my visits. They know that I have the right to investigate, to obtain files and to examine anyone who may have information relevant to my investigations. They know that because of the closeness of the relationships and disorders of some of the residents, altercations can and do take place between staff and residents. They are concerned that I may misinterpret these events. They know that I can recommend disciplinary action against a staff member if I felt it was warranted.

In the majority of institutions, residents are subject to instruction and discipline from the staff. They have little or no control over their lives. Some staff are concerned that my presence might interfere with the distribution of power in the institution.

Others have suggested that the security of the institution or the "treatment" of particular residents would be adversely affected if residents knew they had an independent means of recourse to grievances. While I can understand these feelings, I am not about to ignore residents because of them.

I have attempted to relieve some of the anxiety of staff and residents by speaking to them in groups and individually, informing them of my mandate, procedures, my usual practices, and my policy of resolving complaints quietly and efficiently in cooperation with officials. At these meetings, staff and residents have the opportunity to raise questions and voice their concerns. Residents are given information and my staff are available to take complaints.

Often my staff will visit an institution's various wings and wards and talk with the residents. In some cases, communication with residents is very difficult, if not impossible. My staff will then observe and report to me any concerns regarding the treatment of the residents. In some cases, I may attempt to locate parents, parents' groups or societies that speak for the residents.

The visits have produced a number of positive results. Residents and staff are now aware of the role and function of the Ombudsman. In fact, my office

has became an integral part of the social matrix in some institutions. The Ombudsman's office is mentioned in their policy and procedural manuals and in their appeal brochures handed out to residents. My staff are aware of the pressures and demands of institutional life. Concepts of natural justice and administrative fairness are increasingly being incorporated into policies and procedures of the institutions. Residents are having more of a say in issues affecting them directly and are less inhibited in expressing their grievances. Management on occasion refers complaints to my office or asks that I review a procedure they wish to put into effect.

I would like to highlight three major issue areas I have become concerned with during my visits.

A. Case management
B. The standards of care for persons in institutions
C. Investigation of abuse complaints

A. CASE MANAGEMENT

I work from the premise that in most institutions, residents are there because it is in the residents' best interest. The only exception might be adult corrections where the main reason for containment is to protect society. Institutions are not just there to warehouse the handicapped and sick. Their mission is to care for and to restore an individual to the community.

With this in mind, I hope to find evidence that institutions provide a resident with a better alternative than that found in the community and that the staff are performing with the best interest of the resident in mind. We have seen some excellent examples of that. Specifically, my investigators were invited to a case management conference at Valleyview Hospital. The professionals attending the conference were not informed in advance about our visit.

A case management meeting was convened to review the progress of a particular resident and to plan for his future. My staff were impressed by the manner in which the conference was conducted. The professionals present included a psychiatrist, social worker, recreational therapist, occupational therapist, music therapist and head nurse. They all presented their perspective on the resident's progress. The prior month's objectives were recalled and progress towards these objectives was noted. Each professional was charged with a goal and held accountable at the end of the month for reaching that goal.

This method of dealing with residents has been termed "case management" or management by objective. It encourages responsibility and accountability of staff and provides clear evidence that the institution attempts to provide a healthy and positive environment for the resident. The ultimate objective of case management in most institutions is to put the resident back into the community. To be integrated back into the larger community residents must be given the necessary skills to cope with the new living environment that awaits them.

Case management is a procedure that identifies specific problem behaviours, describes goals and objectives (what is to be achieved), sets out a step-by-step plan of action (how the objectives will be achieved), designates the person(s) responsible for reaching the objectives (who will carry out the plan) and determines the method by which the plans will be evaluated. In addition, long term goals must be set (i.e. reintegration into the community in most cases) and trained personnel must be responsible and accountable for monitoring and reviewing documented case management reports.

The plan is developed in consultation with the resident and a multi-disciplinary team, taking into account the particular needs of the resident. The team meets regularly to review the plan and make changes if necessary, basing their proposals on observable behaviour or facts. If the objective of the plan is to release the resident from the institution, information is regularly communicated to persons responsible for funding appropriate placements in the community.

Documentation of activities and recording of programs are key factors in effective case management. They are also one of the means by which I can ascertain whether or not the residents in institutions are being properly cared for. It is not adequate for an institution to say that case management is being practiced and just not being documented. In fact, the absence of documentation is often a sure indicator of the absence of case management or unsatisfactory case management.

I have found that some institutions only pay lip service to the case management concept. They either do not practice it or there is a lack of information on resident files to show that it is part of the administration of the institution.

In visiting institutions I will continue to search for documented case management as part of good administration and I expect each resident will have an individualized case management plan.

Example: During 1984, I began an investigation of several issues at the Willingdon Youth Detention Centre. I was seriously concerned about the planning for residents in that facility. My staff reviewed residents' files to determine the adequacy of the planning. I have reported my findings to the Commissioner of Corrections. Subsequently, staff have met with Corrections Branch to review my findings and I will report the results of my investigation in 1985.

B. THE STANDARDS OF CARE

Many of those confined or detained in institutions are there pursuant to the law, such as the *Criminal Code* of Canada or the Provincial *Mental Health Act*. By definition they lose certain rights and freedoms but they do not lose all the rights and freedoms. They are not deprived of their basic human dignity and their right to a personal identity. People in institutions should expect and receive a certain standard of care. The standard of care is not given by the grace of a benevolent director, but rather as a matter of public policy that ensures just and humane treatment of people in care of the state. The following discussion expands on what I consider to be appropriate standards of care individuals are entitled to expect in institutions. It is not an exhaustive list but rather an indication of some of the issues that have surfaced during my investigations of institutions.

Privacy

Privacy is an important value which we take for granted until it is unexpectedly invaded. Persons not living in institutions can deal more or less effectively with the invasion of their privacy by taking assertive action against intruders. Those options often are not available to residents in institutions.

Certain communications between residents and others must be confidential. For instance, institutions must respect the privacy of contacts between lawyers and residents. The *Ombudsman Act* prescribes that mail from persons confined in institutions must be forwarded to me unopened and mail I send to persons in the institution must be forwarded to them unopened.

The *Canadian Charter of Rights and Freedoms*, Section 10 prescribes:

> "Everyone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right".

People exercising that right must be permitted to do so in private.

Not all institutions in this province have provided privacy for telephone or written communications with lawyers and others for whom confidentiality and privacy are essential.

Example: In one juvenile correction centre, a resident who wished to contact my office by telephone had to do so in the presence of staff in an administration office because there was no separate and private telephone booth available. For a resident to phone my office to complain about the Centre in the presence of staff and in such circumstances must be pretty intimidating. I recommended that a phone with privacy be installed. The Centre now has a telephone separate from the administration offices. (CS 84-028)

The privacy of mail is also an issue. I continue to receive complaints about the censorship of mail, primarily in correctional facilities. Prisoners and residents think that outgoing and incoming mail is read and believe that the policies of the institution regarding the interception of mail are improper. Procedures on intercepting mail may be laid out in policy manuals but are often capable of different interpretation. Generally, persons in institutions should be able to send and receive letters without officials reading them, except where there is a reasonable suspicion that the correspondence poses a threat to the safety and security of the institution or members of the public. If a letter is to be read it should be opened preferably in the presence of the resident to whom it pertains. The reasons for this action should be documented. It is also important that residents in institutions be advised in advance of the policies regarding the use of telephones and mails within that institution.

Example: Residents of a youth camp complained that staff read their mail and later made comments on the contents to residents and other staff. The Director agreed to provide written guidelines stating that staff may read letters only in specific circumstances and in no case should the contents be discussed with residents. (CS 84-028)

Some personal privacy is important even in an institution, or especially in an institution where a resident mostly lives in a communal setting. A person in an institution should be afforded adequate privacy to allow him to retain his personal dignity. For instance, doors or curtains should be provided on all toilet and shower facilities. It is my position that regardless of the physical or mental state of a resident, the Institution should not deprive a person in its care of his/her personal dignity. If a person is stripped of his clothing because he is suspected of hiding contraband or because he may be a suicide risk, the action should be taken in private and he should be provided with alternative clothing as quickly as possible. The reason for the stripping and the duration of action should be recorded; it should be documented when the clothing was returned.

Example: During 1984 I received several complaints about the Forensic Psychiatric Institute dealing with the Institute's practices on removing clothing from residents. There were several problems with current practices: policy was not very clear about situations in which it was appropriate to resort to removal of clothing from a resident, leading to complaints of arbitrariness; reasons for removal of clothing were often poorly recorded and the duration of withholding of clothing was often not documented, making it difficult to assess the appropriateness of the action taken. As a result of my inquiries the Institute altered its nursing policies

about removal of clothing and reinforced with staff the requirements of accurate record-keeping. My staff can now monitor the nursing notes to check for compliance with the new policies.

Exercise and Fresh Air

Section 12 of the *Canadian Charter of Rights and Freedoms* stipulates:

> "Everyone has a right not to be subjected to cruel or unusual treatment or punishment."

I have investigated complaints over the last year in which residents alleged that they had not been outside for fresh air and exercise over an extended period of time. Most institutional policy manuals contain provisions for outdoor exercise and a minimum amount of time per day that a resident is entitled to be outside. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders set down standard Minimum Rules for the Treatment of Prisoners in 1955. Section 21 (1) of the Standard states that:

> "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits."

Example: Residents on a maximum security floor of a mental health facility complained they had not been outside for exercise for several months. The facilities were not adequate to provide outdoor exercise during the winter months. In addition, staff shortages made it difficult to provide adequate security. Upon my intervention the Ministry of Health provided extra funding to increase the staff and authorized improvements to the yard. The Ministry agreed to exceed the one hour minimum standard, except where the residents are a danger to themselves or others.

Example: A correctional facility provided one hour of exercise in a narrow strip in front of the lock-up cells. A mini-gym was available but not used because there was inadequate staff to supervise the prisoners. I wrote to the Attorney General, to point out that the lack of adequate exercise may lead to an increase in inmate tensions. The completion of new facilities resolved this issue (CS 84-035)

The Correctional Centre Rules and Regulations state that where an inmate is awaiting trial or where a person is in custody as a result of civil proceedings he shall have a daily exercise of at least one hour in the outdoors where weather and security considerations permit.

In spite of the regulations and standards adopted by the Corrections Branch, institutions will ignore these standards with relative impunity.

Example: At the Prince George Regional Correctional Centre where weather conditions can be severe during winter months, all inmates have been kept indoors since October except for outdoor work gangs. The institutional position is that there are not enough winter clothes to provide for those who want to go out of doors, and snowbound yards make proper security difficult.

Example: At the Lower Mainland Regional Correctional Centre protective custody inmates have had to wait for months for promised outdoor facilities to be opened for them. This issue of outdoor exercise was raised by the B.C. Civil Liberties Association and by me.

I am expecting a reply from the Corrections Branch assuring me that inmates who want to go outside can do so. Because a group decision determines whether the exercise period will be outside or inside on vote by inmates, a few strong inmates can put pressure on other inmates to follow their wishes. Combined with institutional reluctance to supply needed clothes or facilities, many inmates will not receive the minimum standard adopted by the United Nations. Although this standard is not binding on British Columbia prisons, it provides a humane minimum standard for the treatment of prisoners. British Columbia and Canada could be acutely embarrassed if we fail to respect these internationally set standards. I must repeat, the standards represent the minimum the international community considers adequate. Institutions should live up to the minimum as a matter of course, and should in fact aim to exceed these standards in my view.

In my visits to institutions I will be looking to ensure that policy is in place that guarantees residents a certain amount of outdoor activity, and that the policy is adhered to in practice. If a resident is not permitted outdoors, the reason(s) must be documented.

Access to the World Outside

a) Visitors

People in institutions must be able to maintain contact with family and friends through the use of visits. This is not only to provide contact, but also to allow the visitor to monitor the care given to the resident while in the institution. The visitor is usually a person the resident can trust and confide in and is his link with the outside world. If visits are to be limited, it has to be for just cause and it has to be documented. I have had a number of complaints from both residents of institutions and visitors regarding visitation rights. I have also received complaints from advocates for persons in institutions who have been refused visiting rights.

Written policy and procedures pertaining to visiting should be made available to staff, residents and visitors and where constraints are put on visiting they must be general, fair, clear and unequivocal.

Example: Residents in a protective custody unit at Vancouver Pre-trial Services Centre were allowed "closed" visits only. Following a proposal from the residents, the institution agreed to open visits three times a week. (CS 84-032)

Example: A Director of a correctional facility prohibited a couple from visiting a prisoner because one of the visitors had been fined for possession of marijuana and the prisoner was found to be abusing drugs. I found that the Director's decision was neither improper nor unfair. However, the Branch failed to inform my complainants of an appeal procedure. A person cannot take advantage of such a procedure, unless he is informed of it. The Branch revised its Operations Manual to ensure that affected parties are informed of the appeal opportunity. (CS 84-044)

Example: A female visitor to a correctional facility complained that she was searched in a manner and place that embarrassed her and made her uncomfortable. While an officer of the same gender completed the search, male officers were present and able to observe the search. The Policy Manual gave no guidance to staff on how to search a visitor. Too much was left to the officer's discretion. The institution agreed to provide a separate room for searching women. In addition, a large sign informing visitors of the rules was posted. The Policy Manual was amended to provide staff with explicit descriptions of how to conduct searches. (CS 84)

Example: Institutions are run by routine. Visitors often have to fit into the time schedule established by the institution. I received a complaint from a visitor that a mental health facility did not follow its own time schedule. Visits began late because gym time overlapped with visiting hours. The facility staff agreed to alter the visiting hours to eliminate the overlap. (CS 84-100)

b) Lawyers and Ombudsman

The *Canadian Charter of Rights and Freedoms* guarantees the right to retain and instruct counsel. The *Ombudsman Act* authorizes any person to complain to the Ombudsman. Any unreasonable restriction of these rights would be contrary to law.

Example: Residents in a segregation unit, in a Pretrial Centre, were only able to use the telephone once a day, during the one hour exercise period. The residents were segregated because of their involvement in a riot, resulting in only one resident being allowed out at a time to make telephone calls. It was difficult to contact lawyers. I found this unacceptable. An accused must be able to contact his lawyer during trial preparations. As a result of my recommendation, prisoners were allowed additional access to their lawyers. (CS 84-043)

Example: A resident of a youth corrections camp said that a staff member told him he could not complain to the Ombudsman. As a result of my investigation, the Director issued a policy directive to all staff informing them that residents have the right of free access to my office. (CS 84-028)

Grievance Procedures

It is important that all institutions develop adequate internal complaint procedures. Depending on the significance of a decision affecting a prisoner or resident, the avenue of redress may run the spectrum from an informal meeting with a staff member to a formal appeal hearing. The grievance procedures in some institutions I have visited were, in my view, adequate. During 1984 some institutions have introduced such appeal mechanisms as a result of my intervention. At Riverview Hospital (a mental health facility), there is now an appeal mechanism for those residents concerned about the dosage and types of medicines they receive at the institution. At the Forensic Psychiatric Institute, a resident with this type of complaint may complain to the Medical Advisory Committee; those residents with other complaints may approach a Patients' Concerns Committee. The Patients' Concerns Committee sends me a monthly summary of the complaints it has received and their disposition. In some juvenile institutions there are residents' committees that can deal with minor complaints and bring them to the attention of the Director.

Example: Forensic Psychiatric Institute established a committee consisting of the Chief Psychiatrist (or his appointee) and two doctors not involved in the complaint. It hears complaints about medication or psychiatrists. The decision of the committee may be appealed to the Medical Advisory Committee. Residents were notified of the appeal mechanism. (CS 84)

Example: Residents of a mental health facility felt they would benefit from a second medical opinion. In these facilities, each resident is assigned a staff psychiatrist. The Chief Psychiatrist agreed that if in his view a second medical opinion is required, he would refer the resident to an independent, outside psychiatrist. (CS 84-102)

Example: A prisoner in a correctional facility complained that the Chairman of a disciplinary panel which revoked his temporary absence, was biased. The Regulations governing these hearings state that an officer who investigates the allegation should not hear the matter. I found that the Chairman had assumed the role of an investigating officer rather than remaining impartial. In addition, the Chairman indicated his bias by attempting to terminate the temporary pass before the hearing was to take place. The Corrections Branch followed my recommendations and set aside the disciplinary action. (CS 84-039)

Information for Residents

It is essential in all institutions that written rules for resident conduct and sanctions are given to each new resident and posted conspicuously in the facility. Most institutions I have visited do have policy requiring the posting of regulations. However, in some institutions there is no evidence that the rules are posted. Sometimes they were posted but had disappeared. I have suggested in some of my investigations that the rules be posted under plexiglass so they will remain available to staff and residents. In some facilities such as Riverview Hospital, pamphlets describing rules and regulations are given to a resident on admission.

Special provisions should be made to inform residents adequately of their appeal rights if they want to be discharged from the institution. In addition, the residents should be advised of persons or organizations that can assist them in such proceedings.

Example: During 1984 Riverview Hospital changed its admission pamphlet to include a description of the Ombudsman's office and the services I provide. This was in addition to references describing other grievance procedures available to residents. The residents receive this pamphlet; they also receive a personal explanation from hospital staff.

Residents' need for other pertinent information has become apparent in the following complaint:

Example: Residents in a mental health institution complained that the doctors did not explain the side effects of medication. The Administrator of Forensic Psychiatric Institute agreed to obtain and distribute educational pamphlets describing the various types of drugs and their side effects.

Food Services

Many of the complaints I receive from institutions involve food. These complaints are by no means easily resolved; all of us have different tastes in food. However, there are some principles that must be adhered to in the provision of food to residents. Food must conform to the nutritional requirements of residents. If some residents require specific diets because of their age, activity or physical disability, special meals must be prepared. In addition to ensuring that meals meet nutritional standards, food provided should be palatable and served as soon as possible after preparation at an appropriate temperature. There should be a sufficient quantity of food to satisfy the residents. This is especially important when dealing with juveniles who seem to be always hungry. Corrections Policy Manuals indicate that menus must be prepared in advance and if there are any substitutions they should be noted.

Example: A youth complained that the menu in a youth camp was altered as a disciplinary measure because the camp cook's cigarettes had allegedly been stolen. Apparently food was used for discipline. This was a violation of Corrections Branch policy. The Director of the Camp informed the complainant that the cook had acted inappropriately and without authority. (CS 84-026)

Example: Residents of a mental health facility complained about the food services. As the provision of this service had recently changed hands, the administrator of the facility had to work out many of the "bugs" in the system. A committee was established to receive and resolve complaints about the food. (CS 84-096)

Resident Records

a) Confidentiality

Records must be kept of all individuals in the care of institutions. For a person confined pursuant to provisions of the *Criminal Code* or the *Mental Health Act* court documents or medical certificates must be on the individual's admissions file. In addition, case management records, medical records, records of unusual occurances, information from referral sources, consent forms, records of cash and valuables held, notes regarding temporary absences from the facilities, assignments of case workers, grievance and disciplinary records must all be kept on each resident's file. These documents must remain confidential. Persons who work with the residents have to have access to these documents, but only the documents that pertain to their particular work with the resident. In medical institutions there is usually a Medical Records librarian who is keenly aware of the need for confidentiality of medical records. In other facilities, attitudes towards confidentiality are lax, too lax in most cases.

Institutions must set up policies and procedures to ensure that the information on residents is kept confidential. The federal *Young Offenders Act* has stringent provisions regarding the confidentiality of a juvenile's records. There are also provisions with respect to the destruction of a juvenile's records. How these provisions will apply to the information I have from juvenile complainants, is a matter I will be negotiating with the Corrections Branch of the Attorney General's Ministry.

Example: A prisoner in an adult correctional facility complained that facility staff opened an envelope containing a transcript of an Immigration Department hearing. This correspondence included information that Immigration officials had assured my complainant would be kept confidential. Privileged correspondence cannot be opened by directors of correctional centres or persons authorized by them. The definition of "privileged correspondence" did not include material from the Immigration Department. I concluded there was no justi-

fication for the Corrections staff to scrutinize these communications. The Corrections Commissioner agreed and issued a directive that Immigration Department correspondence could not be opened. (CS 84-038)

Example: A resident complained that an escort looked through his medical file while transporting the resident. While this incident was too old to investigate, it reflected a possibly serious breach of confidentiality. The Administrator agreed to send a reminder to staff that residents' files sent with an escort are to be placed in a sealed envelope. (CS 25)

Example: A patient in an institution complained that information about him was released to unauthorized persons in the community. I advised the institution of this breach of confidentiality and disciplinary action was taken against the staff member involved.

b) Access to own records

The issue of access to one's own records has surfaced both in correctional centres and health institutions. The law does not state categorically that a person is entitled to access his/her record.

Example: A youth in a detention centre was denied access to his file. However, his parents had been permitted to read reports in the file. The Director agreed this was unfair and allowed access, with the proviso that any report which might have a negative impact on the youth would first be removed.

Resident input in decision-making

I believe that persons in the institution have a right to be informed and consulted before they are transferred from one physical location to another or before their status is significantly changed. The only exception to this general principle would be situations where a resident is confined to the institution as a result of a court order. Although my report on the Tranquille case is currently before Cabinet, I did make my views known on this issue in the fall of 1984. I believe that natural justice and administrative fairness require that people be consulted, given reasons and have the opportunity to rebut questionable information before a significant change is made in their status or physical location. In some cases the resident of an institution may not be capable of expressing his/her point of view.

Example: In my Preliminary Report on the transfer of 56 patients from Tranquille to Glendale Lodge, I was of the view that the method of providing care should be in the individual's best interest and reasons for decisions concerning the method of providing care should be fully documented and provided to the family of the individual. If the family does not agree with the decisions, it should be provided an opportunity to refute or add to any information that may be relevant. Where new or contrary information is presented, the decision should be subject to reconsideration.

Clothing and Personal Possessions

Residents, especially in juvenile corrections facilities continually complain about clothing issues. Many complaints concern the requirement to wear clothes issued by the facility rather than personal clothing.

Example: I have received complaints concerning the fit, style, appropriateness, availability and cleanliness of institutional clothing. There are no universal standards which apply to clothing issues even among the institutions operated by the same Ministry. I believe that if clothes are to be supplied by the institutions, they must be properly fitted, climatically suitable, desirable, properly laundered and repaired. There must be sufficient clothes on hand to permit a change of clothes while others are being laundered.

Care for and availability of personal property (often termed "personals") leads to many complaints, especially if that property happens to be money. Residents must entrust institutions with their personal possessions. Institutions must care for these goods in a prudent manner. Clear and accurate record-keeping is essential for this management.

Example: I received a complaint that $5.00 was missing when a resident's money was returned to him. The staff had recorded the amount of money deposited, but had not recorded all the transactions. A $5.00 withdrawal had not been noted. The Administrator agreed to issue instructions to staff reminding them to note all transactions and that staff and residents should sign for withdrawals or deposits.

Example: A youth detention centre was willing to pay the replacement cost of clothing and personal effects which had gone missing, but were noted on a list of possessions prepared at the time of admission. (CS 84-024)

Suitable Environment

Besides complaints about the physical plant, I have investigated complaints about the suitability of a particular facility to the resident. This may require an examination of the lawfulness of the placement.

Example: I found that two adult offenders were housed at a juvenile facility. My solicitor informed the Director that this violated section 24 (10) of the *Young Offenders Act*. Both adults were subsequently removed from the facility. (CS 84-030)

I have addressed the issue as to whether a facility meets the needs of a resident or supplies him or her

with the least restrictive environment. My 1983 Annual Report (p. 145) mentioned the transfer of residents from Riverview to Valleyview Hospital. Both facilities care for persons under the *Mental Health Act*. Valleyview provides care for residents 65 years and older. The Ministry of Health assessed residents at Riverview to determine who would be suitable to transfer to Valleyview.

Example: I received a complaint from a woman, 65 years old, who had resided at Riverview for 15 years. She lived in a special unit allowing her to do her own cooking and cleaning. Valleyview could not provide her with the same level of independence. I took the position that to transfer her to a less independent environment was wrong unless it could be justified for some other reason. Some have characterized this as the right to be placed in the least restrictive environment. The Ministry decided not to transfer the resident.

Example: A couple complained that the Ministry of Human Resources would not allow them to foster a child residing in an extended care hospital. For two years, the girl had spent several days a week in the couple's home. But the Ministry felt that because of her physical and mental disabilities, the girl was better off in an extended care hospital. On the other hand, the Ministry was quite aware that the girl's weekly visits to the couple were important to her well-being.

Our investigation revealed that the girl functioned at a low level, but the hospital had successfully placed children in foster homes who were operating at an even lower level. Hospital staff stated that the girl had demonstrated a capacity to learn. The girl had a limited command of sign language and was also able to communicate by way of a small portable board with symbols and pictures. Her medical and physical needs were changing, but the couple had demonstrated that they could look after the girl. Hospital staff favoured placing the girl with the couple. They were convinced the girl had the skills to cope with life in a foster home.

I was not convinced that staying at the hospital was in the girl's best interest. I was, on the other hand, convinced that the complainants would be able to look after the girl and give her the love she needed. The Ministry reviewed the case and decided to place the girl with the couple. (Case summary 27)

People can end up in the wrong institution. It may take them years to get out or to get into the proper institution.

Example: A resident of Forensic Psychiatric Institute complained that the Institute was holding him without proper authority. My investigator reviewed the man's file and noticed that he had been charged with theft under $50 and was found not guilty by reason of insanity, and committed to the Institute.

For 12 years, the Institute had tried to place him in the community. Even though the complainant clearly suffered from mental illness and required treatment, I was extremely concerned about the suitability of his present placement. The Forensic Psychiatric Institute treats people who have come from the criminal justice system. Persons held under the provisions of the *Mental Health Act* are far less restricted in their rights and freedoms than those committed through the criminal justice system. For instance, if a forensic psychiatric patient is released into the community, he gets a conditional discharge. If he breaks just one of the conditions, he faces further detention at the Institute. A person committed under the *Mental Health Act* does not face these restrictions.

A facility designated under the *Mental Health Act* agreed to assess the complainant to determine his suitability for its program. (Case summary 24)

The *Young Offenders Act* gives judges the option of placing youths in "open" or "secure" custody depending on their needs and the severity of their crimes. Likewise, Orders-in-Council for forensic psychiatric patients can place the patient in "strict" or "safe" custody. It is important that the institutions comply with these legal requirements and provide residents with suitable surroundings.

C. ABUSE COMPLAINTS

Regrettably, staff-resident altercations do occur in institutions. Altercations may be verbal or physical and in some cases the extent of the altercation may be beyond acceptable limits. Physical contact resulting in injury to staff or residents and swearing are two examples of altercation which are indicative of abuse.

Complaints alleging abuse are difficult to investigate and it is often impossible to reach conclusions with certainty or reliability. If a resident complains that a staff member was abusive, the staff member involved will be reluctant to admit it for fear that he or she would be disciplined, face criminal sanction and/or lose his employment. Other staff members who may have witnessed the abuse, may be reluctant to provide information for fear of exposing a fellow employee to the risk of sanction or discipline.

The victim, too, may be reluctant to come forward for fear of retaliation which could take many forms. These fears may be justified. When I find that serious abuse has occurred I recommend that appropriate disciplinary action be taken against the staff involved. I cannot protect a complainant against retaliation, although if I were able to establish that retaliation did occur I would recommend harsh disciplinary action and consider referring the matter to the criminal courts under the offence provisions of the *Ombudsman Act*. Abuse is bad enough,

but there are processes for dealing with it. If abusers were to use their position of power to inflict further abuse in retaliation for the abused person voicing his complaint, I would consider that as absolutely unacceptable conduct and would seek removal of such a person from the public service in appropriate cases.

There are additional problems beyond those of evidence-gathering and retaliation. Many employees in institutions are governed by provisos in collective agreements regarding discipline. They have grievance rights under these agreements should the employer take disciplinary action against them and the *Labour Code* of British Columbia would apply. If I were to recommend disciplinary action against a staff member and the employer took disciplinary action as a result of my investigation, the employee would have a right to grieve this action ultimately to the Labour Relations Board. I and my staff are neither competent nor compellable to give evidence before such a body by virtue of section 9 (4) of the *Ombudsman Act*.

The employer in a labour arbitration could not rely solely on the evidence I obtained in an investigation of an abuse complaint. I have adopted a procedure that will allow me to consider the complaint and to refer it to competent authorities at an appropriate stage without involving myself in a legal quagmire.

On receipt of a complaint of abuse I will interview my complainant and any other resident who may have witnessed the alleged abuse. Based on the information I have obtained I then decide whether or not there is an apparent case of abuse. If so, I refer the information to the Director of the Institution for action. I always ask to be apprised of the outcome. If there are any other agencies that have the authority to investigate the matter, I refer the matter to them as well with a request that they advise me of the outcome of their investigations. In some instances the police must be advised. If the incident involves a child, I, like any other citizen, am obliged to contact the Ministry of Human Resources. After receiving all of the information, I may recommend to the director of the institution that disciplinary action be considered or initiated. I would not and could not play a more active role in the disciplinary process other than communicating my findings and opinions to the institution. If, upon receipt of the information, I am not satisfied with the investigation, the opinions or the action proposed by the authority, I will state my concerns to the authority. By following this procedure I can avoid conflicts with collective agreements and employer/employee grievance procedures.
I think these procedures ensure as much as possible that abuse allegations are properly dealt with. It is the responsibility of the Director of an institution to ensure that staff do not abuse residents.

In order to assist two directors faced with allegations of physical abuse in their institutions which arose out of the complaints to my office, I provided them with the following guidelines:

UNREASONABLE USE OF FORCE

1. When to investigate

Systems must be in place to inform the management of the institution of incidents that may require investigation.

Staff documentation (Incident Reports, Progress Notes, Unusual Occurence Forms, etc.) at the time of the incident is crucial. Staff notes should include the specific behaviour leading up to staff intervention, the purpose of intervention and the resident's exhibited behaviour upon intervention. The documents should note which alternatives to force had been attempted and had failed. The resident should be warned and given the opportunity to comply with the verbal warning, and the notes on incident reports should include reference to this.

In addition, a description of the type of force used, the staff involved and the subsequent action, should be included.

A description of the behaviour of the resident following the intervention should also be recorded. Staff should note the result of the intervention. Notes should include the time at which the report was completed.

All Incident Reports should be reviewed by a management person noting the date and time at which they were reviewed. Incident Reports should include a place for the resident to sign that he has read the Incident Report and a place for him to provide comments on the incident.

If a resident disagrees with an Incident Report, managerial staff should conduct an internal investigation. Staff investigating the incident should not have been involved in the original incident.

If the resident's comments in the opinion of management staff do not warrant an investigation, management should note this and provide reasons.

Any case involving an injury should be investigated to determine the cause of the injury.

Management should establish procedures for auditing Incident Reports, to look for patterns of unreasonable use of force.

2. Method of Investigation

Investigation should include a record of the observed facts determined through interviews with staff and residents. The notes of the interview should be signed by the person interviewed. The investigator should determine the sequence of events.

The investigation should also include a review of all documentation completed at the time of the incident, including medical reports.

3. Assessment and Conclusions

In assessing the facts, the following standards should be applied to determine whether or not the force used was reasonable.

i) *The objectives to be attained must be lawful.*

The institution must have the statutory authority to detain or treat persons in its care. Policies on restraint or use of force must not exceed that authority.

ii) *The resistance to the attainment of the lawful objective must be evident.*

It appears to me that force can only be used when resistance against a lawful objective by the resident is evident either in verbal or physical form. In an examination of the evidence, the degree of force will be linked to the resistance.

iii) *Reasonable alternatives to the use of force must be either unavailable or have been tried and proven unsuccessful.*

I believe that force must only be used as a *last resort* and only to the extent required to effect control. It may be that staff are too quick to exert necessary "control" and do not provide the residents with the ability to back down or cool off. This has been referred to as "giving the residents space". All means of verbal control must be tried before utilizing physical control. If all else fails and it appears that a confrontation will occur a resident should be advised that force will be used to effect control.

iv) *The force used must be minimal, that is no more than is required to overcome the resistance or to effect control.*

This principle of minimal force includes the concept of escalating force. Force may be incrementally escalated if resistance by the resident increases.

The force to be used is restraint, rather than strikes or blows to the resident.

v) *The force used must be directly related or limited to the attainment of the lawful objective.*

If the minimal force used is directly related or limited to the attainment of a lawful objective, the staff have acted properly.

These tests were recommended by the Hawaiian Ombudsman, Herman S. Doi, in his investigation of complaints alleging the use of unreasonable force in the Hawaiian State Prison. I believe that they provide an objective standard to determine allegations of unreasonable force. If the force used fails to meet any one of the five tests, it is unreasonable.

Example: I applied these standards in a case involving a prisoner of a correction facility who complained that the Inspection and Standards Division of the Corrections Branch's investigation of an incident in which he broke his glasses and bruised his face was one-sided. I disagreed, however, with the Division's conclusion that the officer did not use excessive force. There was no evidence that the inmate had been warned about his resistance. The officer forced the inmate to comply in a manner that resulted in injury. Two officers were present at the time of the incident and both should have dealt with the situation. This alternative to one person acting alone would, indeed, have been correct in the circumstances.

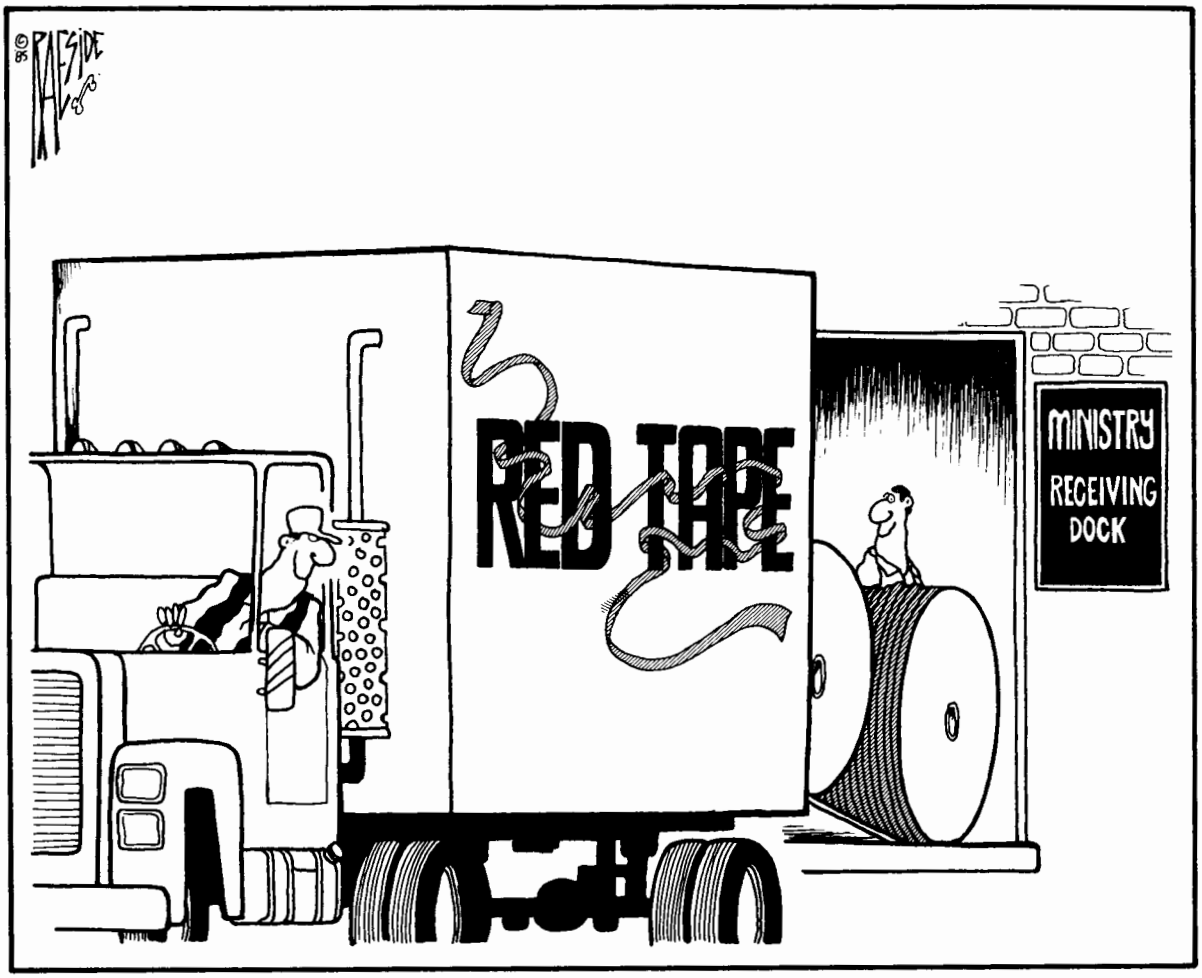
As a result of this investigation, the five standards described above have been drawn to the attention of those responsible for training correctional officers and those responsible for formulation of policy. (CS 4)

Example: A resident complained that he had witnessed staff of a mental health facility using unreasonable force to transfer another resident. My staff interviewed witnesses and the resident affected. Immediately, my staff met with the Director of Nursing and provided him with the information. He investigated the incident and provided my staff with a full report and notes of the incident. The Director concluded that unreasonable force had been used and recommended disciplinary action. The victim was provided with a summary of the investigation and an apology. (CS 20)

3. A CODE OF ADMINISTRATIVE JUSTICE

If the Ombudsman's scrutiny of the rationality, appropriateness and correctness of the actions of public authorities is to carry any weight, the Omqudsman must provide standards by which both his own decisions and those he reviews can be judged. By making explicit the principles which he expects to be followed, a focal point is provided for a reasoned dialogue between the Ombudsman and the administrator. In British Columbia the starting point is the list of grounds set out in the *Ombudsman Act* upon which I may find a complaint to be substantiated.

In my 1982 Annual Report I reported on my attempts to develop a set of guidelines which would govern my interpretation of these statutory grounds. I called these a "Code of Administrative Justice". Since then I have tried to apply these guidelines in



my investigations. I have found them to be useful in analysing my findings, and they have become, with some refinements, a regular feature of my more formal reports to authorities.

In the hope that it will better explain my approach to the analysis of administrative actions I am producing an up-dated version of the Code of Administrative Justice with new examples of its application in particular cases. I have benefited from the comments of other Ombudsmen, and some of these are included following the Code.

There are sixteen possible grounds upon which I may make a recommendation. They are set out in Section 22 (1) of the *Ombudsman Act*:

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was
  (i) contrary to law;
  (ii) unjust, oppressive or improperly discriminatory;
  (iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
  (iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;
  (v) related to the application of arbitrary, unreasonable or unfair procedures; or
  (vi) otherwise wrong;
(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
  (i) did so for an improper purpose;
  (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or
  (iii) was negligent or acted improperly; or
(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(For my interpretation of the terms "decision", "act", "omission", "recommendation" and "procedure", please refer to my 1982 Annual Report, page 4.)

1. CONTRARY TO LAW

It is anomalous in a Parliamentary system of government for an official of the legislative branch to pass judgment on the legality of acts of the executive. Therefore, I have tried to limit the application of this ground to situations in which there is a fairly clear rule of law governing the official conduct under review. Of course, the courts remain the appropriate bodies for the statement of authoritative views of legality, and I am bound to defer to such statements. However, in their absence I also have a duty to state my opinion where the case warrants it.

Although other types of error might also attract judicial criticism — insufficient evidence, failure to consider relevant factors, irrelevant considerations, etc. — I prefer to place the breach of these general rules under other headings because this focuses the analysis on the particular error instead of the legality of the action.

I may therefore find an action to be contrary to law if it is unauthorized, contrary to statutory directives or common law doctrines, or in breach of the order of a court or tribunal.

A. Unauthorized acts

Principle: An act of an authority which does not have prior legislative authorization is contrary to law (*ultra vires*). This includes acts done pursuant to laws which are contrary to the *Canadian Charter of Rights and Freedoms*. According to the *Constitution Act, 1981* ". . . any law that is inconsistent with the provisions of the Constitution is . . . of no force or effect." (Section 52 (1)). The "Equality Rights" section of the Charter (Section 15), which comes into force on April 17, 1985, is likely to have a very significant impact on public administration. It says:

> 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Although the section was not yet in force at the end of 1984, I have had occasion to point out provisions of existing laws which I believe would contravene Section 15 (1) of the Charter.

Example: Widow's benefits under the *Workers Compensation Act* vary according to the age of the widow. The level of benefits depends on whether the widow is 50 years of age or over, under the age of 40 years, or age 40 to 49. In my opinion, such discrimination violates the prohibition of Section 15 of the Charter against age discrimination. Discriminatory awards based on this provision of the *Workers Compensation Act* are contrary to law. (CS 84-161)

B. Failure to comply with statutory directives

Principle: An authority which fails to comply with statutory directives acts contrary to law.

Example: Section 5 of the Correctional Centre Rules and Regulations provides that inmates awaiting trial, or who are in custody as a result of civil proceedings, shall "have a daily exercise period of at least one hour in the outdoors where weather and security considerations permit." I found that a Correctional Centre which failed to provide a daily outdoor exercise period for such inmates was in breach of the statutory directive and thus acting contrary to law. (CS 84-035)

Example: Section 15 (1) of the *Utilities Commission Act* requires the Commission to submit an Annual Report to the Lieutenant Governor in Council in each year for the preceding calendar year. I found that the Commission had failed to submit such a report for the year 1981. This was contrary to law.

Example: Where an applicant requests leave to appeal a decision of the Agricultural Land Commission the Commission is required by regulation to transmit "forthwith" to the Minister a copy of its file on the application. The complainant requested leave to appeal on September 29, but the Commission did not send a copy of the file to the Minister until January 23 of the following year. I found that the Commission acted contrary to law in delaying for more than three months in sending material to the Minister which should have been sent "forthwith". (CS 84-192)

C. Failure to follow common law doctrines

Principle: An authority acts contrary to law if it is in breach of rules of law established by the courts.

Example: My complainant had worked as a labourer on various projects for the Ministry of Forests. On his last job with the Ministry he signed a contract which stated that the term of employment would be the duration of the project or 59 days, whichever was shorter. But even before the project began, he was laid off. The project lasted for sixteen days. The Ministry refused to keep him on until the end of the project or to pay him for the sixteen days. In my view, the Ministry acted contrary to law by refusing to compensate the complainant for the sixteen days. He had signed a contract which said that the term of employment was the length of the project, and unless he was fired for cause (which the Ministry did not argue), he had a legal right to expect the contract to be performed. (SC 84-084)

Example: The Workers' Compensation Board has the power to sue a person who is not an employer or a worker for injuries sustained by a worker and for which compensation is paid by the Board. In the complainant's case this was done and an award was

recovered. In such a case the worker is entitled to receive any excess from the award after deducting the Board's administrative costs, a pension reserve and other payments made on behalf of the worker. In this case the worker was entitled to about $7,400. However, the Board withheld payment of this amount for about six months. It refused to pay interest for the period of time in which it had withheld the money. I found that the Board had benefitted from the possession of these funds through the receipt of interest and that the interest received by the Board was held in trust for the complainant. According to common law doctrine, the Board, as a trustee, could not lawfully profit from trust property. It was therefore contrary to law for the Board to refuse to pay the interest on those funds to the complainant.

D. Failure to comply with the order of a court or tribunal

Principle: An authority acts contrary to law which fails to comply with the order of a court or tribunal directed specifically to the authority, as long as the authority has not taken the legal steps required to challenge the order or to have its effect suspended.

Example: The *GAIN Act* provides that a person may appeal to a tribunal if the Ministry of Human Resources refuses to grant income assistance benefits. The decision of the tribunal is binding upon both the Ministry and the applicant unless it is successfully appealed to the Court. In more than one case, the Ministry has refused to implement a tribunal decision but has not appealed the decision of the tribunal to a court. This is contrary to law.

2. UNJUST

A. Substantive injustice

In determining whether an act or rule is unjust I look at its merits, as well as the reasoning process which produced it, especially if the power being exercised is discretionary. I believe this approach is authorized by Section 10 (1) of the *Ombudsman Act*. It says that I may investigate "a decision or recommendation made", "an act done or omitted", or "a procedure used". In my opinion, these terms include the merits of a decision. I am supported in this view by the judgment of the Supreme Court of Canada in *B.C.D.C., et al.* v. *Friedmann*, [1985] 1 W.W.R. 193. Commenting on the quoted phrases the Court stated:

. . . given their plain and ordinary meaning, [they] encompass virtually everything a governmental authority could do or not do, that might aggrieve someone. It is difficult to conceive of conduct that would not be caught by these words.

Therefore, when I believe I am competent to do so, I take it as my duty to review the values or principles upon which a decision was based, to reweigh the evidence and to disregard inconsequential technical breaches.

(i) Competing values or principles

Principle: Where an authority is exercising a discretionary power I may review the merits of its decision on the basis that it has made the wrong choice of governing principle.

Example: In my special report No.8 to the Legislative Assembly I reported on the case of Mr. Emery, who had to leave his regular occupation at age 51 because he was allergic to the chromates used in the sheet metal industry in which he worked. Due to his age and lack of education and training Mr. Emery was unable to find full time employment in any other field. The Workers' Compensation Board denied Mr. Emery's claim for compensation because of its policy that a permanently increased sensitivity to an industrial substance cannot be considered a "disability". Mr. Emery was caught in a frustrating dilemma: he could no longer work in his area of expertise, but the Board felt that he was physically capable of starting a new career in another field. He could not find comparable employment in another field because he lacked the appropriate skills. The Board did not want to enrol him in one of its own retraining courses to learn new skills because his age and education made it unlikely that he would be a good candidate for re-employment.

I found that the Board had applied the wrong principle in defining the term "disability". In my opinion, compensation should be available to workers who develop incapacitating allergic reactions to industrial substances and who are not able to find employment in other fields.

(ii) Defeat of valid claims: procedural defects

Principle: It is unjust for an otherwise valid claim to be defeated because of the claimant's failure to adhere to procedural requirements, if such failure does not prejudice any other person or authority. In my opinion, administrative decisions should be made on the basis of the real merits and justice of the case. If the failure to comply with the procedural requirement does not interfere with the authority's ability to reach such a decision, the authority should have the discretion to waive the procedural defect.

Example: A farmer had applied to the Ministry of Lands, Parks and Housing to purchase Crown land which lay adjacent to his own. The Ministry had conducted a field examination and had disallowed the application on the ground that the land was not arable. The Ministry advised the farmer of its decision but did not inform him that he had the right to appeal the Ministry's decision within sixty days. Some months later the farmer discovered that he could have appealed and wrote in asking that his appeal be heard. The Ministry refused to hear the

appeal on the ground that the sixty day appeal period had expired. The farmer could not reasonably be expected to know of the appeal right or the time limit; nor was the Ministry prejudiced by his failure to appeal on time. It was unjust to refuse to hear the appeal in those circumstances. The Ministry was negligent when it failed to inform the farmer of his right of appeal. (CS 84-162)

Example: An injured worker was confused about the correct way to apply for Workers' Compensation. The worker filled out the application form and left it with his supervisor, as he thought he was required to do. However, the supervisor failed to submit the application to the Board. The worker did not discover this until almost a year later. His supervisor had since moved elsewhere. The worker attempted to track him down so that he could submit another application. This took several months. At that time a new compensation application was submitted for the worker. However, the Board refused to exercise its discretion to allow the filing of an application outside the one year time limit and denied his claim.

I found that the worker's failure to apply was due to his confusion about the proper procedure to follow, and that there would be no prejudice either to the Board or to the employer if the application was allowed to proceed. Section 99 of the *Workers Compensation Act* requires the Board to decide claims "according to the merits and justice of the case". In my opinion, the Board had failed to observe the spirit of this provision by relying on the technical breach.

(iii) Reweighing evidence

Principle: Sometimes my experience in reviewing administrative decisions enables me to assess the evidence in a case and reach my own conclusions about it. Of course, if the evidence is not available, or if I do not feel competent to make the judgment, I will not do so. But in many cases the evidence is available and I am competent to make the judgment. In such cases I will reassess and reweigh the evidence upon which a decision was based. If I reach a conclusion which differs from that of the authority, and the authority is unable to explain to me why my decision is wrong, I will conclude that the authority erred in its choice of inference in determining the factual issues.

Some authorities reply that the decision was based on the totality of the evidence to which the authority applied its best judgment. This is not a sufficient response to my criticism of the authority's decision. It amounts to a resort to intuition over reason. In my opinion, the authority should be able to explain why it reached a particular view of the facts. If the authority is unable to offer a rational explanation, and if a reasoned alternative can be made, I believe I should choose the reasoned decision over the intuitive one. Intuitive decisions are neither necessary or acceptable in public administration.

Example: An injured worker who was receiving a 30 percent disability pension from the Workers' Compensation Board complained that the Board failed to recognize that he was totally disabled. There was considerable medical evidence on the file that the worker had developed a psychological condition as a result of his injuries, which rendered him totally disabled. However, his psychological condition was not amenable to psychiatric intervention. There was also a report from a doctor which concluded that the claimant's disability was "primarily a physical one". The Board concluded from this statement, plus the fact that psychiatric treatment had been discontinued, that the worker's psychological disability could not be a significant one. In my opinion, the Board had concluded wrongly that because the disability was "primarily" physical the psychological disability was not significant. Four other medical reports had clearly stated that his psychological problems were the result of factors related to his injuries. I therefore concluded that the Board had failed to weigh the evidence correctly and its decision was unjust.

B. Formal injustice

Formal injustice is related to defects in the reasoning process which produces a decision, as opposed to the correctness of the decision, although it may well have a bearing on correctness.

(i) Lack of consistency

Principle: Administrative justice requires consistency in the application of determinative principles and standards. When the law spells out a test to apply, or when an authority has adopted a reasonable policy as a guide to the exercise of its discretion, the test or policy ought to be applied so that similar cases are treated in a similar way. Otherwise the authority acts arbitrarily, and an arbitrary decision is an unjust decision.

Although there may not be a stated policy guideline, a determining principle may be inferred from an authority's decisions in similar cases in the past. An authority's previous decisions cannot be binding on it as precedent. However, it ought to treat similar cases similarly, unless there is sound reason for treating them differently.

Example: An electrician suffered a minor injury when he fell from a ladder. However, the fall triggered the onset of symptoms of spinal degeneration. Surgery was required. The Workers' Compensation Board refused to accept responsibility for the surgery; but it had a stated policy that surgery could be authorized where the onset of symptoms of an underlying condition would not have been felt until much later without the injury. In my view this is a

reasonable policy. I found that the Board had failed to comply with this policy in this case. Its denial of responsibility was unjust.

(ii) Insufficient evidence

Principle: A decision which is not supported by sufficient evidence is arbitrary and therefore unjust.

Example: A guard at a Correctional Centre was splashed with a cup of water thrown from a cell. The cell was occupied by two inmates. The guard was unable to say which of the inmates threw the water. A disciplinary panel, nevertheless, convicted both of the inmates of assault. There was no evidence as to the identity of the assailant. I concluded that the decision was unjust because it was not supported by sufficient evidence. This meant that both inmates would go unpunished. However, I considered that the alternative — to convict the wrong person — was worse.

(iii) Failure to consider relevant factors

Principle: A failure to consider relevant factors can lead to arbitrary decisions and is therefore unjust. Relevant factors may include factual considerations, as well as governing principles. In addition, a decision-maker should address the correct issue in the case.

Example: I have investigated several cases in which the Workers' Compensation Board failed to consider the impact of an injury on a worker's existing compensable condition. The relationship between different injuries is a factor which should not be overlooked.

Example: The widow of a young man claimed compensation when he was killed in an industrial accident. The widow's pension was based on the young man's average earnings over a two year period, which represented his entire working life. The Board focused its decision on the worker's sporadic work history, his short period of employment with his last employer, and lay-offs in the industry due to economic conditions. I found that these factors did not tell the whole story. The Board had largely failed to consider the deceased man's future earning potential. It seemed to me that his low average earnings were due to his youth and that they would probably have increased. The Board failed to consider the facts that the worker held a permanent position, that he had been promoted from his starting position, that his new family responsibilities made it likely that he would remain with his current employer, and that his wages would have increased as he gained experience and seniority.

3. OPPRESSIVE

I have identified two ways in which an authority's actions can be oppressive. It is not the authority's motive that leads me to a conclusion that an act is oppressive, but the effect that it has on the citizen.

A. Unreasonable preconditions

Principle: A precondition is oppressive when it has the effect of unreasonably overburdening a person in the pursuit of his legal entitlement.

Example: A number of authorities require a money deposit in order for a person to exercise his right of appeal against decisions of the authority. The deposit is returnable if the person wins his appeal. Such fees are a deterrent to the exercise of legal rights. They may have the effect of screening out frivolous appeals, but they may also screen out valid appeals of persons who cannot afford to pay the deposit. Such fees usually benefit only the administrators who would otherwise have to decide which appeals were frivolous. In my experience there is almost always a better method of dealing with frivolous cases which does not result in the suppression of valid appeals. In my view, deterrent fees are inherently oppressive and they will receive close scrutiny when they come to my attention.

Example: It is oppressive to require a claimant to provide proof which is beyond his capacity to obtain where other proof will suffice. In one case the Workers' Compensation Board required a claimant to produce a complete medical history. The claimant was, in the words of his doctor, "a physical and psychological wreck" and unable to obtain the required proof. He was also unable to afford the cost of obtaining a complete medical history. In these circumstances I found the requirement to be oppressive because the claimant could not reasonably be expected to obtain the evidence required. Other, albeit less comprehensive, evidence was available.

B. "Bullying"

Principle: An act or decision is oppressive when the authority uses its superior position to place the complainant at an unreasonable disadvantage.

Example: A prisoner's teeth were causing him much pain. The medical officer decided that all his teeth should be removed. The bottom teeth were extracted, but a month later prison staff refused to allow his top teeth to be extracted unless he signed a release absolving the authority from any responsibility to provide dentures. The prisoner had little choice but to sign.

Example: The Agricultural Land Commission wanted to obtain a higher court ruling on a point that had been decided against it by the Supreme Court of British Columbia. Since the time for appeal had passed, the Commission decided to use the complainant's case to test the previous decision. The Commission turned down the complainant's application for exclusion from the Agricultural Land Reserve, thereby forcing him to go to court to have the decision overturned. At the first level the court said that it was bound by the previous deci-

sion and upheld the complainant. The Agricultural Land Commission then appealed to the Court of Appeal; again it lost the case. The Commission then applied to the Supreme Court of Canada for leave to appeal. Again the answer was no.

Of course, the complainant had to hire a lawyer to contest all of these court applications on his behalf. His legal fees were approximately $60,000. The Commission refused to pay this cost. I found that the Commission was using its superior position as a government agency to place the complainant at an unreasonable disadvantage. The Commission's decision to deny his application, in spite of the precedent of the earlier decision, initiated a series of court hearings in which the complainant was compelled to take part in order to protect his application. An authority that initiates or provokes legal action for the purpose of testing the limits of its authority should pay the legal expenses which necessarily follow.

Example: B.C. Hydro is required by law to compensate property owners for damage done by it or its contractors in the course of installing or maintaining Hydro facilities. A contractor working for B.C. Hydro cleared a strip of trees from the complainant's recreational lot without her permission. When she submitted a claim for damages to Hydro she was told that Hydro was not responsible and that she should make her claim against the contractor. This would have required her to sue the contractor. Hydro could have paid the claim and then deducted the amount paid from any hold-back amount on the contract. Instead it was using its superior position to force the complainant to go to court to obtain redress. I found this to be unreasonable and oppressive.

4. IMPROPERLY DISCRIMINATORY

Principle: Discrimination is improper if it is not reasonably required for the attainment of the overall purpose of the administrative or legislative scheme which it is intended to serve.

Example: The Ministry of Human Resources, by regulation, paid single persons, aged 30 and under without dependants $55 less per month income assistance for food than it paid to those aged 31 and over without dependants. The Ministry tried to justify this discrimination on the ground that the need of the younger group was less. I thought that the need for food did not increase at age 31 and rejected this explanation. I concluded that the regulation was improperly discriminatory. (1980 Annual Report of the Ombudsman, p.15).

Example: The Home-Owner Grant is designed to allow some home-owners to off-set municipal real estate taxes. However, home-owners in some municipalities cannot take advantage of the Home-Owner Grant because the municipalities levy separate taxes for water, sewage and garbage collection, instead of a single real property tax. Therefore, in some municipalities, individuals who are eligible for the senior citizen or handicapped portion of the Home-Owner Grant could have their total tax bill reduced to one dollar. Others, who reside in areas where the tax is broken down into separate components, cannot. In my opinion, these variations in tax collection practices resulted in discrimination which did not serve the intended purpose of the Home-Owner Grant system, i.e. to reduce municipal property taxes for senior citizens and the handicapped.

5. MISTAKE OF LAW

Principle: An authority makes a mistake of law when it misperceives or misinterprets a provision of an enactment or a common law rule.

Example: The complainant's physician had prescribed a drug for him which was supplied directly by his physician who obtained it from the manufacturer in Ontario. For some time, the complainant's claims for reimbursement were accepted by the Ministry of Human Resources' Pharmacare program, but they were then refused on the ground that the drug was not dispensed by a pharmacist. The Director of the program asserted that obtaining drugs directly from the physician was in contravention of the *Pharmacists Act*, and therefore constituted a valid reason for refusing the claims. My investigation revealed that the *Pharmacists Act* does not prohibit a physician from directly supplying a drug to a patient. I concluded that the Ministry had made a mistake of law in refusing to pay the claims.

Example: Ms. X was on welfare when she died. She left two young children, who were placed in the care of their father. Her social worker found certain items, including children's toys and children's furniture, in Ms. X's apartment. The social worker contacted the Public Trustee to find out how he should dispose of these items. The Public Trustee, assuming that the children's toys and furniture were part of the estate, had the property auctioned. The children had wanted to keep their toys and furniture. As commonly occurs in auctions, the amount received was much less than the replacement value of the items sold. I therefore found that the Public Trustee had made a mistake of law in concluding that the children's belongings formed part of the estate of the deceased. (CS 84-019)

6. MISTAKE OF FACT

Principle: A mistake of fact occurs when an authority is mistaken as to the existence of a certain fact or facts. A mistake of fact is a question of

perception or knowledge on the part of the authority. It should be distinguished from a failure to take relevant factors into consideration, which is a question of judgment.

A mistake of fact may occur when a wrong inference or conclusion of fact results from the authority's lack of knowledge of evidence which, if known, would have resulted in a different conclusion of fact. If the missing evidence is reasonably available, and if there is a duty on the authority to obtain it, the failure to obtain it may also be "negligent".

Example: An inmate's application for educational leave was denied because the authority believed his common law wife was living outside the province. That was not correct; she lived in the same city as the inmate and maintained contact. The community assessment had failed to discover the common law wife. (1982 Annual Report of the Ombudsman, p.8.)

Example: The complainant was the service manager for a truck and tractor dealership until he was hit on the head by a door. He suffered neck injuries requiring surgery. Before his injury his job had required him to carry out vehicle repairs. After his surgery the Workers' Compensation Board assessed his employability to determine if he had suffered any loss of earnings as a result of his injuries. The assessment concluded that he was able to return to employment as a shop supervisor or foreman with potentially no loss of earnings. The rehabilitation consultant, who performed the assessment, had relied on a statement by an officer of the employer that the foreman's job is "primarily paper work and supervision". My investigation, however, discovered that the duties of a shop foreman included rolling underneath vehicles, doing some mechanical work, using test equipment and tools, tightening loose bolts and looking downward into engines. These were all activities that the complainant was medically unfit to perform. I therefore concluded that the decision of the Board was based on a mistake of fact. (CS 84-247)

7. IRRELEVANT GROUNDS OR CONSIDERATION

Principle: I may criticize a decision if it is based on irrelevant grounds or consideration. This is the obverse of failing to take relevant matters into consideration. It involves a judgment as to relevance. This ground comes into play only when the decision is "based on" irrelevant considerations.

Example: A prisoner was denied permission to keep a tape deck in his cell. The institution said other prisoners might take it and it could be used as a place to hide contraband. I considered both of these grounds to be irrelevant because prisoners were allowed to have other personal possessions which could also be taken by other inmates and because anything small enough to be hidden in a tape deck could be hidden anywhere else.

Example: The Employment Standards Branch had issued a certificate for unpaid severance pay against the complainant's employer, a grocer. Later the Branch withdrew the certificate. It gave as its reason the fact that a Small Claim Court had decided that the complainant owed the employer for groceries; therefore her termination was for just cause. I was unable to see how the complainant's debt to her employer constituted just cause for dismissal or grounds for revoking the certificate for unpaid severance pay. It was clearly an irrelevant consideration.

8. ARBITRARY PROCEDURE

Principle: An arbitrary procedure is a species of unfair procedure. I use this phrase when there appears to be a deliberate failure on the part of the authority to permit the views of those who have a legitimate interest in the decision to be heard. It is primarily a question of emphasis, since I believe the word "arbitrary" has a stronger condemnatory connotation than the word "unfair". I therefore reserve its use for those situations in which I feel the authority needs to focus its attention on this particular aspect of its procedure.

Example: A director of a correctional centre locked up an inmate for an indefinite period without a hearing. This was contrary to the regulations and I found he had followed an arbitrary procedure. (1982 Annual Report of the Ombudsman, p.41; CS 82-020)

9. UNREASONABLE PROCEDURE

Principle: An unreasonable procedure is one which fails to achieve the purpose for which it was established. This test focuses on the rationale for a procedure and the results it produces or is likely to produce. I interpret the term as a synonym for an incompetent procedure on the basis that such a procedure is an absurdity and thus contrary to reason.

Example: The boards of review, which hear appeals from Workers' Compensation decisions, follow a procedure which undermines their ability to reach speedy decisions. Each appeal is considered by a panel of three members. The original file of the Workers' Compensation Board is sent to the boards of review and each of the three panel members reads it in turn. No copy is made. This means that the appellant must, in effect, stand in line three times instead of once. If the panel members were each able to review the file simultaneously by having two copies made, decision making delays could be reduced.

Example: The complainant had been denied a visit with his common-law wife who was being held in a provincial correctional facility. The Manual of Operations provided that a person could appeal a decision to deny a visit by requesting a review by the local director or by contacting the district director. However, there was no requirement in the Manual that the person who is being denied a visit should be informed that an appeal may be made. The purpose of the appeal procedure is to ensure that objections to the termination of visits are properly considered. A person who wishes to object cannot be expected to take advantage of the appeal procedure unless he or she is made aware of it in a timely manner. I found that the failure of the Manual of Operations to include a provision requiring notification of the possibility of an appeal from a decision to terminate visiting privileges related to the application of an unreasonable procedure. (CS 84-044)

10. UNFAIR PROCEDURE

Decision-making procedures are the primary focus of my findings under this heading.

Principle: There are three main elements of procedural fairness:

(i) An adequate opportunity for the person affected to be heard before the decision is made.

What constitutes an adequate opportunity will vary according to the circumstances. The degree of formality required will generally relate to the seriousness of the consequences of the decision for the individual concerned and his or her ability to use the available procedures. For example, an oral in-person hearing will be demanded more for a prison disciplinary decision than it will for a decision whether to grant a parade permit. The existence of meaningful review will also be a factor tending to reduce the need for formality. The impact of the decision on the community may dictate a formal hearing. At a minimum, fairness will usually require adequate notice of the proposed action, as well as of the criteria to be applied, plus an opportunity to make representations. In some cases of emergency it may not be possible to give much or any notice of the proposed action. However, in such cases adequate review procedures should be available.

Example: The complainants owned property in an Okanagan city. An old abandoned pipeline right-of-way lay adjacent to their properties. They had used it extensively and had even fenced it in as part of their lots. Much more recently, the vacant lands on the other side of the right-of-way were sold and the new owner discovered the existence of the abandoned right-of-way. He applied to the Ministry of Attorney General to acquire the land, since abandoned lands revert to the ownership of the Crown. In his submission, he alleged that no one had ever used the right-of-way. The Ministry made no attempt to contact my complainants (or anyone else) and granted the land to the applicant. My complainant had to go to Court for an order that the abandoned right-of-way be equitably divided. Failure to notify the complainants was an unfair procedure.

Example: The complainant, owner of a small construction company, applied for funding under the "Jobs for Youth Program". The complainant had qualified for funding under a similar program the previous year. He offered a position of employment for the summer to a student. However, when the employer contacted the Ministry of Labour in June about submitting an application, he was advised that applications were no longer being accepted as all available funding had been disbursed. None of the literature pertaining to the "Jobs for Youth Program" indicated that there would be a deadline for application, or that applications would be considered on a first-come-first-served basis or that funding was so limited as to require very early applications. I found that the Program failed to meet the standards of procedural fairness because it failed to give adequate notice of the criteria which would be applied. (CS 84-154)

(ii) An unbiased decision-maker

Good faith and an open mind are qualities of the decision-maker which are essential to maintaining the integrity of public administration. The decision-maker should not have any interest in the outcome of his decision, nor should he show any pre-judgment of the issue to be decided.

Example: An inmate of the Vancouver Island Regional Correctional Centre was granted a temporary absence for employment as a commercial fisherman. A condition of the pass was that he not drink alcohol. However, a disciplinary panel revoked the pass on the ground that he had breached this condition. I reviewed the transcript of the hearing at which the pass was revoked. In my view, the panel members had made up their minds before the hearing. For example, the chairman revealed that he had already received information before the hearing concerning the inmate's alleged conduct while on temporary absence. The chairman also asserted that the inmate had a history of previous drinking problems, although there was no evidence of this, and the inmate denied it. The main evidence against the inmate was a report by the R.C.M.P. that he was drinking. When this was challenged by the inmate, the panel revealed that it was not prepared even to consider the possibility that the police report might be mistaken, and that it was not open to question: ". . . we go with what the police tell us." I concluded that the chairman had intended to terminate the inmate's pass before the disciplinary hearing was held. This pre-judgment had infected the procedure with bias and had rendered it unfair.

(iii) Reasons for the decision

The giving of reasons is an essential, post-decisional aspect of procedural fairness. As Rodger Beehler, Chairman, Department of Philosophy, University of Victoria, has written:

> There remains a final requirement of procedural fairness: that the reasons on which the decision is ultimately taken is based be stated clearly by the decision-maker. The explanation of this requirement is that it seeks to ensure that the decision does proceed from an equal consideration of the interests of all parties to the distribution by exacting from the decision-maker a justification of his decision which discloses the considerations and reasons underlying it. In this way the decision-maker must give evidence of the relation of his decision to the canons of equal concern, rational judgment, and fair treatment. The parties to the distribution can then assess these for credible proof of observance of these canons, and so for grounds of acceptance, or appeal. (*Fairness in Environmental and Social Impact Assesment Processes, Proceedings*, Canadian Institute of Resources Law, University of Calgary, 1983, p.6.)

Example: The Ministry of Lands, Parks and Housing was considering an application for approval of an F.M. transmitter/receiver site on Crown land. In the course of the application the complainant objected that the proposed tower would block views from lots in the area. Although he was informed that his objection would be considered, and afterward was notified that the tower had been approved, the complainant was not given any reason why his protest was rejected. In my view, this fell short of the requirements of procedural fairness.

Example: My 1983 Annual Report (pp. 14-17) describes in some detail my investigation of complaints from a number of persons who had filed complaints with the former Human Rights Branch. Since the complaints were not resolved, the Director of the Branch had referred them to the Minister to consider the appointment of boards of inquiry. In each of these cases, the Minister of Labour had not only refused to appoint a board of inquiry, but had also refused to provide his reasons for not doing so. I concluded that the Minister's failure to disclose the reasons for his decision constituted an unfair procedure.

11. OTHERWISE WRONG

Principle: I treat this as a residual ground upon which I may base a recommendation when I cannot find any other appropriate ground but nevertheless believe that the complaint is substantiated. I use it mainly in cases of minor breaches of behaviour standards which do not deserve to be characterized by the weighty epithets otherwise prescribed.

Example: An inmate at a women's correctional centre approached a staff member to see if he would discuss the denial of her temporary absence pass. On two occasions the staff member agreed to meet with the inmate, but left the institution without doing so. He did not give the complainant any explanation. The staff member told my investigator that he did not have time to listen to the inmate's complaints and that he left the institution without seeing her because of the "pressure of business". I found that the failure of the staff member to keep his commitment or to provide an explanation did not meet the standards of civility I expected from administrators.

Example: A child who was the ward of the Ministry of Human Resources and who had been placed in a foster home threw a rock which broke a neighbour's window. The neighbour tried to get the Ministry to pay for the window, but it refused on the ground that it was not legally liable. Although the Ministry was legally correct, it was also the guardian of the child and ought to have acted as a responsible parent would have. Since none of the other grounds seemed to fit the situation, I characterized the Ministry's position as "otherwise wrong". (1982 Annual Report of the Ombudsman, p.10)

12. IMPROPER PURPOSE

Principle: I may find that an authority has acted for an improper purpose in the following situations:

a. When an act or decision is motivated by favouritism or personal animosity towards the individual who is directly affected.

b. When there is an intention on the part of the authority to promote an objective other than that for which a power has been conferred on it.

Example: The Ministry of Transportation and Highways used its expropriation power under the *Highway Act* to take a right-of-way over property owned by the complainant. Previously the Ministry had granted subdivision approval to a developer in the erroneous belief that the land which formed the right-of-way (and which would have provided access to the subdivision) belonged to the Crown. The complainant claimed ownership of this strip of land. Prior to the expropriation she was the owner, or at least had an arguable case.

I concluded that in the circumstances of the case the Ministry had expropriated the right-of-way for the purposes of providing access to the private subdivision and avoiding a judicial determination as to the true ownership of the land. The power of expropriation conferred by the *Highway Act* was not intended to assist private developers, but rather to serve the public interest. The expropriation was therefore intended to promote objectives other than those for which the power had been conferred and

was therefore done for an improper purpose. (Special Report No. 5 of the Ombudsman.)

Example: The complainant operated a restaurant in an area regulated by the Ministry of Finance to which he had to apply annually for a business licence. The Ministry of Environment had a program to acquire land in the area, including that owned by the complainant. The Ministry of Environment asked the Ministry of Finance to refuse to renew the complainant's business licence. Since there was no justification for the refusal I concluded that the purpose of the request was to pressure the complainant into selling his property to the Ministry of Environment. This was not an objective for which the power to licence businesses was conferred on the Ministry of Finance. The request of the Ministry of Environment was therefore made for an improper purpose. (1982 Annual Report of the Ombudsman, p.11)

13. ADEQUATE AND APPROPRIATE REASONS

Principle: In assessing the adequacy and appropriateness of reasons, I look at three major factors:

a. Whether the person's concerns are addressed directly and completely;

b. Whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached;

c. Whether the reasons are comprehensible to the recipient.

Example: The complainant had applied to the Labour Relations Board to set aside an arbitration award. Her lawyer had submitted that the arbitrator had disregarded material evidence and thereby failed to provide the complainant with a fair hearing. The complainant's application was dismissed, and her counsel requested reasons. The reasons simply consisted of a statement of the panel's conclusion that the complainant was not denied a fair hearing and that the arbitration award was not inconsistent with the Labour Code. In my opinion, these reasons failed to address the complainant's concerns. As a result the complainant could not make an informed decision about whether to appeal or even know the basis for the decision. I had to conclude that the reasons were inadequate.

Example: The complainant and his passenger were injured in an automobile accident. I.C.B.C. found the complainant to be 100 percent responsible and paid the passenger's claim. I.C.B.C. then sent the complainant a form letter stating only that the payment had been made and that he would lose his safe driving vehicle discount. Since the letter did not spell out the rationale for I.C.B.C.'s liability decision, I found the reasons were inadequate and inappropriate. (1982 Annual Report of the Ombudsman, p.11)

14. NEGLIGENT

Principle: An authority is negligent if it fails in some care it owes towards a member of the public. Negligence in administration is the failure to exercise proper care or attention in the performance of a public duty.

In deciding whether a duty arises I ascertain whether the complainant was dependant on the authority. I apply a standard similar to that applied by the courts to persons exercising special skill. Such dependence is strongly indicated if the authority is in a superior position because of its exclusive access to information, its expertise, its ability to require the person to perform some act prejudicial to his interests, etc. It is reasonable to expect an authority to recognize a situation in which the person with whom it is dealing is dependant on it and to exercise sufficient care in the circumstances to avoid damaging or prejudicing the person's position.

Example: The complainant's daughter was a patient in a hospital for the mentally handicapped. She was also deaf. The daughter became pregnant while at the hospital. Hospital staff did not discover the pregnancy until the 23rd week. Termination of the pregnancy was no longer an option. The daughter was unusually dependant on staff members of the hospital. Moreover, there was some evidence of pregnancy at an early date. I found that the hospital was negligent in failing to detect the pregnancy in time to do something about it. (CS 84-122)

Example: The Ministry of Agriculture and Food has a program designed to provide insurance protection to participants against market losses. New regulations altered the deadline by which applications for coverage had to be received in order to be eligible in a given year. Application forms were distributed by local agents of the Ministry of Agriculture and Food, who were the only practical source of information for most participants. A number of the local agents were misinformed as to the precise nature of the new deadline. As a result a number of farmers understood that there was no deadline for 1981 and applied too late. In my opinion, the applicants were dependant upon the Ministry for vital information. The failure to provide accurate information was a breach of the duty owed by the Ministry to the applicants and was negligent. (CS 84-001)

15. ACTED IMPROPERLY

Principle: An authority acts improperly when it intentionally or recklessly breaches a duty which it owes towards a person and thereby occasions adverse consequences for him or her. The element of intention or recklessness distinguishes this ground from negligence.

Sometimes there will be a breach of an official rule or policy governing the situation. If so, this will be strong evidence that an authority which departs from the policy or rule knew or ought to have known that it was in breach of a duty and, therefore, intended to cause the resulting harm.

Example: An authority acts improperly if it places on a person's official file material or comments which are irrelevant and prejudicial. In one case the complainant, who had been injured during a sexual assault at work, complained of pejorative remarks on her Workers' Compensation Board file. The following statement appeared:

> "The police have knowledge of the claimant and I was advised that she had been intoxicated in a public place on a previous police complaint."

Apart from the fact that the complainant says this is false, it is also completely irrelevant to the consideration of her claim. Nevertheless, it is calculated to produce a negative and prejudicial impression of the complainant in the mind of anyone who would read the file. Indeed, her claim was initially denied, though later granted on appeal. I concluded that the Board acted improperly by permitting such information to be included in the file.

Example: A correctional officer was escorting an inmate to segregation cells. He ordered the inmate to disrobe for the required skin frisk. While doing so the inmate was struck in the face by the officer causing a cut that required a number of stiches. At the time of the incident the inmate was complying with the order to remove his clothes, although he was talking. There was no evidence that the inmate threatened the officer or provoked the blow. I found that the officer had used excessive force in the situation and that he had thereby acted improperly.

Example: An employee of the Ministry of Health quit her job but did not remove all of her personal belongings from her office. Her supervisor came across a personal letter written to the complainant and read it. Later, the supervisor was called to testify in a court case involving the employee and was required to provide a copy of the letter to the other party. The employee complained that her personal correspondence should not have been read by the supervisor. I agreed. In my view the supervisor acted improperly when he read correspondence which was obviously of a personal nature and addressed to the complainant. (CS 84-113)

16. UNREASONABLE DELAY

Principle: Delay is unreasonable whenever service to the public is postponed improperly, unnecessarily or for some irrelevant reason.

Example: An inmate was returned to the Lower Mainland Regional Correctional Centre from court at 11:35 a.m. He was left in the holding cells in the Records and Reception area until 5:30 p.m. He was awaiting an escort to another wing of the institution. Although the officers responsible for escorting the inmate were occupied cleaning up the aftermath of a riot which had occurred the day before, I found that this was not an adequate explanation for leaving the inmate in an ill-equipped cell for six hours.

Example: The complainant appealed a denial of her Workers' Compensation claim. She received a favourable decision from the boards of review in November 1981. The file was returned to the Workers' Compensation Board for implementation of the appeal decision, and an adjudicator began his investigation of her medical condition and employment record in January 1982. As of August 1984 the complainant had still not received a decision. About six months of the delay occurred because the file was lost. All of the information required could have been obtained in a much shorter period of time. There was no explanation for the delay other than slothfulness on the part of the Board. (CS 84-249)

Example: The complainant felt that his son had been improperly charged with assaulting a police officer and asserted that in fact the officer had assaulted his son. He wrote to the Ministry of Attorney General and asked for compensation for the legal costs he had incurred in successfully defending his son on the assault charge and in representing his son at a subsequent disciplinary hearing which found the police officer's conduct reprehensible. His first question was whether the Ministry was the proper authority to be writing to. Nine months and many letters later he still had no answer to that basic question. He then complained to me and I too had great difficulty in obtaining appropriate answers. It was not until fifteen months after he had first written and more than twenty letters later that my complainant finally received compensation for the costs incurred in defending his son. I had little difficulty concluding that this man had been the victim of unreasonable delay. In fact, this case was one of the most flagrant cases of bureaucratic indifference that I have seen.

COMMENTS FROM OTHER OMBUDSMEN

Reaction to the Code from other Ombudsmen has been generally favourable, although not completely so. From the solicitor of the Ontario Ombudsman I have received the following comment:

> ". . . many of the members of our Select Committee were quite impressed with the Code of Administrative Justice and have referred to it on several occasions during our Select Committee procedures."

From the former solicitor to the Alberta Ombudsman:

> "Quite frankly, I have some serious reservations about such a code.
>
> I wish to illustrate my point by referring to one of the proposals enunciated by Dr. Friedmann under the heading "Otherwise Wrong." Dr. Friedmann states that he uses this ground ". . . mainly in cases of minor breaches of behaviour standards which do not deserve to be characterized by the weighty epithets otherwise prescribed." I am aware of a number of cases in the Alberta Ombudsman's office when this particular ground was used to support a recommendation by the Ombudsman in what was considered to be a very serious breach by government officials."

This commentator may have overlooked a difference in the wording of the Alberta and British Columbia Ombudsman legislation. The Alberta *Ombudsman Act* allows the Ombudsman to find that a governmental action was "wrong". In British Columbia the phrase used is "otherwise wrong", which suggests that I ought to exhaust other suitable grounds before resorting to the broad and vague description of an action as "wrong".

Other Ombudsmen have published interpretations of their governing legislation. The Commonwealth Ombudsman of Australia has developed an interpretation of the term "oppressive" which is broader than the one I apply. In addition to conduct which is intended to bully or overburden a complainant, he looks at a number of other factors.

> "The word oppressive is in my opinion to be interpreted according to the plain dictionary meaning of describing an action which is burdensome, harsh, intimidatory, merciless, cruel or tyrannical. According to the Ombudsman of British Columbia, in the context of his enabling Act, oppressive conduct included an act or decision intended to bully a citizen or having the effect of overburdening a complainant in the pursuit of his legal entitlement e.g. where an authority requests more information than it needs to make a decision. If an authority used its superior knowledge or position to place the citizen at a substantial disadvantage it acts oppressively. This definition in my opinion also fits the use of the word oppressive in my own Act.
>
> In determining whether an action is oppressive my office takes into account not only the degree of severity of the action measured in terms of its adverse effects on a complainant but also other factors including whether the agency:
>
> —adequately considered the complainant's case;
>
> —is justified in terms of public policy and the Commonwealth's legal rights and obligations under existing legislation or international arrangements;
>
> —has acted in accordance with actions taken by other agencies in similar circumstances;
>
> —has acted in such a way as to infringe the complainant's civil rights and personal liberties;
>
> —has put the complainant to unwarranted expense or effort;
>
> —compelled the complainant to resort to unusual measures to dispute its decision;
>
> —has acted according to proper motives and intentions;
>
> —has dealt with the complainant on a one-off basis or as an instance forming part of actions of a continuing nature; and
>
> —has paid due regard to the complainant's rights and particular circumstances."
>
> (*Sixth Annual Report 1982-83*, p.16)

I would likely categorize some of the listed conduct under other headings. The difference in approach may be partly due to the different wording of the Australian Act.

4. LITIGATION

The year 1984 brought on a rush of challenges from a variety of officials against the Ombudsman's right to investigate complaints about their actions. The first case, reported below, had been making its way through the court system since November 1981 and was finally decided by the Supreme Court of Canada in November 1984.

1. B.C.D.C., et al. v. Friedmann

In its first decision on the powers of the Ombudsman the Supreme Court of Canada confirmed the authority of the Ombudsman to investigate the actions of the executive branch of government. The case arose from a complaint by King Neptune Seafoods Ltd., a New Westminster restaurant, that it had been dealt with unfairly by the British Columbia Development Corporation (B.C.D.C.). B.C.D.C.'s subsidiary had acquired the property on which the restaurant stood; the lease was due to expire in a few months. B.C.D.C. intended to build a hotel on the site and entered into negotiations with the complainant concerning its possible participation in the development. Negotiations broke down and the lease expired. The restaurant was forced to move. The restaurant complained to me in the summer of 1981, and I commenced an investigation.

B.C.D.C. and its subsidiary applied to court for a declaration that I was without jurisdiction to investigate the complaint and an interim injunction prohibiting me from examining B.C.D.C.'s documents. The interim injunction was granted, and in December 1981 on the hearing of the application the Supreme Court of British Columbia held that I was without jurisdiction to investigate because individual transactions requiring the exercise of business judgment are not "matters of administration" within the meaning of Section 10 (1) of the *Ombudsman Act*. The B.C. Court of Appeal reversed that decision, in July 1982 (see Special Report No. 6 to the Legislative Assembly). B.C.D.C. appealed to the Supreme Court of Canada.

At this point the Attorney General of British Columbia intervened to support B.C.D.C. The Ombudsman of Ontario, the Ombudsman of Saskatchewan and the Public Protector of Quebec were granted intervener status by the Supreme Court of Canada, and they supported my position. The case was heard on January 30, 1984, before five members of the Supreme Court of Canada. Reasons for judgment were delivered on November 22, 1984. (The case is reported as *B.C. Dev. Corp. v. Friedmann*, [1985] 1 W.W.R. 193). In a unanimous judgment rendered by the Honourable Mr. Justice Dickson (now Chief Justice of Canada) the appeal was dismissed and my authority to investigate was upheld.

"A Matter of Administration"

Section 10 (1) of the *Ombudsman Act* authorizes the Ombudsman to investigate "with respect to a matter of administration" the actions of authorities that "aggrieve or may aggrieve a person". The issue in the case before the Court was whether these words included individual transactions requiring the exercise of business judgment.

Following a comprehensive review of the legislative scheme, including an interpretation of other terms used in Section 10(1), the Court concluded:

> There is nothing in the words administration or administrative which excludes the proprietary or business decisions of governmental organizations. On the contrary, the words are fully broad enough to encompass all conduct engaged in by a governmental authority in furtherance of governmental policy — business or otherwise.

and later in the judgment:

> The touchstone of administrative action, according to the above definitions, is the government's adoption, formulation or application of general public policy in particular situations. There is no *caveat* that the policy in question be divorced from proprietary, commercial or business matters.
>
> A transaction can thus be characterized as a matter of administration even though it carries a business flavour. Indeed, a bewildering array of governmental authorities now regularly implement governmental policies and programs in the marketplace. The decisions made by the government's agents in these areas are no less administrative merely because the policies they implement are tied to some greater or lesser extent to business concerns.

and later in the judgment:

> In my view, the phrase "a matter of administration" encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the legislature and the courts from the Ombudsman's scrutiny.

The Unique Role of the Ombudsman

The Court also considered the historical development of the Ombudsman concept, and analysed the Ombudsman's role in our system of government. The Court characterized the Ombudsman as a "concept of a grievance procedure which would be neither legal nor political in a strict sense". The following are a few of the highlights from the Court's judgment.

> . . . The traditional controls over the implementation and administration of governmental policies and programs — namely, the legislature, the executive and the courts — are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies is such that they are naturally unable to give careful attention to the workings of the entire bureaucracy. Moreover, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue . . .
>
> The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladminstration that would otherwise pass unnoticed. The Ombudsman "can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds" . . .

On the other hand, he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.

In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectiveley resolve.

It is important to note that the Ombudsman has no power directly to force any governmental authority to remedy a wrong he uncovers. The *Act* does, however, create a variety of mechanisms whereby the Ombudsman may move the government to implement any decision he reaches after an investigation. He may recommend corrective action to an authority who must then notify him of what action will be taken, if any, and where no action is planned the reasons why (Section 23). If the Ombudsman remains unsatisfied, he may report the matter to the Lieutenant Governor in Council and to the Legislative Assembly (Section 24). And he may comment publicly on any case where he deems it appropriate (Section 30).

It is these sections that ultimately give persuasive force to the Ombudsman's conclusions: they create the possibility of dialogue between governmental authorities and the Ombudsman; they facilitate legislative oversight of the workings of various government departments and other subordinate bodies; and they allow the Ombudsman to marshal public opinion behind appropriate causes.

Read as a whole, the *Ombudsman Act* of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad, purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil.

"A Person Aggrieved"

The Court also considered the argument of the Attorney General that King Neptune Seafoods Ltd. was not a "person aggrieved" within the meaning of Section 10 (1) of the *Ombudsman Act* of British Columbia. The Supreme Court of Canada responded:

> I will not pause long to consider the argument of the Attorney General of British Columbia that the word "person" in subs. 10 (1) does not include "corporations", like King Neptune. The *Interpretation Act*, . . . s. 29 provides that "[i]n an enactment . . . 'person' includes a corporation". There is nothing in the *Ombudsman Act* inconsistent with this provision.
>
> Moreover, as a matter of policy, there is no reason to opt for the narrower meaning. Corporations, after all, are merely the vehicles through which natural persons pursue economic goals. When a corporation is treated unfairly or denied something to which it has a right, the effects are felt by people. Denying standing to corporations would result in some injustices to people going unexamined and possibly unredressed, whether those people are shareholders or, as here, long term employees who stood to lose their jobs if King Neptune's restaurant closed.
>
> The Attorney General of British Columbia advanced the rather strained argument that because corporations may not vote they may not apply to the Ombudsman for redress of their grievances, on the theory that the Legislature represents people, not corporations, and the Ombudsman represents the Legislature. I see no connection whatever between the right to vote and the right to seek the Ombudsman's assistance. . . . The argument that a corporation is not a person within the meaning of subs. 10 (1) is without merit.

The Court also dealt with a further argument by the Attorney General of British Columbia:

> . . . [T]he appellants and the Attorney General of British Columbia contend that the phrase "aggrieves or may aggrieve", as used in subs.10(1), is a term of art intended to describe the denial or potential denial of a *legal* right; to be aggrieved a person must have been deprived of, or denied something, to which he was entitled by law. They argue that since King Neptune had no right to purchase the land upon which the restaurant stood, or to compel the renewal of the lease, it cannot be said to have been aggrieved by its inability to do so. . . .
>
> That the Ombudsman's powers of investigation and reporting were meant to extend beyond those cases in which the complaining party asserts a cause of action is evident from s. 22 of the *Ombudsman Act*, which speaks of determinations by the Ombudsman that something the government did was "unjust", "oppressive" "based in whole or in part on a mistake", brought about through "arbitrary, unreasonable, or unfair procedures", or "otherwise wrong". This section also provides that in such cases the Ombudsman "shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate". This makes clear the intent of the legislature not to confine the Ombudsman to investigating governmental acts that "aggrieve" a person in the narrow sense argued for by the appellants.

Secondly, the appellants offer no principled justification for limiting the meaning of "aggrieves" to the infringement of a legal right. The absence of such justification is not surprising since it was, at least in part, the lack of any remedy at law for many administrative injustices that gave rise to the creation of the office of Ombudsman. The courts, not Ombudsmen, have responsibility for remedying violations of legal rights. As counsel for the Ombudsman of Ontario submits, "the purpose of the *Ombudsman Act, inter alia*, is to create someone who can investigate actions which prejudice someone's interest even if those actions fall short of violating the strict legal rights which a court protects". To interpret the phrase "aggrieves or may aggrieve" in the manner urged by the appellants would run counter to the legislature's clear intention to provide redress for grievances not legally cognizable.

I would hold that a party is aggrieved or may be aggrieved whenever he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interests, whether or not a legal right is called into question. In this case, it is quite clear that the loss of the waterfront location for the restaurant could cause harm prejudicial to the interests of King Neptune and therefore the King Neptune might be aggrieved by the conduct of B.C.D.C. . . .

This decision of the Supreme Court of Canada is important beyond British Columbia because most Ombudsman statutes of other provinces, and indeed many or most Commonwealth jurisdictions that have adopted the office, use similar expressions to establish the Ombudsman's powers and function.

I would like to express my gratitude for the support shown to me by the other Ombudsmen of Canada throughout this case. In particular I would like to thank Mr. Yves Labonte, the Public Protector of Quebec, Mr. David Tickell, Ombudsman of Saskatchewan, and Mr. Donald Morand and Dr. Daniel Hill, the past and present Ombudsmen of Ontario, for their active support as interveners.

The complete text of the reasons for judgment was reproduced in my Special Report No. 9 to the Legislative Assembly.

2. Levey, et al. v. Friedmann

Mr. Gerald Levey, Administrative Chairman of the boards of review, along with three other members of the boards of review, challenged my authority to investigate complaints against the boards of review (which hear appeals from decisions of Workers' Compensation Board claims adjudicators). Briefly, Mr. Levey contends that the boards of review are courts, and that the Ombudsman has no authority to investigate the actions of the board of review. A writ was issued in May 1984, and the trial was heard in the Supreme Court of British Columbia March 11 to 15, 1985. As of the date of this report, no judgment has yet been rendered.

However, in proceedings prior to the trial, the Supreme Court of British Columbia held that the Ombudsman is not compellable to provide discovery to the other parties in the action. The plaintiffs had demanded that I answer questions and produce documents for their inspection. The decision is based in part on an interpretation of Section 9 (4) of the *Ombudsman Act*, which reads:

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

In its interpretation of this section the Court said:

The Ombudsman deals in complaints from members of the public who allege a governmental abuse. If he is not able to receive and obtain information and material in confidence and not able to give that assurance to the complainant, there would be little need for the office. The confidentiality aspect of the legislation is paramount and fundamental, and without it the Ombudsman could not function. Any narrow interpretation of Section 9(4) is, in my view, contrary to the overall intention of the legislation. To allow discovery by any of the methods outlined and in the form suggested would compel the Ombudsman to violate what he is obligated to protect: namely, the confidentiality of "*anything* coming to his knowledge in the exercise of his duties" and the privacy of the complainant. Nothing short of a broad interpretation of Section 9 will allow the Ombudsman to fulfill this obligation. (emphasis in original)

3. Workers' Compensation Board v. Friedmann

The Workers' Compensation Board has challenged my jurisdiction to investigate a particular complaint. Mr. J.D. Hamilton, the owner of Forward Sawmills Ltd., complained that the Workers' Compensation Board, through the office of the Deputy Sheriff in Campbell River, had seized certain equipment belonging to him in order to satisfy judgments against Forward Sawmills Ltd. and that the equipment had been sold for less than its fair market value. I commenced an investigation of Sheriff Services Branch and the Workers' Compensation

Board. Following my investigation I reported to the Workers' Compensation Board that in my opinion the Board had acted without authority and negligently when it instructed the Sheriff's Officer to seize the equipment. I recommended compensation be paid to my complainant and that the amount of compensation be determined by arbitration. The Workers' Compensation Board rejected my recommendation. I then reported the matter to the Lieutenant Governor in Council, pursuant to Section 24 of the *Ombudsman Act*.

At that point, two months after I submitted my report to Cabinet, the Workers' Compensation Board applied to Court under the *Judicial Review Procedure Act* questioning my authority. Briefly, the Board argued that I had no jurisdiction to reach conclusions of law in the course of my investigations. The case was heard before the Supreme Court of British Columbia on March 25, 1985.

In a decision rendered on April 9, 1985, the Court dismissed the application on two grounds. First, it held that the application was moot because I had already completed the investigation. Second, it held that the Board had no standing to bring the application under the *Judicial Review Procedure Act* because the Ombudsman's report does not determine legal rights or duties and is therefore not the exercise of a statutory power of decision, which is the only type that can be reviewed under that Act.

I might add that in this case my complainant's name and the nature of the complaint as well as the results of my investigation became a matter of public record because the Workers' Compensation Board filed my correspondence in Court as part of its legal action. Neither my complainant nor I were asked to consent to the publication.

4. Regina v. Hauser

This year I found it necessary to report an incident to Crown Counsel in which I believed an official intentionally misled my office in the course of an investigation. As a result, charges have been laid under section 31 of the *Ombudsman Act*. The trial was scheduled for April and May of 1985.

5. Friedmann v. Vancouver Police Board, et al.

Norman Fox was convicted of a crime which he did not commit. He spent eight years in prison until his innocence was finally accepted and he was released. The original case had been investigated and prosecuted by the Vancouver Police. Mr. Fox tried to complain to the Chief Constable and to the Vancouver Police Board. Neither would entertain his complaint, and he complained to me. His complaint was that the Vancouver Police had deliberately departed from proper investigative procedures in order to obtain his conviction and that the Police Board failed to investigate his complaint. I commenced an investigation more than two years ago while Mr. Fox was still in prison.

I believed my investigation required an examination of the files of the Vancouver Police and the Vancouver Police Board, and I requested access to them. Both bodies denied my request. I have now applied to the Supreme Court of British Columbia for an order directing the Vancouver Police Board and the Chief Constable to produce their files.

As of the date of writing no decision has been rendered.

6. Eckardt v. Friedmann

A former Commissioner of a Royal Commission of Inquiry brought a court application in 1981 challenging my authority to investigate his actions. I also applied for a declaratory order from the Supreme Court of British Columbia in the same matter. Before the applications could be heard the Court delivered its judgment in *B.C.D.C. v. Friedmann* (see above). The issue in that case was essentially the same as that in the other applications. Accordingly, they were adjourned pending the outcome of the *B.C.D.C.* case. The judgment of the Supreme Court of Canada in that case made further judicial consideration of the issue unnecessary, and Mr. Eckardt and I agreed not to proceed with our applications. At that stage I also discontinued the investigation of the original complaint, which had been suspended since September, 1981.

B. PAST AND PRESENT ISSUES

1. UPDATE

a) Reports to Cabinet

Section 24 of the *Ombudsman Act* permits me to make a report to the Lieutenant Governor in Council (the Cabinet) and, if necessary, to the Legislative Assembly when a government authority declines to implement my recommendations. While I do not view the making of a such a report as an extraordinary remedy, to be exercised in only particularly worthy cases, I am selective. I will take a case to the Cabinet if the injustice caused to the complainant is severe or if the complaint raises a matter of public interest. Of those complaints in which the Cabinet declines to intervene, I select the most important for submission to the Legislative Assembly. In 1984, I submitted five reports to the Cabinet and two to the Legislative Assembly; I have summarized the latter below. I will first review those reports made to the Cabinet that were resolved or rectified by some action taken by Cabinet during the year 1984.

1981 Report to Cabinet

The Ferguson/Gollmar Case: The Fergusons and the Gollmars owned property which lay adjacent to a pipeline right-of-way. I use the complainant's real names as they are a matter of public record following court proceedings described below. The pipeline had been abandoned years ago and ownership of the right-of-way had reverted to the Crown. Both the Fergusons and the Gollmars had made extensive use of the right-of-way and had, in fact, fenced it in as part of their lots. A year prior to their complaints to my office, the person who purchased the property on the other side of the right-of-way from the Fergusons and the Gollmars wrote to the Ministry of Attorney General and applied to purchase the right-of-way from the Crown. His statutory declaration stated, incorrectly, that no one else used the right-of-way and that it was vacant land. The Ministry recommended to the Cabinet that the right-of-way be sold to the neighbour and it was.

I concluded that the Ministry had erred on two counts. First, it had not insisted that the neighbour advertise his interest in buying the right-of-way, thus giving other claimants an opportunity to state their interest in it. Secondly, the Ministry had accepted the information from the applicant that no one was using the right-of-way, without any further verification.

I recommended that the Ministry change its procedures for handling such applications to ensure that other persons who may be affected receive proper notice and are given an opportunity to defend their interests. I also recommended that the Ministry not rely upon hearsay evidence where direct evidence is available. The Ministry agreed to implement both of these recommendations. Further, since the Fergusons and the Gollmars would now have to go to Court in order to get their part of the property back, I recommended that the Ministry pay their legal costs as well as any compensation that the Court ordered be paid to the neighbour for the land. The Ministry refused to accept this recommendation.

I submitted my report to Cabinet in April 1981. Between 1981 and 1983, the Fergusons went to Court and finally the British Columbia Court of Appeal ordered that the land be returned to them (Mr. Gollmar had settled out of court). Through the good offices of the Deputy Attorney General, my last recommendation was finally implemented in part. The Fergusons had all of their legal costs paid for by the Attorney General but they were left to pay for the land itself. Since the Fergusons agreed to settle on these terms, I concluded my involvement as well.

1983 Reports to Cabinet

During 1983, I submitted three reports to Cabinet. One of these became the subject of a special report to the Legislative Assembly in 1984 and is discussed below (WCB). The second report, and the Cabinet's response to it (concerning Section 4 of the *Highway Act*) remains under consideration by my office. The third report, described below, did not require further action as my concerns were resolved after Cabinet had the report under consideration.

Rights of Appeal Against Decisions of the Motor Carrier Commission: Early in my term, I discovered that there are many avenues by which citizens can appeal administrative decisions. Some of these are established by law and where they exist, I do not investigate a complaint about a decision until the complainant has exercised his or her right of appeal. But people are often unaware of their right to appeal, and I found that administrators are often reluctant to advertise the fact that decisions can be appealed.

Such was the case with the Motor Carrier Commission. The law provides that where a person is dissatisfied with a decision of the Commission, an appeal can be made to the Lieutenant Governor in Council. I found that while the Commission quite properly objected to my launching an investigation of a complaint until the complainant had filed an ap-

peal, the Commission did not inform parties affected by its decisions of their right to appeal. I recommended that this practice be changed and that the Commission inform all parties of their right to appeal to the Lieutenant Governor in Council. The Commission declined to implement my recommendation, in fact it was quite adamant it would do no such thing.

I submitted a report on this matter to the Lieutenant Governor in Council in December 1983, recommending that either the Motor Carrier Commission be instructed to impart appeal information to affected parties or that an appropriate change in the *Motor Carrier Act* be considered for introduction in the Legislative Assembly. Shortly thereafter, I found that the Commission had decided to alter its practice. Now, at the time of sending its decisions to the parties, the Commission also notifies the parties that they do have the right to appeal the Commission's decision to Cabinet.

1984 Reports to Cabinet

I submitted five reports to Cabinet during 1984. One of these became the subject of a Special Report to the Legislative Assembly and is discussed below (Shoal Island case). Three remain under active consideration by either the Cabinet or my office and I hope that we will be able to find a fair resolution to the complaints which are the subject of those reports. The last of the 1984 Cabinet reports is described below.

Paving in Manning Park Village: This complaint arose when a land developer posted a bond with the Ministry of Transportation and Highways as a guarantee that he would pave the roads in his new subdivision. Years later the roads were still not paved and inflation had eroded the value of the bond to the point where it was much cheaper for the developer to forfeit the bond than to pave the road. Upon investigation of complaints I received from people who had purchased lots in the subdivision, I concluded that the Ministry had an obligation to pave the roads since it had either not obtained a sufficient bond or had not taken action sooner to enforce the developer's promise to pave.

For two years, the Ministry put me off — telling me that they would pave the roads if their budget the following year permitted. However, it seems that the Ministry's budget was never sufficient to cover this project and, consequently, the roads were never paved. Last summer, I filed my report on these complaints with the Cabinet. And some months later the Minister of Transportation and Highways advised me that the Ministry's difficulty in finding the funds had been resolved and the roads would be paved during the summer of 1985.

b) Special Reports submitted to the Legislative Assembly in 1984

Special Report No. 7: The Shoal Island Case: During my investigation of six complaints about scaling deficiencies at British Columbia Forest Products' Shoal Island sorting area, I concluded that a substantial amount of timber had been processed through Shoal Island without first being scaled as required by the *Forest Act*. Scaling is usually performed by Ministry of Forest employees and is the government's mechanism for quantifying the amount of timber harvested from Crown land for the purpose of assessing the stumpage and royalties payable to the Crown. Because of the faulty scaling procedures which had been employed at Shoal Island, it appeared to me that British Columbia Forest Products had failed to pay the Crown stumpage of up to $2 million and to pay its contractors (who were my complainants) up to $6.3 million for logs harvested and delivered by the Contractors to Shoal Island.

While I was able to conclude that a significant amount of wood had not been scaled, I was not able to quantify precisely how much. Consequently, I recommended that the Ministry conduct a hearing to determine the best estimate of the amount of timber which had not been scaled and then to issue the necessary stumpage assessments. When the Ministry refused to implement my recommendations, I submitted my report to Cabinet.

When no action was taken to implement my recommendations I submitted my Special Report No. 7 to the Legislative Assembly.

There were some difficulties associated with the submission of my report to the Legislative Assembly. First, the Attorney General asserted that I had acted imprudently since he had initiated a criminal investigation a day prior to the submission of my report. Second, the Minister of Forests asserted that one statement in my report was incorrect. I disputed the Attorney General's assertions, but I conceded that the statement referred to by the Minister of Forests was in error and promptly filed an addendum to the report to correct my mistake.

Readers who follow provincial politics will recall the lively debates in the Legislative Assembly which followed the tabling of my report. Shortly thereafter, the Minister of Forests made a statement in the House advising that the hearing, which I had recommended to estimate the amount of timber which had gone unscaled, would be held. The Minister undertook to ensure that following that hearing, B.C.F.P would be billed for the amount of stumpage which it had not paid on the unscaled timber and I am hopeful that my complainants will also receive the monies due to them.

The Regional Manager of Forests was appointed to conduct the hearing and I understand that, as of the

date of this writing, the hearing process is complete. At this time, we are awaiting Mr. Grant's decision.

I have since received complaints about the manner in which these hearings were conducted, but have not investigated those new complaints.

Special Report No. 8: The Workers' Compensation Board: On April 12, 1984, I submitted my Special Report No. 8 to the Legislative Assembly: "The Investigation by the Ombudsman into Eleven Complaints about the Workers' Compensation Board". The report related to the following matters:

Case #1. The Board refused to compensate a worker who had acquired a disabling allergy to chromates used in his workplace. His age and low level of education made retraining impossible.

Case #2. Although there was evidence to suggest that the claimant's back pain was linked to a compensable injury, her physician could not give a concrete diagnosis for it. On this basis the Board denied the claim. I concluded that the Board had placed an undue burden of proof upon the claimant.

Case #3. A Board doctor attributed the complainant's surgery to a non-compensable cause. The claimant was successful in his appeal to a Medical Review Panel which linked his disability to his work. His claim was then returned to the original doctor for assessment; the doctor assessed the complainant at a minimal level. I was concerned that this procedure created an appearance of bias in the assessment.

Case #4. The 90 day limit on appeals to Medical Review Panels does not allow for extension in appropriate cases. As a result claimants may lose their appeal rights through no fault of their own or through simple ignorance of the appeal period. An amendment to the *Workers Compensation Act* will be necessary to cure this problem.

Case #5. A worker with a club foot was injured when a log rolled onto his feet. Although the club foot was non-disabling and he had worked for 20 years in the lumber industry, the Board reduced his pension because of his visible pre-existing foot condition.

Case #6. The Board refuses to inform employers of their right to appeal assessment decisions to the Director of the Assessment Department and from the Director to the Commissioners of the Board.

Case #7. The claimant was both employee and principal share-holder of a one-man company. He had just set up business and had not registered with the Board as an employer when he suffered an injury at work. The Board ignored the separate existence of the company and denied the claim for compensation because the company had not been registered.

Case #8. The claimant was the divorced widow of a worker who died in a logging accident. There were three children. The claimant and the worker had divorced some years earlier. Although there was a court order for child support, the worker had not been making payments. The Board denied the widow's claim for dependant's benefits because she had not actually been receiving support payments from the deceased worker. Had the worker been merely disabled instead of killed, the Board could have diverted all of his compensation to his dependants. An amendment to the legislation will be required to correct this situation.

Case #9. A worker who wishes to dispute a medical decision of the Board may appeal to a Medical Review Panel. However, in doing so he risks the reopening of issues which the Board does not dispute because the Panel is required to decide on all medical issues in the case. This can act as a deterrent to a worker who wishes to exercise his rights of appeal but is afraid that he may lose what he has already obtained by doing so. Only those medical issues which are in dispute should go before the Medical Review Panel.

Case #10. A worker must apply for compensation within one year of an injury. The Board is allowed to extend the one year period in special circumstances, but only for injuries which occurred on or after January 1, 1974. In my opinion, the power to extend the time limit should apply to all cases.

Case #11. The Board wrongly determined that the complainant was an employer in the construction business. In reality he was simply a broker who put the builder in touch with a framing crew. The complainant should not have been charged any assessments.

To date all but two of these cases remain unresolved. Case #3 has been rectified by the Board: Medical Review Panel decisions no longer are referred back to the original doctor for implementation. Case #11 has also been rectified by the Board: the complainant's assessments have been rescinded. With respect to all the other cases the Board has maintained its refusal to accept my recommendations.

c) Libby Reservoir Revisited

In late 1979, I received a complaint from the owner of a ranch east of Cranbrook in the East Kootenays. The complainant asked for assistance in her efforts to obtain replacement land for property she lost to

the flooding of the Libby Reservoir in the early 1970s. My complainant's family had lived on the property for generations, and for the last 15 years, she had attempted to get adequate replacement land.

The complainant had lost 77 acres of valley bottom land to the Libby Reservoir. So far, she had only been successful in getting back an 11-acre parcel, intended as a home relocation site.

The complainant's prolonged and determined battle with the Ministry was based on a commitment made by the former Minister of Lands, Forests and Water Resources before the construction of the Libby Reservoir. The Minister had stated that farmers and ranchers who were about to be displaced by the Libby Reservoir would get replacement land and would be no worse off after the flooding of their valley than before.

I mentioned this issue in my 1980 Annual Report in a discussion of recurring problems, in this case the trouble people have holding public officials to their commitments. I wrote at that time (p. 13 — 1980 Annual Report):

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

For many years prior to the flooding, a reserve from alienation was placed on lands adjacent to properties which would be needed for the proposed Libby Reservoir. These lands were intended for the relocation of displaced landowners, particularly farmers and ranchers who had lost only part of their holdings.

Although the Minister's commitments were broad and difficult, the establishment of the land reserve was clear evidence of an intention by the Provincial Government to assist those displaced by the flooding to re-establish themselves in the area, with minimal disruption. Historically, the problem appears to have been that between the time that the reserve was established and the time that the lands were required by displaced farmers, new priorities and competing uses for the land base had arisen. In addition, there was no direction or coordination between the various departments to make the re-establishment of displaced landowners a priority. In fact, no one wanted to take responsibility for living up to the Minister's commitment. I believe the situation was aptly stated by Mr. Nimsick, the former Minister of Mines and Petroleum Resources, who stated to the complainant as early as 1972 that " . . . there seems to be an awful mixup between the different Departments who are administering this problem of land in the Libby pondage area. It seems they do not wish to relinquish any land due to the pressure they are experiencing from other resource users."

The fragmentation of responsibility for the resettlement of Libby Reservoir landowners also contributed substantially to the frustration experienced by the complainant and others displaced by the reservoir. For example, the Ministry of Transportation and Highways was the agent for arranging settlements, but land applications had to be made through a different Provincial Government Ministry. Several of the complainant's applications in the past were blocked by the Fish and Wildlife Branch or the Ministry of Forests, but no attempt was made until very late to work out existing conflicts or to assist the complainant in locating alternate land.

The first progress towards the resolution of the problem was an initiative taken by the Ministry of Lands, Parks and Housing in the summer of 1981. The then Deputy Minister of Lands, Parks and Housing, Mr. John Johnston, initiated a "Libby Resettlement Program", intended to bring the settlement of all commitments to displacees to a conclusion by July 4, 1982. My 1981 Annual Report to the Legislative Assembly (p. 63-64) reported the Ministry's commitment and I expressed again the hope that this long outstanding commitment would finally be met. To this end, personal interviews were to be held with all partial displacees, to confirm their requirements for replacement land. However, no interview was necessary in the case of my complainant as her present application for 73 acres of bench land adjoining her ranch was already under consideration.

While I appreciated the initiative taken by the Deputy Minister of Lands, Parks and Housing, I continued to be concerned about unreasonable delay on the part of the provincial government in living up to its commitment. My office monitored the progress of the complainant's land application, which at long last appears to have reached a conclusion. All but a one-half hectare parcel of land sought by the complainant has been approved for disposition by the Ministry of Lands, Parks and Housing. This small parcel of lands which has not yet been committed to the complainant has been referred by the Ministry of Lands, Parks and Housing to the Ministry of Forests, with a recommendation that the land be removed from the provincial forests and alienated to the complainant. Ministry of Forests staff

have informed my office that the additional area required by the complainant will be approved for deletion from the Provincial Forest.

In view of the extreme delay in making replacement land available to the complainant, I found this complaint substantiated, both with respect to the Provincial Government in general and with respect to the Ministry of Lands, Parks and Housing, in particular. It should never have taken 15 years to live up to this commitment. The Ministry of Lands, Parks and Housing deserves some credit for ultimately assuming some responsibility for implementing the commitment which had been made to the displaced landowners.

It is interesting to compare the extreme delay in this case with the great rapidity with which government acts when it wishes to acquire private land for public purposes. Acquisition of private land and expropriation proceedings by government often proceed with lightening speed. However, when it comes to living up to a government commitment to provide replacement land, the snail's pace appears to be the usual pace of locomotion.

My staff and I have admired the perseverance and patience which this complainant and others have shown in obtaining replacement land. I am sure that we will all observe a moment of celebration when the transfer of the land is finally complete.

d) Corrupt Practices

A complaint to the Ombudsman led directly to the prosecution and conviction of a B.C. Hydro official for corrupt practices in the administration of right-of-way clearing contracts.

In August of 1982, I received a complaint from a man who had worked for several years clearing rights-of-way for B.C. Hydro's high-voltage transmission lines, first as a labourer and tree faller for a number of independent contractors and in recent years as the head of his own clearing company. According to the complainant, his working relationship with B.C. Hydro was satisfactory until he was awarded contracts to clear several sections of the Cheekye-Dunsmuir right-of-way between Squamish and Sechelt. A series of disputes arose between him and Hydro concerning the quality of the work completed, the timeliness of progress and numerous issues related to on-site job management.

One of the results of these difficulties was Hydro's decision to terminate one of the complainant's contracts just prior to its completion. The complainant claimed that Hydro's actions in this regard were unfair and improperly discriminatory. Specifically, he alleged: that Hydro had applied standards of performance not applied to other clearing contractors on the same right-of-way; that the standard of work already completed on this particular section was comparable to other sections of the right-of-way which had already been approved by Hydro inspectors; and that other clearing contractors who were behind schedule had not been penalized by termination of their contracts. He further alleged that many of the difficulties he experienced in attempting to complete the terms of his contract were due, directly and indirectly, to the actions of Hydro personnel.

Initially, the complainant's description of events and circumstances focused on establishing that he was, indeed, treated differently from some other contractors. But in discussing possible explanations for this, he eventually revealed his strong suspicions that his troubles were due in large measure to his refusal to make "under-the-table" payments to Hydro clearing inspectors.

In monitoring and evaluating the work of clearing contractors, Hydro's field inspectors were in a position to affect contractors' profits through their on-site decisions and reports and recommendations to headquarters. The complainant claimed that he had been aware for at least seven years that several Hydro inspectors were making a regular practice of favouring contractors with financially beneficial decisions in exchange for a portion of the proceeds. The complainant described five main methods by which inspectors were able to increase a contractor's profit margin for this purpose:

1. recommending payment for a greater area than was actually cleared;
2. allowing the use of less expensive clearing methods than specified in the contract;
3. approving payment for "danger trees" (trees outside the right-of-way which may be a hazard) which were never identified as such and never cut;
4. approving or recommending extra work orders for jobs that would normally be expected to go to public tender;
5. authorizing helicopter invoices payable by B.C. Hydro for transporting clearing crews to job sites — a cost normally expected to be borne by the contractor.

Several other contractors interviewed by my staff made similar allegations of misconduct in describing their experiences with Hydro's on-site administration of clearing contracts. I decided that the matter should be referred immediately to the Attorney General. With the agreement of the complainant and his lawyer, at the end of September 1982, I informed the Ministry of Attorney General of the allegations, and my solicitor, the complainant and his lawyer, met with Regional Crown Counsel. Regional Crown Counsel, in turn, referred the allegations to the R.C.M.P. for investigation.

At this point I suspended my investigation of the administrative aspects of the complaint. Since the R.C.M.P. investigators would require accounts of the same events using many of the same documents and witnesses, any further investigative activity on my part might have interfered with the criminal proceedings.

The public was first informed of the police investigation in August of 1983 when both the R.C.M.P. and B.C. Hydro confirmed this fact to the Vancouver Sun newspaper. The Sun also reported that B.C. Hydro had placed six employees on leave of absence with pay, pending the outcome of the police investigation. It was not until August of 1984, however, that Crown Counsel was able to bring charges against one of the officials who was named in the complainant's original allegations — B.C. Hydro's Clearing Inspector Supervisor. The preliminary hearing led to his committal for trial on six charges of demanding and taking bribes in relation to clearing contracts near Nanaimo, Duncan and Squamish. Following a trial in December 1984, the official was convicted on only one of the charges and in January of 1985 he received a sentence of 90 days in prison to be served on weekends.
I was subsequently advised by a representative of the Attorney General that a resumption of my investigation would not interfere with any further proceedings that may be considered.

I recognize that the process of investigating and prosecuting the type of criminal offences alleged by the complainant can be difficult and time-consuming for the authorities concerned. The pressures on my complainant over the past two years have been enormous. It may be little consolation to the complainant, who has not received any personal gain from this process, but I believe the complainant should be acknowledged for the fact that his considerable investment of time and energy in this matter has been of benefit to B.C. Hydro and the public in general. As Ombudsman, I applaud the courage of those willing to speak up against the more serious forms of maladministration that extend to the realm of criminal conduct and I am always ready to facilitate contact with the appropriate authorities when such allegations are brought to my attention.

I will now continue my investigation and will specifically review what steps the B.C. Hydro and Power Authority has taken or plans to take to revise its administrative procedures and practices with a view to preventing corrupt practices in the future.

My 1983 Annual Report (pp. 6-7) raised the issue "When Ombudsmen Receive Allegations of Criminality" in a general way as a result of discussions at the 1983 Conference of Canadian Ombudsmen.

2. Continuing Problems

a) Quo vadis, W.C.B.?

As reported in Parts II and III, I have received an increasing number of complaints about the Workers' Compensation Board. A large proportion of these complaints (68 percent in 1984) cannot be investigated by my office because complainants have not exhausted appeals available within the W.C.B. system. Nevertheless I must listen to all these complainants and make inquiries to ascertain the status of their claims. What I hear resembles a crescendo of complaints about Board decisions, procedures, policies, practices, and lately, Board attitudes towards claimants that I find quite disturbing. What's more, I am inclined to believe that there must be quite a bit of substance to these numerous complaints if the treatment my office receives from the Workers' Compensation Board is any indication of how the Board treats the rest. I will bring my own complaints about the W.C.B. to the attention of the Legislative Assembly in this section of my report, and I will inform the Assembly of trends in W.C.B. administration that increasingly aggrieve those members of the public who have no choice, but must deal with the Board.

Obstruction

Recently a directive has gone out from a senior W.C.B. manager to line staff "that personal or telephone contacts from the Ombudsman or his staff should be dealt with by the Manager". W.C.B. staff apparently interpreted this instruction as prohibiting them from answering our inquiries. All we are getting now in response to even the simplest questions of fact from the W.C.B. employee who has the answer to our question is: "talk to the Manager". When we talk to the Manager, invariably he does not have the answer, because he must first talk to the line staff who just refused to respond. Back to the merry-go-round.

Example: I received a complaint that a Board office had unreasonably, in fact, excessively delayed in making a decision on a claim. We made some inquiries in the hope of speeding up the making of the decision. My investigator phoned the Board officer who apparently was responsible for the delay to ask what had caused the delay and when the decision could be expected. The Board officer refused to discuss the matter and referred my investigator to his supervisor.

The supervisor was *not* responsible for the delay and could not explain it to my investigator when asked. He had to interview the Board officer, and later relayed the response to my staff. Needless to say, through this indirect communication our query was not answered satisfactorily. New questions arose and we sought further explanations from the first Board officer, only to be referred again to his

supervisor, who in turn could not answer our second set of questions without first checking with the officer.

A matter which could have been disposed of in one five-minute telephone conversation between two persons reasonably familiar with the issue, now required three people and eight or more interactions. Inevitably our investigation was lengthened and complicated. Multiply this absurd scenario by several hundred inquiries we must make per month, and what emerges is a senseless waste of time and public resources. The Board may have endless resources to play these sorts of bureaucratic games, but I do not.

The directive in question also seeks to make it impossible for staff other than the Director of Claims to accept a suggestion or recommendation from the Ombudsman or his staff. Is the W.C.B. management trying to choke off what little cooperation exists now between our two organizations?

I brought my concerns to the attention of the Chairman of the Workers' Compensation Board asking that the directive be withdrawn and replaced with an encouragement to staff to cooperate to the maximum extent possible with the Ombudsman's office. The Board contends that its procedure is administratively more efficient. The claim is absurd.

I also believe the questionable directive may be counselling W.C.B. staff to disobey the law. The *Ombudsman Act*, specifically Section 15, makes it abundantly clear that I "may receive and obtain information from the persons and in the manner" I consider appropriate, and that I may "require a person to furnish information . . . that relates to an investigation at a time and place" I specify.

Perhaps I am hoping for too much when I expect a cooperative working relationship with the W.C.B. But surely I can expect at least that responsible public officials will respect the law. I hope I will not have to resort to asking Crown Counsel to consider obstruction charges under Section 31 of the *Ombudsman Act*.

I believe the Board is also quite unfair to its staff. They end up having to choose between obeying the law or obeying their supervisors. I am most reluctant to seek charges against individual staff when their actions really originated from management instructions. The Chairman of the Board assured me twice that the memo was not intended to get staff to hinder or obstruct the Ombudsman. I accept this assurance about intent. But I have two concerns: (1) staff have apparently interpreted it as an instruction not to cooperate with my office, and (2) if obstruction is not the purpose of the directive the Chairman of the Board should have no difficulty withdrawing it and replacing it with a more reasonable request to staff to comply with lawful requests from the Ombudsman.

The Board's Objections to my Recommendations

After a W.C.B. claimant has exhausted two, at most three appeal opportunities against decisions of the Board, I may investigate a complaint either about the decision or a procedural issue. In approximately half the cases that are fully investigated I find some unfairness or injustice. I base my findings on administrative justice principles outlined in the "Administrative Justice Code" documented in this and one previous (1982) annual report.

Many of my recommendations on W.C.B. complaints are based on my own assessment of evidence on Board files. I support my conclusions by explaining why I give more or less weight to particular pieces of evidence than the Board did. Commonly the Board responds by asserting that the original decision was supportable or at least "not unreasonable" and they can see no reason which would require a different decision. In my view, such a response does not adequately address my concerns. It does not respond to the issue as to what are the correct inferences to be drawn from the evidence. I have reassessed and re-weighed the evidence upon which such a decision was based. When I reach a conclusion on re-weighing the evidence which differs from that reached by the Board, and the Board is unable to explain to me why they consider my conclusion wrong, then in my opinion the Board erred in its choice of inference in determining factual issues. If the Board is unable to offer a rational explanation and instead resorts to intuition to justify its decision, I believe it acts wrongly. It should accept the rational alternative I can offer. Intuition is not a rational form of conduct and public administration must be based on reason and rationality.

For example, in one case the issue was whether a claimant's work injury aggravated an existing back condition, thereby contributing to his need for a spinal fusion. The evidence consisted of the opinions of four physicians: two orthopedic surgeons who had treated the worker, the worker's family physician — all of whom expressed the view that the injury did aggravate the back condition — and an orthopedic consultant employed by the Board, who did not believe it had. I concluded that the preponderance of medical opinion favoured the worker. The Board simply asserted that its consultant's opinion was reasonable and supported by evidence. The Board does not say why it dismissed the evidence of the other three doctors. I could not accept the Board's response as reasonable or rational. I felt compelled to report this case to the Lieutenant Governor in Council.

Part of the problem is, I believe, based on the fact that the Board's decisions are seen by it as being unreviewable by any outside agency. (The boards of review are seen as "part of the system".) The courts

are precluded by the terms of the *Workers Compensation Act* from reviewing the merits of W.C.B. decisions. They may only intervene if the Board has exceeded its jurisdiction.

In a presentation prepared for the Third International Ombudsman Conference (June 1984) I made some comments about these problems:

> "I should add that it has been a very difficult process over time and in each individual case to get the Workers' Compensation Board to accept my recommendations for a change in their discretionary decisions. Volumes of correspondence arrived from the Board accusing me of wanting to substitute my discretion for theirs, my weighing of the evidence for theirs, and my uninformed views on medical and legal issues for those of the Board doctors and lawyers. Even though after four years our working relationship has vastly improved the Board's rate of rejecting my recommendations is still much higher than any other bureaucracy's. Part of such attitudes are undoubtedly attributable to a complex specialized subject, but a lot is, in my view, the consequence of the public policy decision that virtually exempted Workers' Compensation from judicial review (except for ultra vires cases), and virtually exempts it from political accountability, all for probably quite laudable reasons at the time. But, I believe, policy makers overlooked the propensity of uncontrolled, unreviewable and non-responsible bureaucracies to be arbitrary, indifferent, insensitive and oppressive in the absence of effective outside controls.
>
> With the arrival of the Ombudsman such agencies suddenly find themselves in the unaccustomed situation of being reviewed effectively, and one must expect they will try all the usual bureaucratic tactics to throw off attempts to control or influence their decisions, policies and practices. Their first line of defence is to question and challenge the Ombudsman's right to investigate in the first place. Bureaucrats suddenly claim to be judges performing purely judicial functions — out of reach of the Ombudsman. Or, all of a sudden, bureaucrats claim to be politicians, making policy, thus suggesting they are outside the Ombudsman's reach. The next line is often that the Ombudsman should not be an "appeal" agency reviewing the merits of discretionary decision within the special expertise of an agency. The arguments occur with predictability. Ombudsmen should be careful not to be overwhelmed by some unsound arguments or overly impressed with the superficial logic of some of these assertions."

Recent Concerns

I have received a whole range of complaints during 1984 about recent trends in W.C.B. decision-making that I find it very difficult to deal with. They are concerns about a change in direction, a tendency observed by interested groups that might increase unfairness or the burden on W.C.B. claimants. I will briefly discuss these complaints even though they are very general, hard to verify and difficult to decide. I invite the Board to recognize the complaints and if any of them misperceive the directions of the Board, to set the record straight.

(1) Appeal information: In 1980 I first became concerned about the Board's failure to advise all claimants about their right to appeal Board decisions. As a result of my intervention, the Board began to inform unsuccessful claimants that they had a right to appeal. It also furnished claimants with pamphlets outlining the appeal route. I thought this resolved the problem.

When an occasional letter from the Board, rejecting a claim, did not contain the appeal information, I considered it an oversight. But when more and more letters without the appeal information came to light, I realized that the problem was not resolved.

There was, for instance, no appeal information in letters advising claimants of pension awards. The Board seemed to be under the impression that no appeal information was necessary in cases of pension awards, because, after all, the claimants received something. From its long experience in pension matters, the Board should know better than to assume that recipients will not question the amount of the pension they are granted.

Employers are also not informed that they may appeal assessment decisions to the Director of the Assessment Department. (I have raised this issue in Case #6 of my Special Report No. 8 to the Legislative Assembly).

(2) Adversarial tendencies: I am disturbed by what I perceive as an increasing tendency of the Workers' Compensation Board to disbelieve workers and to diminish or disallow claims. Many claimants are shocked at the adversarial attitude taken by an increasing number of Board personnel. Section 99 of the *Workers Compensation Act* states that the benefit of doubt should go to the worker in cases where the facts are evenly balanced. Current practice appears to put the burden of proof on the worker. The Board's hardline stance places the worker in a defensive and stressful position. This situation would be less serious if the appeal system could quickly review the claim. However, once an adjudicator denies a claim, it may take two and a half years, in some cases almost four years, to exhaust the appeals available.

As a result, even when the final decision is favourable, after all that time the worker may have lost assets and his or her family may have experienced considerable disruption as a result of the stress and

financial strain. In some cases, after this lengthy battle, an adjudicator or disability award officer can interpret a successful appeal decision in a way that minimizes the benefits to be paid. The worker's only recourse is to the appeal system once again. In addition, even when a worker receives payments, the Ministry of Human Resources can in many cases recover any income assistance paid from the W.C.B. award on account of an assignment demanded before income assistance was paid during the appeal years. Although at first glance it would seem logical that this money should be paid back, it is not a fair exchange. Before a worker becomes eligible for income assistance he or she must dispose of most assets such as vehicles, land and any other disposable assets beyond the allowable limit. Even after a success at the end of the long appeal treadmill, therefore, some workers appear not to be adequately compensated for erroneous decisions denying their legitimate claims. While the worker is engaged in this long struggle in the appeal system, I cannot take their cases as I cannot investigate when there are appeals available.

Too often, it is the red tape at the W.C.B. that puts the worker on welfare. When his assets, and sometimes his dignity, are sufficiently diminished, he seeks assistance from the Ministry of Human Resources. MHR, after ensuring that all other sources of income or credit are exhausted and that the worker is truly penniless, agrees to provide benefits — but only if the worker signs an agreement to pay everything back if his appeal to the W.C.B. is successful. And should the appeal be successful, the W.C.B., apparently on the assumption that workers cannot be trusted to pay their debts, will repay MHR first before giving whatever is left to the worker. Too often, there is little or nothing left over, and the worker, now completely impoverished, remains dependent upon the state. The net result is that the worker gained nothing by appealing the decision — he might just as well have gone directly on welfare.

(3) Diminishing awards: I receive numerous complaints about the pension awards of the Workers' Compensation Board. Many of these complaints involve a decision by the Workers' Compensation Board that the major part of a person's disability is due to a pre-existing problem such as degeneration of the spine, a predisposition to a condition or disease, or a congenital defect. Pensions can be determined in two ways, and a worker is supposed to receive the higher amount. The first method determines the extent of physical impairment; the second calculates the loss of potential earnings caused by the injury or industrial disease.

I am observing a tendency to minimize the extent of the injury or disability and thus to minimize the Board's responsibility for compensation. At the same time I see a tendency to over-estimate what the person should be earning after the injury. The loss of income is then blamed on the worker's failure to reach full earning potential, rather than on the disability. Thus the Board relieves itself nicely from responsibility and its apparent primary objective, to protect its Accident Fund, takes priority over all other legitimate objectives of its statute. At the same time a victim of such changes in emphasis in Board policies has a most difficult time analyzing and proving what has been done to him.

(4) Rehabilitation: The Workers' Compensation Board employs rehabilitation consultants to assist workers with re-entry into the workforce after an injury. Although the Workers' Compensation Rehabilitation department has achieved considerable success in the past in this area, a tightening up of rehabilitation funding is limiting the assistance available. Workers are advised to find jobs and the Workers' Compensation Board offers employers training money as an incentive. However, many persons, such as fallers who have relied on their physical strength, have few other skills to offer in today's labour market.

(5) Calculation of wage loss benefits: I am concerned about the way the legislation pertaining to the calculation of wage loss benefits is being interpreted by the Workers' Compensation Board in cases where a person has not been employed steadily prior to the injury. There is latitude to determine the amount that best reflects the loss of earnings resulting from the injury. However, the method of averaging used by the Workers' Compensation Board and its practice of excluding unemployment insurance earnings reduces some workers to a wage below income assistance rates.

(6) Overpayments: In the past year the Workers' Compensation Board has initiated more aggressive action on the issue of overpayments. An overpayment is declared by the Board after it determines that through an error by Board personnel a worker was overpaid. Previously there was an overpayment committee set up to examine the circumstances if the overpayment exceeded $1,000. In the past the Workers' Compensation Board would not demand repayment until a worker had received a final decision after appealing the matter. Now there is no overpayment committee and the collection department of the Workers' Compensation Board may decide to collect even before the appeal process has been completed.

Concluding Comments

While I have been critical of Board policies and practices, I do not wish to leave the impression that the Board and I only disagree. The case summaries in Part III of this report and the statistics in Table 3.B. (Part VI) show a goodly number of cases in which the Board has resolved or rectified complaints I brought to their attention.

Lines of communication between my office and the Board remained open in 1984. Even though I often could not sway the Board to my point of view, I could at least count on a full hearing of the cases I felt obliged to advocate. Much of the credit for this cooperation must go to Mr. Robert Bucher, one of the Board's Commissioners, who acted as a liaison between the Board and my office for three years. Unfortunately, Mr. Bucher left the Board for a position in Ontario. I was sorry to see him go. He will be missed.

The Chairman of the Board, Mr. Walter Flesher, also deserves full recognition for being willing to sit down personally with me to go over the contentious cases and issues.

b) The Boards of Review

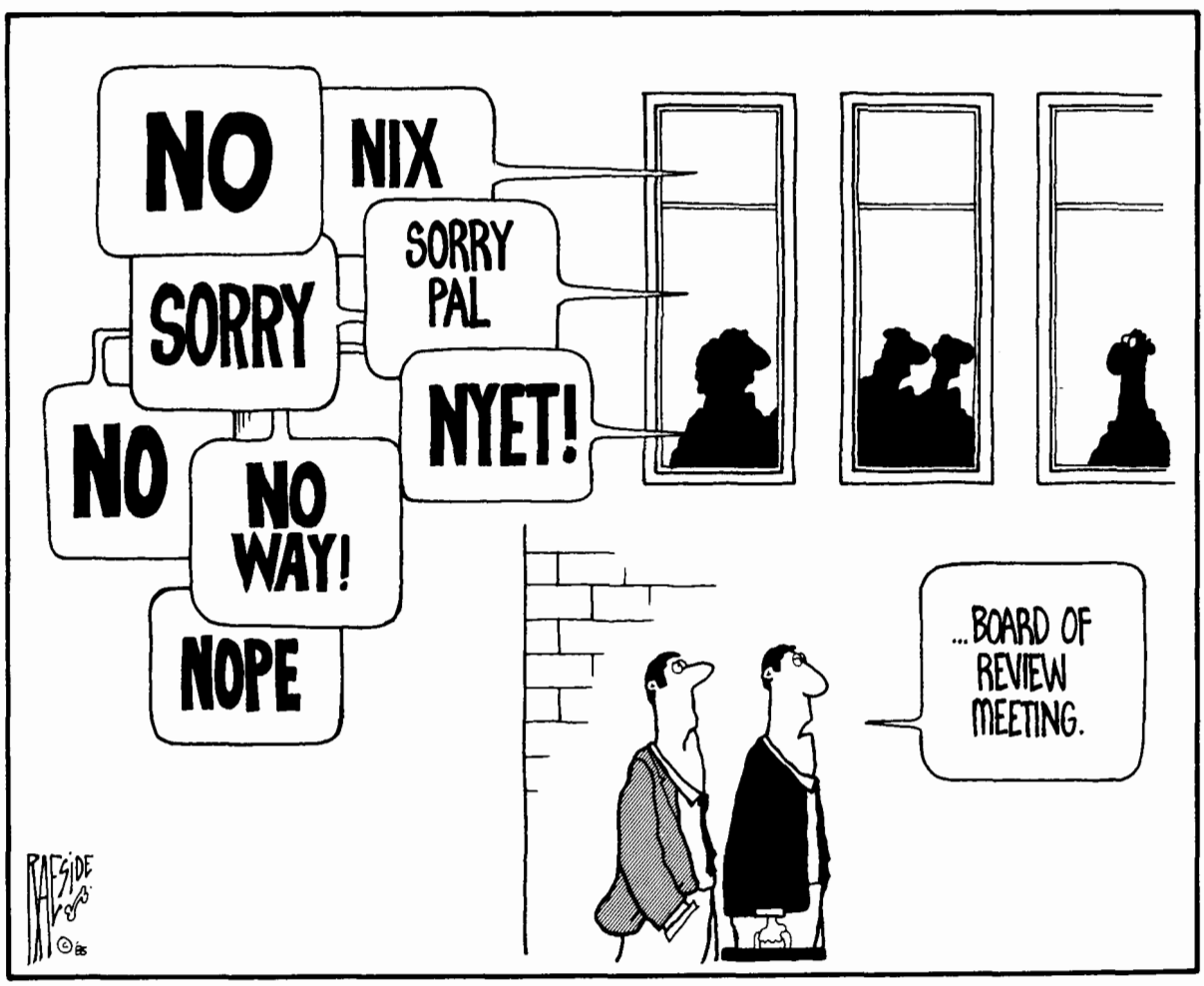
The Boards of Review hear appeals from injured workers against decisions made by officers of the Workers' Compensation Board. The Boards of Review are legally independent of the Workers' Compensation Board. I have expressed my concerns about this authority in three preceding annual reports.

My running battle with the Boards of Review has left me almost as exhausted as many of their clients feel. I have observed this agency in action (so to speak) for five years now. During all this time, the Boards of Review have been a prime example of how a government agency should not treat the public.

In my 1982 Annual Report, I stated how dismayed I was at the performance of the Boards of Review. Last year I reported that my dismay had turned to despair. I do not know what term accurately describes the state beyond despair. Whatever it is, I have arrived at it.

Endless delays in hearing appeals and rendering decisions continue unabated. When I first expressed my concern about the Boards of Review, there was a backlog of about 2,000 appeals. That number has grown to over 4,000 and will soon reach 5,000, unless something is done.

Recently a number of senior staff persons from the Workers' Compensation Board were seconded to the Boards of Review to help reduce the backlog. The idea of more staff is probably inevitable, but the fact that they come from the Workers' Compensa-



tion Board, the very body which made the decisions the Boards of Review are considering, may not be all that reassuring to the appellants.

The Administrative Chairman of the Boards of Review has never been very receptive to my recommendations for change. Last year, I reported that things had escalated to the stage where he had challenged my authority to investigate decisions made or actions taken by the Boards of Review. The matter is now before the courts. I have had to suspend my investigation of complaints against the Boards of Review until this case is decided. As of December 31, 1984 I had 30 such complaints accumulated awaiting the court's decision.

A number of citizens' concerns have been expressed through the past year about Boards of Review practices. The latest of these concerns relates to the new application for appeal form used by the Boards of Review which many in the community regard as being too complex for the average worker to deal with. However, the Boards of Review require that the form be completed. The Order-in-Council authorizing this new form contains another provision which suggests that oral hearings before the Boards of Review may be granted less frequently than was previously the case. Such a restrictive measure may help reduce the backlog, but I fear it will be at the expense of reducing the rights of workers to a full hearing. And it will become more and more a necessity that workers engage expensive legal assistance to help them through the obstacle course they encounter on their way to the Boards of Review. These are issues I intend to address should the courts determine that the Ombudsman is able to consider the cause of B.C. citizens who find themselves aggrieved by this authority.

C. THE THIRD INTERNATIONAL OMBUDSMAN CONFERENCE

Sweden and Stockholm, the cradle of the modern Ombudsman, were the settings for the Third International Ombudsman Conference in June, 1984. The Conference was hosted by Per-Erik Nilsson, Chief Ombudsman of Sweden and organized by him and members of his staff. A number of high quality papers were delivered. Mr. R.D. Bakewell, Ombudsman for South Australia, lectured on "The Ombudsman and Politics." He examined the extent to which an Ombudsman can or should involve himself in investigating decisions of a "political" character; political influences on the Office of the Ombudsman (including the methods by which the executive may exercise control over the Ombudsman); and the extent to which the Ombudsman can use political means to achieve redress for grievances.

On the last point he said this:

> "The most effective tool of an Ombudsman's independence is his ability to publicise the outcome of an investigation. As the South Australian Premier explained at the second reading stage of an amending Bill to my Act: "this procedure in the Ombudsman's view, with which the Government agrees, reflects more accurately the independence of the Ombudsman and also indicates his special relationship with Parliament." In Australia, the Ombudsmen are required to submit annual reports, and they are also permitted to submit at other times reports on any matter relating to their functions. . . .
>
> "The annual report provides an excellent means of publicising a particular matter. As I have already stated, in my view, the most useful tool of the office is the ability "to go public", although I realise not all Australian Ombudsmen have this luxury. In this way, an Ombudsman need not be a "tooth-less tiger", as suggested by some critics. I, (and other Australian Ombudsmen) have made full use of our ability to go public on matters in the public interest. I have done this by way of separate press releases and also via my annual report. . . .
>
> "In relation to my annual reports, I find that because I am prepared to be forthright and address important social issues which arise during the course of my investigations, the media gives the reports excellent coverage. In this way, my office becomes better known to a wider number of people. I am also aware that many other groups anxiously (for good or bad) await my annual report i.e. Members of Parliament, industry groups, business people, the public at large etc. . . .
>
> "I am somewhat concerned that there is little Parliamentary debate, at least in Australia, after the tabling of annual reports which perhaps confirms that the Parliament can take little action in its control over the executive. . . .
>
> "I believe that it is largely true that awareness of the Ombudsman and what he has already achieved is a major factor in the office being truly

influential. In addition, I want the office to be universally accessible and to have a major role in government reform. This process of reform and control can only be set in motion if people know how to complain and think it worthwhile to do so. Also, if people are aware of the office, and use it, this becomes another "tool", as I call it, of the politics of the office. In this way, the office's continuation and acceptance will grow as more people become aware of its permanent place in the administrative process."

Professor Jon Bing, of the University of Oslo, Norway, lectured on "The Ombudsman and Computerized Administration." He pointed out some of the problems faced by the Ombudsman in reviewing computerized administration on a large scale. Dr. Franz Bauer, Ombudsman of Austria, in a lecture entitled "The Ombudsman and the Media," described the impact that his weekly television program has on administration in that country. He reported that 650,000 — 800,000 people watched the program weekly.

Other lectures included "The Ombudsman and Human Rights," by Niels Eilschou-Holm, Ombudsman of Denmark; "The Ombudsman and the Formal Hearing" by Sir Cecil Clothier, Parliamentary Commissioner for Administration, United Kingdom; and "The Ombudsman and the Discretionary Exercise of Power" by myself. (Copies of my paper can be made available on request). Ulf Lundvik, former Chief Ombudsman of Sweden, led a lively panel discussion entitled "Does the Ombudsman get the complaints that he should — or the ones that he deserves?"

Following the Stockholm Conference Finland's Ombudsman, Dr. Jorma Aalto, and his staff hosted the International Ombudsman Seminar. This seminar dealt with a number of matters of practical administration within Ombudsman offices. The topics covered were "E.D.P. in the Ombudsman Office", "How to Deal with the Chronic Complainant", "The Use of Outside Experts by the Ombudsman", "The Ombudsman and Complaints against Police", and "Publicity in the Ombudsman's Office."

Following the seminar the member of my staff who was accompanying me returned to Stockholm where he spent a day in the Office of the Ombudsman studying tghe Swedish style of management and methods of investigation.

The Conference provided a rare but excellent opportunity to exchange ideas to share experiences in our still relatively rare trade, Ombudsmanship.

D. ACKNOWLEDGEMENTS

The Ombudsman is both a person and an institution. My complainants deal most intensively with my staff through my Victoria and Vancouver offices. My staff have given dedicated, effective and loyal service under extremely and increasingly intensive pressure of work. For that I want to thank them now publicly. Their excellent work is recognized by complainants, as demonstrated in their correspondence, some of which is printed in Part V.

I also owe a debt of acknowledgement and gratitude to those many public officials, who helped my office resolve the public's problems. All of them share the public's concern with fairness, and work diligently to serve the public. Many of them think and act like Ombudsmen themselves. Occasionally criticism is required, but that is most often of procedures, regulations, policies rather than the personal conduct of specific public officials. Serious complaints of personal misconduct are relatively rare, which is a tribute to the general probity of our public service.

I wish to acknowledge the Premier's assistance to my office in 1984. Under his direction the Cabinet Secretariat has developed an effective process for dealing with my Reports to Cabinet, and indeed a process for settling several outstanding complaints.

My office also received great help from quite a number of students from Simon Fraser University, the University of British Columbia and the University of Victoria who worked free of charge for many months in my office as part of internship programs. They gained experience by working for us, and we appreciated their enthusiastic approach to problem-solving.

My Ombudsman colleagues in other provinces and some from other countries have helped me genuinely with their ideas, their support and constructive criticism.

PART II

COMPLAINTS: THE WORK OF THE OMBUDSMAN OFFICE IN 1984

A. COMPLAINANTS AND COMPLAINTS

Numbers cannot express injustices, and statistical reports do not reflect adequately either the claims the public makes upon this office and the demands my office makes on public officials or the outcome of our work. Yet, it is important to report as accurately as possible the work and the workload of this office and the disposition of the complaints in numerical terms.

I will offer a few general comments about the volume of complaints handled in 1984 and in the years before, here in this section. Detailed statistical tables for 1984 are reported separately in Part VI of this report.

Complaints received and closed

Ever since this office opened in 1979 the demands of the public for investigations have exceeded all expectations. As the tabulation below shows, there has been a substantial increase every year in the number of complaints brought to my office by the public. In 1984 we received 11,462 new complaints, an increase of twenty percent over 1983. On an annualized basis we now receive three times as many complaints as in 1980, which was the first full year of operation. And complaints do not show any tendency to level off or decrease in 1985. If present trends from early in 1985 continue I must now expect about 12,800 to 13,000 new complaints in 1985.

Complaints Received and Closed

Year	New Complaints Received	Percent Increase Over Previous Year	Complaints Closed	Percent Increase Over Previous Year
1979	924	—	256	—
1980	3,840	—	3,941	—
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
79–84	38,874		38,046	

In addition to the 11,462 new complaints received in 1984, my office handled inquiries which are not included in the above total.

The following tabulation lists the total of all complaints active during 1984. It shows that a total of 12,649 new and continuing investigation files were handled in 1984. Of these 11,343 cases (or 90 percent) were completed and closed in 1984.

1984 Complaint Load

1979–1983 complaints carried into 1984	1,187
New complaints received in 1984	11,462
Total active complaints in 1984	12,649
Complaints closed in 1984	11,343
Complaints still under investigation at year end (Dec. 31, 1984)	1,428*

* Complaints still under investigation at year end will be larger than the difference between "total active complaints" and "complaints closed" (in 1984 by 122 cases) because occasionally a second complaint is registered for a complainant for whom we originally opened one complaint file. A few complaints have to be re-opened for a variety of reasons after they have been closed, but are not counted as "new complaints received"

Complaints and Jurisdiction

In 1984 roughly half the closed complaints were directed against authorities currently within my jurisdiction. Although the proportion of complaints within jurisdiction has varied a little over the years, as the next tabulation shows, it has always been close to one half of all complaints dealt with in any one year.

Closed Complaints by Jurisdiction and Year

Year	Total Complaints Closed	Number Outside Jurisdiction	Number Within Jurisdiction	Percent Within Jurisdiction
1979/80*	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3

* 15 months

Information about Complainants

The tables presented in Part VI and the remaining discussion utilize *closed* complaints as the basis for analysis, that is the 11,343 jurisdictional complaints that were investigated or otherwise dealt with to completion in 1984.

Table 1 in Part VI provides some sociological and statistical information about the complaints, the complainants and their communication with my office. Most of these factors have remained reasonably stable over several years. Two changes are noticeable in 1984: first, an increase in personal contacts between complainants and my office; this refers specifically only to the complainant's *first* contact with my office; second an increase in the number and proportion of complaints that reach my office through what Table 1 refers to as "local visits". The explanation for both changes is simply that my staff now visit several provincial institutions on a more regular basis and more frequently than in past years — as explained in Part I of this report. Residents in these institutions can articulate concerns in such personal meetings, but would not otherwise communicate with my office.

Table 2 in Part VI again presents a comparison between the population distribution of British Columbia by regional districts and the proportion of our closed complaints from each of those regions. The only unusual fact in that information is that there are fewer complaints from the greater Vancouver area than are warranted by the population distribution, and there are more from the Victoria, Capital Region area.

Non-Jurisdictional Complaints

Over five thousand people brought in concerns and complaints against organizations or persons outside the Ombudsman's authority. We listened carefully to these complainants, and, where possible, gave some advice, information or an appropriate referral in about 80 percent of these cases. In about 16 percent of these cases, usually in an emergency, we made some inquiries or helped with finding a resolution of the problem. Tables 4 and 5 in Part VI list our estimate of the extent of service we provided to these complainants and in general groupings the organizations against which the complaints were made. With the pressure of work from jurisdictional complaint investigations, we have had to restrict our help to non-jurisdictional complainants considerably over the years. But my office has accumulated a great deal of experience about effective complaint resolution in these areas outside government or outside provincial government authority and my staff can share this expertise readily and quickly with complainants who are often quite helpless and desperate.

B. DISPOSITION OF JURISDICTIONAL COMPLAINTS

Table 3 in Part VI presents the most important statistical information about my office's work in 1984. Table 3A lists all the Ministries, the total of complaints handled and closed during the 1984 reporting year, and in 5 broad categories what my office did with respect to each Ministry's complaints. Table 3B lists the same information for all Boards, Commissions, and Tribunals presently within my jurisdiction.

First a few comments about the total number of complaints per agency/Ministry: for convenience of reference and to allow comparisons over time I have tabulated below the complaint totals for the last 3 years, for those nine Ministries/agencies that attract the largest number of complaints.

Number of Complaints Closed for Selected Ministries

	1982	1983	1984
Human Resources	599	984	1,369
I.C.B.C.	791	810	499
Workers' Compensation	440	482	641
Attorney General	419	428	988
Consumer & Corporate Affairs	346	213	103
Transportation & Highways	220	263	285
Health	163	209	301
Lands, Parks & Housing	139	163	131
B.C. Hydro & Power Authority	135	159	212

Before commenting on any increases or decreases I would repeat a caution I have used in past years.

The number of complaints attracted by a Ministry or agency is not necessarily the most reliable indicator of the quality of their service or administration. I have always felt that the frequency and intensity of contact with the public is the major cause of the complaint quantity. At the same time it goes without saying that an agency that treats its public fairly and well will likely receive fewer complaints, and fewer of the complaints investigated by my office will require a change in the disposition of the administrative action complained about.

I.C.B.C.

The best news this year is that complaints about I.C.B.C. have dropped significantly. I received 38 percent fewer complaints about I.C.B.C. in 1984 than in the previous year. From being the most complained about agency in 1982 I.C.B.C. dropped to second position in 1983 and fourth in 1984. From my office's experience with I.C.B.C. and from what the public tell us about I.C.B.C. I would think two principal positive explanations can account for the major part of the change: (1) I believe I.C.B.C. has changed significantly, perhaps dramatically, its attitudes towards the public, its clients. I notice a much more consistent attitude of service now, compared to earlier years when people often were made to feel that they were a nuisance that got in the way of I.C.B.C.'s policies and practices. (2) When things go wrong I.C.B.C.'s policy holders usually complain first to I.C.B.C. I can state with some assurance that I.C.B.C. now attends much more seriously to problems brought directly to its attention by the public. As a result people get most of their problems resolved at source, and in a satisfactory manner, which is how it should be.

Human Resources

The Ministry of Human Resources has attracted the largest number of complaints in the past two years and has also experienced dramatic increases in complaints: a 39 percent increase in 1984 on top of a 64 percent increase experienced in 1983 over the respective preceding years. There are probably many factors which have contributed to the escalation of complaints; two general factors are (1) the undoubtedly massive increase in the Ministry's clientele, especially income assistance recipients, and (2) the Ministry's ever more restrictive policies that seek to stem the tide of demands by making it administratively more difficult to become or remain eligible for income assistance.

Attorney General

The Attorney General now receives the second highest number of complaints. Although relatively speaking the increase in complaints about the Attorney General is massive (131 percent increase in 1984 over 1983) there is an explanation for this change. It is more the result of a change in my office's priorities rather than any identifiable changes in the Attorney General's policies or practices: my office felt we were not adequately investigating problems in the youth corrections system and other institutions. We initiated a program of regular visits to these institutions as described in detail elsewhere in this report. As a result residents articulated many complaints that went unattended and unregistered beforehand.

Workers' Compensation Board

The W.C.B. remains the third most complained-about agency as in the past two years, although it experienced a larger than average increase in complaints (33 percent) from 1983 to 1984. The increase in complaints no doubt reflects a hardening of W.C.B. management attitudes towards workers and small business. I have voiced my criticisms elsewhere in this report.

Other decreases and increases

Complaints about the Ministry of Consumer and Corporate Affairs continued to drop significantly (52 percent in 1984) after a 38 percent drop in 1983 as the Ministry continued its withdrawal from the field of landlord and tenant disputes and consumer services. Lands, Parks and Housing also experienced a drop in complaints (20 percent) probably as a result of withdrawing from previous program areas (housing).

The Ministry of Health attracted 44 percent more complaints (not counting some institutions under the Ministry's supervision). B.C. Hydro and Power Authority also experienced an increase of 33 percent mostly as a result of increased account collection activities. The total of 212 complaints for Hydro is still a long way from the 5,000 complaints the Vancouver Sun predicted in an editorial in 1977 the Ombudsman would get about Hydro alone.

Investigation Decisions and Investigation Results

Beyond listing the complaint totals for each Ministry/agency, Table 3 in Part VI shows the disposition of all jurisdictional complaints in five broad categories.

"Discontinued". The first column in Table 3A and 3B shows that 41 percent of all jurisdictional complaints were either not investigated or an investigation was discontinued for a variety of reasons. Table 6 in Part VI provides a breakdown of both numbers and reasons for my office's decisions to refuse or discontinue 2,339 complaint investigations in 1984. About 20 percent of these complaints were actively or passively withdrawn by the complai-

nants; some 14 percent were not eligible for investigation because the complainant still had a statutory right of appeal available; and 64 percent were declined or discontinued in accordance with a discretion given to the Ombudsman in section 13 of the *Ombudsman Act*; the largest share of these latter complaints were refused or discontinued because in my judgment the complainant had a reasonable administrative or judicial remedy available.

"Resolved". The second column of Table 3 lists 1,905 cases in which a resolution was found to the satisfaction of the complainant and with the consent and cooperation of the Ministry or agency. These resolutions in the complainant's favour were achieved during an investigation and without the necessity, on the part of my office, of making formal critical findings against a Ministry. Some 33 percent of all jurisdictional complaints were resolved in this manner in 1984.

"Rectified". The third column in Table 3 lists all those cases which were rectified by an agency or Ministry after I submitted formal critical findings and written recommendations. Just under 3 percent, 148 complaints, required this kind of action in 1984.

"Not rectified". Column 4 of Table 3 lists 51 cases (one percent of all jurisdictional cases closed in 1984) in which I had substantiated a complaint but rectification was either refused or not possible. For details on some of these cases I refer to the Ministry reviews and case summaries in Part III of this report.

"Not substantiated". Column 5 of Table 3 lists 1,264 complaints I declared "not substantiated" after full and complete investigation. These "not substantiated" cases represent 22 percent of all jurisdictional complaints closed in 1984. Both the complainant and the Ministry receive my report with reasons why I consider the complaint "not substantiated".

Disposition Comparisons

To facilitate comparisons with past years I have tabulated below the dispositions of all jurisdictional complaints for the present and past reporting years in both absolute and relative numbers.

Disposition of Jurisdictional Complaints 1979–1984: Numbers of Complaints Closed

	79/80*	1981	1982	1983	1984
Discontinued	864	1,220	1,926	1,907	2,339
Resolved	506	601	1,169	1,417	1,905
Rectified	59	180	135	139	148
Not rectified	0	74	18	20	51
Not substantiated	459	682	880	1,123	1,264
Totals	1,888	2,757	4,128	4,606	5,707

* 15 months

Disposition of Jurisdictional Complaints 1979–1984: Percentages

	79/80*	1981	1982	1983	1984
Discontinued	46	44	47	41	41
Resolved	27	22	28	31	33
Rectified	3	7	3	3	3
Not rectified	0	3	1	1	1
Not substantiated	24	25	21	24	22
Totals	100	101	100	100	100

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

The figures show that there are some minor variations from year to year between these dispositions. The overall impression, though, is one of a reasonable stability in how my office dealt with complaints over the last 5 years. Just over 40 percent do not require an investigation or the completion of an investigation. About one third of complaints require some change in official actions in the form of a resolution or rectification. The predominant mode of interaction between my office and Ministries/agencies is one of agreement on the nature of the resolutions required. Some 3 or 4 percent of complaints involve more contentious findings and recommendations: 3 out of 4 contentious matters are eventually accepted by the agencies. Just under one quarter of all jurisdictional complaints are not substantiated after full investigation.

C. IMPACT ON OFFICIAL PROCEDURES AND PRACTICES

Most complaint resolutions and rectifications, in fact some 83 percent, lead to a change in the disposition of a matter that affects only my complainant. In 17 percent of the cases the change goes further to affect some procedure, regulation, policy or practice of a Ministry or authority. Table 7 tries to show our own estimate of the number and kind of change we feel has taken place. A selection of such changes in procedures and practices is presented in summary form in Part IV of this report. Individual case summaries in Part III will give a more detailed account of the situations which brought the need for change to our attention.

PART III

COMMENTS ON MINISTRIES AND COMPLAINT SUMMARIES

MINISTRIES

MINISTRY OF AGRICULTURE AND FOOD

Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	5
Substantiated: corrected after recommendation	3
Substantiated but not rectified	0
Not substantiated	3
Total number of cases closed	15
Number of cases open December 31, 1984	1

In past annual reports, I mentioned the lack of adequate information to ranchers and farmers regarding eligibility criteria and deadlines for participation in the Ministry's Farm Income Insurance Program. These complaints have now been satisfactorily concluded with the following results.

Ranchers air beef

In 1981, two ranchers complained that they were refused coverage under the Beef Producers Farm Income Insurance Plan for that year because they had submitted their applications too late.

Both complainants had submitted their applications based on information they had received from local representatives of the B.C. Cattlemen's Association. This information included details on eligibility criteria and deadlines for participation in the insurance scheme.

At the time, the income insurance plan was administered by the Ministry of Agriculture and Food through the offices of the B.C. Federation of Agriculture. One of the eligibility requirements was that the applicant be and remain a member in good standing of the B.C. Cattlemen's Association.

Local co-ordinators of the Cattlemen's Association provided information and helped process applications for participation in the insurance plan. According to the complainants, any requests for information regarding the plan were routinely directed to the local representative of the association.

The complainants also told my investigator some applicants had been turned down that year because of the retroactive application of an amended regulation.

On October 22, 1981, the regulation in question was amended to set the deadline for applications at July 31 of any given year. Anyone applying after July 31 would not be eligible for coverage

until the following year. In anticipation of this amendment, the Ministry had rejected applications submitted between July 31 and October 22, 1981, regarding them as late applications.

The Ministry provided us with a list of all persons whose 1981 applications had been rejected. We contacted every one of them, and 14 of the 28 expressed concerns and complaints, similar to those of my original two complainants.

Following our investigation, I recommended that the Ministry provide full coverage for 1981 to all applicants who had relied on misinformation given by local co-ordinators, as well as to all those who had applied before October 22, the date the regulation was amended.

The Deputy Minister agreed that the retroactive application of the amended regulation was illegal and that the Ministry was responsible for any loss or reduction of coverage which resulted from incorrect or misleading information given out by the agents for the Ministry, in this case the local co-ordinators of the Cattlemen's Association.

He said the Ministry would get in touch with all the affected ranchers to negotiate a satisfactory settlement. (CS 84-001)

Farmer gets benefits

A sheep farmer complained that he was denied benefits under the Farm Income Insurance Plan because his claim was allegedly received 17 days after the deadline.

The farmer said he submitted his claim on time. He based his opinion on information contained in circulars prepared by the B.C. Sheep and Wool Commission and the B.C. Federation of Agriculture.

I reviewed the relevant legislation, as well as the circulars, and found that the complainant had interpreted the ambiguous information in the circulars in a reasonable manner. On this basis, I recommended that the Ministry allow the farmer full benefits for 1983.

The Ministry accepted responsibility for the misleading statements in the circulars and allowed the farmer full benefits. The Ministry also advised me that it would prepare new brochures to provide clear and comprehensive information on each Farm Income Plan. (CS 84-002)

There were also a number of complaints involving administrative functions of the Ministry.

That slip was an invoice

A logging company delivered several thousand dollars worth of fence posts to the Ministry of Agriculture. The invoice accompanied the shipment. Several months later, the logging company still had not received payment.

It turned out that the Ministry had mistaken the invoice for a packing slip, assuming that the bill would follow. Informed of the error, the Ministry immediately paid the bill. (CS 84-003)

New interviews held

The Ministry had a vacancy for an auxiliary Deputy Brand Inspector. My complainant applied for the position and was invited for an interview. He knew that a number of other people were interviewed on the same day. As part of this interview, the candidates were asked to read six brands.

At a later date, an additional candidate was interviewed. This candidate did not have to read any brands but was offered the job.

My complainant felt that the interview procedure was inappropriate and that all candidates should have been asked to read the same brands.

Instead of investigating this complaint myself, I referred the matter to the Public Service Commission. The Commission, after its own investigation, agreed with the Ministry that new interviews for this position would be held. (CS 84-004)

MINISTRY OF ATTORNEY GENERAL

Declined, withdrawn, discontinued	291
Resolved: corrected during investigation	405
Substantiated: corrected after recommendation	26
Substantiated but not rectified	4
Not substantiated	262
Total number of cases closed	988
Number of cases open December 31, 1984	280

The number of complaints against the Ministry of Attorney General increased sharply from 428 in 1983 to 988 in 1984.

This increase is mainly the result of my staff's increased work with juvenile and adult institutions. This year, I received more than 330 complaints related to youth containment centres, and more than 400 complaints about adult correctional institutions. This is obviously an enormous increase. Complaints related to branches of the Ministry,

other than Corrections, also increased by 20 percent.

The first few cases in this year's report are examples of how small errors can produce large problems. The good news is that once the problems were brought to the Ministry's attention, it promptly accepted responsibility.

Victim ends up in jail

A young woman whose car had been stolen, received a subpoena to attend the trial of the thief on January 5. So did her father and brother. A couple of weeks later, her father got a call from the court, asking if he was coming to court the next day. After some conversation, the father was told the date had been changed. He was instructed to attend as a witness on January 26. The young woman was pleased to learn of the change because she had hoped to go on holiday during the Christmas period.

On January 13 the woman was arrested for not having been in court on January 5 as summoned. She spent a night in a police cell and appeared in court the next morning, still not sure what she had done wrong. She was even more confused and angry when she got home and found a letter asking her to contact the court within a month to prevent a warrant from going out.

Our investigation quickly revealed the source of the problem. Two different trials had been set for different dates because one accused was an adult, the other a juvenile. The summons was for the adult case, the phone call for the trial of the juvenile. Unfortunately no one had bothered to tell our complainant that there were two separate trials. As a result, the victim of the crime was the one who ended up in a cell and in court.

The Ministry agreed that this series of errors had resulted in the unnecessary arrest and humiliation of our complainant and paid her $1,000 compensation. (CS 84-005)

Arrest was not necessary

A complainant was charged with impaired driving while away on holiday, and given a notice to appear in the local Court House.

Ten days before the court appearance, he went to the court in his home town and applied to have the charge waived over, as he intended to plead guilty. He signed the form and was told not to worry about his court date because he would get new papers for the new date. Three weeks later, however, he was arrested on a warrant for failing to appear in court, and held in jail for a few hours.

The Ministry agreed that its staff had made a series of small errors which had combined to cause my complainant's unnecessary arrest. The Ministry offered to pay my complainant compensation of $350. (CS 84-006)

Man should not have been arrested

A young man was investigated by the police on a charge of mischief. Before the court process could begin, he moved to the Lower Mainland. Over the next year he tried, unsuccessfully, to get the court case transferred. After a lot of confusion, he was finally tried and convicted in a small Interior town. He was placed on probation, but no one told him that he must stay to sign the probation order. Consequently he went home to Vancouver without having signed the order.

The following day, someone in the Court Registry discovered that the order was not signed, and sent out a form letter, asking my complainant to come in to sign the order. When he failed to comply, a summons was issued, and returned by the sheriff, marked unservable. Both documents had gone to an address more than a year out of date, even though my complainant's proper address in Vancouver was on the court file. A few days later, the matter went back into court. Another warrant was issued, and my complainant was arrested. Unlike the Registry staff, the police appeared to have no trouble finding him.

I was very concerned when I learned that court files are kept "loose," with no system to note addresses, names etc. in one place on a file. As a result, new documents are not necessarily on top, and changes of address can be overlooked. Since delays of many months, even years, before trial are common, a change of address of at least one party is likely.

The Ministry responded to my concern by circulating to all managers a letter outlining the story of this particular complainant. The managers were instructed to ensure "that all Registries be informed of the consequences of not systematically noting address changes." (CS 84-007)

While I'm talking about people who were unnecessarily locked up, let me relate the stories of three other people. These complaints are about the conditions prisoners experience when they are in the care of the "system."

"I fell," says assaulted prisoner

A man was held in jail on remand, pending his trial. He was escorted from jail to court for an adjournment date, and was injured by fellow prisoners in the Sheriff van during the return journey.

When the van arrived back at the jail, the prisoner had to be taken to hospital with a broken nose and injuries to his knee, which required an operation. He was visibly injured, and photographs were taken. The Sheriffs also checked the hands of other prisoners, but did not call the police. Even though everyone knew the man had been assaulted, the Sheriffs accepted his explanation that he "fell off the seat."

A couple of weeks later, the injured prisoner called my office. He said the Sheriffs on duty must have heard the noise the other prisoners made when they kicked and hit him. He said the Sheriffs were negligent because they simply carried on driving until they reached the jail.

While the Sheriffs cannot always stop the van and look inside, especially on a freeway, they can contact the police by radio and ask them to meet the van. In this particular case, I did not have to decide whether negligence was involved because my complainant hired a lawyer and began a civil suit.

I did, however, pursue two other questions. Why did no one report the incident to the police when it was clearly an assault? And why were prisoners moved in a van so badly designed that the Sheriffs on duty said they could neither hear nor see clearly what was happening behind them?

The Ministry addressed both problems. First, it issued a new policy requiring Sheriffs to notify the police whenever they suspect criminal activity by or against persons in their care. Secondly, the Ministry agreed to modify the four vans in the province that are similar to the one in which my complainant was escorted. The interiors of the vehicles will be altered to ensure that the Sheriffs in the cab can both see and hear their prisoners.

Incidentally, the modifications will also help the Sheriffs. They provide better security. (CS 84-008)

Where's the money?

A man went to jail and left a jacket among his possessions in his personal lock-up. When he was discharged, the jacket was no longer there. He complained to our office, and we told him how to apply for compensation.

He obtained an estimate of how much the jacket was worth, took it to the jail and was told a cheque would be mailed to him shortly. Two months later, the cheque still had not arrived. Our complainant again got in touch with the jail. This time he was told that his application had been lost but that the cheque would now be issued.

Four weeks later: still no cheque. Again he complained to us. An investigator phoned the person in charge of Finance at the Ministry of Attorney General who looked into the matter very promptly and had a cheque issued immediately. (CS 84-009)

Judge co-operates

While visiting an institution, my staff received a complaint about inadequate exercise facilities in an R.C.M.P. city lockup. Although the R.C.M.P. is not within my jurisdiction, my staff talked to local R.C.M.P. staff, and it became apparent that the root of the problem was elsewhere. Sheriff Services in the area only escort prisoners on Tuesday and Thursday. Anybody remanded in custody Monday to Monday, must sit in police cells for five of the seven days, and the cells were not designed for this purpose.

Despite the lack of jurisdiction, I was concerned because the problem involved three major towns in the Interior. I brought the matter to the attention of both the Chief Judge of the Province and the Court Services Branch, and was pleased by the results. The judge responsible for that area of the province assured me that, wherever possible, court remand dates would be made for Wednesdays, thus keeping to a minimum the time prisoners must spend in police cells. (CS 84-010)

In my 1983 Annual Report, I explained that many complainants try to resolve their own problems and come to me only after they feel they are losing their battle with the system. That problem still exists, as the following cases demonstrate.

Go to the right person

A company went to the Sheriff Office to pick up an inventory of the goods to be sold at a sheriff sale. Their bid of $7,500 was successful.

When the company collected the goods, two items on the list were missing. When no one could find the missing items, the company wrote to the Sheriffs, that they were "obligated to either deliver the goods or issue a refund for the missing items. I suggest $337.50, or 50 percent of the replacement cost of the two items."

Sheriff Services replied that this was not their problem, and the company complained to my office. As soon as I drew the matter to the attention of supervisory staff, the problem was resolved, and a settlement cheque was issued.

I have included this case as an example of a problem I see fairly often. Once an issue is presented fully to the right person, a good decision is made. (CS 84-011)

Buyer beware — and check for tax debt

In 1979, an elderly lady was the successful bidder on a mobile home the Sheriffs had seized to cover the previous owner's debts. This was a year after new legislation had been proclaimed in B.C., requiring all mobile home dealings to be registered with a government agency. The same applies to large boats and land.

The paperwork involved was new to the Sheriff. He had to make several attempts before he got it right. He told the purchaser at the time that he, the Sheriff, would pay all debts owing on the trailer. The transaction was done by way of a long bill of sale, containing terms, such as "free and clear of all encumbrances."

A couple of months after moving into the home, the woman discovered that the previous owners had left behind a debt of nearly $600 for property taxes for which she was now liable. Trying to resolve the problem, her daughter contacted the Sheriffs and their supervisor — to no avail. Enlisting the help of her MLA also did not bring any results. Four years later, the woman came to us for help.

By now, interest and penalty charges had increased the $600 debt to $1,000. I felt, however, that the Crown should not be held accountable for this increase because the complainant was partly responsible for the delay. On my recommendation, however, the complainant received payment in the amount of taxes owing the day the Sheriff sold the home.

The outcome of the case will benefit others as well. In the future, all Sheriff sale documents or advertisements for the sale of mobile homes will alert bidders to check for outstanding property taxes. This means that purchasers can adjust their bids to reflect the debt owing on the home. (CS 84-012)

Lower fee for less work

A woman defended herself in a suit by a contractor for payment of the balance of his bill. Her defence was that the work originally ordered was not done properly.

When she lost the action, she decided to appeal and ordered "appeal books" from the Court Reporter. When she received the books, she discovered many errors. Questions she knew she had asked were omitted from the transcript, and questions she had not asked were included. Since this made her case at appeal difficult, she approached the Court Reporter to try to correct the transcript. They agreed on two errors, but the woman was not satisfied and complained to me.

My investigator, with the aid of the Court staff, compared the transcript with notes made by the judge during the trial. They found that the transcript differed from the judge's records in 11 places. The judge's records agreed with my complainant's memory. The Court Reporter then agreed to issue an "addendum" correcting the transcript.

In the course of the investigation, a second problem became apparent — the Court Reporter's bill for the appeal books, as allowed by government regulations. The regulations, at that time, set a fee of $5.80 per page, including five photo copies. The fee was uniform, even though the work involved can vary greatly. Some pages are actually produced from the Court Reporter's shorthand notes, whereas other pages involve only the photo-copying of documents already on the Court file. In some Courts, Reporters chose to charge less than the full fee for photo-copied pages, while the full fee was charged in other Courts.

In response to my concerns, the Ministry agreed to rewrite the regulations, setting a regular fee, as well as a lower one for items involving less work. (CS 84-013)

I am pleased to see that the Ministry is taking steps to produce more public information pamphlets to help people understand their rights. One such pamphlet was already written, but was available only in one area of the province. That changed when my office became involved in the following case.

A taxing experience

A woman complained that she was subjected to the embarrassment of debt collection by a Sheriff because a Registrar had misinformed her.

The woman had disputed a lawyer's bill and had asked the Registrar to "tax" it, in other words, decide how much the lawyer should be paid. This is a frequent procedure, but quite understandably, people do not usually engage the services of a lawyer when they dispute another lawyer's bill. Instead they do it themselves, with little knowledge of how to proceed, what form to fill in, and so on.

The complainant said before she left the Registrar, she was told that the Registry would get in touch with her. It did not. Instead, the Sheriff collected the debt without warning.

I never found the source of the problem, but in the process of investigating, I was able to ensure that other people will be better protected. I discovered that a Vancouver Registrar had written an excellent guide on how to tax a lawyer's bill. Court Services agreed to reproduce this pam-

phlet and make it available, at cost, throughout the Province. (CS 84-014)

The next two cases are included because they are of public interest and show the Ministry's good side, not its bad.

An 80-year-old problem is resolved

Some cases make me feel better than others. The outcome of this one was very gratifying because it is an example of a citizen battling enormous odds. The government's position, on the other hand, was equally unenviable. The blame lay with no one, at least not anyone involved with the problem in the last 80 years. No single government agency could resolve the problem. Eventually, however, it was resolved, but not without a lot of patience, co-operation and a willingness to take responsibility.

In 1902, or so we believe, a man left British Columbia to go back to the United States. He sold all his land. At least, he thought he did. He also signed a document which gave a utility company the right to use a 50-foot by 2,000-foot strip of land for utility access. It is likely that the document was intended to give the land to the utility company, but it didn't. It only conferred the right to use the land.

The area, a small interior town, grew in the next 80 years. People built homes, subdivided land. Soon, everyone had forgotten that the strip of land existed, including the B.C. Assessment Authority and the Land Title Office.

The years went by. My complainants discovered the error in 1979. To their horror, they found that the lot on which their home sat actually consisted of two separate pieces, bisected by no man's land. Worse yet, their home was on the 50-foot strip. About 10 neighbours were also affected, but did not know it yet.

My complainants went to a lawyer. Two years and a lot of money later, everyone was stalemated. The court had appointed the Public Trustee to act for the man who left in 1902. The Public Trustee could not find him or his heirs, and could not simply give away his land. To top it off, it wasn't even clear whose land it was. Some government agencies contended that the land belonged to the Crown by forfeiture. Others said it belonged to the man who left in 1902. Not that it mattered, in a practical sense. The land was now in property tax arrears again, and would soon be forfeited to the Crown. That prospect, however, held no hope for a solution either because property tax law forbids action on forfeited land for three years.

I was not at all sure what I could do, but we began looking for a way out. Two years later, I had asked for and received the help of Transportation and Highways, Lands, Parks and Housing, Attorney General, the Public Trustee, the Surveyor General and probably a few I've forgotten.

The Ministry of Lands, Parks and Housing offered to solve the problem if we could convince the courts to allow the Public Trustee to gift the land to the province. It worked. The land now belongs to the Crown. The Ministry of Lands, Parks and Housing will prepare a survey plan. When that plan is completed, the Ministry will offer to sell the land to all the property owners who have been living on it.

Eventually, my complainants and their 10 neighbours will be able to buy the land they thought they already owned. And the best news is that the Ministry will only charge a minimal fee to cover the costs of the survey and sale. (CS 84-015)

The problem of abuse

The chairman of a men's association complained about sexual discrimination in a new policy issued to police throughout the province.

The policy was part of a larger set of guidelines for many branches of the Ministry, for dealing with wife abuse. The guidelines instructed police to lay charges if they believed an assault had occurred, rather than leaving it to the victim to lay the charges.

The *Ombudsman Act* gives me the mandate to look at whether or not such a policy is improperly discriminatory. My review of the Ministry's information made it clear that although the phrase spouse abuse is used, the policy is intended to deal specifically with the abuse of females by males within a family relationship.

I was satisfied, however, that the new policy was intended as an addition to, not a replacement for, existing policies dealing with the assault provisions of the Criminal Code. I was also satisfied that the policy was not intended to remove the possibility of charges against female offenders.

Given the magnitude of the problem of wife abuse in our society, I could not find that the Ministry acted in an improperly discriminatory manner by designing a policy to address the specific problem. (CS 84-016)

My 1983 Annual Report included a cautionary tale, warning property owners that the accuracy of a survey cannot be assumed from the fact that it is filed at the Land Title Office. This year's warning is also about property.

Watch out for liens

According to the *Builders Lien Act*, contractors, sub-contractors and a variety of other people, have the power to register a lien against property if the owner owes them money. The Act states that the property owner may serve notice to the lien claimant to sue or remove his lien. The problem is that the owner does not receive any notice of the lien's existence. The Act also states that a lien ceases to exist after a year. The problem with that is: no one takes the lien off the title until the owner applies for its removal.

Two complainants had problems with liens they had no idea existed. They applied for mortgages and were told they would not get the necessary financing until the liens were removed. Fortunately, a few days later both were able to get financing. Others may not be so lucky. They may see a good real estate deal collapse because of a lien they did not know of.

I made two recommendations to the Ministry. Both were rejected. My first recommendation was that the Act be changed, requiring the lien claimant to serve a copy of his claim on the owner. Alternatively, I recommended that Land Titles staff mail out a form notice to the owner when a lien claim is received.

The moral of this story is: it is important to check the Title to one's property, particularly a month or so after having renovation work done. The fact that the contractor has been paid for his work is no insurance against liens. He may not have paid his workmen, any one of whom can make a claim against the property. (CS 84-017)

PUBLIC TRUSTEE

Perhaps because my staff spend more time than in past years investigating complaints from residents in institutions, I have become more aware of complaints against the Public Trustee. The Public Trustee's job is not easy. His staff manage the financial affairs of people who are unable to care for themselves. They also must deal with the estates of people who die without leaving a will and protect the financial interests of children.

Considering this difficult task, I receive very few complaints about the Public Trustee's financial administration. I do, however, get complaints about inadequate communication between the Public Trustee's office and its patients and their relatives and heirs. The underlying problems seemed to be the same in all cases. Trust officers would not reply to letters and telephone calls in a reasonable time; they failed to provide clients with adequate information about their files and did not meet commitments they had given to clients.

Communication problems

In one case, Cabinet rescinded in 1976 an order-in-council remanding a complainant to Riverview Psychiatric Hospital. Eventually, the complainant found himself owing Riverview $10,500 for the cost of his maintenance and treatment.

In a letter dated March 4, 1983, my complainant was informed that the Public Trustee had paid this bill in September 1982. The money, he was told, had been taken out of his bank account which, at the time, contained about $11,000. The complainant was extremely distressed that the Trustee had paid the bill before he was even informed that he owed Riverview Hospital any money for his maintenance and treatment.

Our investigation showed that the $10,500 billing was justified, but the method of collecting the money was not. I am certain the complainant would have been spared some of his distress and anguish, had the Trustee informed him of the retroactive billing before taking the money out of his account.

My staff discussed this case and others with the Public Trustee. He stated that he, too, was very concerned about this type of complaint. He hoped that a new computerized file system would assist him in maintaining quality control of his files and increase his ability to keep track of the length of time taken by Trust Officers to deal with issues arising from files. He said in future, he would make sure that former patients are informed of the fact that they owe money before taking steps to collect it.

In view of these assurances, I closed the file, but I intend to continue monitoring the situation to make sure that this type of complaint does not arise again. (CS 84-018)

There are, of course, other problems. The Public Trustee's staff must deal with people who are distressed by a death, or who have medical or social handicaps. I believe it is crucial that these people receive fair, prompt and considerate treatment at the hands of a government agency.

Children's toys sold

A man complained that the Public Trustee had sold the belongings of his former wife's children to cover the cost of her funeral.

I investigated the allegation and concluded that the Public Trustee had wrongfully sold the children's belongings at the time of the estate's liquidation.

Prior to the estate sale, the Public Trustee had told the children's social worker that they could

enter the apartment to obtain additional clothing. The social worker did not interpret this as an authorization to remove from the apartment all items belonging to the children. Subsequently, the balance of the children's clothing and toys was disposed of at the time of the estate sale.

I recommended that the children be reimbursed for these items. The Public Trustee initially questioned whether the items could be considered the children's property, as distinct from the estate. While the Public Trustee did not agree with my analysis of his legal responsibility, he agreed to replace items which had obviously belonged to the children.

The Public Trustee also accepted my second recommendation to adopt a more formal means of notifying the Ministry of Human Resources to collect a child's belongings prior to the liquidation of an estate. (CS 84-019)

Bureaucratic indifference

A man who had been ill, was certified in March 1984 to be capable of handling his own affairs. Problems with computer cut-off dates meant that his April pension cheque went to the Public Trustee, even though the Trustee no longer administered his money.

The Trust Officer had a hunch this would happen and informed the man and his wife not to worry. The office would forward the cheque to them. No cheque arrived.

The following month, the man reminded the Trust Officer to send the cheque, but for some reason or other, it was not mailed. The man's wife wrote in June, and again in August, asking the Trust Officer to please forward the April cheque. Those letters were not even acknowledged.

When my investigator called, the Trust Officer was able to issue a cheque and send it to the complainant by courier within 24 hours. This was one of the more glaring examples of bureaucratic indifference to a citizen's need. (CS 84-020)

She paid twice

A woman whose husband was declared incompetent complained that the Public Trustee had made an error in handling her husband's financial affairs.

The Public Trustee had handled the man's affairs initially. When the woman was given charge of her husband's estate, she assumed payments to Valleyview Hospital to cover the cost of his maintenance and treatment. Shortly after, she became convinced that the Public Trustee had made an error regarding her husband's finances, but she was ill herself, and not able to pursue the matter thoroughly.

During the investigation, I discovered that Valleyview Hospital had received double payment for the man's maintenance for several months. There was a reason for this confusion. The Trust Officer involved in the case was moved to another area at the same time the affairs of the complainant's husband were transferred from the Public Trustee to the complainant. The Public Trustee continued to make automatic payments to the hospital for approximately three months.

Soon after Valleyview's accountant discovered the $655 overpayment, he returned $356 to the Public Trustee and $278 to the complainant. Since the entire amount should have been returned to the complainant, my investigator spoke to a Trust Officer to find out what had happened to the balance of the overpayment. We discovered that this money was in the Public Trustee's account. The Public Trustee immediately agreed to send a cheque to the complainant for the balance of the overpayment. (CS 84-021)

Where is my furniture?

When a storage and moving company went out of business, the furniture belonging to a patient of the Public Trustee's disappeared. The furniture had been stored with the company just before the Public Trustee assumed responsibility for the man's affairs. The Public Trustee had reassured the patient's son-in-law that the furniture would be cared for.

The Public Trustee sent two letters to the company regarding the patient's account for storage costs. The company did not respond or submit a bill. Finally, one year after the furniture had been placed in storage, the Public Trustee made telephone contact with the company and learned that it was out of business and that the furniture had been disposed of.

For several years after that, the Public Trustee reassured the patient's son-in-law that the fate of the furniture would be determined. The patient eventually resumed responsibility for his own affairs and five years after the furniture had been lost, he complained to my office about the Public Trustee's failure to take appropriate action to recover it.

After my investigation, the Public Trustee agreed to compensate my complainant. I closed my investigation when the complainant and the Public Trustee negotiated the value of the lost furniture. (CS 84-022)

Sorry, our "mistake"

During an investigation, police sealed a complainant's residence and told him they would release his personal possessions to the Public Trustee.

The Public Trustee advised the complainant to submit a signed disposition listing his personal belongings. A field investigator would then retrieve his possessions and return them to him.

The following week, a Trust Officer informed him that the investigator had been on the premises and turned everything over to the landlord for disposal. He was very apologetic, saying the whole thing had been "a mistake."

The Public Trustee stated he was willing to compensate the complainant for the lost items. He eventually settled the matter by paying our complainant $150. (CS 84-023)

JUVENILE CONTAINMENT

In 1984, my staff investigated more than 300 complaints against juvenile containment facilities. Many of them may seem trivial to an outsider. To those behind bars, they are not. It is easy to dismiss as frivolous or irrelevant complaints about food or clothing. But I believe that children and youths contained in institutions must have an environment that offers hope for their return to normalcy, as well as correct, fair and professional conduct by officials.

Centre replaces missing items

Several residents of the Victoria Detention Centre complained that some of their clothing and personal effects had gone missing.

At the time of admission, the residents' clothing and personal items are noted on a special list. The Centre acts as trustee of these possessions while youths are at the Centre.

The Centre was quite willing to pay for the replacement of the lost items, as long as they were listed at the time of admission. (CS 84-024)

The personal touch

A resident of the Willingdon Youth Detention Centre complained that she was not allowed to decorate her room with posters.

I believe it is important to provide residents of institutions with the opportunity of giving their rooms a personal touch. The Centre's staff explained that they decided against allowing the complainant to decorate her room because she was there on remand and would not stay for too long.

When my investigator explained that the complainant had already been in the Centre for over a month, the staff agreed to allow residents on long-term remand to decorate their rooms. (CS 84-025)

Food is not a disciplinary tool

One youth complained that the menu was altered as a disciplinary measure against residents because someone had allegedly stolen the camp cook's cigarettes.

This complaint concerned me for two reasons: food was used for disciplinary purposes, and staff used group punishment because of the alleged action of an individual.

I referred the matter to the Inspection and Standards Branch which acknowledged the incidence and confirmed that the Branch policy had been violated. The Director of the Camp wrote to the complainant, informing him that the cook had acted without authority. (CS 84-026)

It is important for children and youths in containment centres to know the rules to which they must adhere. And they must be able to rely on those rules and on the fairness of those who enforce them.

Camp rules posted

I mentioned in my 1982 Annual Report that the Victoria Youth Detention Centre agreed to post in the commons room the rules regarding conduct and disciplining.

On a regular visit to Lakeview, my staff discovered that the grievance procedures were not posted on the walls of the residents' huts.

It appears to me that it is important for people in institutions to know the rules of the game. These rules have to be clear and must be widely distributed.

The Director of the Camp agreed to draft a specific set of procedural guidelines and post them on the wall of each hut. (CS 84-027)

Communication with outside a right

Several Lakeview residents complained that the staff monitored communication with their families and friends.

They said staff read residents' mail and commented on the contents. At my urging, the Director agreed to provide written instructions to staff that letters were to be read only in specific circumstances, and that their content was never to be discussed with residents.

The right to communicate with persons on the outside is recognized in the United Nations' "Standard Minimum Rules for the Treatment of Prisoners." According to these rules, prisoners shall be allowed to communicate with family and reputable friends regularly, both by correspondence and by receiving visits.

One resident said a staff member told him he could not complain to the Ombudsman. He also complained about the lack of privacy for making telephone calls to the Ombudsman.

The *Ombudsman Act* gives all residents of institutions access to the Ombudsman. This includes access by telephone or in writing. It is important that institutions provide a resident with the privacy to communicate with my office.

The Director issued a policy directive to all staff, informing them that residents have the right of free access to my office. The Director also ordered a telephone booth installed to ensure the privacy for such calls. Previously a resident had to use a phone in an administration office. (CS 84-028)

Access to information

A Willingdon resident complained that he was not permitted to see the file the Centre had on him. He thought this was unfair, considering that the Centre had made the file available to his parents to read reports about his behaviour.

The Director agreed to let the complainant read the file, with the proviso that any report which might have a negative impact on him would first be removed. (CS 84-029)

Wolves among the sheep

A caller who wished to remain anonymous said an alleged sexual offender was kept with juveniles at the Lakeview Youth Camp. We contacted the facility and discovered that two adult offenders were housed at the juvenile facility.

My solicitor advised the Director of the Camp and the Corrections Branch that according to section 24(10) of the *Young Offenders Act*, it is against the law to house adult inmates in juvenile facilities.

Both adult inmates were subsequently removed from the facility. I viewed the complaint as substantiated and rectified and advised the Corrections Branch of the Ministry of Attorney General accordingly. (CS 84-030)

ADULT CORRECTIONS

The greatest number of complaints from adult correctional institutions last year centred on medical and dental issues and visiting programs. The fact that food services were turned over to the private sector also contributed to the increase in complaints over the previous year.

And when the dust had settled on the agreement between the Correctional Services component of the B.C. Government Employees Union and the government, inmates found themselves under increased restrictions. The supervision previously provided during lunch hour was reduced under the new contract. This, too, triggered a number of complaints from inmates.

There was a substantial decrease in complaints regarding protective custody. This would indicate that institutions are resolving some of the issues I reported last year.

My staff visited the institutions more often last year to resolve local issues quickly, an approach that requires good co-operation from Corrections staff.

The nature of custody or incarceration may generate a community based on conflict, rather than co-operation. Officers and staff are required to hold persons in surroundings that are often dehumanizing. Working conditions in our prisons appear to generate a temptation to be indifferent to human need or suffering. Inmate-staff relations can quickly degenerate. Inmates may offer active or passive resistance, and officers may react with a display of force. The following cases illustrate my concern.

The use of force

An inmate complained to the Inspection and Standards Branch about an incident in which he broke his glasses and bruised his face after an officer forced him to return to a clothes-change area before entering disciplinary segregation.

When Inspection and Standards concluded that the guard did not use excessive force in the incident, the inmate complained to me that the investigation was one-sided.

I reviewed the findings of Inspection and Standards. I also considered the detailed response of the inmate, his statements, and the initial complaint presented by a law student on his behalf.

Not all of the inmate's objections could be sustained and I concluded that the report of the Inspection and Standards Branch was based on an adequate investigation. This answered most of the objections raised by the inmate. I disagreed, however, with the conclusion that the officer did not use excessive force. Because allegations of excessive force or brutality are cause for concern, I decided to investigate further on my own initiative.

A prison officer's work involves many judgment decisions regarding the use of force. An officer is

expected to exhaust all means of reasoning or verbal control and use force only for legitimate purposes, such as terminating violence, preventing the commission of an offence, apprehending an offender, or assisting another person to do the same. An officer also should never apply more force than is necessary to effect control, and only after other, non-forcible methods have failed.

The evolution of a standard in the use of force by prison personnel is an international problem. In September 1983, Herman S. Doi, the Hawaiian Ombudsman, investigated allegations of the use of unreasonable force against inmates during the shake-down of the Oahu Community Correctional Centre, formerly known as the Hawaii State Prison. In a swift and sometimes crude manner, state officials skin-frisked approximately 800 inmates over a period of five days. To complete the investigation of the resulting complaints, the Ombudsman conducted 546 interviews of both inmates and state personnel.

From this investigation, a standard for the use of force was developed and applied. Ombudsman Doi recommended that administrators investigate each instance in which force is used. And by examining reports and findings, they were to develop a training file for officers to assist them in pinning down the circumstances and the degree of force that should be properly used. This process, Ombudsman Doi hoped, would result in consistency of decisions and standards.

I applied five of Ombudsman Doi's questions to the incident at the Lower Mainland Regional Correctional Centre. In order to determine whether the force used was reasonable, these five criteria had to be met:

1. The objectives to be attained must be lawful.
2. Resistance to the attainment of the lawful objective must be evident.
3. Reasonable alternatives to the use of force must be either unavailable or tried and proven unsuccessful.
4. The force used must be minimal, that is no more force than is required to overcome the resistance or effect control.
5. The force used must be directly related or limited to the attainment of the lawful objective.

Excessive force will be apparent if the action taken fails to meet any one of the five tests. I concluded that the force used by the one officer was excessive in the circumstances and that he acted improperly because he had not tried reasonable alternatives.

There was no evidence of a warning regarding the inmate's resistance. The officer's actions caused the inmate to fall, and because he could not protect his face, his glasses broke and he bruised his face. The officer also did more than enforce a lawful order. He forced the inmate to comply in a manner that resulted in injury.

I presented my findings to the Corrections Branch which replied that the inmate's credibility must be considered. That we had already done. The Branch also stressed that an examination on my part of the circumstances and the degree of force would have led me to the conclusion that the action was both reasonable and justified. The Branch's findings did note, however, that two officers were present at the time of the incident and that both should have dealth with the situation. This alternative to one person acting alone would, indeed, have been correct in the circumstances.

As a result of this investigation the five questions above, establishing the criteria for the use of force by prison personnel, have been drawn to the attention of those responsible for training of correctional officers and those responsible for formulation of policy. Officers at the Lower Mainland Correctional Centre were alerted to a high standard of professional conduct in their relationship to inmates. (CS 84-031)

Inmates find solution

An inmate at the Vancouver Pretrial Services Centre complained that he was denied open visits with his wife because he was in the protective custody unit. For security reasons, the centre allowed protective custody inmates closed visits only.

Our investigation revealed that the inmates of the protective custody unit had submitted a proposal on open visits, outlining how they could be conducted, while maintaining security. The institution informed me that they found this proposal acceptable and approved open visits for protective custody inmates three times per week. (CS 84-032)

Force not excessive

An inmate in a secure institution accused guards of having used excessive force. He claimed they struck him in the face and broke his nose.

The incident began when an officer suggested the inmate go to the medical clinic after he was found dabbing blood from his nose following an altercation with another inmate. He refused medical treatment and offered resistance which escalated into group resistance. A riot squad eventually took the inmate forcefully to segregation.

I reviewed three specific issues arising from this complaint. Should an inmate be forced to report to the medical unit when an injury has been observed? Was the deployment of the tactical squad necessary? And did the tactical squad use excessive force?

The inmate first contacted the B.C. Civil Liberties Association which was permitted total access to the recorded disciplinary hearings and interviews with inmates. The Regional Director of Corrections responded to the recommendations of the Association, and I decided not to investigate this aspect.

The officers initially involved in the incident thought it was their duty to make sure that the inmate received medical treatment. They acted as if this was the only possible procedure. I considered this approach unreasonable. I felt that alternative policy should allow for an inmate to refuse medical treatment in some circumstances.

The Corrections Branch responded with a policy outlining informed consent principles. The exact circumstances in each case will determine the reasonableness of the alternatives followed by the officers. Recent court cases, involving inmates who decided to fast to death, have established that the Corrections Branch should not be compelled to force-feed inmates, as long as the fasting inmates are capable of making rational decisions.

In cases of attempted suicide, on the other hand, an officer should not simply stand by and do nothing. He must take steps to safeguard the inmate's life, even though the inmate has obviously chosen to kill himself. The policy developed by the Corrections Branch must provide officers with guidelines within which to use their judgment and discretion.

I concluded that the deployment of the tactical squad was necessary in the circumstances. The director must have authority to establish control quickly and in the most appropriate manner. No other show of force would have been adequate to secure the institution after a number of inmates indicated their resistance to the lawful orders of the officers. In my preliminary report, I proposed that an escalating degree of security could be found by utilizing lock-up procedures prior to confrontation. This topic was discussed by the director and senior officers at the institution.

I was not able to establish with certainty the extent of injury to the inmate's nose, but it was obvious that the injury or re-injury resulted from the use of force by riot squad guards. I concluded, however, that the force used was not excessive. Officers who must physically remove a resisting inmate from a cell and take him to a segregated area may inadvertently injure the inmate. They, too, face the risk of injury.

I suggested that a medical officer accompany the deployment of the tactical team whenever feasible. The use of video equipment to record the incident could protect both officers and inmates from unwarranted allegations of abuse. Restraining neck holds, used by officers, were also reviewed. I pointed out that recent literature shows some neck holds are potentially lethal after a very brief application. Officers must have continual training and proficiency in the application of reasonable force. (CS 84-033)

Escorts within the hour

An inmate complained that he was locked in a bare cell in the reception area for five hours after he returned from court to a secure correctional centre.

The inmate said such delays were not unusual, which was perhaps an exaggeration. While some delays occur, this one was exceptionally long, unreasonably long, in fact. True, the institution had experienced internal disturbance, but other officers could have escorted the complainant.

The Corrections Branch agreed with my finding and tightened an existing policy to resolve within one hour any delays due to lack of escort service. The officer in charge of records will monitor the need to contact directors to resolve the problem. This resolved the complaint adequately. (CS 84-034)

A healthy mind in a healthy body

During an institutional visit to the Vancouver Island Regional Correctional Centre in July, my staff received a complaint that exercise was limited to one hour per day in a restricted area in front of the lock-up cells. This narrow strip appears to be about 70 feet long and four feet wide. The inmate requested access to a mini-gym area during exercise time.

The inadequate exercise program was apparent to officers but they were unable to assign staff to supervise inmates in the mini-gym area and inmates on the lock-up tier at the same time. The latter require one-on-one supervision when out of their cells.

Officials could not provide an adequate exercise program because the current level of staffing permitted by the government was not sufficient to supervise inmates on the tier, as well as at exercise. This meant that the benefits of vigorous exercise, which contributes to mental health and

physical well-being, were denied within the prison. It also meant a potential increase of inmate tensions.

I could not hold the Vancouver Island Regional Correctional Centre at fault for failing to provide such a program but I wrote to the Honourable Brian Smith, Attorney General, to make him aware of this potentially dangerous situation caused by budgetary restraints.

The completion and opening of new facilities at the centre in early 1985 should resolve this issue. I found this complaint substantiated but not immediately resolved or rectified. (CS 84-035)

Institutions must demonstrate a strict adherence to the authority granted them under the law. The law most often relevant to complaints against the Corrections Branch is contained in the Correctional Centre Rules and Regulations. The following cases deal with procedures required by the regulations and a definition of privileged correspondence that needs updating.

Family visits stopped

Inmates at the Lower Mainland Regional Correctional Centre greatly appreciate family visiting privileges. These monthly visits present more security problems to the supervising officers than the regular visits which take place behind glass. An inmate complained that an officer monitoring his phone calls became suspicious and terminated his visiting privileges improperly.

I found the complaint substantiated because the institution had followed arbitrary and unfair procedures. It had imposed the loss of family visiting privileges as a penalty, which is contrary to the regulations. The regulations state that "the visiting privileges of an inmate shall not be restricted or revoked, except where it is found the inmate committed a breach as a direct result of a visit."

In this case, the officer did not charge the inmate with an offence. No disciplinary hearing was held. Under these circumstances, the institution should not have imposed the loss of visiting privileges.

The Branch agreed that a disciplinary hearing must be held before any sanctions can be imposed on an inmate. The Branch agreed to evaluate the provincial policy regarding visiting privileges.

The institution agreed to introduce an application form for family visits which spells out the consequences of being found under the influence of drugs, intoxicants or unknown substances following a family visit.

And lastly, the district management of the Lower Mainland Correctional Centre adopted my recommendation to give inmates a transcript or a statement outlining the details of a monitored communication before using it as evidence at a disciplinary hearing. The information must include the time, place, date, as well as the names of the parties involved in the conversation. (CS 84-036)

Embarrassing search of prison visitor

A woman who had visited the Lower Mainland Correctional Centre said a female officer frisked her in a manner and place that made her feel very embarrassed and uncomfortable.

According to regulations, a prison officer may search visitors or their possessions if he has reason to believe they may bring into or take out of the prison any object that will threaten the institution's security.

The regulations also require that the officer must be of the same gender as the person being searched. The officer must respect the privacy and dignity of the person. In this case, the officer was also a woman, but male officers were present and able to observe the search. The woman was embarrassed.

The Policy and Procedures Manual gave no guidance to officers in how to conduct the search of a visitor. In my opinion, too much was left to the officer's discretion. The risk of inappropriate conduct on the part of the officer was too high. Because the institution has many female visitors, and security requires constant vigilance, I viewed the absence of detailed guidelines for officers as an unreasonable omission.

The complainant had asked me not to identify her to prison authorities during my investigation. I was, therefore, unable to determine conclusively whether the officer had acted improperly in conducting the search. I found that the institution had rules governing visitors and contraband, but these were not posted where visitors could see them. The failure to provide advance notice to visitors that they might be searched, also constituted an unreasonable procedure.

The Corrections Branch rectified the problem by requesting a separate room at the main gate for searching women visitors. Until that room is available, another room offering sufficient privacy will be used. A large sign, informing visitors of the rules, was posted at the front gate.

The Director reviewed the institutional manual and initiated revisions that include explicit descriptions of the procedures to be followed during searches of visitors. To ensure consistent

standards at the province's secure institutions, she also asked other directors to address the issue. (CS 84-037)

Privileged correspondence

The Immigration Department assured an inmate that any information divulged by him at an immigration hearing would be held in strict confidence. Later, the Immigration Department sent the inmate a transcript to review. When the inmate received this correspondence, it had been opened and some pages appeared to be missing.

Directors or persons authorized by Directors at Correctional Centres may examine all correspondence other than privileged correspondence if they believe it may threaten the management, operation, discipline or security of the Centre. The Immigration Department's correspondence was not privileged. Therefore, the letter had been opened. I could not determine if the missing pages were removed or had inadvertently been left out to begin with.

I concluded that there was no justification for scrutinizing official communications from the immigration authorities. The confidentiality promised at the immigration hearing had been compromised.

On December 6, 1984, the Corrections Commissioner accepted my position and advised all institutions that privileged correspondence would now include correspondence between the Immigration Department and inmates held in custody under an immigration detention order. The proposed Correctional Centre Rules and Regulations were changed in accordance with this directive. This rectified the complaint. (CS 84-038)

The administration of inmate affairs places a special premium on strict adherence to basic standards of fairness. An open mind on the part of the decision-maker is essential to the integrity of public administration, especially when it involves the possible imposition of a penalty or the granting of parole. A disciplinary process that is perceived to be unfair and arbitrary, fosters cynicism and undermines respect for the law in general.

Disciplinary process must be fair

An inmate who was charged with breaching a rule or regulation while absent from the institution had his temporay absence privileges revoked by a disciplinary panel.

After the Division of Inspection and Standards denied his appeal on grounds that there was justification to revoke the privileges, the inmate complained to me. He said he did not get a fair disciplinary hearing.

I obtained the tape recording of the hearing, a copy of the findings of the Division of Inspection and Standards and the Corrections Branch policy for temporary absences.

After examining the procedures of the panel I found that the Chairman had neglected his obligation to be impartial. He investigated further information and assumed the role of investigating officer.

The Regulations clearly state that "an officer who filed the allegation in writing or investigated the allegation shall not be the officer or a member of the disciplinary panel hearing the allegation."

I also found the hearing unfair because the inmate was not given proper notice of the allegations to be considered at the hearing, and a key question regarding a witness' testimony was not answered.

The Chairman indicated his bias by attempting to terminate the inmate's temporary absence pass six days before the hearing was to take place.

On my recommendation, the Corrections Branch set aside the disciplinary action against the inmate, as well as the findings of the Division of Inspection and Standards. Any references to the disciplinary hearing were deleted from the inmate's file, and the procedural errors were reviewed with the institutional authorities.

As a result of this complaint, the Corrections Branch also decided that inmates will from now on be responsible for the expenses of their own witnesses at disciplinary hearings. (CS 84-039)

Fairness in parole decisions

An inmate complained that the Parole Board wrongly revoked his parole.

Following investigation I concluded that the Parole Board had properly considered the matter and based its decision on relevant facts.

But the investigation raised secondary questions regarding the inmate's right to request a re-examination of the original decision and the possibility that the Board followed unfair procedures in deciding to grant re-examination. I reviewed these questions on my own initiative.

I recommended that the Board broaden the grounds upon which applications for re-examination of decisions are granted. Existing criteria were limited to instances in which denial or revocation was based on incorrect information.

I also recommended that the Chairman be required to delegate responsibility for approving or

rejecting applications for re-examination of previous decisions in which he participated.

The B.C. Board of Parole reviewed all requests for re-examination and amended its policy satisfying both of my concerns. (CS 84-040)

Delay is unreasonable whenever service to the public is postponed improperly, unnecessarily or for some irrelevant reason. Sometimes I can be of assistance, as shown in the cases below.

Payment problems

A man who operates a youth program for the Ministry on a contract basis complained that a delay in payment was causing him problems.

To pay his ongoing expenses, such as rent, telephone, supplies, etc., he depended on payment early in the month for the services he provided the previous month. When he called us, the Ministry owed him money for two months and he had difficulties meeting his financial obligations.

We phoned the appropriate person in the Ministry and were told that a cheque was already in the mail. At the same time, we were able to pinpoint the source of the problem and informed the complainant accordingly. We have not heard from him since, and can assume that he took steps to avoid future delays. (CS 84-041)

Better late than never

A visit by my staff to the Prince George Regional Correctional Centre in June 1981 coincided with a sit-down strike by the inmates. During that visit I received some 120 complaints.

These complaints ranged from the serious to the definitely not so serious — from allegations about beatings by prison guards to complaints about no HP sauce on the table at meal time. Most of these complaints have since been resolved or corrective action was taken. Other inmates were advised that I was not able to substantiate their complaints.

But one complaint remained unresolved, a blot on my statistical records. Two inmates complained that no tape decks were permitted in the cells. At the time of the investigation, regulations with regard to these devices were inconsistent in the province's penal institutions. At least one secure institution allowed the use of small tape decks, as long as no recording device was attached (the recording device could have serious implications for prison security). Although staff at this institution had initially been reluctant to permit tape decks, they eventually considered them as a help in occupying an inmate's time.

One objection by the Corrections Branch to tape decks in cells was that the "heavy-type inmate" would put pressure on weaker inmates to hand over such an item. I pointed out that to be logically consistent with such an objection, the institutions would have to deny the inmates all personal possessions, including the small radios which were already allowed in cells.

Another objection was that contraband could be hidden in such devices. I pointed out that I was not proposing the use of large tape deck players — but small tape decks which would present no more of a security problem than other personal items.

As for the argument that inmates were already provided with a variety of entertainment (TV sets in units, reading material, etc.), I argued that tape decks would allow inmates some small measure of personal control over the entertainment.

Finally, in September 1984, the Corrections Commissioner and the Branch Management Committee determined "that these tape decks should be allowed, but that if problems resulted from their use, an exception to the policy should be sought."

I considered this sufficient concurrence with my recommendation and was finally able to close my file on this long-standing complaint. (CS 84-042)

If a procedure fails to achieve the purpose for which it exists, it is an unreasonable procedure. The following cases deal with unreasonable procedures.

Call to lawyer necessary

Even new prisons have problems. An inmate at the Vancouver Pretrial Services Centre complained that he was unable to contact his lawyer because he was only allowed to use the phone when his lawyer was in court.

Inmates who receive disciplinary charges, or pose a management problem may be locked up for 23 hours of the day. They may make telephone calls during their one-hour exercise period.

At the time my complainant encountered his problems, a number of inmates who had been involved in a riot at the Pretrial Centre were also kept in the segregation unit. Because of the crowded conditions and mood of the institution following the riot, officers allowed only one inmate out of his cell at a time to attend to his personal hygiene, and make personal and business telephone calls.

I found these restrictions unacceptable. An accused must be able to contact his or her lawyer

during trial preparations. The Director had been unaware of the problem and agreed that it contradicted normal practice.

A senior corrections officer reviewed the guidelines with the assigned staff of the segregation unit, and the result was that inmates are to be allowed telephone access to their lawyers at times other than during the designated exercise period. (CS 84-043)

Cancellation of visits not unfair

A couple had visited an inmate on a regular basis for more than five months. When a staff member at the institution discovered that one of them had been fined for possession of marijuana, both were barred from further visits. They complained that the termination was improper and unfair.

According to our investigation, the Director had ample evidence that the inmate was abusing drugs which were contraband. I concluded that his attempts to prevent the abuse of drugs in the institution by denying the visits were neither improper nor unfair.

But I found that the Corrections Branch had failed to inform my complainants of an appeal procedure that allowed persons whose visiting privileges had been denied to appeal that decision to the District Director.

Since the purpose of an appeal is to ensure that objections to the decision are properly considered, a person who wishes to object cannot take advantage of an appeal procedure unless he is informed of it. The failure to notify inmates, as well as visitors of the appeal process is, therefore, an unreasonable procedure.

The Corrections Branch accepted my proposal to inform affected parties of the appeal procedure in future and revised its operations manual accordingly. (CS 84-044)

Sometimes I can assist a complainant by first giving the authority a chance to resolve the problem. If the complainant gets no satisfaction, I can still investigate. The Corrections Branch resolved the following complaint without an investigation on my part.

Prison cleans own house

In late 1983, an inmate and a former prison staff member voiced serious complaints about staff conduct and the abuse of inmates at a secure institution. They contacted my office when they felt their letters to the Attorney General, the Premier and the Corrections Branch were being ignored.

On October 17, 1983, I asked the Corrections Branch to inform me of the outcome of its investigation into the allegations.

The Corrections Branch identified the complaints. They included telephone harassment, alcohol and drug involvement, staff with personal problems, hassling of inmates, improper language, improper sexual relations and assaults on inmates.

Not all of the allegations were substantiated, but a significant number of abuses were documented. Disciplinary action was taken in those cases, and institutional changes put in place.

I concluded that the institution had dealt with each complaint. The Director of the Division of Inspection and Standards met with the complainants and reviewed each complaint with them. They did not get back to me, and I considered the matter resolved. (CS 84-045)

Some 27 percent of all complaints against Corrections are not substantiated. I advise each complainant of my findings in detail and state the reasons for my conclusion that there is no substance to the complaint.

Transfer denied twice

An inmate complained that he was denied a transfer to the Vancouver Island Regional Correctional Centre after serving 18 months in Oakalla. He had a job waiting for him on the Island after his release.

The classification officer denied the transfer because the inmate was a security risk. He had escaped twice and had numerous disciplinary charges against him. According to Corrections Branch policy, inmates from Vancouver Island who require security will be held at the Lower Mainland Correctional Centre.

The denial was reasonable because it took into account the inmate's behaviour and his record. (CS 84-046)

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

Declined, withdrawn, discontinued	53
Resolved: corrected during investigation	19
Substantiated: corrected after recommendation	4
Substantiated but not rectified	2
Not substantiated	25
Total number of cases closed	103
Number of cases open December 31, 1984	17

In one way or another, the Ministry of Consumer and Corporate Affairs potentially affects every British Columbian. The Ministry's mandate is to protect consumers, to license motor dealers, travel agents and cemeteries and to register companies and societies. The Ministry even issues certificates for seeing-eye dogs.

Considering this multitude of responsibilities, the number of complaints against the Ministry is small, indeed. I should also mention I get excellent cooperation from Ministry staff.

CONSUMER AFFAIRS

Even though consumer complaints do not fall within my jurisdiction, I am occasionally brought into the fray through the back door. People who believe they have been cheated in the market place may complain to the Ministry. If they do not get any satisfaction from the Ministry, they can complain to my office, not about the matter which originally raised their ire, but about the way the Ministry handled their complaint. Here are a few examples.

There is your transmission, lady

A woman took her car to a transmission repair company to have her transmission inspected. She was told the inspection would cost $80.

The woman expected — not unreasonably — that for her $80 she would find out whether the car's transmission was either all right, needed repairs, or would have to be replaced. That is not what happened, however.

When the inspection was completed, she was informed that her car needed a new transmission. The trouble was that the transmission was now disassembled. She could not drive the car anywhere else to get a second opinion or a better price than the one the company quoted. She protested in vain and eventually had no choice but to give the okay for the installation of a new transmission at a substantial cost.

The woman then complained to the Ministry of Consumer and Corporate Affairs which apparently misunderstood her intentions. Ministry officials thought she blamed the transmission company for misleading her into believing that her car needed a new transmission when it did not. Since there was no longer any evidence in the form of the old transmission, they said, there was nothing they could do.

At this point, the woman came to my office. The real complaint, of course, was that her car was driveable before the inspection and not driveable after. She was under the impression that she was buying an inspection for $80, and that she would have a choice of what to do after the inspection, including driving the car away. Most of all, she objected to the fact that she did not have the option of shopping around for a better deal.

After I pointed out the misunderstanding to Consumer and Corporate Affairs, the Ministry conducted an investigation. In the end, the complainant received a partial refund from the company, a solution with which she was quite happy. (CS 84-047)

The missing money order

A woman had the driveway to her residence paved. When the work was not to her satisfaction, she complained to the Ministry of Consumer and Corporate Affairs.

The Ministry got in touch with the supplier and persuaded him to refund an amount of $122.50. The supplier bought a money order payable to the complainant and sent it to the Ministry which forwarded it to the complainant by certified mail.

Several months later, the complainant phoned the Ministry and inquired how her complaint was getting along. The Ministry was surprised to hear from her because the matter had been resolved some time ago. It now seemed that the complainant had not received the money order.

When the money order was mailed to the woman, the Ministry's Consumer Affairs Branch was understaffed. Because there was no secretary, no one wrote down the number of the certified letter and no one made a photocopy of the money order. In other words, no one in the Ministry could prove that the money order had been mailed at all.

To make matters worse, the supplier who had bought the money order and sent it to the Ministry could no longer be found. The Ministry de-

cided it could not help the woman, and she complained to me.

After considering the matter, I felt that the Ministry owed the woman the money. The Ministry agreed, but making such a payment is not a simple matter. The Minister of Consumer and Corporate Affairs had to ask the Attorney General for a decision under Section 14 of the *Crown Proceedings Act*. Both the Minister of Consumer and Corporate Affairs and the Attorney General are busy people, so matters took a while.

Finally, a Ministry official informed my investigator that the Attorney General had approved the payment, and that a cheque would be sent to the complainant in a few days.

When my investigator phoned the complainant to give her the good news, she told us something she should have told us earlier: she had also complained to her Member of Parliament in Ottawa and sent a copy of that complaint to the Canada Post Office.

The Post Office checked whether the lost money order might have been a postal money order, and it was. Canada Post did its own investigation and determined that the money order had not been cashed. A few weeks before our phone call, the woman had received a replacement money order in the amount of $122.50 from the Post Office.

I thanked the Ministry for its efforts and co-operation and advised the woman to return the $122.50 to the Ministry immediately. (CS 84-048)

Intimidation and harassment

A couple complained about a very unpleasant experience with a debt collector. The husband had bought a tractor on credit. When he ran into financial difficulties, the vendor called in a collection agency.

The complainants alleged that the collection agency used apalling methods in its efforts to collect the debt. For example, the wife alleged that the debt collector called her on the phone and told her that her husband would be arrested

and thrown in jail, and that a warrant could also be issued for her arrest. The debt collector also offered the wife $2,000 for certain information.

The complainants found out that the debt collector had called all the telephone numbers on the couple's last phone bill, including relatives in Ontario, trying to locate the couple. The debt collector later admitted that he had called the numbers. He said he had paid a B.C. Tel employee $25 for a copy of the complainant's telephone bill.

The collector even went to the extent of offering my complainant's employer a financial reward for information about the complainant or his truck. The debt collector questioned and intimidated the complainants' young children. He even circulated a poster offering a $500 reward for information about my complainant and his truck.

My complainants brought the matter to the attention of the Director of Debt Collection who conducted an investigation. The Director determined that, while many of the allegations may have been true, there was insufficient evidence for most of them. Other methods used by the debt collector did not constitute an infraction of the Debt Collection Act.

The Director held a hearing to determine whether the debt collector's licence should be suspended. The debt collector was present at the hearing, but the complainants had not been invited to attend. The hearing dealt mostly with the allegation that the debt collector had distributed a poster offering a reward. In the end, the Director was satisfied that the debt collector had not been responsible for the poster. It had been distributed by a third party. The Director determined that the other allegations could not be substantiated, and took no further action regarding the collector's licence.

At this point, the complainants wrote to my office and expressed their dissatisfaction with the methods used by bailiffs and debt collectors in this province. They also complained about the Director of Debt Collection.

My investigator discussed the matter with the Director and examined the pertinent files. We found that the Ministry had conducted a thorough investigation which had, indeed, substantiated some of the complainants' major allegations. But the Director had been under the impression that proof beyond a reasonable doubt was required to cancel or suspend a debt collector's licence.

For example, the complainant's employer confirmed that he had received a phone call from the debt collector offering a reward for information about the complainant, but he could not recall the date on which this telephone conversation took place. The Director considered this inadequate proof. I pointed out to the Director that, in my opinion, he applied a standard that would satisfy court requirements in a criminal matter. For the Director's purposes, it was sufficient that, on the balance of probabilities, the alleged acts had taken place. This is the standard of proof the courts themselves apply in civil matters.

The investigation completed, I wrote to the Director and informed him of my preliminary findings. I advised him that, depending on his response, I would make certain recommendations. These would include that he reconsider the standard of proof to be applied in an administrative decision, and that in future, he invite complainants to hearings that may result from their complaint.

The Director responded promptly. He informed me that, in future, he would apply the standard of proof used in civil cases before the courts, rather than the standard of proof beyond reasonable doubt, applied so far. He also assured me that he will continue to follow his practice of inviting complainants to hearings, adding that this particular case had been an exception.

The Director also wrote to the complainants, explaining what had happened, and offering an apology.

What of the high-pressure debt collector's licence? Well, by the time the complainants came to me, it was too late to reverse the process. Both the Director of Debt Collection and I were of the opinion that it would be unfair — and probably unlawful — to hold a new hearing regarding this particular debt collector's licence. I believe, however, that it will now be easier for complainants to provide proof of improper collection practices. (CS 84-049)

CORPORATE AFFAIRS

The Corporate Affairs Branch of the Ministry deals to a large degree with business organizations and their lawyers, rather than the average citizen. As a result, the number of complaints I receive about Corporate Affairs is small.

Cease-trading order extended

An investor complained that the Superintendent of Brokers, Insurance and Real Estate failed to find that it was in the public interest to continue a cease-trading order for a company listed with the Vancouver Stock Exchange.

The complainant alleged that the company had issued inaccurate and misleading statements

concerning its financial affairs. He said he was unable to convince the Superintendent to continue a recently imposed cease-trading order until the facts were clarified. The complainant felt that many shareholders who were not aware of the facts might lose a considerable amount of money if trading were resumed when the exchange opened the next day.

During an 11th-hour discussion, my investigator was able to persuade the Superintendent that the complainant might have a point. The Superintendent agreed to continue the suspension of trading in the shares for the first four hours of the next day to give the complainant time to present his evidence and arguments. The complainant's position was vindicated when the Superintendent required the company to immediately issue a public report correcting the earlier inaccuracies. (CS 84-050)

Another complaint about Corporate Affairs came to me in the form of poetry. I am not presenting my findings on this complaint here because it was still under investigation at year's end. But the complainant has given me permission to publish his verse, I am doing so in the talk-back section near the end of this report.

LIQUOR DISTRIBUTION

The following are two examples of complaints against the Liquor Distribution Branch.

No free booze here

A man went through a garbage container behind a liquor store in search for some empty cardboard boxes. To his surprise, all the boxes he found contained empty liquor bottles or empty wine kegs. He also noticed some broken glass.

His curiosity and suspicion aroused, the man asked us to look into the matter. Perhaps someone had been provided with free liquor and had then dumped the empties behind the liquor store.

The scenario sounded a little strange. After all, who would get free liquor, drinking it at home or some other place, and then go through the trouble of carrying the bottles back to the garbage container behind the liquor store. It was hardly the stuff full- scale investigations are made of. But just to make sure, my investigator drew the matter to the attention of the Liquor Distribution Branch in Vancouver.

A Branch official explained that once in a while, liquor stores conduct a so-called "breakage" operation. On such occasions, liquor returned to a store over time is disposed of under well supervised conditions, and the empties are put in the garbage. The Branch promised to call back and let us know when the last breakage routine had taken place at that particular store. I should add that we had not told the Branch when the complainant had visited the garbage container.

A few days later, the Branch got back to us. The last breakage operation at that store had taken place on October 19, 1984. Lo and behold, this was the very date on which the complainant had stumbled upon the empty bottles in the garbage container.

This seemed sufficient proof that the complainant's suspicions were unfounded. (CS 84-051)

Christmas bells — in the cold

A woman felt sorry for people standing outside liquor stores, collecting money for charitable organizations. She said Salvation Army representatives, for instance, should be allowed inside the store, instead of having to shiver in minus 20 degrees Celsius in Prince George or Williams Lake.

The Liquor Distribution Branch has had a policy against solicitation inside their stores for several years. An organization can leave collection containers on the checkout counter, but no personal collections are permitted inside.

This policy was developed for several reasons. Customers used to complain when they were approached for donations, and there is not enough room in most stores to begin with. There was also the problem of who would be allowed inside. Even if only registered societies were allowed to solicit donations inside liquor stores, the situation would be unmanageable. There are hundreds of registered societies in British Columbia. And that does not even take into account local highschool fund-raising drives.

I considered this policy reasonable. Even though Salvation Army helpers must stand in the cold and rain, the Branch provides them with some comfort. They may, for instance, leave their kettles inside overnight for safekeeping, and use the store's washrooms. (CS 84-052)

LIQUOR CONTROL AND LICENSING

The Liquor Control and Licensing Branch of the Ministry has been the object of several complaints from applicants for neighbourhood pub licences. Usually the applicants complain that the Ministry was unfair to them. In the following case, however, the complaint came from opponents of a proposed pub who felt that Ministry officials were too soft on the applicants.

Not in my neighbourhood

The Branch has published a booklet, "Obtaining a Licence for a Neighbourhood Public House in British Columbia," which summarizes the various stages involved in this process. According to the booklet, the first stage is pre-clearance by the General Manager, which signifies that the proposal meets some of the basic requirements set out in the Act and regulations. If pre-clearance is refused, an appeal is possible to the Minister.

Then comes approval by local authorities, and "If the applicant is unable to obtain the approval of the local authority, the process ends at that point." Next comes a referendum of residents in the area. At least 60 percent of votes must be in favour for the application to pass. And finally, the approval of the floor plan and mechanical details by the General Manager is required.

In the case in question, the General Manager had refused pre-clearance but the decision was reversed by the Deputy Minister after an appeal hearing. The complainant felt she should have been given an opportunity to appear at the hearing to speak against the application.

Had the Deputy Minister's decision been the final one in the process, I might have agreed, since the complainant was obviously going to be affected if approval were given. But this was only the pre-clearance stage. The complainant still had the opportunity of influencing the decisions of City Council, the referendum voters, and the final decision by the General Manager, all of which options she was vigorously pursuing. I, therefore, concluded that she had not been denied her right to be heard.

Secondly, City Council in this case decided not to approve or disapprove the application at that stage, suggesting instead that the referendum be held to determine the wishes of the neighbourhood. The General Manager agreed to this.

This, however, was not the sequence of events that was to take place according to the Branch's booklet. The complainant felt the General Manager was by-passing his own rules, and might even be doing something illegal.

After reviewing the requirements of the legislation and regulations, I found that the particular sequence described in the booklet was not specifically required by law. It was merely a convenient and orderly way of processing applications within the general framework provided by the Act, but the Act could not be expected to cover all possible situations.

In view of Council's unusual decision, I felt the general manager had acted reasonably in allowing the referendum to proceed. I was unable to substantiate this aspect of the complaint.

Incidentally, the complainant and her associate conducted a vigorous public campaign against the proposed pub, and the proposal eventually failed to receive the necessary 60 percent of approving votes in the referendum. (CS 84-053)

MINISTRY OF EDUCATION

Declined, withdrawn, discontinued	14
Resolved: corrected during investigation	7
Substantiated: corrected after recommendation	2
Substantiated but not rectified	0
Not substantiated	9
Total number of cases closed	32
Number of cases open December 31, 1984	10

As in past years, Ministry staff were very helpful in solving the relatively few complaints against the Ministry of Education. The following case summaries are typical of the complaints against this Ministry.

A matter of priority

A woman complained on behalf of her brother that the B.C. Institute of Technology had an unfair admissions policy.

The woman's brother had applied for enrolment in the Computer Systems Technology program, but his application for admission was placed in the third priority group because he lived outside of Canada at the time.

Because his application was fairly low on the list and the number of applications exceeded the number of openings, the man was not accepted by B.C.I.T. The complainant and her brother felt his application should not have been given a lower priority than Canadian citizens residing in Canada, simply because he was presently living in the Netherlands.

Following our investigation, the Institute found that a misinterpretation of the term "permanent residents" had led to some confusion about the admission status of Canadian citizens living abroad.

The Ministry sent a policy addendum to all colleges and institutes, clarifying the foreign stu-

dent admissions policy. The application of the complainant's brother was given a higher priority, and he was accepted into the computer program on the condition that he acquire two of the necessary prerequisites for the course. (CS 84-054)

Changes for the better

While investigating a number of complaints about the B.C. Student Aid Program, I found that some aspects of the appeal process needed improvement.

According to the manual used by Financial Aid Officers, an appeal regarding a student loan decision had to be made to the Financial Aid Officer. The manual also stated that the Financial Aid Officer's recommendation concerning a student's appeal must go to the Student Services Branch. Students were not to be informed of the recommendation.

When I informed Student Services of my concerns, the Ministry agreed to a number of changes.

Students will now be given a copy of the Financial Aid Officer's final appeal submission. Financial Aid Officers may attach a recommendation to the submission, but do not have to. Students will also be allowed to submit to Student Services additional documentation accompanied by a letter. (CS 84-055)

No more funds

A student complained about the apparent inconsistency with which the Minstry had treated applications for student grants. Some students received grants, others did not. He also complained about the delay in notifying students that the grant component of the British Columbia Student Assistance Program was being replaced by loans.

I suggested that the Ministry pay grants to all students who had applied before November 1, 1983, when the combined loan-grant program was still in effect. The Student Services Branch, which handles all the applications, replied it no longer had any funds for grants because the program had been changed. (CS 84-056)

Fuzzy eligibility requirements

Under the terms of a work-study agreement, students can earn money working on campus. A student complained that the Ministry had first approved his application for work-study and then cancelled the agreement.

The Ministry's reason for cancelling the agreement was that the complainant still owed the Ministry money for previous student assistance.

I concluded that the Ministry's action was unjust. There had been no conditions attached to the Ministry's approval of the work-study agreement. I also pointed out to the Ministry that neither the application for the work-study program, nor the contract agreement stipulated that in order to qualify, students must also be eligible for the B.C. Student Assistance Program.

Finally, the Ministry agreed to write off the complainant's outstanding debt which was equivalent to the amount of wages he would have been paid under the work-study program. The Ministry also agreed to revise its brochures, clearly stating that eligibility for the work-study program depended on eligibility for the Student Assistance Program. (CS 84-057)

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

Declined, withdrawn, discontinued	3
Resolved: corrected during investigation	3
Substantiated: corrected after recommendation	1
Substantiated but not rectified	1
Not substantiated	4
Total number of cases closed	12
Number of cases open December 31, 1984	7

As in past years, there were few complaints against the Ministry of Energy, Mines and Petroleum Resources, but those we did receive were complicated, dealing with matters, such as claim-staking disputes and the interpretation of legislation. Here are two examples.

Gold wrapped in red tape

Included in my 1983 Annual Report was a complaint concerning the administration of Section 8(2) of the *Mining (Placer) Act*. We discontinued the investigation of that complaint at the time because a legal remedy was available to the complainant.

But since I was still concerned that other people might run into similar problems, I initiated an investigation into the broader aspects of how the pertinent section of the Act is administered.

Section 8(2) states that an application for the extension of a placer lease shall be made before it expires. Prior to 1982, however, the Ministry did not always adhere to this section, and some leases were extended in violation of the Act. My concern was that there might be a number of placer miners who could reasonably assume that they held valid placer leases when, in fact, they did not. These miners might be in danger of losing their leases because of an administrative error by the Ministry.

My solicitor and the investigator responsible for this case met with the Ministry's solicitor and the Chief Gold Commissioner to discuss the extent of the problem and possible remedies to it. Following that meeting, the Chief Gold Commissioner's staff searched its placer lease files for other leases which were invalid under section 8(2).

They found several invalid leases and informed the holders that they had to restake their claims and obtain new leases. In doing so, the Ministry made sure that no future problems with respect to section 8(2) of the Act would arise.

My office also suggested to the Chief Gold Commissioner that the Ministry provide with each new placer lease a one-page handout listing the expiry date and pointing out that the lease must be renewed before this date. The Chief Gold Commissioner agreed that such a handout would be useful and said he would consider including one with each lease document. (CS 84-058)

Work credit of $23,912.89

A miner complained in 1982 that a Mining Titles office clerk had misinformed him about the procedure for abandoning mineral claims. As a result, he did not use the correct abandonment procedure for several claims and lost the right to record a substantial amount of work on these claims.

Allegations of misinformation are difficult to investigate when they involve little else than a discussion between two parties. In this case, I requested sworn statements of what happened from both parties. Before all the statements had come in, however, the complainant informed me that the Ministry was going to allow him to record all the work on the claims. The complaint appeared resolved and I closed the investigation.

Unfortunately, the complainant had misunderstood the Ministry's letter and I reopened the investigation in 1983. The facts revealed by the investigation gave some credibility to the complainant's allegation that he was misinformed.

When it turned out that the *Mineral Act* did not allow administrative errors resulting from misinformation to be remedied, I recommended that the Ministry ask the Legislative Assembly to amend the Act.

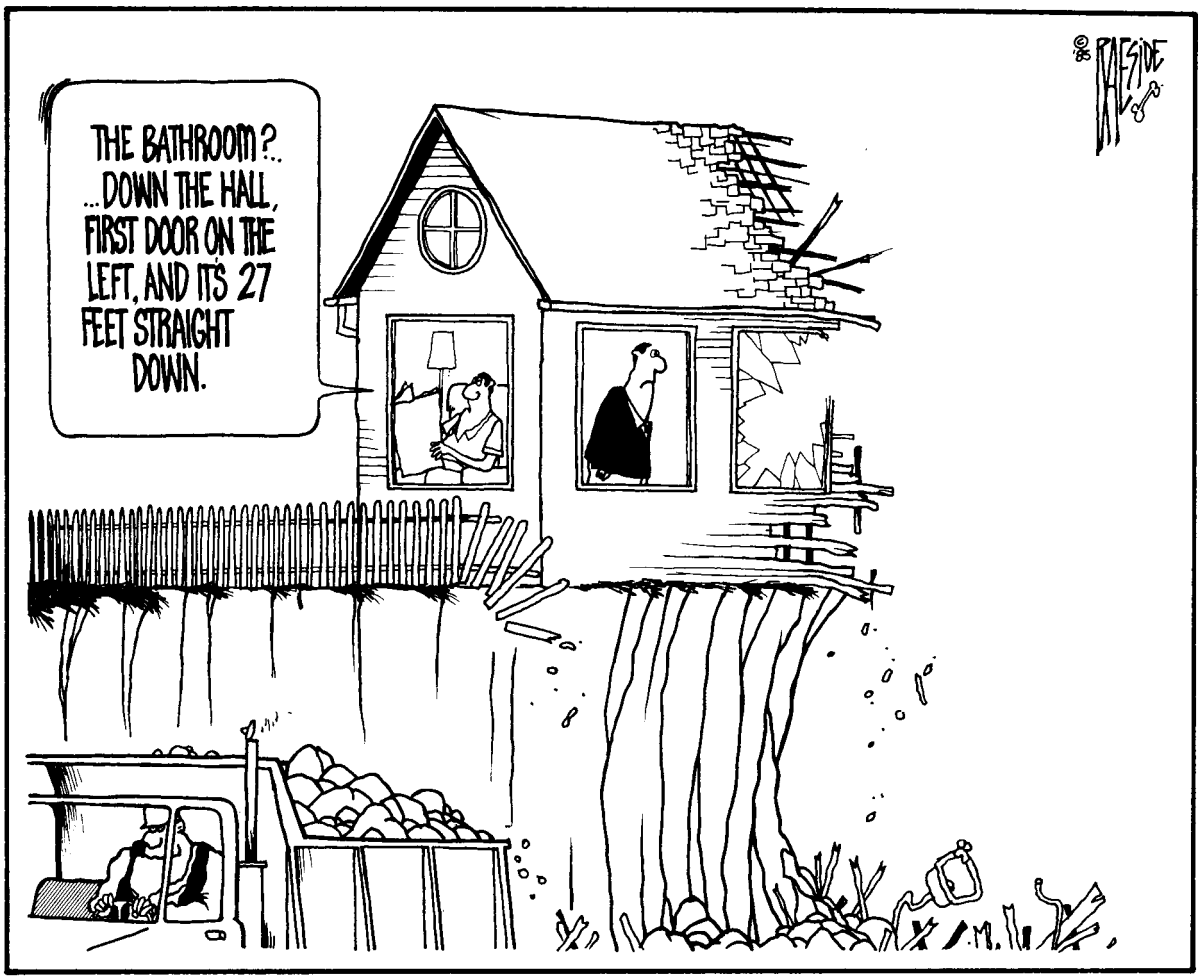
The Deputy Minister accepted this recommendation, and the Act was amended in 1984. Shortly after, the Ministry notified me that the complainant was now allowed to apply assessment work credit in the amount of $23,912.89 to the claims. (CS 84-059)

In recent years, my office has dealt with a number of complaints about gravel pits. Homeowners living adjacent to gravel pits generally complain that excavation work is proceeding too close to their property. They are disturbed to discover that neither the provincial nor municipal governments take much responsibility for regulating gravel pits.

The Ministry of Energy, Mines and Petroleum Resources regulates gravel pits to a limited extent through the *Mines Act* and formerly through the *Mining Regulation Act*. According to the Ministry's interpretation of the *Mines Act*, its regulatory responsibilities extend only to the safety and reclamation aspects of gravel pits.

The Ministry argues that it does not have authority to prohibit either the extraction of sand and gravel or the expansion of an existing pit, provided the Chief Inspector of Mines is satisfied that there are no safety or reclamation concerns. The Ministry presumes that the right to extract sand and gravel is inherent in the title to the land. The Ministry argues that the title may be subject to regulatory requirements imposed by municipal government, other provincial agencies or the federal government.

Zoning is the principal mechanism used by municipal governments for controlling land use within their boundaries. But according to a court decision, gravel pits are not subject to municipal zoning by-laws because their development is considered "consumption" of land, not a "use" of land. Some municipalities have attempted to deal with gravel pits by establishing by-laws, but these by-laws have only been approved by the province if they exclude gravel pits licensed by the province. Since the province claims to be responsible only for safety and reclamation on these gravel pits, problems inevitably arise. These jurisdictional disputes were clearly evident in a gravel pit complaint I began investigating in 1983.



Gravel pit problems

The complaint centred on the fact that the Chief Inspector of Mines had recently changed the requirements of the permit for the gravel pit in question by reducing the greenbelt area around the pit. The earlier permit required a 100-foot greenbelt, while the revised permit required a greenbelt of approximately half that size plus a berm, a mound of earth blocking the gravel operation from public view.

My complainants were concerned that the new requirement would allow the edge of the excavated area to come too close to the boundaries of their properties. The resulting noise and dust, they feared, would adversely affect the resale value of their homes. Because the reduction of the greenbelt area would have a negative impact on the adjacent property owners, the complainants felt they should have had an opportunity to present their views to the Chief Inspector of Mines before a decision was made.

My investigation into this complaint was complex and time-consuming. In the end, I concluded that the Ministry had acted improperly and I made formal recommendations to the Ministry.

The gravel pit in question had operated without a permit from 1978 to 1983. The pit owner had applied for renewal of the permit in 1979, but the Ministry apparently did not take any action on the expiry of the permit until 1983. I concluded that the Ministry was negligent when it allowed the gravel pit to operate without a permit for five years. During that period, however, the *Mining Regulation Act* was replaced by the *Mines Act*, and permits issued under the new Act do not bear expiry dates. That problem should, therefore, not recur.

I also concluded that the Ministry had acted improperly when it requested that the Ministry of Municipal Affairs exclude this gravel pit from a proposed Regional District by-law, while the Ministry, at the same time, advised the complainants that expansion of the pit was a matter for the Regional District to decide. In fact, the Ministry allowed the pit to expand by cutting the greenbelt in half, while effectively preventing the Regional District from exercising control over

the pit. I proposed that the Ministry prevent future problems of this nature by providing clear and accurate information to municipal governments, the Ministry of Municipal Affairs and citizens who contact the Ministry on this subject.

Finally, I concluded that the 1983 extension of the permit constituted an unfair and arbitrary procedure. In my view, the change in the terms of the 1983 permit created a situation for the surrounding residents that was comparable to a change in zoning under a municipal by-law. Such a change would have required a public hearing first. The Ministry assumed the change in the permit was for the better, but a number of residents clearly disagreed.

On the basis of this finding, I recommended that all potentially affected residents, the Regional District, and the gravel pit owner be advised of a hearing at which they could make representations to the Ministry concerning the greenbelt around the gravel pit.

I also recommended that the Ministry give careful consideration to these representations and revise the terms of the permit if appropriate.

The *Mines Act* and the *Mining Regulation Act* appeared to provide clear authority for changing the conditions of a permit at any time.

In his reply, the Deputy Minister of Energy, Mines and Petroleum Resources said he had received legal advice that the Chief Inspector of Mines had no authority to amend or vary the permit. Consequently, he did not believe that anything would be gained by holding a hearing.

Since the terms of the present permit had already been changed once, the Deputy Minister's argument that the Chief Inspector did not have the authority to change the permit made no sense. I continued my attempts to rectify the matter but ultimately, I had to advise my complainants to pursue legal remedies. The complaint was substantiated but not rectified.

I expect similar complaints to arise in the future. If the Ministry will not take full responsibility for gravel pits, it should at least allow municipalities the freedom to regulate them. (CS 84-060)

MINISTRY OF ENVIRONMENT

Declined, withdrawn, discontinued	45
Resolved: corrected during investigation	32
Substantiated: corrected after recommendation	4
Substantiated but not rectified	0
Not substantiated	37
Total number of cases closed	118
Number of cases open December 31, 1984	42

The Ministry of Environment, I am happy to say, continues to be concerned about complaints we bring to its attention. As a result, not one substantiated complaint remained unresolved in 1984. I have included a number of case summaries to show what sort of complaints the public has against this Ministry.

Not an emergency

A representative of a Land Irrigation District complained that the government had rejected the District's application for funds under the Provincial Emergency Program for damages caused by flooding from a local creek.

The *Emergency Program Act* gives the Cabinet a wide range of powers and discretion to deal with emergency situations. It is the government's responsibility to determine what constitutes an emergency and what, if any, funding should be provided.

The Ministry had concluded that the damage caused by the flooding of the creek was not extensive and that it was a maintenance problem, for which the District had to assume responsibility. No emergency funding was warranted.

I concluded that the District had not been treated unfairly and found the complaint not substantiated. (CS 84-061)

Of motherhood and invoices

A logging company complained that it had not yet been paid for fence posts it had sold to the Ministry of Environment several months ago.

The logging company's invoice was found in a file folder on top of a desk in a Ministry office. The clerk who had put it there, had since gone on maternity leave. Once found, the bill was paid promptly. (CS 84-062)

Ministry did the right thing

A number of complaints regarding the Ministry's regulation of municipal governments reached

my office last year. One of the complaints alleged that the Ministry had improperly used the *Environment Management Act* to allow the city of Vernon to dump sewage into Okanagan Lake.

The *Municipal Act* gives municipal governments the authority to establish facilities for the collection, conveyance and disposal of sewage. The Ministry generally plays its role under the *Waste Management Act*. Under this Act the Ministry may issue permits allowing the introduction of waste into the environment, subject to requirements for the protection of the environment. The question of adequate environmental safety requirements is discussed at public hearings, mandatory under the Act.

In the case of Vernon, a combination of errors by the municipal government and unexpected climatic conditions had created a dangerous situation in the municipality's sewage pond. The effluent level in the pond had to be reduced immediately or the safety of the pond could not be guaranteed.

The Minister ordered an immediate discharge of effluent into Okanagan Lake under Section 4 of the *Environment Management Act* which does not require public hearings. As a result of this quick action, the level in the sewage pond was reduced to a safer point.

The complainants believed that this danger could have been foreseen, and that any proposals to solve the problem should have been subject to a public hearing provided for by the *Waste Management Act*. They believed a false emergency had been created to circumvent the public hearing process.

After a thorough investigation, it was clear that a genuine emergency existed and that the *Environment Management Act* was the appropriate legislation to remedy the problem quickly.

The dangerous effluent level in the pond had built up so quickly because of the failure of two systems that were to reduce the level. When these failures were identified, the Ministry's actions were prompt and appropriate. I concluded that the complaint against the Ministry was not substantiated. (CS 84-063)

Committee gets free advice

A man complained that the Ministry had failed to live up to an agreement to provide data and advice free of charge to a Water User Committee in his community.

The committee favored controlled development within the region's watershed, but to safeguard the interests of all parties, the committee wanted input from the Ministry before approving any development. The complainant stated that the Ministry had undertaken work without informing the Water User Committee. He saw this as a violation of the understanding with the Ministry.

My investigation revealed that the Ministry had, indeed, agreed to provide data and advice to the committee and was still prepared to do so. The problem arose when the Ministry obtained unexpected funding for a small research project. The Ministry commissioned an independent firm to do the work but failed to notify the committee of this. When we brought the oversight to the the attention of Ministry officials, they notified the committee, and trust between all parties was restored. (CS 84-064)

Three agencies agree to help

A man complained that a government-operated nursery was responsible for serious erosion of his farmland.

There was a spring-fed creek on the complainant's farm. This creek flowed into another stream used by several residents for their domestic water supply. On higher land, adjacent to the farm, the Ministry of Forests operated a tree nursery. The nursery was already there when the complainant bought his farm.

When the nursery was established, a mountain stream had to be contained to prevent its water from flowing over a broad plain. Earlier upstream logging and some landslide activity may also have affected this mountain stream's course.

My complainant argued that containment of the mountain stream had caused a more concentrated flow of water to reach his farm, where it caused extensive erosion to his land. The complainant also stated that the sediment carried into the stream fouled up the residents' water supply.

I could not find fault with the Ministry of Forests. The nursery already existed when the complainant purchased his farm. There was also the possibility that landslides and previous logging operations had affected the water course.

I was, however, able to be of some assistance to the complainant. The Ministry of Agriculture agreed to advise him on methods of stabilizing the creek bank and building an effective ground water drainage system for the farm. The Ministry of Forests agreed to channel upstream water directly to the former creek. The Federal Department of Fisheries and Oceans agreed to clean out a pond between the farm and the water users' creek to establish a sediment catch basin. (CS 84-065)

Creek is back where it was before

A man complained that a nearby gravel pit had created flooding problems on his property. The complainant said the pit operator had diverted a creek, causing gravel and water to build up on his land.

My investigation revealed that the Ministry had not authorized the diversion, but I could not establish who had actually diverted the creek. Hydro employees, who had done some work in the area, denied any involvement in the diversion. In any case, they had nothing to gain from diverting the creek. The municipality also denied having diverted the creek, and there was no reason why it should have done so. The only one who stood to benefit from the creek diversion was the contractor.

The contractor agreed to do some work to divert the creek back to its original channel but refused to install a necessary culvert. The Municipality then agreed to install the culvert. The Ministry of Environment completed the job by returning the water to its original location.

My complainant was reasonably happy with this collective effort although he was not compensated for his inconvenience. (CS 84-066)

MINISTRY OF FINANCE

Declined, withdrawn, discontinued	27
Resolved: corrected during investigation	28
Substantiated: corrected after recommendation	4
Substantiated but not rectified	5
Not substantiated	32
Total number of cases closed	96
Number of cases open December 31, 1984	9

The large proportion of complaints against the Ministry of Finance are about the Social Service tax, usually referred to as sales tax. This is not surprising since everybody pays the tax. Additional complaints result from the fact that business people must collect the tax and remit it to the government. There is a lot of scope for problems to develop.

In some cases, with the excellent co-operation of the Consumer Taxation Branch, I have been able to help, as the following summaries show.

Tax lifted from calls

The *Indian Act* states that an Indian's personal property situated on a reserve is not subject to taxation. Based on that Act, the British Columbia Court of Appeal decided several years ago that the provincial government cannot impose a social service tax on electricity purchased from B.C. Hydro by Indians residing on a reserve.

An Indian Area Council complained to us because it felt that for tax purposes, telephone calls are similar to Hydro services and should, therefore, also be exempt from the social service tax.

My investigator discussed the matter with the Ministry of Finance which initially argued that there was a difference between Hydro and telephone service, and that long-distance telephone calls originating from an Indian reserve should be taxed under the provisions of the *Social Service Tax Act*.

I suggested that the Ministry obtain a legal opinion on the matter. The Ministry complied and decided that long-distance telephone calls originating from an Indian reserve are not subject to the social service tax.

The Ministry informed the telephone companies of this decision immediately, and I passed the information on to all Indian Band Councils in the province.

The Ministry also agreed to refund tax improperly collected since July 1983 wherever receipts could be produced. (CS 84-067)

Ding dong, taxman calling

A woman who sold cosmetic products from her home had paid the provincial social service tax on her entire stock.

When she discontinued her business some time later, she destroyed whatever stock was left over and applied for a refund of the social service tax she had paid on the discarded merchandise. The Ministry rejected her application.

After discussing the matter with my investigator, the Ministry decided to refund the tax the woman had paid on the discarded cosmetics and issued my complainant a cheque for about $80. (CS 84-068)

Complainant saves $1,770

A complainant moved his company from Saskatchewan to British Columbia. His company owned three cars. The complainant drove one of them to British Columbia.

When he registered this car in B.C., he was initially told he would have to pay social service tax because the car was registered in his company's name rather than his own. He explained that he actually used the car himself but that it was registered in his company's name for income tax purposes. That did the trick. He was allowed to register his car without having to pay the social service tax.

He should, however, have paid the tax because, in order to be tax-exempt, the car would have had to be owned by a person rather than a company.

Subsequently, the complainant brought two more company-owned cars from Saskatchewan to British Columbia. When he was told he had to pay social service tax on all three vehicles, he complained to my office.

After investigating the complaint, I agreed with the Ministry that, according to the *Social Service Tax Act* and its Regulations, the tax was indeed payable. But since the complainant was able to register the first car without paying the tax, he had been left with the impression that the exemption applied to all cars owned by his company.

Based on that assumption, he had decided to bring his other two cars from Saskatchewan. Had he known, after registering the first car, that the tax was payable, he could have made different arrangements. For example, he could have transferred ownership of the vehicles from his com-

pany to himself, or he could have simply sold the cars in Saskatchewan. In other words, he made his decision regarding cars number two and three on incorrect information.

I recommended that the Ministry charge the complainant tax on the first car only, but not the second and the third one. The Ministry agreed with my recommendation, and the complainant now had to pay only $1,130 rather than $2,900 in tax and accumulated interest. (CS 84-069)

The Ontario connection

An Ontario family arrived in British Columbia by car early in 1981. After settling in his family, the husband travelled back to Ontario by plane, leaving the car in British Columbia.

Later that year, the wife, who does not hold a driver's licence, went to the local Motor Vehicle Office and registered the car in her husband's name. She paid all necessary fees, including $330 social service tax, by cheque.

When her husband found out that she had registered the car, there was some disagreement, and the next day the woman returned the B.C. licence plates, was given the Ontario licence plates back, and stopped payment on the cheque.

They thought this would settle the matter but it didn't. There was indeed an adjustment for unused insurance and registration fees, but the Ministry still wanted the $330 social service tax.

Initially it appeared that nothing could be done. As a new settler in British Columbia, the complainant would have been able to bring in his car tax-free had he been the owner of the car for at least 30 days prior to taking up residence in the province. Unfortunately, he had bought the car only three weeks before he drove it to British Columbia.

To complicate matters even further, the car was now no longer in British Columbia. The complainant had driven it back to Ontario and sold it there.

My office had corresponded with the complainant at his family's new address in British Columbia. That was also the address to which we sent the letter explaining that nothing could be done.

To my surprise, the reply to that letter came from Ontario. It turned out that the complainant was still a resident of Ontario, even though his family had moved to British Columbia. He was able to prove this by submitting to us not only a statutory declaration but also evidence in the form of phone and hydro bills for the past few years and airline tickets that showed he had flown back and forth between Ontario and British Columbia frequently to visit his family.

In other words, the complainant had never been — and was not now — a resident of British Columbia. He had driven the car to British Columbia, had parked it there for some time, and then had driven it back to Ontario, none of which meant that he had to pay social service tax on it.

Provided with this new information, the Consumer Taxation Branch readily agreed that the social service tax had been charged in error. (CS 84-070)

In other cases, I was unable to persuade the Ministry to change its point of view.

Now you pay, now you don't

When a partnership incorporates and the newly-formed company acquires the assets of the former partnership, the new corporation is not required to pay social service tax on the purchase of these assets.

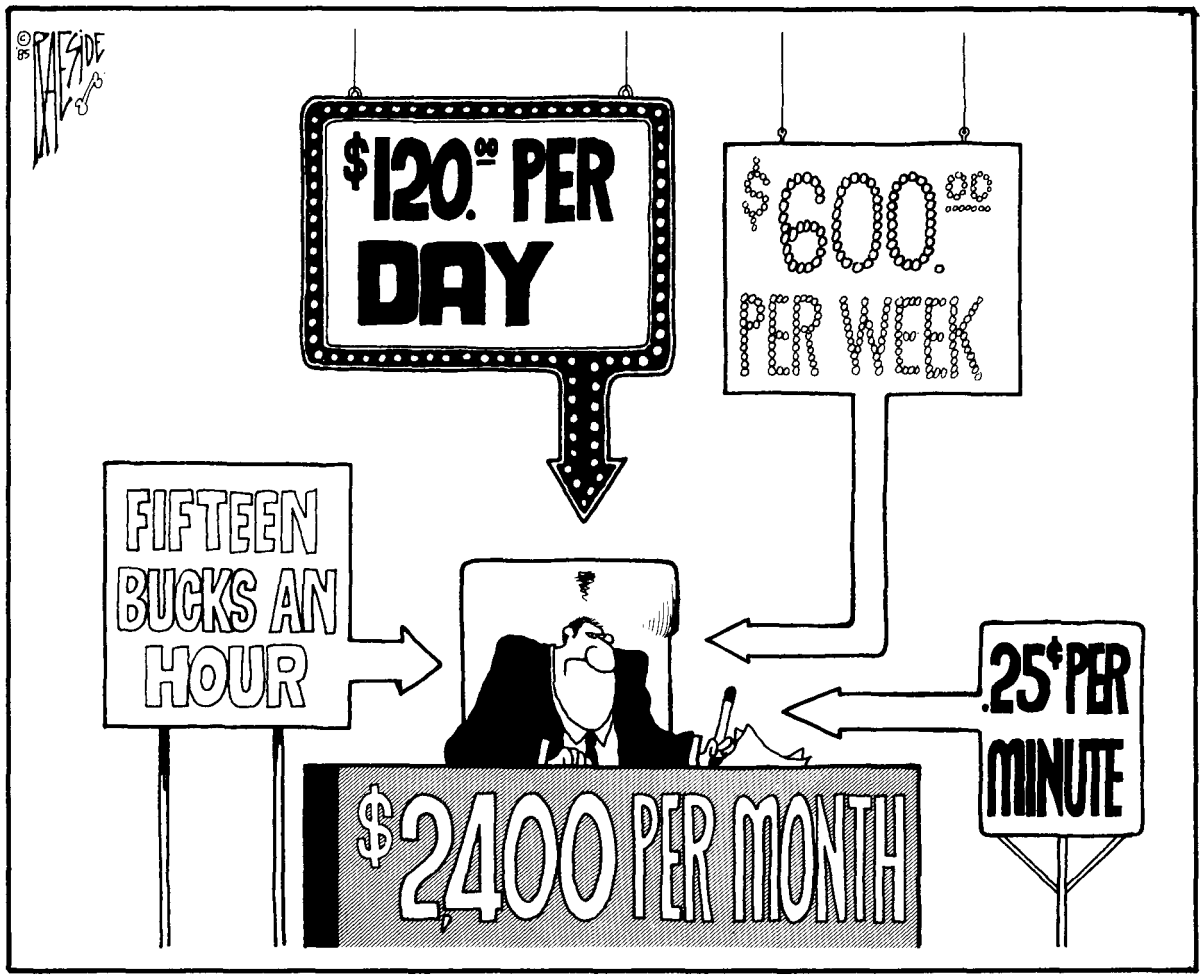
At times, however, a partnership does not incorporate into a new company, but rather purchases an existing "shelf" company. This process can cost less money than forming a new corporation.

It was from such a former shelf company which had been purchased by a partnership that we received a complaint. After the purchase, the company acquired the assets of the former partnership. It turned out that, because the assets had not been purchased at the time of incorporation, the transfer of the assets was taxable.

I considered the exclusion of shelf companies from the tax exemption improperly discriminatory and made two recommendations to the Ministry. I recommended that a regulation under the *Social Service Tax Act* be amended to make it clear that shelf companies are also eligible for the tax exemption. I also recommended that the Ministry refund to my complainant the amount assessed on the transfer of assets.

The Ministry informed me that it would reconsider the regulation in question, but did not comply with my recommendations to refund the tax paid. Ministry officials felt that the regulation had to be applied uniformly, unless and until it is changed. To grant a refund in this particular case, according to the Ministry, would be inequitable and discriminatory against all other businesses that have already paid the tax.

I did not fully agree with the Ministry's rationale. Even though consistency is an important element of fairness it is not the only one. If the Ministry is made aware of an improperly discriminatory



practice, it should stop that practice. There was, however, some merit to the Ministry's point of view, and I decided not to pursue the matter further. (CS 84-071)

Ministry ignores verbal agreements

In 1983, the Legislative Assembly changed the rate of sales tax payable on the purchase of cars. In some cases, the tax was increased from 4 to 7 percent of the purchase price. According to the legislation, however, if a car had been ordered before July 7, 1983, and was delivered at a later date, the purchaser was to pay the new tax. If the vehicle he bought was subject to the 4-percent tax prior to the change in legislation, he would receive a refund.

There was a catch though. The rebate was only payable if a purchaser took delivery of a new passenger car "in the execution of a written contract made with the vendor of the car on or before July 7, 1983." The emphasis here is on "written contract."

Three people complained. They had ordered imported cars before July 7, 1983. The written agreement called for 1983 models, but the purchasers knew at the time the agreement was made that 1983 models may no longer be available. They, therefore, entered into verbal agreements with the dealers that 1984 models could be substituted if 1983 models were no longer available. And that's exactly what happend. All three complainants took delivery of 1984 models.

The complainants were presumably happy with their cars, but they certainly were not pleased when they were informed that they did not qualify for the tax refund. The Ministry argued that the 1984 cars were not delivered pursuant to a written contract. The contract had called for the delivery of 1983 models, and, according to the Ministry, the purchasers were under no legal obligation to accept the 1984 cars.

My legal advisor informed me that there is nothing unusual about oral agreements in addition to written contracts. In these three cases, there had obviously been oral agreements, since all three complainants had accepted delivery of the 1984 cars.

I found the three complaints substantiated and recommended that the Ministry refund the tax.

The Ministry, however, stuck to its point of view and did not accept my recommendation. The old mixed metaphor still holds true: a verbal agreement is not worth the paper it is written on.

After giving the matter a great deal of thought, I decided not to pursue it further. The time and effort my staff and I would have had to spend submitting a report to Cabinet and later on perhaps to the Legislative Assembly, would have been totally out of proportion to the benefits my complainants might have derived. (CS 84-072)

I also received complaints about a variety of other matters. Here is just one example of a complaint I found not substantiated:

Publishing salaries is okay

The administrator of a municipality approached me with a somewhat unusual complaint.

According to the *Financial Information Act*, any organization that receives a grant from the provincial government must publish an annual financial statement which shows "all remuneration, bonuses, and gratuities paid to each employee."

This means that a municipality has to publish the salaries of its employees. My complainant thought that this was unfair. Information about his financial circumstances, including his salary, he said, should be a private matter and not become public knowledge.

I pointed out to the complainant that he is employed by the public and that as his employer, the public has a right to such information. I found the complaint not substantiated. (CS 84-073)

MINISTRY OF FORESTS

Declined, withdrawn, discontinued	30
Resolved: corrected during investigation	20
Substantiated: corrected after recommendation	10
Substantiated but not rectified	2
Not substantiated	28
Total number of cases closed	90
Number of cases open December 31, 1984	27

The distribution of complaints about the Ministry of Forests varied little from that of previous years. The exception was a slight increase in complaints about valuation (scaling) matters, which appeared to be linked to the Shoal Island situation.

Considering the importance of the forest resource to the province's economy, and the number of people affected by Ministry decisions, the volume of complaints about the Ministry of Forests remains relatively low.

As in previous years, many of the complaints which I did receive pertained to timber tenures. Many individuals, small businesses and large companies apply to the Ministry for rights to harvest timber. Some people came to me with concerns about delays in awarding various licences and permits, while others felt the Ministry had treated them unfairly in making timber tenure decisions. In three similar cases in the Prince George area, it initially appeared that the Ministry was acting in a somewhat arbitrary fashion by denying these people cutting rights while granting cutting rights to others in similar circumstances. Upon closer inspection, however, it turned out that the problems had been caused by a misunderstanding of Ministry policy, and by a change in policy.

Who gets what timber — and how

All three complainants — I'll call them Mr. A, Mrs. B and Mr. and Mrs. C — had applied for licences to cut timber on land over which they had agricultural leases. In the past, it had been fairly common practice for the Ministry to award cutting rights to the rancher or farmer who had to clear his lease for agricultural purposes.

There were complaints about this arrangement, both from the forest industry which felt that good timber was being used to subsidize agriculture, and from the agricultural community when it appeared that people were applying for lease lands for the purpose of timber removal without any interest in developing the land for agricultural purposes. The Ministry then introduced a new policy under which timber on agricultural leases would be auctioned under the Small Business Enterprise Program if it exceeded certain volume and density criteria.

Mr. A. wanted to expand his cow-calf operation. The Ministry of Lands, Parks and Housing had approved his application, but since the land was in a Provincial Forest, it was also necessary to obtain the Ministry of Forests' approval to remove the land from the Provincial Forest. In April

1983, the Ministry said it would first dispose of timber on the land by means of a sale under the Small Business Program. But the Ministry cancelled the sale at the last minute, and by April 1984, the Ministry had still not made any decision respecting the timber. Mr. A. felt this was an unnecessary delay. He also felt that the Ministry should dispose of the timber through a licence-to-cut rather than through a Small Business Program sale.

When I contacted the Ministry with respect to Mr. A.'s situation, I was advised that the Ministry had just decided to issue Mr. A. a licence-to-cut and had so advised the Ministry of Lands, Parks and Housing. Mr. A. had not yet been advised, so I was able to let him know that both parts of his problem were resolved.

The resolution of Mrs. B.'s case took more time. Because the Ministry did not believe that Mrs. B. had an independent, viable ranching operation, it was unwilling to release the land from the Provincial Forest. The Ministry also stated that there was a significant volume of timber on the land which should be auctioned off under the small business program. Mrs. B. felt the Ministry had taken an unfair position on these matters; she had a letter from the district agriculturist confirming the viability and potential of her ranching operation, and she felt she should be given the cutting rights to offset her land clearing costs.

I was able to persuade the Ministry to accept a statutory declaration from Mrs. B. respecting the independence and viability of her ranching operation, and at the same time the Ministry decided to issue a licence-to-cut to Mrs. B.

Mr. and Mrs. C. came to me after the timber on their agricultural lease had been sold through the Small Business Program. The complainants felt they had been treated unfairly. They pointed out examples of other ranchers who had received rights to all the timber on their land. After examining the examples, I found that the Ministry had, in fact, acted in a manner consistent with Ministry policy. In one case, the land in question had been held under an old form of special use permit which included timber rights. In the other case, the volume of timber was scattered throughout the land in question, and so did not meet the density criterion. While a significant portion of the timber on Mr. and Mrs. C.'s lease was granted to other parties, Mr. and Mrs. C. were granted rights to 4,000 cubic metres on the arable portion of the land, and were applying for rights to the 18,000 cubic metres remaining on the non-arable portion. (CS 84-074)

I had also received a number of complaints about the Ministry's practice and policy regarding Woodlot Licences. In many instances, people were concerned about the delays in processing applications. Such delays generally resulted from the low priority given the Woodlot Licence Program after it was initially announced. Others complained that the Ministry had set unfair and unreasonable criteria.

Landowners preferred

A man complained to me that the Ministry's requirement of ownership of private forest land was unfair. He had applied for a Woodlot Licence in 1982. By 1984, he had not yet received a decision, but Ministry staff had said he was unlikely to be successful because he did not own land in the area.

My investigation showed that the intent of the program was to combine private and Crown Forest land under one management plan. Private ownership of land was, therefore, a reasonable criterion and had also been specified as a consideration by the *Forest Act*. My complainant was eligible to compete for a Woodlot Licence, but the Ministry would give priority to those owning private forest land. I found the Ministry's position reasonable. (CS 84-075)

There are many competing and often conflicting uses for Crown land. When that land is within a Provincial Forest, or is included in a timber tenure issued by the Ministry, the Ministry has a role in deciding among the competing proposed uses for the land. As one would expect, each party in such disputes believes that his proposal is the best use for the land, and may feel treated unfairly if the Ministry rejects his proposal.

He could not see the trees for oysters

A man complained that the Ministry had unfairly denied him the opportunity to obtain a specific lot within a Tree Farm Licence for his proposed farming and oyster operation. He believed that his agriculture and aquaculture proposal would provide more benefits to the province than would be achieved by retaining the land for forestry purposes.

The Ministry disagreed with this position. Both the Ministry and the licence holder had inspected the area and believed it was valuable for timber production. Since the Ministry's mandate is to encourage maximum productivity in the use of forest and range resources, its decision to keep this forest land in timber production rather than alienating it for other purposes was not unreasonable.

Although my complainant's proposed operation clearly had merit, it is not my role to determine the best use of land. The provincial agencies responsible for promoting agriculture and aqua-

culture are the Ministry of Agriculture and Food and the Ministry of Environment. I suggested that he seek the support of these agencies to help him pursue his proposal further. (CS 84-076)

Sometimes the Ministry makes mistakes when it issues timber tenures. In one instance, the Ministry was willing to take corrective action but ran into roadblocks from another government agency.

How much for no trees?

In this particular case, the Ministry had issued a Timber Sale Licence to a company. Because of mapping errors, the Ministry had included private land in the licence area. As a result, the licensee trespassed on private land and cut private timber. The landowner complained to me. He had met with the Ministry officials and had reached an agreement under which the Ministry would pay him $40,000 as a settlement.

But even though the complainant and the Ministry had agreed to this settlement, the payment had to be approved by the Ministry of Attorney General. That Ministry disagreed with the amount, offering the complainant $13,000 instead. Since the Ministry of Forests had inspected the damage and assessed the value of the timber, clean-up costs, and damages when it initially agreed to the $40,000 settlement, the Ministry of Attorney General's position appeared to require reconsideration.

I discussed the matter with both Ministries. Forests confirmed its initial assessment, but the final decision was in the hands of the Ministry of Attorney General. After a number of discussions and explanations, the Ministry of Attorney General increased its offer to $33,500 and my complainant decided to accept that offer. (CS 84-077)

The Ministry of Forests also issues grazing permits over Crown Range. As in past years, grazing problems seemed to constitute an inordinate proportion of the complaints against the Ministry. In many instances, access to grazing on Crown land makes the difference between survival and extinction for a rancher. This means that officials in the Range Management Branch wield a great deal of power over ranchers. It is, therefore, important that the Branch makes its policies fair and clear, and that it applies those policies in a consistent manner.

In some cases the Branch seems to lack policy in important areas, or seems not to have adequately communicated its policy to its field staff. Trespass on Crown Range is one such area. When I contacted Range staff throughout the province, I found an amazing variety in the practices employed by field staff when confronted with non-permitted cattle trespassing on Crown Range. In my view, this and other range matters require clarification and direction from the head of the Range Management Branch. Instead, the Branch appears to lack direction, making decisions on an ad-hoc basis, or postponing them indefinitely.

One of my complainants was the victim of this latter approach. The Ministry's refusal to act on my recommendation reflected nothing short of obstinacy and stupidity.

Deplorable behaviour

A rancher complained that the Ministry gave him incorrect information about jurisdiction over grazing on federal lands.

On several occasions in 1978 and 1979, the Ministry advised the rancher it had jurisdiction over grazing on a block of federally owned land. If his cattle were found on the land, the Ministry told him, he would be charged with trespassing under the *Grazing Act*, a piece of legislation that became subsequently the *Range Act*.

In an August 1979 letter to the B.C. Cattlemen's Association, the Ministry stated that because of an oversight, the federal government had not given the Ministry jurisdiction over the federal land, but that this oversight had been corrected. The rancher learned this from the B.C. Cattlemen's Association, but it was not until 1981 that the Ministry wrote to provide this information directly to the rancher.

The rancher complained that if the Ministry had not misled him regarding the jurisdiction over grazing on the land in question, he could have applied to the federal government for a grazing permit. He felt that the Ministry owed him an explanation and an apology.

Our investigation confirmed that the Ministry had not only given the rancher incorrect information in writing on a number of occasions, but that Ministry staff actually knew the information was incorrect. The rancher might or might not have been able to obtain a grazing permit from the federal government, but it was because of the Ministry's misinformation that he did not even have the opportunity to apply. I agreed that the Ministry owed the rancher an explanation and an apology, and so advised the Ministry in March 1983.

I did not receive a response until sixteen months later, and then only after considerable prodding. The response was very disappointing. The Ministry attached a copy of a 1979 letter it had written to the rancher.

In that letter, the Ministry claimed it had explained the correct situation regarding authority over grazing on the land in question. The Ministry took the position that because it had provided

this explanation, it was not necessary to offer an apology. What was worse, the attached letter provided no such explanation. It simply reiterated the position that the Ministry had jurisdiction over grazing on the federal land.

I pointed this out to the Ministry and recommended again that it give the rancher an explanation and an apology. The Ministry's response? "We have reviewed the matter and we do not feel that a written letter of apology at this point in time would serve any useful purpose. We therefore will not be writing a letter of apology . . ."

That response is nothing short of deplorable. The Ministry knowingly gave the complainant incorrect information. All I had asked the Ministry for was an explanation and an apology. To implement that recommendation was neither expensive nor time-consuming.

I felt strongly that the rancher was owed an apology. Since the Ministry would not do so, I apologized to the rancher on the government's behalf. (CS 84-078)

Another area over which the Ministry of Forests exercises jurisdiction is the development and maintenance of Forest Service roads. There are many thousands of miles of Forest Service roads in the province, and many thousands more in the planning. The Ministry has expropriation powers under the *Forest Act*, and I have received some complaints from people who do not want a Forest Service road through their property. Others are dissatisfied with the amount offered by the Ministry for the land.

To the Ministry's credit there are few such complaints and most are satisfactorily resolved. In general, the Engineering Branch, which has responsibility for Forest Service roads, has been extremely co-operative in evaluating matters which I bring to its attention, and has displayed an understanding of the problems which can result from its road development activities.

Unblocking culverts

I received a complaint that the Ministry's failure to properly maintain an unused Forest Service road had resulted in erosion and flooding of private property. Culverts had become blocked and the complainant was afraid that even more severe problems would continue in the future.

The property was located in a rather remote area. The Ministry made two inspection trips and agreed to clean and ditch the culverts, and clear some alder trees from the road embankment behind the complainant's home. The erosion, which had initially occurred during the heavy Boxing Day rain of 1980, was considered to be the result of natural waterflow patterns through the area, so the Ministry concentrated its work on the prevention of future problems. (CS 84-079)

In deciding on the location of Forest Service roads, the Ministry tries to inconvenience as few people as possible. Inevitably, however, some people will object to the choice of a specific location or to the Ministry's procedures in choosing that location.

Not in my valley

I received some complaints about the process followed by the Ministry in deciding on the location for a Forest Service road in the Cranbrook area. The complainants stated that the Ministry had decided on the location without conducting proper studies and without advising the public. Residents of the area felt the road would adversely affect wildlife, property values, and water quality, and that other options had been rejected without adequate consideration.

I found that no final decision had been made with respect to the road location because the Ministry was waiting for a hydrologist's report. The potential effects on wildlife had been examined, and the public had been consulted through both a public meeting and individual discussions. The route under consideration (to which the complainants had objected) did not pass through any private land, was the least expensive, and would affect fewer people. I found that the Ministry had followed reasonable procedures. (CS 84-080)

As I indicated earlier, there was a slight increase in complaints about scaling. Some of these were directly or indirectly related to the Shoal Island situation, while in other cases, the complaints related to the payment or non-payment of stumpage fees generally.

Ministry had already acted

A man complained that the Ministry allowed forest companies to have very large outstanding debts on stumpage payments owed to the province. He named one company which, he said, owed more than $800,000 at the time. This debt, he believed, jeopardized the taxpayers of B.C. who might be left as unpaid creditors, should the company go bankrupt.

The Ministry had alredy identified this problem and had acted to correct it a month before I received the complaint.

A new Ministry procedure sets out a sequence and time-frame for action on collecting debts. It includes suspension of timber licences, forfeiture of security deposits, cancellation of timber licences, and legal action.

The primary purpose of the new procedure is to put pressure on companies to arrange repayment schedules. The schedules are to facilitate payments on the principal of the debt plus interest, as well as payment of all current stumpage fees.

This new procedure should provide a framework for reducing forest companies' debts to the province without creating undue hardship on an industry suffering from the economic recession. (CS 84-081)

I have received some complaints about the Ministry's employment practices both from and about Ministry employees. The first case summary below is about a Ministry employee whose duties included renting equipment on the Ministry's behalf. He was also the manager of the equipment rental company from which most of the equipment was rented. The complaint involved conflict of interest and unfair competition, and serves as a good example of the importance of fair consideration in decisions on government contracts. The second example concerns an employee who felt he was fired unfairly. The third example is about a tree planter who had difficulty extracting his pay from his employer who, in turn, worked under contract to the Ministry.

Unfair competition

A man who operated an equipment rental business in northern British Columbia felt that the Ministry had discriminated against him during the fire-fighting season.

At the beginning of the year, the complainant had informed the District Forest Manager that he had a good deal of equipment for rent which the Ministry might be able to use during its fire-fighting operations. But as the season progressed, he noted that the Ministry rented equipment only from his chief competitor in the quipment rental business. He then discovered that the manager of his competitor's business was also employed by the Ministry to rent equipment on its behalf.

When he brought this situation to the attention of the District Forest Manager, the employee in question was given the choice of working for the Ministry or managing the equipment rental business. He was told he could not do both. The

employee decided to quit his job with the Ministry and return to the equipment rental business.

My complainant felt that the Ministry should take steps to prevent this problem from recurring. The Deputy Minister agreed to implement a policy that would prevent any supplier from obtaining an unfair advantage. Since this new policy has been implemented, no equipment may be hired from a Ministry employee, unless no other equipment is available, and then only with prior approval from the Regional Manager or the Branch Director. (CS 84-082)

Treeplanter gets his pay

A treeplanter complained that he and some fellow workers had not been paid for their work. The employer, in turn, blamed the Ministry, claiming it had not yet paid him for the contract.

My complainant said when he asked the local Ministry office in Burns Lake for confirmation of the employer's claim, he got nowhere.

A call to the Ministry determined that it had already paid the contractor, except for the usual holdback of 15 percent for 40 days.

Since the complainant was still left without money, I asked the Employment Standards Branch of the Ministry of Labour in Prince George and Vancouver to assist the complainant in recovering his wages from the holdback money.

I also contacted the Ministry of Forests office in Burns Lake — just in the nick of time: the holdback money was to be sent out in the next few days.

Aside from assisting my complainant, the Ministry of Forests also offered to instruct all its offices to give out information on the status of payments for contracts when requested by employees of the contractor. (CS 84-083)

Hired and fired in three days

For certain projects the Ministry uses short-term employees who are hired for the duration of the project or for 59 days, whichever is shorter. If the project takes longer than 59 days, a new agreement for another 59 days or less is entered into. This procedure ensures that short-term employees cannot become union members.

A complainant worked for the Ministry as an auxiliary employee for nearly two years, followed by a six-month stint as an auxiliary labourer. After that, his employment became subject to the 59-day procedure. His employment under one agreement expired March 4. That same day he was asked to sign a new agreement and told to return to work March 8. On the afternoon of March 7, he was phoned at home and told that he was laid off.

When we investigated the complaint, nobody in the Ministry denied that the complainant had been offered work on the new project. But for some reason, nobody seemed to have the piece of paper the complainant had been asked to sign regarding his future employment. The complainant said he did not get a copy of the document at the time.

Since nobody denied the existence of the document, I concluded that it existed at the pertinent time and, therefore, constituted a binding offer of employment for either 59 days or for the duration of the project, whichever was shorter.

The Ministry informed me that there had been difficulties in the past regarding the complainant's job performance, which may have been the reason why he was not to be rehired. The complainant said he was never told that his job performance left something to be desired. In fact, he was under the impression that he had done a good job.

In my opinion, the man had been treated unfairly. If the Ministry was not satisfied with the complainant's past job performance, it must have been aware of the problem before it offered him further employment.

I recommended that the Ministry pay the complainant for the time he would have worked, had he not been fired. The Ministry initially questioned my recommendation but eventually agreed to pay the complainant the wages he would have earned, had he been employed until the end of the project. (CS 84-084)

MINISTRY OF HEALTH

Declined, withdrawn, discontinued	109
Resolved: corrected during investigation	121
Substantiated: corrected after recommendation	7
Substantiated but not rectified	0
Not substantiated	64
Total number of cases closed	301
Number of cases open December 31, 1984	96

In 1984, the number of complaints against the Ministry of Health increased by more than 150 percent over the previous year. This increase is due in part to the stepped-up involvement of my office with institutions operated by the Ministry. Co-operation from the Ministry staff has generally been good. We were able to resolve 45 percent of the cases we investigated.

The Ministry affects British Columbians in many different ways. It is involved in issuing birth certificates, the operation of long-term care homes and mental health institutions. Every time a resident of British Columbia needs surgery or must go to hospital, the Ministry is involved. Even private sewer systems fall within the Ministry's mandate.

MEDICAL SERVICES PLAN

The Medical Services Plan covers a wide range of medical services. More than 1.75 million British Columbians subscribe to the Medical Services Plan. It is not surprising, therefore, that I receive many complaints against M.S.P.

Most complaints involve either eligibility or payment for services. In past Annual Reports, I have stressed eligibility problems. In the following cases, the problem was with Medical Services' administration.

Series of post-dated cheques o.k.

When Medical Services refused to accept a post-dated cheque from a subscriber, he complained to us.

The Ministry's practice was not to accept post-dated cheques. In the end, the Ministry agreed to accept a series of post-dated cheques up to ten working days in advance of the due date of the premium payment. Staff was notified of this change. (CS 84-085)

A number instead of a letter

A complainant objected to the letter "W" printed on Medical Services Plan identity cards issued to income assistance recipients. The complainant had correctly guessed that the "W" stood for welfare. Because of the derogatory connotation of the word welfare, he wanted the "W" removed.

My investigator found that in the group insurance category, Medical Services uses numbers to identify both the subscriber and the subscriber's employer. It appeared to me that if the Ministry wished to provide an identifier for Human Resources clients, it should use a number, rather than a letter. It was not necessary for purposes of the Plan to allow medical practitioners to identify a patient as an income assistance recipient.

Eventually the Ministry agreed to remove the "W" and use a number. (CS 84-086)

Most patients are reluctant to seek medical treatment outside of Canada. When an operation is medically required but not available in British Columbia, severe medical problems can often be compounded by financial hardship.

Boy's treatment in U.S. covered

A man whose son had received medical treatment in the United States complained that the Medical Services Plan would not cover the costs.

The man's 15-year-old son had a three-year history of imbalance in the dark. For four months, he had been having problems with his right ear. The family physician found out that for four generations, the family had had a history of acoustic tumors. Complications from the condition and treatment procedures had left the boy's father with facial paralysis and an uncle with a total hearing loss in one ear.

Doctors made a tentative diagnosis, but discovered later that whereas the actual condition was related to the original diagnosis, it was a distinct, non-identical disease. B.C. has a number of qualified surgeons that could have treated the disease as it was first identified. But a clinic in Los Angeles had devised the surgical procedure needed to correct the condition, allowing the boy to lead a normal life without suffering from serious side effects.

After reviewing the information my investigator had collected, I was convinced that the conditions were, in fact, different and required different treatment. Only one of the procedures was available in Canada.

I asked the Medical and Surgical Advisors to reconsider their decision. They agreed that the service the boy had required was only available in the U.S. and authorized payment at the "usual and customary rates." (CS 84-087)

Cured of medical and financial problem

A man complained that Medical Services would not cover the cost of surgery he underwent in the United States.

For the past three years, the complainant had suffered from a variety of symptoms. He had bouts of shivering, eyesight problems, nausea and speech impairment. Following a series of tests, he was diagnosed as having a compression of the eighth cranial nerve. Subsequent treatment had not adequately relieved the symptoms. The complainant then conducted an exhaustive search to determine if corrective surgery could be performed. When he could not locate a specialist in Canada who was familiar with the procedure that would correct his disorder, he got in touch with a hospital in the United States which had on staff one of the leading experts in the field.

The specialist agreed to perform the surgery and Medical Services authorized payment, but only up to the amount that would have been paid, had those services been rendered in British Columbia. That qualification resulted in a considerable financial liability for the complainant.

My investigator discovered that the surgery could have been performed in B.C., but only as an answer to the originally diagnosed condition. New information on the disorder and its causes was not available here. Medical staff at the U.S. hospital, on the other hand, had utilized surgical techniques that greatly enhanced chances of recovery. The complainant was, therefore, justified in seeking medical treatment outside the country.

When this information was brought to the attention of Medical Services, medical and surgical advisors reviewed the case and agreed to pay the outstanding bills. The complainant was cured of both his disorder and the financial problems resulting from its treatment. (CS 84-088)

HOSPITAL INSURANCE

Hospital Insurance covers the cost of hospital stays for British Columbia residents. Unlike the Medical Services Plan, which charges a premium, Hospital Insurance charges a user fee. There can be problems, as the following case shows.

User fee for three hours?

A complainant whose mother was admitted to one hospital and transferred to another that same day, was charged the hospital user fee twice.

The complainant's mother had been taken by ambulance to one hospital where she received emergency treatment. Three hours later, she was transferred to an acute-care hospital.

The *Hospital Insurance Act* and Regulations allow hospitals to charge a user fee for each day's stay. My investigator reviewed the regulation with Hospital Programs officials and pointed out that the woman had only remained at the first hospital for three hours, which could hardly be interpreted as a "day's stay."

The officials agreed to instruct hospitals that when a person is admitted as an in-patient to more than one hospital on the same day, the user fee will be charged by the last hospital to admit the patient that day. The accounts office agreed to refund the complainant for one user fee. (CS 84-089)

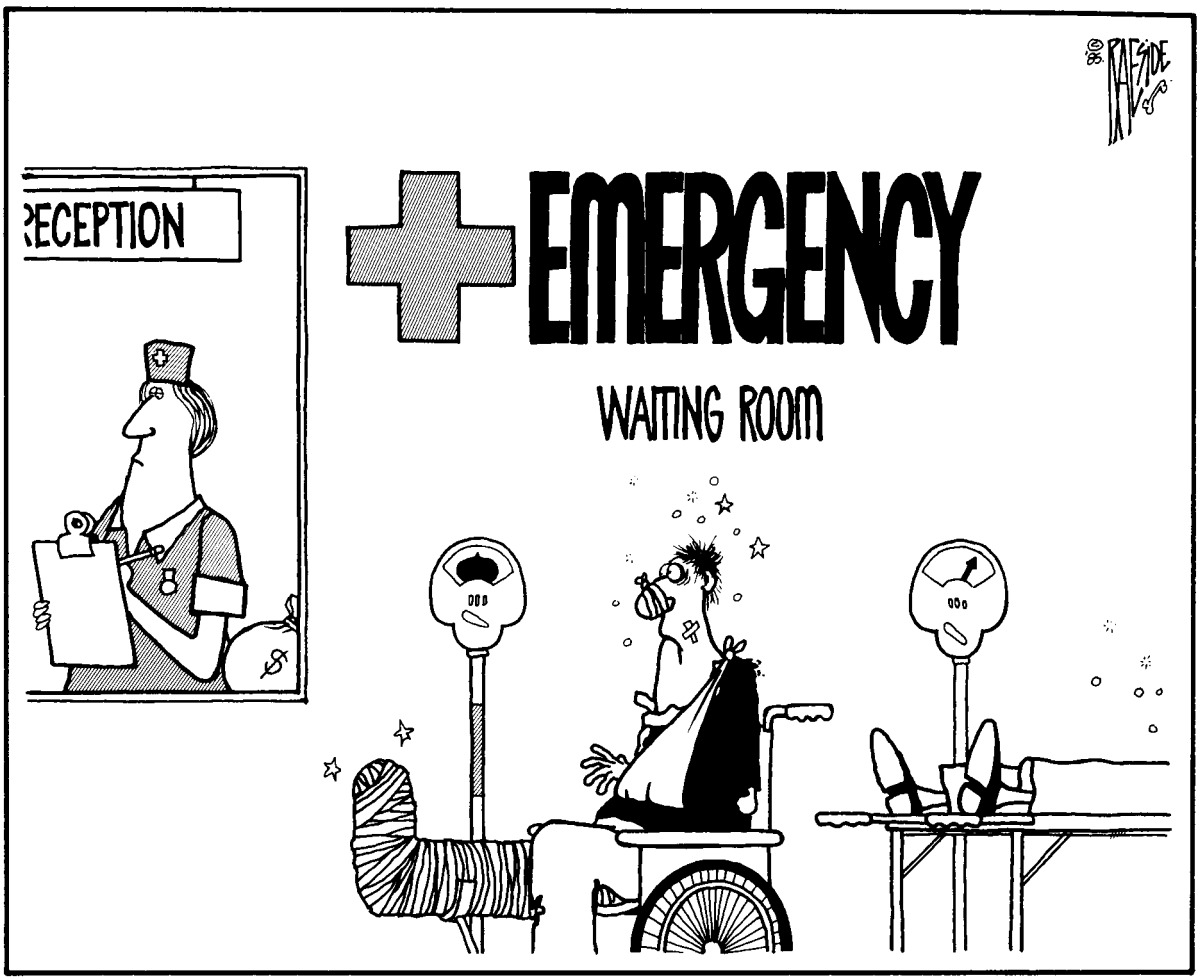
LONG-TERM CARE

The Ministry is responsible for assessing and placing senior citizens requiring care. It also provides homemakers for elderly people who live at home but need some help in looking after themselves.

I mentioned in my 1983 Annual Report that I was concerned about the financial hardship faced by some senior citizens who live in long-term care homes and are admitted to acute care hospitals. Both the long-term care home and the hospital charge the senior citizen a user fee.

Last year, the Ministry of Health stated that the Ministry of Human Resources should pay the fee in cases of financial hardship. Human Resources replied that it would not pick up the cost, unless the senior citizen was a Human Resources client prior to being 65 years old. I informed Health of this and recommended that the Ministry consider amending the *Hospital Insurance Act* regulations to exempt needy senior citizens from the requirement to pay the hospital fee. After waiting for nine months for a response from the Ministry, setting a date for a response, and informing the Ministry that it may commit an offence by not responding, I received a letter informing me that the Ministry would deal with the issue in the near future. Hardly a satisfying answer for those citizens facing not only the challenges of growing old but also this financial hardship.

To date, I have not heard anything further from the Ministry. I noticed, however, that Section 29 of the *Hospital Insurance Act* has been amended by the Legislature. The amendments provide clear stat-



utory authority for the Ministry through the Cabinet to implement my recommended changes to the regulations and exempt "persons or classes of persons" from the requirement to pay the hospital fee.

PREVENTIVE HEALTH CARE

The Ministry provides a number of services under Preventive Health Care. They include licensing daycare centres, speech and hearing services, public health nursing and public health inspections. The latter was already a matter of concern two years ago. I mentioned in my 1983 Annual Report that I had encouraged the Ministry to provide information pamphlets to owners of septic systems to clarify the role of Public Health Inspectors. And while Ministry officials had agreed that a pamphlet would be helpful, they had not produced one. A year later, still no pamphlet.

I also stated in the 1983 Annual Report that I had received complaints about the enforcement of sewage disposal regulations for new houses. The problem is still with us, as the following case shows.

Catching up with permit evaders

In my 1983 Annual Report, I mentioned that I had received complaints about the construction of new houses without proper Ministry permits for septic tank systems. I stated that these complaints came from areas where local bylaws did not require building permits.

One of the difficulties was that Public Health Inspectors were not always aware of construction activity. There is no mechanism for informing Public Health Inspectors of any construction in areas not covered by Regional District bylaws. The same problem arises with property that has been previously subdivided.

Health officials met with officials of the Electrical Safety Branch of the Ministry of Labour. The latter agreed to inform public health inspectors of recent electrical permit applications. This way, inspectors will be able to make sure that septic systems are not installed without permit. (CS 84-090)

VITAL STATISTICS

The Division of Vital Statistics registers events such as births, deaths, marriages, and divorces. It goes without saying that accuracy and consistency are important in the registration of these events. Invariably, situations arise that are not covered by existing rules. With a little goodwill, however, even the most unusual problem can be solved. Read on.

Get me to the church on time

The following case could have been taken from a Keystone Cop movie script. The reader may have a hard time not laughing, but as far as the complainant is concerned, there was nothing funny about his experience.

A young man was about to be married but he wanted to change his surname before the wedding.

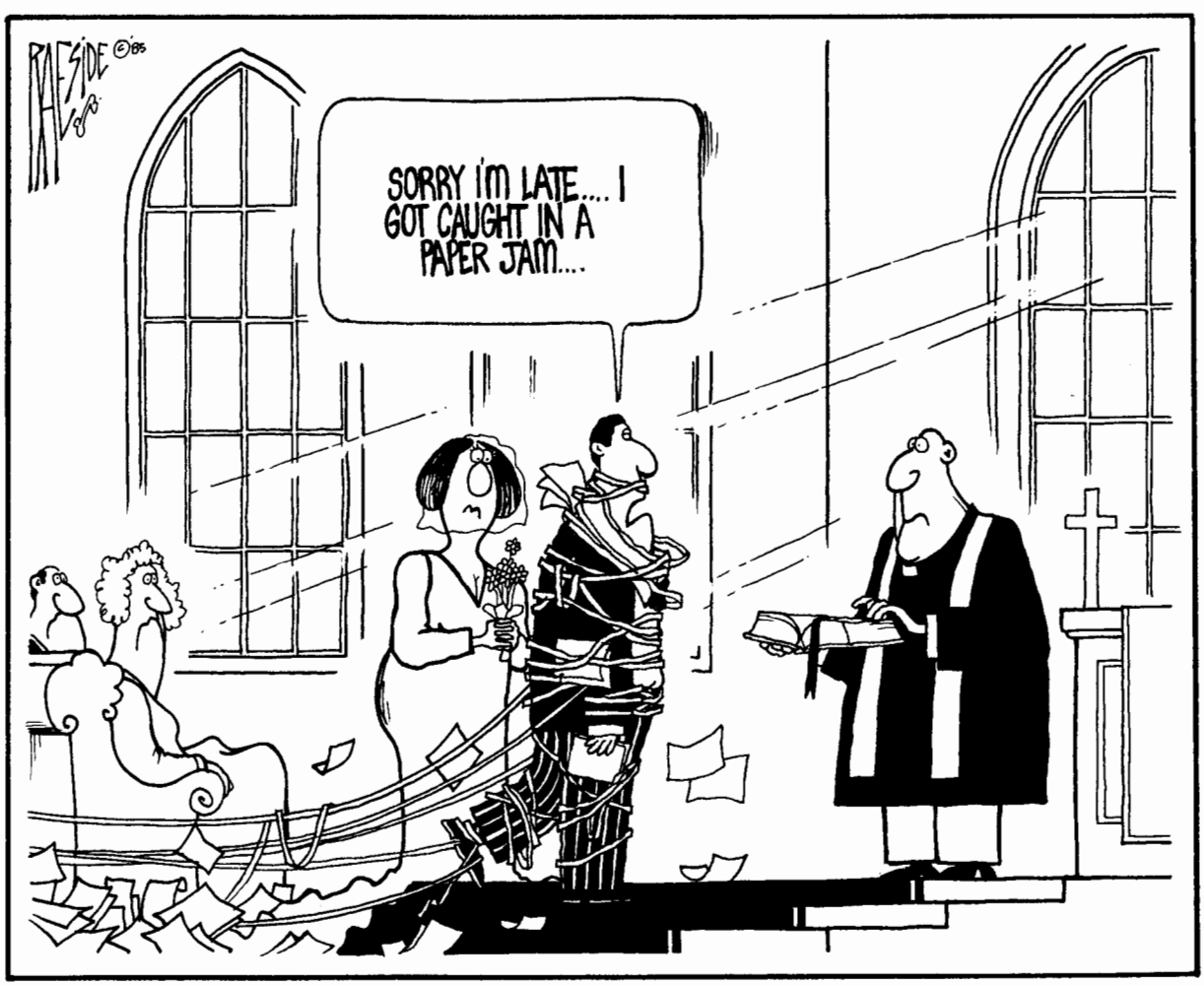
He had submitted the necessary documents to Vital Statistics months before but had heard nothing. The wedding date was drawing near and he needed the matter settled quickly so that his marriage licence would be issued in the appropriate name.

Inquiries revealed that Vital Statistics had received the application itself months ago. The problem was that the complainant had failed to send in the necessary confirmation that the name change was publicly advertised. Assuming that the man had abandoned plans to change his name, the Director of Vital Statistics sent him a refund cheque for the application fees.

But before the refund cheque reached him, the complainant sent the necessary confirmation of advertising to Vital Statistics. Presumably the two crossed paths somewhere in the postal system.

When the confirmation documents arrived, Vital Statistics attempted to contact the applicant to explain the situation. Unfortunately he had moved and not provided his new mailing address. No contact was established. Meanwhile the refund cheque was neither received by the applicant nor returned to Vital Statistics.

To add to the confusion, the orginal application for the name change had been filled out in reverse order which meant that he had, in fact, applied to change his new name back to his old one.



Time was now of the essence, and to speed matters up, the Director of Vital Statistics agreed to forget about the refund cheque for the time being, and ignore the fact that the advertising was out of date.

He sent the complainant a new application for his signature. If all went well, he could drop the completed form off at the Government Agent's office and have it processed in time for the wedding.

Of course, all did not go well. As instructed, the man brought the form to the Government Agent's office. The Agent, somewhat confused by this unusual procedure, phoned Vital Statistics in Victoria for direction.

As bad luck would have it, he spoke to a clerk who was unaware of the Director's plan and, in keeping with standard procedures, informed the complainant that he could not accept his application without a new application fee. The complainant did not have the money, and the application was not accepted.

By the time I found all this out, it was the afternoon before the day of the wedding. Appropriately it was also a Friday. My investigator contacted the Director of Vital Statistics and explained the confusion. Not a man to stand in the path of true love, the Director proposed a novel resolution. If the Government Agent would phone him and read the completed form to him, he would consider this the equivalent of a processed application and would then authorize the marriage licence in the new name.

My investigator phoned the Government Agent, explained again the predicament, and persuaded him to follow this unorthodox procedure. At 4:30 that Friday afternoon, the licence was issued. The wedding took place the following day.

Aside from being a good example of life's little pitfalls, this case shows public servants at their best. Without the patience and co-operation of the Director of Vital Statistics, the complainant would not have been able to have his name changed in time for the wedding. (CS 84-091)

The registration of names can create problems. And while the question of whether a name can be hyphenated doesn't cause too many people to lose sleep, it can be frustrating for that one person who has his heart set on a hyphen.

No-hyphens-permitted

A man complained that Vital Statistics would not permit the use of a hyphenated surname. The complainant and his wife wanted their child to have both their surnames.

There was nothing I could do for the complainant. Vital Statistics legislation in this province is rather antiquated. Since I received that complaint, however, an amendment to the *Name Act* has come into effect. It permits a woman, with her spouse's consent, to adopt any surname, including a hyphenated combined name. It also permits changing a child's name to that of the mother. Again, the spouse's consent is required. (CS 84-092)

More name problems

Another complaint involving name change legislation was brought to us by a lawyer. The provisions of the *Name Act*, she said, were unnecessarily restrictive for married women attempting to change the names of their children.

The complainant told my investigator one of her clients had been trying to change the names of her children, fathered by someone other than her spouse. The children carried their father's surname. The only name she could have changed her children's name to was that of her spouse. She had no intentions of doing that because she was separated from him.

At the time of the complaint, the Ministry of Health had begun a review of the *Name Act*, the *Marriage Act*, and the *Vital Statistics Act* with the aim of developing new draft legislation. The proposal, developed jointly with the Uniform Law Commission of Canada, was to be ready for consideration by the Legislative Assembly in 1985.

All of which did not help our complainant's client. Eventually, however, Vital Statistics agreed to consider her status as that of an "unmarried mother," rather than a "married woman." This overcame the limitations of existing legislation which does not reconize that the husband of a married woman need not necessarily be the father of her children and, therefore, should not have a say in the children's name change. On that basis, Vital Statistics accepted her application to change the children's surname. (CS 84-093)

Some complaints do not only stress the importance of fighting for a principle. Sometimes it is the money.

It makes no sense

A man complained that Vital Statistics would only accept a $5 cheque from him if he had it certified. He said it made no sense because the certification would cost almost the same as the amount on the cheque.

The problem was resolved on December 1, 1983, when the Registrar discontinued the practice of accepting certified cheques only. (CS 84-094)

INSTITUTIONS

A great deal of my office's resources went into the investigation of complaints against institutions that come under the Ministry's jurisdiction. Few people are in these institutions of their own free will. Their lives are regulated in a near-absolute manner. For that reason, administrative fairness is of great importance to residents in institutions.

The following complaints arose because the system failed in one of its most basic functions — the provision of adequate facilities and food.

Residents need exercise

My staff visited the Forensic Psychiatric Institute. Residents on the strict-custody floor often complained about the lack of outdoor exercise. I discovered that many residents had not been outside for exercise for several months.

The Institute has a great deal of power over the lives of its residents. With such power come certain responsibilities. The Institute must provide a healthy environment. Residents have a right to be treated in a humane manner. Fresh air and sunlight are fundamental to a healthy environment. Their lack impairs the residents' mental and physical recovery.

Institute staff stated that the facilities were not adequate to provide outdoor exercise during the winter months. The field had become wet and could not be used. A staff shortage made the situation even more difficult.

I got in touch with several psychiatric centres in Canada to find out what they did in similar circumstances. I also took into consideration the standards applied in Canada's most secure penal institutions. In addition, I took into consideration the United Nations standard minimum rules for the treatment of prisoners which requires that each person "have at least one hour of suitable exercise in the open air daily if weather permits."

On my recommendation, the Ministry decided to exceed the minimum standard calling for one hour of exercise, except when residents are a danger to themselves or others. To accommodate that policy change, the Ministry provided the Institute with additional staff and authorized improvements to the outdoor exercise yard at a cost of $105,000.

The staff agreed to keep my office informed of the extent of outdoor exercise residents get. (CS 84-095)

Problems with basic amenities

I received a number of complaints from residents of the Maples Adolescent Treatment Centre regarding the facilities, the equipment and the furnishings.

My investigators alerted the officials to the problems at the treatment centre which affected basic amenities, such as mirrors, light, water temperature, heating, ventilation and bathing facilities. The officials agreed to make the necessary changes. (CS 84-096)

Complaints about food

A number of residents of the Forensic Psychiatric Institute complained about the quality of the food.

The hospital administration had asked residents earlier in the year what changes they wanted in the food service. The majority replied that food service would improve if it were taken over by Riverview Hospital. But that did not do the trick. When Riverview took over the service, I continued to receive complaints about the quality of food.

To provide a quick and efficient method of dealing with complaints about food, the Hospital Administrator agreed to establish a committee consisting of representatives from staff and residents. Food services staff from the Institute and Riverview Hospital will be represented. The Committee will receive and handle all complaints regarding food services. (CS 84-097)

Coffee please

A Riverview Hospital resident complained that the Hospital did not provide coffee for visitors and residents on weekends.

My investigator discussed this complaint with the Volunteers Association at Riverview Hospital and discovered that the Association planned to open its shop on weekends to provide coffee. The recreation facility was also to be open on weekends to provide activities. There, too, coffee would be available. (CS 84-098)

The provision of adequate programs is essential for the mental and pysical well-being of residents.

Program adjusted

Forensic Psychiatric Institute residents are encouraged to participate in work programs. Those who take part receive a token amount of money. A sliding scale reflects the level of skill and number of hours contributed by residents.

Many residents found that the increased cost of living had eroded their earnings. They complained that they had not had an increase in pay for several years.

I pointed out to the officials that the objective of the work program was to teach residents something about financial management. If the program did not provide them with sufficient income, this purpose would be defeated.

The Forensic Psychiatric Services Commission agreed to an increase of five percent in July, 1984. That amount was within the funding levels for the 1984/85 fiscal year. (CS 84-099)

Later visiting hours

A visitor to the Institute complained that visiting hours for third-floor residents began too late.

It is very important for residents of an institution to get visitors. Visitors are the residents' lifeline to the outside world.

Staff members explained that gym activities often overlapped with visiting hours. To accommodate both gym time and visiting hours, the Institute agreed to move the latter 30 minutes ahead. (CS 84-100)

That's 8 p.m, not 20.00 hours

A Riverview resident complained that notices drawing attention to certain events or schedules gave the time according to the 24-hour clock. While this may be regular hospital practice, it is confusing to most residents.

The Assistant Director of Nursing agreed to instruct staff to refrain from references to the 24-hour clock on notices posted in the admission area. (CS 84-101)

Many contentious issues in institutions revolve around the provision of medication and psychiatric services. The following cases will serve as good examples.

New review mechanism

Several residents complained about their psychiatrist or about the medication they had to take. Advised of the problem, the Institute's Medical Advisory Committee agreed that in future, the Hospital Administrator will receive all complaints. Those dealing with medical care will be referred to a committee consisting of the chief psychiatrist and two doctors not involved in the complaint.

An alternative for the chief psychiatrist is to be selected if he is or was involved in the treatment. Residents can appeal the decision of this group to the Medical Advisory Committee. The Institute notified residents of the review mechanism. (CS 84-102)

Residents want drug information

A number of residents complained that doctors did not explain the side-effects of medication. Most people in the Institute are on some kind of medication. Knowledge of the various side effects becomes an important issue.

The Hospital Administrator agreed to make available to residents educational pamphlets outlining the various types of drugs and their side effects. (CS 84-103)

Residents want second opinion

Residents of the Forensic Psychiatric Institute complained that they were unable to obtain independent psychiatric opinions. Each resident is assigned a staff psychiatrist, but some residents felt they would benefit from a second opinion.

The Director of Medical Services agreed that residents should be able to request a second opinion. If in his judgment a second opinion is medically required, he will refer the resident to an independent outside psychiatrist. Since this second opinion is required on medical grounds, the Medical Services Plan will pay for the costs of the visit.

The Director also agreed to inform my office whenever he decides against referring a resident to an outside psychiatrist for a second opinion. (CS 84-104)

Diagnosis explained

A man whose brother was in Riverview Hospital complained that the patient's family had not been informed of the medical diagnosis. They had been told about the proposed treatment, but the doctor had never explained the diagnosis to the family.

The doctor explained the diagnosis and the proposed treatment at a meeting with my staff. The doctor had received a second opinion which confirmed his diagnosis and his proposed treatment. He had already met with the family, but agreed to be available to the family to answer any further questions. (CS 84-105)

Several complaints arose because of the way institutions look after the residents' money and property.

New "banking" procedures

A man who had been remanded to the Forensic Psychiatric Institute for 30 days complained that he was missing $5 when he left the Institute.

At his arrival, the complainant had $50. Normally, when a person is admitted to the remand ward, staff count his money, put it in an envelope and write the amount on the outside. Whenever the resident needs money, it is taken from the envelope and the transaction is written down.

In this case, however, the staff did not record on the envelope what money was taken and given to the resident. In the end, a $5 withdrawal was not accounted for.

The administration agreed to issue a cheque for $5.00 to the complainant. The Hospital Administrator also issued a written directive to staff reminding them that all funds retained on the remand ward be noted on the envelope. In addition, any withdrawals were to be signed for by resident and staff. (CS 84-106)

More for your (U.S.) dollar

According to a complainant, residents of the Forensic Psychiatric Institute did not receive the exchange rate when U.S. funds were deposited in their trust accounts.

Our investigation showed that in order to obtain the exchange rate, the deposit had to be made in person at the Bank. That raised a problem since the trust account was with a Vancouver bank. The residents are kept in strict custody and are, therefore, unable to go to the bank. And the staff could not go because the bank was too far away.

Finally, the Forensic Psychiatric Services Commission agreed that staff would convert the U.S. money to Canadian funds at a local bank and deposit the Canadian funds in the residents' trust accounts. The Financial Policy and Procedures Branch of Ministry of Health agreed to amend the patient's trust account section of the Financial Administration Policy Manual to ensure that the exchange rate was provided in all cases. (CS 84-107)

Confidentiality and privacy are important under normal living conditions. They take on even greater importance in the confines of an institution.

Confidentiality protected

A former resident of the Forensic Psychiatric Institute asked me about his legal status. During the review of the complainant's medical and legal file at the Institute, my staff noticed that attached to the file was a letter from the Ombudsman to the complainant. The envelope had been opened.

Correspondence between the Ombudsman and a person detained in an institution is privileged under Section 12 (3) of the *Ombudsman Act*.

The Hospital Administrator agreed to remove the letter from the file and forward it to the complainant. He also agreed to remind staff that letters from the Ombudsman to residents are not to be placed on any file, unless it is requested in writing by the resident, in which case the letter and the request will be placed on the file.

I am satisfied that this procedure will adequately address the confidentiality question, without taking away from complainants the right to place letters on their legal file, if they so wish. (CS 84-108)

Files must be confidential

A resident at the Forensic Psychiatric Institute complained that an escort looked through his medical file during his transport to Riverview Hospital where he was to see a doctor.

Residents' medical files are usually taken along to doctors appointments. More than a year had passed by the time the complainant brought the matter to my attention, but I was sufficiently concerned about the nature of the complaint that I asked my staff to meet with the administration of the Institute.

The Hospital Administrator agreed to send a reminder to all staff that residents' files sent with an escort are to be placed in a sealed envelope. (CS 84-109)

As important as respect for confidentiality and the residents' privacy is the institution's willingness to give residents access to information about them.

Giving his side of the story

A former resident of Riverview Hospital alleged that his medical file contained incorrect information.

Former patients of psychiatric institutions often express concern that their files may contain incorrect information obtained from third parties. Such information might have been obtained to help hospital staff assess the patient's medical condition and background.

The Executive Director of Riverview Hospital agreed to place on file a letter from the complainant explaining his position with regard to events described by third parties. (CS 84-110)

Allegations of abuse in institutions are serious complaints. My office gives them the highest priority. Whenever abuse occurs, the resident's welfare is threatened. And the trust which must exist between residents and staff is endangered. My staff are instructed to act swiftly on complaints of this nature.

Unnecessary use of force

During a visit to the Forensic Psychiatric Institute, my staff received a complaint from a resident who had witnessed the transfer of another resident from a room to the dormitory early one morning. The complainant said the hospital staff had used unnecessary force.

My staff immediately met with the Director of Nursing and provided him with all the information regarding the incident. He agreed to initiate an immediate investigation. When the investigation was completed, the Hospital provided me with a full report and notes of the investigation.

The Director of Nursing concluded that staff had used unnecessary force during the incident. The Hospital had already initiated disciplinary proceedings against the staff member. The resident who had been the victim of unnecessary use of force received a written summary of the investigation and an apology from the Hospital. (CS 84-111)

The following is the tragic story of a man who received more than adequate care, but suffered because the system had channelled him into the wrong institution.

Fewer restrictions

One Forensic Psychiatric Institute resident alleged that the Institute was holding him without proper authority.

When my investigator reviewed the man's file, we noticed that the complainant was arrested in the early 1970s and charged with theft under $50. He was found not guilty by reason of insanity and committed to the Institute.

For 12 years, the Institute had tried to place him in the community. Unfortunately, the complainant had breached certain conditions of his modified Order in Council.

Even though the complainant clearly suffered from mental illness and required ongoing treatment, I was extremely concerned that the treatment he received came via the forensic system rather than the civil system governed by the *Mental Health Act*.

Persons held in an institution under the provisions of the *Mental Health Act* are far less restricted in their rights and freedoms than those committed through the forensic system.

In the latter they face several restrictions. Their legal status is determined by the Lieutenant Governor in Council. And when residents are placed in the community, they get a conditional discharge. In other words, their discharge is subject to a number of conditions. Breaking any one of those conditions will result in further detention at the Institute. Person committed under the *Mental Health Act* do not face these restrictions.

Riverview Hospital's Hillside Unit, which provides programs to prepare residents for their return to the community, agreed to assess the complainant to determine his suitability for the program at the Hospital. The Medical Director at Forensic agreed to permit assessment. If the complainant turned out to be suitable for the Program, staff at Riverview and Forensic would recommend to the Review Board that he be considered for transfer to Riverview Hospital.

If the complainant was suitable for the hospital's program, he would be treated under the *Mental Health Act*, rather than the Lieutenant Governor's Warrant. (CS 84-112)

My office also gets complaints from public servants about the various branches of the government for which they work. The following case raised some serious questions.

Oath of office ignored

A former employee of the Ministry complained that her supervisor had improperly obtained, copied and released a personal letter she had written to her sister. The woman said she had left the letter behind with some papers when she left the employment of the Ministry.

The complainant also said Ministry officials had released private information about her to a professional association.

Our investigation revealed that the woman's supervisor had, indeed, copied and kept a personal letter belonging to the complainant, an unquestionably improper act. On my recommendation, the Ministry advised all supervisory staff that an employee's private correspondence should not be read or copied by the employer.

The second complaint raised some serious issues for professionals employed by government. These professionals felt an obligation to their professional Association to report allegations of unethical conduct by a colleague. They disregarded the oath of office which allows the release of information obtained in the course of their employment only by authorization of the Deputy Minister. They had no such authorization.

As a result of my investigation, the Ministry amended its guidelines dealing with conflict of interest. The new guidelines prohibit the release of information without the authorization of the Deputy Minister. (CS 84-113)

Unfair conditions?

Last year, under case summary CS 83-084, I reported that the Public Health Inspector in Fort St. John "had not considered all available information" in objecting to a proposed subdivision in the area. The Public Health Inspector brought this to my attention and complained that my report was in error. Following a complete review of the complaint which had been summarized and my investigation of it, I must concede that the Public Health Inspector has a point. At the time of making his objections, he had indeed considered all of the information available at that time. By the time my staff contacted him to discuss his objections, however, new information had come to light. As I described in the summary, the Inspector agreed to consider this information and advise how his objections could be overcome.
(CS 84-114)

MINISTRY OF HUMAN RESOURCES

Declined, withdrawn, discontinued	578
Resolved: corrected during investigation	459
Substantiated: corrected after recommendation	8
Substantiated but not rectified	2
Not substantiated	322
Total number of cases closed	1,369
Number of cases open December 31, 1984	216

The increase of complaints in 1984 against the Ministry of Human Resources was out of proportion, compared with increases of complaints against other authorities.

Here is a brief breakdown. In 1984, I received 1,414 new complaints against Human Resources, of which we closed 1,369. That is an increase in complaints handled of 39 percent over the 1983 figure of 984, and a 128 percent increase over 1982 when I dealt with only 599 complaints against the Ministry.

An increase in complaints from agencies providing social services is to be expected in tough economic times. More people are forced to rely on the services this Ministry provides to meet their basic needs. My office's resources, however, are limited and it becomes more and more difficult to handle the complaint load generated by the Ministry of Human Resources.

My staff rely heavily on the co-operation of the Ministry's field staff to resolve as many complaints as possible with the least investment of time and resources by both sides. It was that co-operation, that made it possible for us to help the large number of people who had complaints about the Ministry in 1984.

FAMILY AND CHILDREN'S SERVICES

The Ministry provides a range of services to children and families. Foremost among these are protection services to families in crisis, foster care services for children unable to live with their own families, adoption services, and a number of support services to maintain children in their own families.

PROTECTION

Of the thousands of complaints, those involving child abuse or neglect are the most disturbing. In some cases, parents accuse the Ministry of interfering with their family life. Others feel the Ministry is not doing enough to protect children from abuse.

The decision to remove a child from its family is not taken lightly. It should only be used as a last resort to protect the child. But when a child's safety is at risk, the Ministry must side with the child's interests. The Ministry cannot and should not allow a child to live in a dangerous environment, just to keep the family together.

I am horrified by some cases of abuse children suffer and that come to our or the public's attention. I find it difficult to comprehend how long some children must endure ill-treatment before the matter comes to the Ministry's attention. The consequences to the child can be devastating. For that reason, it is important that anyone witnessing child abuse brings the matter to the attention of the Ministry, and that the Ministry be ever vigilant and take great care in attending to reports about child abuse.

I have also received many complaints from parents about the Ministry's actions when investigating child abuse allegations. There are some complaints of child abuse that are made on tenuous information, some that are not made in good faith and some that are actually made maliciously.

The Ministry is usually able to sort the wheat from the chaff and, in my view, does a reasonable job. If it does not, my own investigation will uncover shortcomings which can then be addressed through recommendations.

The problem remains for parents who are unfairly or maliciously accused by relatives, neighbours or former spouses of having abused or neglected a child. I work closely with the Ministry to mitigate

the effects of interventions that turn out to be unwarranted. I still will and must defend the Ministry's intervention because it is obliged by law to investigate a complaint. I also feel it is better to investigate and conclude that no further action is warranted than not to investigate and risk the welfare of a child.

Classified information

A woman complained that the Ministry refused to provide the name of the person who filed a child abuse allegation against her.

We informed the complainant that the *Family and Child Service Act* allows the Ministry to release information about child protection only to its legal counsel, to the courts when it gives evidence, when disclosure is necessary to protect the child, or when disclosure is required by legislation, such as the *Ombudsman Act*. I was unable to substantiate the complaint. (CS 84-115)

Lie detector fallible

A woman complained that the Ministry had apprehended her daughter without good cause and refused to return her.

The Ministry had acted on allegations that the complainant's husband had sexually abused the child. The complainant pointed out that her husband had taken a lie detector test, and that the results had been negative. In her opinion, that exonorated her husband. She concluded that her daughter had fabricated the whole story. She saw no justification for her daughter to remain in the Ministry's care.

Sexual abuse often leaves little, if any, physical evidence. The offence usually occurs in private circumstances. There are no witnesses. The Ministry's problem is how to prove or disprove the allegation. Whom should the Ministry believe — the child or the alleged abuser?

A polygraph test has two major limitations in establishing credibility. It is not infallible. The accuracy of the test depends to a great extent on the skills of the operator. The test also relies on what the subject believes to be true, rather than what actually occurred. This is particularly significant when the issue is so repugnant that the subject's mind blots out the incident.

Given these limitations, I felt the Ministry acted reasonably in bringing the matter to the Court's attention to determine the truth. I found the complaint not substantiated. (CS 84-116)

Neglectful, not abusive

When the Ministry notified a woman that it would remove her adoption application form from its adoption registry and would no longer allow her to provide day care for Ministry clients, she complained to me.

The Ministry's action had followed an investigation of a child abuse allegation. The complainant said the Ministry had investigated the allegation and had found her neglectful, but not abusive. She felt the allegation was unfounded and considered the Ministry's action wrong. She asked me to review the Ministry's decision with a view to having both the adoption application and day-care approval reinstated.

I found that the woman had, indeed, not been abusive, but neglectful with respect to a certain incident. Perhaps she simply lacked the necessary parenting skills to keep young children under control.

I suggested that the complainant take a course in parenting skills, and that the Ministry review its position if she successfully completed the course. Both the Ministry and the complainant agreed with this proposal. (CS 84-117)

First she must deal with her problem

A man complained that the Ministry had apprehended his child at birth. He considered the Ministry's action unreasonable and argued that he and his wife should be given a chance at parenting the child.

My investigation revealed that the complainant's lawyer had agreed to the Ministry's request of assuming custody of the child for six months. The court had ratified this agreement. I informed to the comlainant that I could not alter the court's order.

I also explained to him that if his wife could successfully deal with her drug and alcohol problem, the Ministry would place the child near the mother, giving her easy access to her child. This way, she would be able prove that she can look after a child. (CS 84-118)

Only if all else fails

A man complained that the Ministry was not adequately protecting his children. He had filed a child neglect complaint about the children's mother with the Ministry and could not understand why the Ministry had left the children at home with their mother. He thought they should be in his care.

I told the complainant that only the courts could make a decision with respect to the custody matter, and that the protection complaint was a separate issue. I explained that the Ministry's mandate was to protect children, and that he could not resolve the custody matter by way of

child neglect allegations. I also gave him information about the Ministry's procedure in investigating child neglect complaints.

Custody of children is arranged between the parents at the time of separation. Even if the Ministry has concerns about possible neglect, it will, as a rule, not place children with the parent who does not have custody.

Instead, the Ministry will work with children's custodial parents (in this case the children's mother) to resolve neglect concerns. Only if all attempts at resolving neglect concerns fail, and the children cannot be returned to their custodial parents' care, will the Ministry consider placing them in the care of non-custodial parents. (CS 84-119)

Ministry acted quite properly

A man complained that the Ministry would not allow him to live at home until a psychiatrist had assessed his child. The Ministry had received an allegation of sexual abuse and had allowed the child to remain home with her mother, provided the father stayed away.

The complainant said he understood the Ministry duty to protect children. He did not object to a psychiatric assessment of the child. His complaint was that it would be three weeks before the assessment was done. In the meantime, he was expected to live away from his family and home.

I found that the Ministry had acted properly. The allegation was serious. His wife had chosen the psychiatrist. The three-week delay was not the Ministry's fault; no earlier appointment was available. (CS 84-120)

Child removed from foster home

A man complained that the Ministry had not responded appropriately to his concern about his step-daughter's care in a foster home. He had discovered bruises from a spanking on the child's bottom. He felt the child should be removed from the foster home.

While I investigated the matter, the Ministry reviewed its decision and decided to remove the child from the foster parents' care. (CS 84-121)

People in residential care for the mentally handicapped cannot always initiate complaints. I must go to them. My staff have developed regular contact with the major institutions. This contact gives residents access to the Ombudsman. Parents or friends may also complain to me on behalf of residents.

Mother was shocked

A mother complained about an incident which involved her daughter, a resident of Woodlands since 1972. In June 1978, the complainant was shocked to learn from Woodlands staff that her daughter was more than five months pregnant.

To help residents become more independent, they are concouraged to walk from one building to another to institutional work or school sites without supervision. It appears that the young woman had contact with a man during these unsupervised periods. Attempts by Woodlands staff to determine who the father of the child was resulted in inconclusive findings.

I investigated the standard of care and supervision of residents and the response of the institution to the discovery that the girl was pregnant. Woodlands provided complete access to all records for my investigation.

I expect a high standard of care for residents because they are dependent on the staff. The complainant's daughter was deaf and had only limited communication skills. My complainant maintained close contact with her daughter. Woodlands provided for the daughter's daily needs, medical treatment, school, training for her deafness and her social and recreational needs. Because she was a shy person, the young woman was not given contraceptive pills.

I concluded that the institution had failed to provide the standard of care required. Medical treatment or procedures ordered by the institutional physician were not recorded as completed or fulfilled. This lack of communication between staff resulted in the failure to detect the pregnancy early in its term.

As a consequence of this case, Woodlands implemented a revised menstruation record and pregnancy-testing policy. According to the new rules, tests will be conducted if no menstruation is recorded for two months.

Our investigation also showed that Woodlands staff did not inform my complainant about the outcome of its investigation. I felt that keeping this information from my complainant was counterproductive and at cross purposes to the parental involvement encouraged by Woodlands. At the conclusion of my investigation, a meeting was held between Woodlands administrators and the complainant to deal with the findings and changes initiated by the institution. (CS 84-122)

ADOPTION

The adoption of a child is a joyful time for the new family, but can be a very painful event for the

natural parents of the child. The following two cases show some of the difficulties they may have to face.

Adoption procedures changed

A mother complained that the Ministry was proceeding with the adoption process of her child, even though she had appealed a judge's decision not to revoke her consent to the adoption.

The woman said she had given the Ministry of Human Resources notice of her appeal. She argued that the Ministry should have postponed the completion of the child's adoption until the Court had heard her appeal. The complainant stated she would not have continued her legal appeal had she realized that the child was already adopted.

My investigation revealed an error by the Ministry. The social worker at the Adoption Registry failed to see an important note in the District Office's records. According to this note, the girl's natural mother was appealing a lower Court decision which stated that the mother could not revoke her consent to the adoption of the child.

I informed the Ministry that I was concerned about the administrative procedure established for adoptions. It appeared that the Superintendent of Family and Children's Services was not notified when a parent proceeded with a legal action against him. And because the Superintendent was not notified in this case, he could not inform the Court that the matter was under appeal.

On the other hand, the lawyer acting as counsel for the Superintendent was notified of the appeal by the complainant's lawyer, but he did not forward the notification to the Superintendent's office. As a result, legal action proceeded against the Superintendent without his knowledge. Unaware of the legal action, the Superintendent submitted a report to court stating there was no appeal and recommending that the adoption proceed.

The Ministry informed me that its practice was to delay completion of adoptions until all outstanding legal issues are resolved. While this was not a statutory requirement, the practice reflects the judges' reluctance to decide on a matter subject to review by a higher court.

The Ministry informed me later that it had changed its administrative procedure some time ago. The Ministry of Attorney General had been notified that the Superintendent of Child Welfare required copies of all notices of appeals.

Ministry policy was further revised. Now the social worker of the child to be adopted must immediately notify the Ministry's Division Headquarters if "either parent initiates court action to revoke a consent."

The Minister followed up on the resolution of the procedural issue with an apology to the complainant. (CS 84-123)

No right to know

A woman who had not seen her two sons for 10 years, complained that even though the Ministry knew where they were, it would not tell her.

Our investigation revealed that the Ministry had neither the authority nor the responsibility to tell the woman where her sons were because they had both been adopted. (CS 84-124)

Adoptive children face equal difficulties when they attempt to establish contact with their natural parents, as this woman found:

No access to documents

A woman who had already traced her natural mother complained that the Ministry would not give her any information about her adoption.

Since she already knew who her natural mother was, the woman felt the Ministry should release to her copies of the legal documents regarding her adoption. The Ministry replied that it could not grant her request because the *Adoption Act* forbids it.

The *Adoption Act* states that adoption documents are to remain sealed. The Superintendent of Family and Children's Services does not have the authority to release any information that might identify the natural parents.

I considered the Ministry's decision appropriate, even though I understood that from the woman's point of view, it must seem nonsensical. After all, she had already identified her natural parents. Unfortunately, the *Adoption Act* does not address this particular situation. (CS 84-125)

FOSTER CARE

Good foster homes are hard to find. Given the dedication and parenting skills required of foster parents who open their homes to troubled children, this is not surprising. Despite the difficulty of finding good homes, however, the Ministry must not lower its standards.

I received a number of complaints about the Ministry's fostering program, both about the level of care and the lack of homes. In the following case, however, the Ministry refused to make use of an excellent foster home.

Girl now has a family

A couple complained that the Ministry would not allow them to foster a child in need of special care.

For two years, the girl had spent several days a week in the couple's home. But the Ministry felt that because of her physical and mental disabilities, the girl was better off in an extended-care hospital, rather than in a foster home. On the other hand, the Ministry was quite aware that the girl's weekly visits to the couple were important to her well-being.

The Ministry had based its decision to place the girl in an extended-care hospital on a number of specific concerns:

The girl, according to the Ministry, functioned at a very low level, was neither ambulatory nor toilet-trained, and could not communicate. Her potential for improvement was considered to be very limited.

The Ministry also considered the girl's physical, medical, and supervisory needs beyond one person's capability of looking after her. She was gaining in weight and size which, according to the Ministry, would make it even more difficult for one person to care for her. A proposed back operation was expected to add to the problems.

The Ministry also worried about the girl's ability to deal emotionally with moving into a private home. She had lived in a foster home before. When that arrangement did not work out, she had great difficulty adjusting to life in the extended-care hospital. And finally, the Ministry took into consideration that many foster placements fail when the child is significantly handicapped.

In addition to all this, the Ministry had a number of concerns about the potential foster parents, foremost among them was the fact that they lived common-law. Their home life, according to the Ministry, could not be considered as stable as that of a married couple. The Ministry was also under the impression that the couple would not be able to make a long-term commitment to the girl.

Our investigation, however, revealed quite a different picture. True, the girl functioned at a low level, but the extended-care hospital had successfully placed children operating at an even lower level in foster homes. Hospital staff stated that the girl had demonstrated a capacity to learn. Her main problem appeared to be one of boredom. As for making herself understood, the girl had a limited command of sign language and was also able to communicate by way of a small portable board with symbols and pictures.

Her medical and physical needs were changing, but the couple had demonstrated that they could look after the girl, individually, as well as together. Hospital staff also stated that one person would be able to look after the girl.

Hospital staff favoured of placing the girl with the couple. One official told our investigator that the girl very much wanted to live with the couple and fussed every time she returned to hospital after staying with the couple. They were convinced the girl had the skills to cope with life in a foster home.

The complainants said they had a stable relationship and pointed out that the Ministry had placed children in need of special care with common-law couples before. They expressed surprise that the Ministry was not aware of their willingness to make a long-term commitment to the girl.

From the information we were able to gather, it became quite clear that the Ministry should reconsider its decision in the light of the new information. I was not convinced that staying at the extended-care hospital was in the girl's best interest. I was, on the other hand, convinced that the complainants would be able to look after the girl and give her the love she needed.

The Ministry reviewed the case and eventually decided to place the girl with the couple. The girl now lives with her foster parents and enjoys the security of family life. (CS 84-126)

In the child's best interest

A woman complained that the Ministry moved her foster daughter, a child in need of special care, to another home for adoption. The complainant wanted to adopt the child and felt the Ministry's decision was wrong.

Our investigation of this complaint was extensive. It involved telephone conversations with the complainant and a thorough examination of all Ministry files pertaining to the foster parents and the child. The Ministry also reviewed the case.

The outcome of my investigation suggested that the complainant and her husband lacked the skills required to raise a child in need of special care. As a result, the child's behaviour was getting out of control. The foster parents seemed unable to say "no" and were easily manipulated by the child.

There were other concerns. The complainant seemed to lack the understanding and the resources to meet the needs of older children. Her husband worked at two jobs which kept him away from home much of the time. She seemed to want a child to meet her own needs.

I felt that the Ministry's decision to move the child from the foster home was in the child's best interest. But I also felt that the Ministry should have done a better job of explaining to the complainant and her husband why it had decided to move the child. (CS 84-127)

SUPPORT SERVICES

Sometimes financial support is needed to help a child. The following two examples illustrate how the Ministry's financial assistance can help children who do not live with their parents.

Mother and baby get assistance

A mother came to our office because the Ministry had rejected her 18-year-old daughter's application for financial assistance.

She explained that her daughter had had a baby a year ago and that both the mother and the baby lived at her home. She said because the family had only a small income, they needed financial assistance to support the daughter and her child.

The Ministry had tried to get the baby's natural father to pay maintenance for the child under the *Child Paternity and Support Act*. The father, however, was unemployed and had stalled the Ministry's attempts to make him support the child. The complainant felt that a delay of 12 months was enough. The family needed assistance now.

Ministry officials agreed that the delay had, indeed, been too long. They planned to take the matter to court to let a judge adjudicate the amount of maintenance the father would have to pay. In the meantime, the Ministry agreed to accept the girl's application for income assistance. (CS 84-128)

Wedlock, children and money

Sometimes it is not easy to inform people of certain rights without offending their dignity. We encountered that problem when we tried to find ways of making sure that women who bear children out of wedlock are informed about the *Child Paternity and Support Act*. Under this Act, an unwed mother must ask for financial support from the father within one year from her child's birth. After a year, she loses that option.

The matter first came to my attention in connection with the Ministry of Human Resources and its procedures for informing clients of the Act. The problem was resolved when the British Columbia Medical Association agreed to help increase the doctors' awareness of the Act. The doctors would, in turn, pass the information on to their patients. This proposal was also supported by the Ministry's Family and Children Service Division. Although this solution will not ensure that all women know about the Act, it may increase the general awareness of its existence. (CS 84-129)

Uncle needs assistance

A man complained that the Ministry denied him financial assistance. He supported a niece who lived with him and attended school. The man's request was not unusual. The Ministry may pay assistance in support of a child who lives with a relative.

We found that the child's mother lived in Saskatchewan. Because the pertinent Ministry in that province had to co-ordinate its actions with the British Columbia Ministry of Human Resources, some delay could be expected. In the meantime, however, the complainant required some financial assistance.

The District Supervisor agreed to provide interim financial assistance until the Ministry had received the necessary documents pertaining to the support of a child in the home of a relative.

The Ministry assured the complainant that he would receive assistance payments, if the Saskatchewan ministry provided an assurance that the niece's placement with him was a favourable one. If the Saskatchewan report turned out to be not favourable, the British Columbia Ministry would review the matter. (CS 84-130)

INCOME ASSISTANCE

Many complaints against the Ministry are related to income assistance. Some are merely the result of a breakdown in communication, while others can be traced to people's uncertainty about where to go for information, help and advice.

May I save this money?

A resident of a mental health institution complained that he could not get a clear answer to a question of eligibility for income assistance benefits.

He wanted to know if he was entitled to save his "comforts allowance," a payment by Human Resources of $60 a month for personal needs not provided by the institution. He pointed out that he already had $500 in assets and had been told that any further accumulation of money might render him ineligible for the comforts allowance. He wanted a clear answer, one way or the other, so he could plan accordingly.

My investigator discovered that the Ministry had not considered this situation previously. In the end, the Ministry decided that a recipient of income assistance would be allowed to save up to two months' comforts allowance on top of the maximum allowable asset of $500.

We passed this information on to the complainant and to the various institutions that administer the allowance for the Ministry. (CS 84-131)

Regional manager reinstates benefits

A man complained that his income assistance benefits were discontinued, even though he had been actively seeking work.

Because the complainant lived in a "low employment opportunity" area, the Ministry had considered his attempts at finding employment futile and terminated his benefits.

He appealed the decision by writing to the Regional Manager who reinstated his benefits after reviewing the appeal.

Usually income assistance benefits continue during the appeal process, but because this particular appeal had been launched during the strike by government employees, the complainant did not receive any income assistance benefits for November.

When the problem was pointed out to the Regional Manager, he agreed to pay the complainant benefits for the month he missed. (CS 84-132)

Parents decide, not the Ministry

The Ministry informed a complainant that she and her family would be denied income assistance benefits, unless her daughter attended monthly job search meetings.

The woman felt this was unfair. Her daughter was only 16 years old, and she believed that the parents, not the Ministry, should determine whether the daughter attends school, seeks training, helps at home or looks for work. To avoid being cut off from benefits, however, the daughter agreed to attend the meetings.

My investigator raised these concerns with Ministry officials and was informed that it was not Ministry policy to suspend benefits because a dependent child does not seek work. The Ministry promised to clarify the policy with its staff. (CS 84-133)

Of hardship and undue hardship

A woman was denied hardship shelter benefits because her spouse had been involved in a labour dispute. The woman had gone back to work but would not get paid for some time. Meanwhile, she could not pay the rent.

Initially, the Ministry insisted that according to its "Labour Dispute Policy," it could not provide shelter benefits for the woman. After reviewing the case, however, the Ministry decided that it could be classified more appropriately as "undue hardship," and accepted the woman's application. (CS 84-134)

All problems resolved

A lawyer representing an income assistance recipient came to us with several complaints about the Ministry's Nelson office.

He said the office refused to process Income Assistance appeals until the clients met with both the case worker and the District Supervisor. His client's benefits, he said, were reduced January 1, a decision that, according to the Human Resources office, had been made prior to that date. For that reason, her case worker argued, she was not entitled to have her benefits reinstated, until after appeal was heard.

The complainant also said the Ministry had delayed the appointment of its appeal nominee by more than two weeks. He pointed out that according to the Regulations of the *Guaranteed Available Income for Need Act*, the Ministry must appoint its nominee within seven days.

Our investigation revealed that the Ministry's Nelson office accepted appeals at any time. If, however, appellants launched their appeals on the Ministry's own appeal forms, the "eligibility decision" portion of the form was to be completed before the appellants requested an appeal. If this form was not completed by the time eligibility was determined the client was to ask the worker to complete it.

The District Supervisor and the Regional Manager agreed that such a request would be given priority, and that completion of the form did not normally require another meeting with the case worker. If, for some reason, another meeting was required, the client should have the written decision the same day it was requested.

The Ministry officials confirmed that they had asked the client to attend a meeting with the District Supervisor, but added that the appeal process started with a client's request and was not delayed by such a meeting.

The purpose of the meeting they said, was to give the supervisor an opportunity to resolve the problem without a formal appeal. A client's refusal to attend the meeting in no way affected the appeal.

There had been some confusion about the eligibility of our complainant's client for benefits during the appeal. The case worker thought that since the Ministry had informed the client of the reduction in benefits in October, the 30-day appeal period expired at the end of November. The Regional Manager, on the other hand, felt that the 30-day limit started when the reduction took place, on January 1. On that basis, he reinstated the client's benefits.

The investigation showed that the Ministry had appointed its appeal nominee within the seven-day period or very shortly after. The problem was a breakdown of communication between the Ministry's nominee and the client's nominee. (CS 84-135)

Appellants no longer in the dark

An income assistance recipient complained that he was denied "handicapped" status. He believed his physician had supported his application.

When an applicant is denied the handicapped designation, he has the right to appeal that decision. I advised him to pursue an appeal. Soon after I had referred the complainant to the appeal route, I became aware of a weakness in that process. I found that the Ministry would not provide the appellant with a copy of the physician's report regarding his disability.

Without access to this information, the appellant's ability to present an adequate case in his defence was obviously limited, and I recommended that at the request of the appellant, the Ministry provide a copy of the medical report. The Ministry agreed to implement that recommendation.

In assessing the appeal process, I also became concerned that appeal tribunal members often seemed unaware of the rules of natural justice. I felt that the Ministry had a special responsibility to ensure that tribunal members were aware of these rules. As a result of these concerns, the Ministry agreed to develop guidelines for tribunal members, outlining their responsibilities. (CS 84-136)

Sometimes, individual complaints raise issues of wider impact. The following cases, brought to my attention by the Legal Services Society of B.C. and the Unemployment Action Committee in Vancouver, are good examples.

Misuse of S.I.N.

The Legal Services Society of British Columbia complained to me on behalf of a citizen that the Ministry of Human Resources followed an oppressive policy when dealing with Income Assistance applicants with inadequate identification.

The Society argued that the Ministry placed an unreasonable burden on the applicant by offering "assistance in kind only" and restricting benefits to a two-week period, pending presentation of adequate identification.

I looked into the matter and concluded that the denial of benefits on the basis of Section 7(1) of the *G.A.I.N. Act Regulations* to people unable to produce specific documents of identification but who can produce alternate forms of identification, constitutes a mistake of law. Limiting interim assistance to two weeks or less when adequate documentation is not available is an unreasonable procedure.

I recommended that the Ministry cease requiring production of only specified documents of identification (S.I.N. card, birth or baptismal certificate, and/or driver's licence) to verify eligibility of Income Assistance benefits. I also recommended that the Ministry pay interim assistance to meet the applicant's need for as long as necessary when adequate documentation is not available, provided the applicant makes reasonable efforts to obtain the necessary documentation.

Further discussion with the Ministry resulted in an agreement to accept my recommendations in part. Specifically, the Ministry agreed to provide "hardship assistance" to applicants with inadequte identification for a period of up to three months. The Ministry felt this was sufficient time to obtain the documents.

The Ministry also agreed not to restrict identification documents to a few specific ones. As a condition of ongoing eligibility, however, the Ministry continues to require a Social Insurance Number, both for identification and as a tracking mechanism for G.A.I.N. benefits.

I was not happy with this approach. It constitutes a misuse of the Social Insurance Number which was intended only to establish eligibility for federal pensions. The Ministry has assured me, however, that it is attempting to develop its own internal client identification number. Once in place, the need for the Social Insurance Number for Income Assistance benefit purposes will be eliminated. (CS 84-137)

Irrelevant information

The Unemployment Action Centre in Vancouver complained that the Ministry required recipients of payments for the care of a child in the home of a relative (CIHR) to sign a monthly declaration related to the recipient's own financial affairs.

The Centre felt that since eligibility for such payments was based on the circumstances of the child's parents, rather than the recipient's, the declaration provided irrelevant information and was an invasion of privacy.

According to G.A.I.N. Regulations (s.9, ss.1), however, the Ministry is required to establish eligibility for benefits on a monthly basis. After some discussion, the Ministry agreed to amend the Income Assistance Manual to ensure that relatives applying for CIHR benefits receive a letter of clarification. This letter was to state:

"The above child(ren) has been found eligible for benefits under the Child in the Home of a Relative program. You will receive a cheque each month from this Ministry and attached to it will be a form (HR81) that must be completed, and the declaration signed by yourself on behalf of the child, and returned to the Ministry before the 5th day of the next month. The information requested on this form refers only to changes in the child's circumstances, and the appropriate boxes must be completed on his or her behalf.

The Ministry neither requires nor requests similar information concerning yourself and family to be included on this form." (CS 84-138)

This action resolved the complaint.

Sometimes complainants believe the Ministry has a wider responsibility than it really does. A complainant may, for instance, feel that the Ministry should make amends for the negligence or wrong-doing of a client. This is true only in a limited number of cases.

Rent paid — a year late

A landlord complained that a rent cheque issued to him directly by the Ministry for one of his tenants had gone astray and that his attempts to get a new cheque had been unsuccessful.

For some time, the Ministry had sent the $310 rent cheque to him. But for some reason, the December 1982 cheque, made out in his name, was sent to the client, leaving the landlord without the rent for that month.

Shortly after, Vancouver City Police arrested a man trying to cash the cheque. The man was subsequently charged. Unfortunately, the landlord did not get the rent money because the police held the cheque as evidence for the trial. His attempts to have the Ministry reissue the cheque failed.

My investigator tracked the cheque down to the Vancouver Police Property Office which agreed to release the evidence on the Ministry's request. But the cheque had by now been stale-dated.

When I pointed the problem out to Ministry officials, they agreed to reissue the cheque. More than a year after the original cheque had gone astray, the landlord finally got his rent money. (CS 84-139)

Caught in a squeeze

A man whose mobile home was located on Indian land complained that neither the Indian Band nor Human Resources would give him income assistance.

The complainant was not an Indian, but that should not have automatically disqualified him from getting Band assistance. According to an agreement between Canada and British Columbia, the federal government is responsible for all people living on Indian Band land, regardless of their status. The provincial government, in turn, assumes responsibility for all the rest, including Indians living off Indian land.

The federal government does not pay income assistance. It pays grants to the Bands. Those grants are to include income assistance payments to non-Indians living on Band land. Not all Bands, however, stick to that arrangement.

In our complainant's case, the Band refused to assist him on the grounds that he was not a Band member. Human Resources would not help him because he lived on Band land: "catch 22."

With the intervention of the federal government's Department of Indian Affairs, our complainant's individual problem was eventually resolved. That solution, however, did nothing for other people in a similar situation.

After further discussions, however, the Ministry of Human Resources offered a solution. In cases, such as our complainant's, the Ministry will provide benefits, while pursuing other avenues, such as convincing Ottawa to pay income assistance to eligible clients who live on Indian land. (CS 84-140)

Ministry does what it can

An official of the Social Concerns Office of St. Vincent De Paul, a non-profit charitable society, complained that the Ministry had refused to provide written acknowledgement of eligibility for income assistance benefits at the request of a client. The client needed the information to get an early income tax rebate.

The Ministry's Regional Manager for the area agreed to discuss with his supervisor whether such requests could be met. He eventually agreed to have Ministry employees in his region provide information on current eligibility. Because of limited resources and a growing demand on these resources, however, he said the Ministry could not document eligibility for the whole year.

Considering the time necessary to conduct the document search for such information, I found the Ministry's position reasonable. (CS 84-141)

At other times, complainants will accuse Human Resources or its employees of meddling in private matters that are no concern of theirs.

Battered woman has a right to know

A man complained that a Ministry worker had told his common-law spouse he had a history of violent behaviour. The allegations, he said, were untrue and also constituted a breach of confidentiality.

British Columbia does not have freedom of information legislation, and the complainant's attempts to review his file were rejected by the Ministry.

When my investigator reviewed the contents of the complainant's file, she found no reference to violent behaviour, but came across information leading her to another file, that of the complainant's former wife. That file contained several specific references to violent behaviour towards his former spouse and child.

Having identified the source of the information, I obtained the Ministry's permission to share it with the complainant. The Ministry agreed to include on his former wife's file any information he might wish to submit.

I could not fault the decision of Ministry worker to pass on to the common-law spouse the references to the complainant's history of violent behaviour. She had come into the Ministry office pregnant and badly beaten up. (CS 84-142)

Policy misinterpreted

The operator of a rooming house complained that the Ministry refused income assistance to people staying at her premises.

Ministry staff had evidently misinterpreted the policy dealing with income assistance recipients

staying at rooming houses. The District Supervisor had merely suggested that Financial Assistance Workers inform clients that rooming houses charge a large part of their income assistance for rent, leaving little for food. If, however, clients still wished to stay at a rooming house, Financial Assistance Workers were to comply with that wish.

The District Supervisor assured us that the matter would be brought to the attention of Financial Assistance Workers, which resolved the complaint. (CS 84-143)

"Lolita" relationship irks Ministry

A complainant was denied income assistance benefits because the Ministry alleged that he was "harbouring" a ward and that he did not live where he said he did.

The complainant pointed out that the Ministry could confirm his residence by checking with his landlord. He also said the "ward" was his common-law spouse.

Ministry officials said they could not condone the relationship between the complainant and the young woman in question. They also explained that the complainant lived in a motel and could, therefore, be considered "transient." If the complainant stopped living with the minor, however, he would be classified a "long term client" and would receive income assistance benefits.

From all the information we gathered, it became obvious that the Ministry had confused two separate responsibilities. On the one hand, the Ministry was the guardian of the minor with all the responsibilities of a parent. On the other hand, it had the responsibility to provide for the destitute, including our complainant.

I sympathized with the Ministry's moral dilemma, but found that it had no right to withhold income assistance benefits from one person to enforce its parental responsibilities towards another. The Regional Manager agreed with that finding which resolved the complaint.

As for the relationship between the complainant and the young woman, it soon broke up — with or without pressure from the Ministry. (CS 84-144)

Managing her own affairs

A woman complained that the Ministry did not allow her to decide how to spend the money she received from income assistance. Instead, the Ministry decided how the benefits were spent. The woman also believed that her benefits were calculated incorrectly.

The Ministry informed us that the client had in the past been unable to manage her money. The client, on the other hand, stated her difficulties had stemmed from marital problems which were now resolved.

We were able to arrange a compromise. Normally, asistance cheques go out once a month. In this case, the Ministry agreed to issue support cheques to the complainant twice a month. This would enable her to manage her own funds, while maintaining some protection against running short at the end of the month. If the complainant demonstrated her ability to look after her own finances, the Ministry would eventually return to monthly cheques. Both the client and the Ministry agreed that the rent would be paid directly to the landlord.

Regarding the complainant's belief that her benefits were calculated incorrectly, an error was, indeed, discovered. After the complainant had left her spouse, her request for income assistance was considered a "new application." She was told she had to wait for eight months before she would get the higher rate. That was incorrect.

While it was true that the complainant had filled out an application in a different name, she nevertheless was already receiving benefits. Her application was not a new one, and she should have received the higher rate. Consequently, the Ministry adjusted the benefits to match the higher rate. (CS 84-145)

I continue to receive complaints from people in need of medical benefits. In many cases, I can arrange for temporary assistance from the Ministry, and income assistance clients usually end up paying very small monthly Medical Services Plan premiums.

But the Ministry often refuses to underwrite dental benefits — except emergency treatment to relieve pain — for clients considered employable. Health care policy changes were brought into effect in mid-1984, including decentralization of most basic dental and medical requests, which may result in prompter and less bureaucratic processing by the local offices.

Quick action deserves praise

There is nothing like satisfied clients to generate new business, as I found out when a woman whom I had assisted earlier brought a new complainant to me.

The woman called me one day, after her friend had related her misfortunes to her. Her friend, she said, was on Unemployment Insurance benefits but the Ministry of Human Resources had

agreed to provide medical coverage for her because of some very expensive health problems.

She had filled in the form in March and waited patiently because Human Resources had told her that when her coverage finally came through, it would be backdated to April 1.

In late May she discovered that the first application form had been rejected because it was incorrectly filled in. A revised form, she was told, had already been mailed by Human Resources to the Ministry of Health.

In June she learned that the Ministry of Health had no record of receiving the revised form, and that she would have to start all over again. Meanwhile her optometrist would not release her prescription glasses, the laboratory was demanding payment, and her general practitioner was accumulating bills with nowhere to send them.

The Ministry of Health deserves to be commended for the speed with which it resolved the problem. A medical number was issued the same day the woman called my office. (CS 84-146)

An interesting issue arose in connection with the Shelter Aid For Elderly Renters (SAFER) program which is designed to subsidize, subject to certain qualifications, senior citizens paying more than 30 percent of their income in rent.

Benefits reinstated

The Ministry of Human Resources notified a complainant that he had been overpaid by $1,522.60 from the Shelter Aid For Elderly Renters (S.A.F.E.R.) program. The Ministry informed him that he was no longer eligible for benefits.

The Ministry claimed that the complainant's shelter costs were reduced because his daughter was living with him. The complainant pointed out that his daughter's only income consisted of her monthly handicapped benefits, and that she neither declared nor received shelter benefits from that source.

Our investigation did not bring to light any information verifying the Ministry's contention that the complainant's daughter contributed to his shelter costs. We also discovered that according to S.A.F.E.R. regulations, to be considered as sharing accommodation, a person must be an "eligible renter," a term defined as a person eligible to receive S.A.F.E.R. benefits. Since the complainant's daughter was too young to be eligible for S.A.F.E.R. benefits, I found that the Ministry's decision was based on a mistake of law.

The complainant had first contacted us in July, 1982. By September, we completed the investigation. The Ministry agreed to take no further action on what it still considered an overpayment, until it had reviewed the matter.

When the review was still not completed by March 1983, I asked the Ministry to quash the overpayment and reinstate the complainant's benefits retroactively. Three months later, the Ministry agreed to implement that recommendation.

That solved the complaint at hand. To keep other S.A.F.E.R. applicants or recipients from running into similar problems, I asked the Ministry to produce a proper definition of "sharers" for the purposes of calculating S.A.F.E.R. benefits.

On June 1, 1984, two years after the complainant was first notified that he was ineligible for S.A.F.E.R. benefits, the Ministry decided that only "eligible renters," as defined by the regulations, will be considered as sharing accommodation. (CS 84-147)

The old "catch 22"

A man complained because the Ministry would not reinstate his benefits after he filed an appeal.

The appeal focused on what the Ministry considered adequate verification of his earnings. The Ministry refused to reinstate the complainant's benefits until he provided verification of his income, the isue that had led to the appeal in the first place. When my investigator brought the double bind of this practice to the Ministry's attention, it reinstated the complainant's benefits pending the outcome of the tribunal's decision. (CS 84-148)

MINISTRY OF LABOUR

Declined, withdrawn, discontinued	38
Resolved: corrected during investigation	37
Substantiated: corrected after recommendation	7
Substantiated but not rectified	16
Not substantiated	22
Total number of cases closed	120
Number of cases open December 31, 1984	11

Over the years, I have received a reasonably good degree of co-operation from every Branch of the Ministry of Labour. The Ministry takes complaints seriously and responds with consideration. This goes for the Employment Standards Branch, the Safety Engineering Services Division, as well as the Apprenticeship and Employment Training Programs Branch.

But unlike his officials, the Minister of Labour at the time, the Honourable Robert H. McClelland, was not always anxious to help me resolve complaints. For years, the Minister's responses to my correspondence were variations on the theme — I have no further comment about this matter. And even when the Minister complied with a recommendation, the results were not necessarily substantial.

Ministerial tardiness

The British Columbia and Yukon Building and Construction Trades Council had made a submission to the Minister of Labour and complained to me that the Minister was taking too long to respond.

In late 1983, the Council complained to the Minister of Labour that Section 46 of the *Hospital Act*, governing the payment of fair wages, was being violated with respect to construction of the Vancouver General Hospital's Research Institute. On November 29, 1983, the Minister advised the Council that he was referring the charges to the Director of Employment Standards Branch for investigation.

The Council provided additional material to the director on January 5, 1984, and requested a meeting with him. Apparently there was some difficulty in setting up the meeting, but finally a meeting was held in early February. Some time later that month, the director completed his investigation and forwarded his report to the Minister.

On April 3, 1984, my investigator informed the Minister's executive assistant that the Council had complained to me about the delay in the Minister's response. The matter was further discussed during subsequent telephone calls. The executive assistant advised my office that the Minister was aware of the situation but had had no time to deal with it because of other important matters before him.

In accordance with Section 14(2) of the *Ombudsman Act*, I informed the Minister by letter on May 23, 1984, that I recognized the urgency of these other matters and that I was quite aware of the demands on a Minister's time. But I also reminded the Minister that it had been more than five months since the matter was first raised with him. In response to that letter, the Minister's office advised me that the matter was still under review.

My next letter, pursuant to Section 16 of the *Ombudsman Act*, went to the Minister on August 22, 1984. That section states:

"Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter."

In that letter I drew to the Minister's attention that nine months had now elapsed since the Council's submission. I further pointed out that Section 46 of the *Hospital Act* appeared to place on the Minister a statutory obligation to make the determination indicated.

I also stressed that the Council had provided his Ministry with detailed information on the issue, and that his officials had completed and forwarded to him a report on the matter nearly six months earlier.

I informed the Minister that his failure to provide the Council with a response to its submission might constitute unreasonable delay, and that I was considering the following recommendation:

"That the Minister of Labour forthwith provide the British Columbia and Yukon Territory Building and Construction Trades Council with a response to its submission alleging that Section 46 of the *Hospital Act* is being violated with respect to the construction of the Vancouver General Hospital Phase I Research Institute project."

On September 14, 1984, I received a copy of a letter the Minister had sent to the president of the Building and Construction Trades Council on September 10, 1984.

The Council's complaint was rectified to the extent that the Minister had finally responded to the Council's earlier submission. (CS 84-149)

SAFETY ENGINEERING SERVICES DIVISION

This Division is responsible for inspecting anything from boilers and elevators to electrical and gas systems. The Division even inspects amusement rides. Here are a few case summaries which illustrate the problems in this area.

Trailer needs rewiring

A woman purchased a mobile home from a real estate agent in April, 1983. She had the trailer moved to a different site in June and sought approval for an electrical connection.

The electrical inspector noted that the trailer did not have a Canadian Standards Association (CSA) approval sticker, and that the wiring was defective. He advised the woman that no electrical hookup could be provided until the trailer met current electrical safety standards.

The sale of a used mobile home with no CSA sticker and no provincial government approval is prohibited by the *Electrical Safety Act*, Regulations and Bulletins.

In July, the woman complained about the problem to the Real Estate Council of British Columbia which scheduled a hearing for the following January. At the same time, she complained to Crown Counsel.

In late November, she complained to my office because she believed that the electrical inspector was disinterested in her plight and did not provide Crown Counsel with the information necessary for the case to go to prosecution.

Throughout July and part of August, however, the electrical inspector had tried to solve the problem. After that, he reviewed the matter with Crown Counsel to determine whether prosecution should proceed, and what persons or firm should be named as the responsible party.

It is the Branch's policy to encourage the parties to such disputes to resolve the problems themselves. The inspector had consulted with the parties through most of the summer. His last contact with the previous owner left him with the impression that she would try to resolve the matter. He admitted, however, that his Branch did nothing for two to three months after that.

He said he thought the Real Estate Council would deal with the issue of negligence on the part of the real estate firm. He did not feel that anything would be gained by taking the real estate firm to court. He rejected the woman's allegation that he did not care about her problem.

The Branch then took the necessary steps to send the matter to court. The case is still pending.

The Electrical Safety Branch conducted a seminar for the real estate board to acquaint salespersons with electrical approval requirements. (CS 84-150)

Freebees are acceptable

A complainant was upset that the *Electrical Energy Inspection Act* regulations permit homeowners to do electrical work in their homes, but prohibit them from enlisting the help of friends or any other person who is not a family member.

The complainant said it made no sense that he could get a licence to do the necessary work, but would not be allowed to call on a friend for help, no matter how much that person might know about electrical wiring.

When my investigator brought this complaint to the attention of the Ministry's Safety Engineering Services Division, she was advised that friends and neighbours may help with electrical work, as long as they don't receive any remuneration for their services. (CS 84-151)

Pay your own legal expenses

Having successfully completed his examination and satisfied the Gas Safety Branch as to the length of his experience in the field, a man was granted his Grade I licence for gas fitters.

Imagine his surprise, when about a year later, he received a letter from the Branch stating that he should not have received his licence because his trade experience had been called into question.

The letter continued, ". . . therefore, unless you have other experience which you can verify, we will be cancelling your present gas fitters licence. . .". The letter apologized for any inconvenience but made no mention of a possible appeal of this decision.

It turned out that the man's employer had informed the administrator responsible for licensing that his experience consisted mostly of driving trucks, and that he had spent less than 10 percent of his time on activities that contributed toward the four years of experience required for the Class I gas fitters licence examination. The man later told my investigator he had had personal problems with the employer at about that time.

He engaged legal counsel, and two months later, the Gas Safety Branch restored his licence. It was

the bill for his legal fees, totalling $945.76, that prompted him to complain to me. He said he should not have had to incur this expense to regain his licence.

The *Gas Safety Act* is quite explicit on the requirements for revoking a licence. Section 23 of the Act states:

1. Every Gas-Fitter's licence may be revoked or suspended by the Chief Inspector for violation of this Act or of the Regulations, or for the making of any false statements in the application for the licence by the holder of the licence, or by his agent or employee, or person working directly under his supervision.

2. The Chief Inspector shall not revoke a licence until he has given notice to the holder of it in accordance with the Regulations that he will hold a hearing and has held a hearing, nor shall he suspend any licence for a period of more than one month.

There were no clear grounds for revoking the complainant's licence. The Gas Safety Branch had received word that the complainant may have provided "false information" on his application to write the examination. The Branch, however, had made no attempt to confirm this. Instead, it took the allegation for granted and asked the complainant to supply information about "other experience."

Contrary to law, the Branch cancelled the licence without giving my complainant notice of a hearing, in fact, without even holding one. Nor did the Branch advise my complainant that he had a right to a hearing.

To remedy the situation, I recommended that the Ministry of Labour reimburse the complainant for his $945.76 legal bill, and that all letters from the Gas Safety Branch dealing with revocation or suspension of a licence under Section 23 of the *Gas Safety Act* advise the affected parties of their right to a hearing under Section 23 of the Act.

Initially, the Branch argued that according to certain regulations, the action it had taken was justified.

Finally, the Director of the Safety Engineering Services Division, which oversees the Gas

Safety, advised me that he concurred with my first recommendation concerning notification of appeal rights. My recommendation to reimburse the complainant his legal fees had been referred to the Ministry's legal officer.

A few months later, my complainant received a cheque for $945.76, and the complaint was rectified. (CS 84-152)

APPRENTICESHIP PROGRAM

The Apprenticeship and Employment Training Programs Division offers apprentice and pre-apprentice training. It is also responsible for journeyman upgrading and tradesman certification qualification.

Refrigeration apprentice out in cold

From time to time, Members of the Legislative Assembly complain to us on behalf of their constituents. One such complaint involved an apprentice who left a well-paying part-time job, only to end up with neither a job nor an apprenticeship.

The young man in question was laid off for economic reasons after serving the first seven months of his apprenticeship in the refrigeration trade. He had been unemployed for three months when the Apprenticeship Training Programs Branch made arrangements for him to take his first technical training course. The young man declined because he felt he could not afford to take the course at that time. The apprenticeship counsellor then advised him that unless he attended the next course in ten months' time, his apprenticeship would be terminated.

About two months before the next course was to start, he had landed a fairly well paying part-time job in a field not related to his trade. He left this job on Vancouver Island to take his training at the Pacific Vocational Institute in Vancouver. When he returned, his part-time job had gone to someone else, and he was still unable to obtain employment in his trade.

A month later, the Branch notified him that his apprenticeship was cancelled because he had not worked in the refrigeration trade for over a year.

On the surface, the Branch's attitude appeared to be somewhat callous, but that was not the case.

When an apprentice is laid off, he or she remains on the Branch's records for about nine months. During that time, the Branch will try to schedule technical training courses for the apprentice. To be terminated by the Branch simply means the apprentice is removed from the current statistical records.

The apprenticeship will be reinstated the moment the apprentice finds another employer willing to continue the apprenticeship. Any previous experience and courses will be recognized. In fact, the apprenticeship counsellor stated in his letter terminating the apprenticeship:

"In the future, should Mr. X wish to continue his apprenticeship he would have to secure suitable employment in the trade and then apply for apprenticeship. We would recognize the 7-month practical time and the level 1 school assignment that has been completed."

While my complainant felt compelled to leave his part-time job and take the technical training when instructed to do so by the Branch, the final choice was his. In light of that, the complaint was not substantiated. (CS 84-153)

The early bird . . .

A couple who own a small construction business complained about the 1984 Jobs for Youth Program. Under the terms of the program, eligible employers receive a partial refund on the salaries they pay students and youths they hire for summer jobs.

Because they had qualified for the program in 1983, the couple again offered to employ a student for the summer of 1984. But when they contacted the Ministry in June 1984, they were told that no more applications were accepted. All available funds had been disbursed. Only applications received by March had qualified.

The complainants were upset. There had been no warning in the brochures that funding was limited, that applications should be submitted as early as possible and that applicants would be dealt with on a first-come-first-served basis.

Our investigation showed that all funds had been allocated to applications received by March. For the first time since the program was initiated, there had been more applications than could be funded.

I recommended that the Ministry reword the information in the brochures to let applicants know that funding is limited and that applications should be submitted as early as possible. The Director accepted my recommendation and assured me that in the future, the brochures will contain this information. (CS 84-154)

Certificate reinstated

A tradesman complained to us that the Apprenticeship Training Programs Branch had revoked his trade certificate.

Before he wrote the trade examination, his union certified that he had sufficient experience. He

had no problem passing the examination. Later, however, the union withdrew its statement regarding the complainant's experience, which was followed by the revocation of his certification by the Apprenticeship Training Programs Branch.

When I brought this complaint to the attention of the Branch, the Administration Manager agreed to convene a certification panel to consider the issue. The Branch determined that the complainant had the experience necessary to write the examination, and reinstated his certification. (CS 84-155)

Experience recognized

A resident of a forensic institute had previously completed more than three years of a trades apprenticeship. While in hospital, he was able to get relevant work experience under the guidance of a journeyman tradesman employed at the hospital. He asked the Apprenticeship Training Programs Branch to recognize this experience.

Following my intervention, the Branch agreed to consider his work experience in the institution and applied this time towards the five-year work experience required to write a trades qualification examination. If he passed the exam, the complainant would be certified as a journeyman in that trade. In the meantime, the institution agreed to assist him with enrolment in upgrading courses. (CS 84-156)

EMPLOYMENT STANDARDS BRANCH

They got their money

Two men complained that the Employment Standards Branch was unable to obtain the funds from their former employer, even though certificates for wages due had been issued against the employer.

As a result of a lien action, the employer had deposited money into court. After all lien claims had been paid out, there was enough left to pay at least a portion of the back wages to my complainants. Unfortunately, only the former employer could apply to have the funds released by the court. This would have been costly, especially since the Branch would probably be able to seize the money from him.

To break the impasse, I suggested that the Employment Standards Branch assist the former employer in getting the money paid out of the court and assume the cost of the process. The Branch finally agreed to implement my proposal. (CS 84-157)

Can someone here speak French?

A woman from Quebec complained that she was treated improperly by a receptionist of the Employment Standards Branch.

The woman went to the Branch to complain about a former employer. When she tried to discuss her complaint with the receptionist, she ran into a problem. The receptionist could not speak or understand French. She had the same problem with English. Eventually, the woman complained to me that the receptionist had not taken her seriously.

Our investigation showed that neither party was to blame. The problem was a lack of communication. I suggested that the Employment Standards Branch make sure all employees are familiar with the names of colleagues who can communicate in languages other than English.

The Branch implemented my suggestion and now has a list of employees who speak languages other than English. (CS 84-158)

Perils of a temporary landlord

A unique complaint came from a man who was the quasi-landlord of an apartment building for about three weeks, never collected any rent, but ended up having to pay the wages of the caretakers.

On October 5, 1982, my complainant was appointed interim receiver of an apartment building in a Vancouver Island city. Eight days later, all tenants received a form letter, advising them to pay their rent to the receiver, starting November 1. The letter also informed the tenants that the present caretakers would continue in that capacity. On October 27, my complainant was discharged as receiver through court action of the owner. Sometime later, the caretakers submitted a wage claim for the month of October to the Employment Standards Branch. The Branch found that between October 5 and October 27, my complainant had actually been the employer and was, therefore, responsible for the wages for that period. He was required to pay $446.56 to the caretakers.

Our investigation showed that the complainant, in his capacity as receiver, had assumed direction and control of the work force at the appartment block. The Employment Standards Branch considered him a successor-employer.

The owner of the building had collected the rent that was due October 1. After October 27, the owner was again in control of the apartment building and collected the rent due November 1. My complainant was left out in the cold. During

the time he acted as receiver, there was no rent money to be collected.

The complainant alleged that even some overdue rents, collected mid-month, were passed along by the caretaker to the building's owner, a fact to which the Employment Standards Board should have given greater consideration. I could find no reference to this in the Board's decision. There was also no mention of it in the notes Board members had taken at the hearing. There was only one reference by the caretakers to a sum of money deposited October 7, the day before my complainant informed the caretakers that he was in charge of the building.

The Employment Standards Board, on the other hand, could only deal with the wage issue. It could not address the question of whether the caretaker should have forwarded any rent money to the receiver. I was not able to substantiate this complaint. (CS 84-159)

Hands across the border

A woman complained that the Alberta Employment Standards Branch refused to enforce her claim, even though the money in dispute had been earned in Alberta.

The woman said the investigating officer felt that the Alberta Branch would not be able to enforce her claim because the employer resided in British Columbia, and there was no reciprocal agreement for handling such labour matters between Alberta and B.C.

When my investigator checked with B.C. Labour Ministry officials, they verified that such an agreement had come into effect on September 1, 1983. Apprised of the situation, the Alberta Employment Standards Branch agreed to reopen the woman's claim. She eventually received the wages owed to her. (CS 84-160)

Age should not be a criterion

Three widows expressed concern that according to Section 17 of the *Workers Compensation Act* a widow's age determines the size of her pension. The widows felt that age should not be a factor in determining entitlement because the financial consequences of the loss of a spouse are not necessarily related to the widow's age.

I investigated this issue to determine whether Section 17 of the Act is improperly discriminatory. I was concerned that age as a factor in the calculation of a widow's pension might produce inequitable results. I was particularly concerned about women who have no income of their own and whose pensions are assessed on the basis of their age rather than solely on the basis of their deceased husbands' income.

One of the complainants had been out of the work force for more than 18 years. She was 43 years old when her children lost their dependant status. Had she been over 50 years of age, she would have received a higher pension.

In my view, age is an inadequate reason for this difference. Widows without an income of their own in the three categories specified in Section 17 of the *Workers Compensation Act* (over 50 or an invalid, under 40 and not an invalid, between 40 and 50 and not an invalid) often have equally limited job skills and, therefore, similar pension requirements. With respect to widows who have worked outside the home during the marriage and continue to do so after their husbands have died, the ascending pension rates based on age appear arbitrary, and the use of age as a criterion appears irrelevant.

I informed the Ministry that the provisions of Section 17 (3) b, c, d, and e of the *Workers Compensation Act* may be contrary to Section 15 (1) of the Charter of Rights and Freedoms (Equality Rights), which is scheduled to come into force in April, 1985. Section 15 (1) provides that:

> "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

I concluded that Section 17 (3) b, c, d, and e of the *Workers Compensation Act* is discriminatory on two counts — sex and age. The provisions apply only to widows, not to widowers. And they discriminate improperly among widows on the basis of age.

I recommended that the Ministry initiate reconsideration of the pertinent section of the *Workers Compensation Act* with a view to placing before the Minister a proposal for appropriate amendments that would eliminate a widow's age as a criterion for the calculation of widows' benefits. I further recommended that if the Ministry did not support such amendments, it at least bring my report to the attention of the Minister.

The Ministry agreed to implement my recommendations. An interdepartmental committee is considering all British Columbia statutes to determine if any provisions contravene Section 15 of the Charter of Rights and Freedoms. (CS 84-161)

MINISTRY OF LANDS, PARKS AND HOUSING

Declined, withdrawn, discontinued	61
Resolved: corrected during investigation	38
Substantiated: corrected after recommendation	2
Substantiated but not rectified	2
Not substantiated	28
Total number of cases closed	131
Number of cases open December 31, 1984	41

There was a small reduction in complaints against the Ministry of Lands, Parks and Housing in 1984, compared to the previous years. The number of complaints concerning land remained steady. There was a considerable drop in complaints against the Ministry's Housing Division, occasioned, no doubt, by the cancellation of first home grants. And finally, there was a slight increase in the number of complaints relating to provincial parks. As in the past, Ministry staff were helpful and co-operative.

LANDS AND HOUSING

The disposition of Crown land often gives rise to conflicts. Small wonder that most complaints against the Ministry concern decisions about Crown land. The following case summaries are typical.

Fairness essential

A complainant brought to my attention a number of shortcomings in the Ministry's administration of the Core Land Sales Program.

The man had applied for the purchase of some Crown land under that program. When the Ministry decided to sell him only part of the land he had applied for, he came to my office. Aside from wondering why the Ministry would only sell him part of the land, he also complained that the Ministry had not given him any reasons for that decision. His third complaint was that the Chairman of the Appeal Committee would not hear an appeal on the decision.

Giving reasons for decisions is a fundamental principle of administrative justice. The Ministry's failure to provide the complainant with reasons for selling him only part of the land was contrary to that principle. Even though I could not conclude that the Ministry's decision itself was unfair (I was not privy to the reasons either), I made a preliminary finding that the Ministry had failed to give adequate reasons concerning its decision.

The right to appeal a decision is important, and I expect decision makers to advise the public of appeals. My complainant was not advised that he could appeal the decision. When he subsequently learned of the Ministry's appeal process, he immediately took the necessary steps. By that time, however, the appeal period had expired, and the appeal committee refused to hear his appeal. I found two errors: failure to advise of appeal rights and improper refusal to entertain an appeal.

On the basis of these preliminary findings, I presented a report to the Ministry. I suggested that the Ministry give the complainant complete reasons for its decision. I also recommended that the Core Land Appeals Committee hear his appeal if grounds for such an appeal could be established. The Ministry accepted my recommendations. The appeal was still pending at the time of this report. (CS 84-162)

Lease problems

In 1982, my office received a complaint from a farmer that his agricultural lease had been taken away from him and granted to a construction company owner and would-be farmer. The investigation was long and complex and the following is only a brief summary of the major issues.

During the 1960s, a third party obtained a lease which it later assigned to the complainant. A condition of the original lease was that all assignments had to be approved by the Minister. The complainant requested that the Ministry approve the lease assignment, but the Ministry did not respond.

Instead the Ministry renewed the lease on the strength of information the complainant had provided. The complainant was led to believe the lease was valid. Several years later, however, the Ministry cancelled the lease because the assignment had not been approved. The cancellation action was prompted by a letter from the would-be farmer who had also enlisted the help of his MLA in his efforts to acquire the land. The Ministry did not notify my complainant of the cancellation and decided to issue a lease directly to the would-be farmer.

That decision appeared to be unjust for several reasons. Other adjacent landholders, including my complainant, were known to be interested in acquiring this parcel of land in the event of an alienation. In accordance with its policy, the Ministry should also have required the would-be

farmer to advertise his application before making a decision.

Unclear access to the land was another problem. The Ministry normally will not issue agricultural leases unless there is adequate access. And finally, the Ministry appeared to ignore a number of memos from Ministry officials and its legal advisor when it decided to assign the land directly to the would-be farmer.

On the basis of these findings, I wrote to the Deputy Minister and recommended that my complainant be compensated for his loss. The Deputy Minister did not accept my recommendation because he believed that the Ministry had treated my complainant fairly. He noted that the complainant had received a portion of the original lease despite the apparently improper assignment and several concerns set aside by the Ministry in carrying out this transaction.

I was not satisfied with the Deputy Minister's response and I certainly did not agree that my complainant had been treated fairly. According to the Ministry's rationale, the complainant should have been grateful that the Ministry allowed him to keep a portion of the lease, instead of taking it all from him.

Although I considered the Ministry's action completely improper, I did not believe that further submissions from my office would rectify the complaint. When the complainant sought legal help, I withdrew from the case, albeit with great reluctance and disappointment. The complaint was substantiated but not rectified. (CS 84-163)

Price too high, cruise again

A man who was about to purchase a parcel of Crown land complained to us about the price of the timber on the land.

The value of timber on Crown land is determined by a visual inspection of the timber stand, commonly referred to as a timber cruise. When the prospective purchaser disputed the timber price, the Ministry official who had done the first cruise agreed to do a second one.

To arrive at a possibly more accurate evaluation of the timber on the second cruise, he planned to take along an employee of the Ministry of Forests. Unfortunately the second cruise had to be postponed because there was too much snow in the area.

The complainant agreed that a second cruise might resolve his complaint. For that reason I decided that at this stage my office could be of no further help to the complainant and we closed the investigation. But I informed both the complainant and the Ministry that the investigation could be re-opened at any time if neccessary.

Several months later, both the Ministry and the complainant called my investigator to say that the price of the timber had been reduced by several thousand dollars following the second cruise. Both parties were relieved to resolve the controversy and complete the purchase. (CS 84-164)

My office has been distributing a brochure about my office's role, the rights of the public and what I consider appropriate obligations of public officials. The following statement from that brochure summarizes my position on such conduct: "Citizens are entitled to assert their rights, although with the same courtesy they expect for themselves from officials." For the sake of the complainant in the following case, I hope people treat him with more courtesy than he showed for at least one public official.

Complainant behaves rudely

A man complained that the rental for his leased parcel of Crown land was too high, a fairly common complaint. He said he had already fought with the Ministry for seven months about the price.

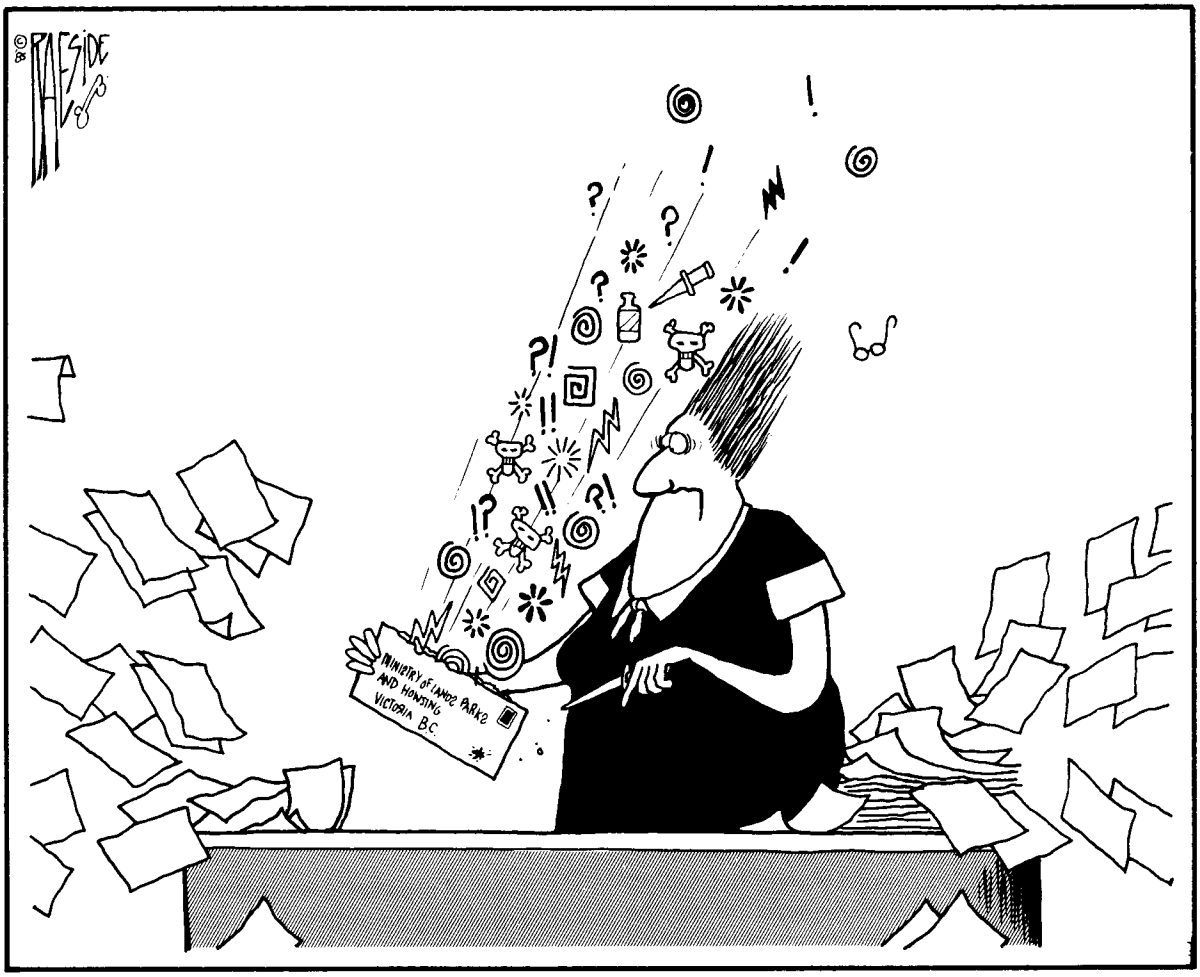
I am sympathetic to individuals who face increasing government fees, rents and licences but objections to such increases must be justifiable in objective terms.

The complainant had obtained a twenty-one-year lease in 1962 for a three-quarter of an acre parcel of land and had paid an annual rent of $70. He had built a home on the property. When the lease expired in 1983, the Ministry offered to renew it at an annual rent based on actual land value to be established by the B.C. Assessment Authority. The new rent was to be $189 a year.

Since an increase in rent of less than $120 per year seemed very small after 21 years, I asked the complainant why he could not accept the new price. He replied that in his opinion, every British Columbian had a right to a free place to live. On the basis of that philosophy, he had carried on his lengthy dispute with the Ministry. I advised the complainant to make use of the Ministry's appeal procedure.

The Ministry official responsible for land administration in that region had always been reasonable and co-operative in his dealings with my investigators. And as far as I could determine, he had treated this complainant in the same helpful and professional manner.

The complainant was less conciliatory. When the Ministry official sent him a letter outlining the



appeal procedures, the complainant returned the letter with the following note on the bottom: "Get off my back and leave me alone you goddamn son of a bitch!!"

The official took the note good-naturedly. I would hope that other complainants do not follow this approach. After all, public servants are people too. (CS 84-165)

New lease rates hit seniors hard

On one of my field trips, two senior citizens were referred to me by the mayor and a council member of Port Hardy. For many years, the couple had been leasing a residential lot from the Crown for a fairly economical annual rate. Then the Ministry developed a new policy under which Crown land would be leased at rates based on the market value of the property.

In 1983, the couple were advised that their lease fee would be increased from $200 to $2,157. The new lease fee might well have reflected the market value of the property accurately, but it was well beyond the financial resources of the two pensioners.

The couple had lived on this small lot for over 25 years after clearing it on their own and building a modest house on it. There were absolutely no services or amenities associated with the lot and both complainants were over 75 years of age.

The almost 1000 percent lease fee increase hit them like a lightning bolt out of the blue sky. The couple were extremely distraught.

With the assistance of a real estate agent, they had managed to have the B.C. Assessment Authority reduce the assessed value of the property, but the Ministry had not reduced the annual lease fee accordingly. When I pointed this out, the Ministry reduced the annual fee to $1,617, to be phased in over a five-year period.

It was better than no reduction but still a strain on the couple's limited financial resources. We then began to explore other possibilities that might lead to further reductions. One such possibility was to reduce the size of property the couple leased. They had been leasing slightly more than a quarter of a hectare, but they did not use all the land on a regular basis.

My investigator helped the couple apply for a reduction of their lease to .104 hectare. In May 1984, they were advised that the reduction had been approved, and that their annual lease fee would now be $516 for 1984 through 1988.

The amount was much more affordable from their point of view, but their problems were not yet over. According to their 1984 lease statement, the annual fee was $796.80, instead of the $516 the Ministry had said they would have to pay. Again, my office was able to be of assistance. My investigator contacted the Ministry and found out that a computer was to blame for the error. The Ministry corrected the problem and issued a new statement.

While we were able to help this couple solve their problem, it occurred to me that other seniors on limited income may also be faced with dramatic lease increases as a result of the Ministry's policy. I have, therefore, decided to initiate an investigation to explore the extent of the problem and its possible solutions. (CS 84-166)

The sound of silence

A group of people whose peace and quiet had for years been shattered by the roar of motor cycles at a nearby gravel pit complained that the owner of the land had consistently ignored their request to do something about the problem. The Vancouver Island city had grown to such an extent, the pit was now surrounded by houses.

The owner of the land was the provincial government. The Ministry of Transportation and Highways had used the land for a gravel pit in the early 70s.

The residents' pleas to the provincial and municipal governments to ban motor bikes from the gravel pit evoked a lot of sympathy but little action.

My investigator discussed the matter with the Regional Lands and Housing Director who had heard of the problem only a few months earlier. He agreed that something had to be done. But there was another problem.

Even though the land belonged to the provincial government, it was situated within the municipal government's containment area which meant that both levels of government had to address the problem.

Finally a solution was worked out. The municipal government agreed to rezone the area. The new zoning would prohibit the use of motor bikes. Lands, Parks and Housing agreed to post signs in the area, making it clear that no motor bikes were to be used in the gravel pit. The police would then have the authority to keep motor bikes out of the area.

Needless to say, residents were delighted with the outcome of their complaint. After years of frustration, they could again enjoy some peace and quiet. (CS 84-167)

PARKS AND OUTDOOR RECREATION

In previous Annual Reports I have virtually ignored parks complaints because there were so few of them. In 1984, however, there were more parks complaints to attend to. I have included the following summaries as examples.

Game guide still in business

A guide outfitter complained that he was denied a park use permit for big-game guiding in a provincial park.

The man had guided in the area for about 40 years and was quite disturbed when he discovered that he could no longer use this prime sheep-hunting area for his guiding operation, after the area became part of a new provincial park.

To obtain a park use permit for guiding in a provincial park, it is necessary to first get a Guide Outfitter's Certificate from the Fish and Wildlife Branch. Because the legal description on our complainant's certificate excluded the provincial park in question, the Parks Programs Branch had no choice but to turn down his original application.

Our investigation revealed, however, that neither Parks nor Fish and Wildlife had any serious objections to letting the man continue his guiding operation in part of the park. Therefore, the Fish and Wildlife Branch amended the description of his guiding territory to include the area within the park where he had been guiding for so many years. The Parks Programs Branch, in turn, agreed to issue the park use permit authorizing the complainant to guide within the park. (CS 84-168)

Safety and insurance imperative

A man from the Queen Charlotte Islands complained that the Parks Branch prevented him from using unlicensed vehicles, such as dirt bikes, "trikes" and "odysseys" on the east coast beaches of Naikoon Park.

This complaint about the licensing condition appeared to have some merit. I sent a preliminary report to the Ministry in which I expressed my concern.

I pointed out that the regulation requiring vehicles using the east coast beaches of Naikoon Park to be licensed by the Motor Vehicles Department may be based on irrelevant considerations. The Department, I stated, considers highway safety a major factor in determining whether or not to issue licences. I proposed to the Ministry that highway safety not be a consideration for vehicles which are not used nor intended to be used on the highway, and suggested that this licensing condition be removed from the permit.

The Deputy Minister sent a detailed response to my preliminary report, outlining the reasons for the Ministry's decision. His most important points were as follows:

Naikoon Park was established as a Class A, Category One Provincial Park "to preserve its particular atmosphere, environment or ecology". Initially, the east beach was closed to vehicles to be retained as a wilderness. Since Ministry estimates had indicated that only about three per cent of the total vehicle use occurred on the east beach (compared to 90% on the north beach), this restriction was not a radical departure from existing use patterns. In response to public objections, the east beach was opened to vehicles under permit. The permit was developed so that the Parks Branch would have some control over the vehicles using this area.

Two important factors — safety and insurance — led to the imposition of the licensing condition. The Ministry wants to be sure that it has safe vehicles and competent drivers in the park. At present, the only system to determine those factors is that of highway licensing. Parks personnel are not qualified to determine vehicle safety and, therefore, must rely on the expertise of the Motor Vehicle Department.

The Deputy Minister pointed out that if the permit allowed unlicensed vehicles, the same logic could be used to argue that it is unfair for the driver to require a licence. Again, Parks personnel are not authorized to determine who is a competent driver. Until safety requirements and a licensing system for off-road vehicles are developed, the Ministry must rely on highway licensing.

Requiring licensed vehicles also assures the Ministry that vehicles have insurance. Off-road vehicles can, but need not be insured. They also need not be driven by licensed operators. Many off-road vehicles are insured under homeowners' policies and may not be covered in a park accident.

I had been critical of the Ministry in my preliminary report, but changed my mind after I received the Ministry's response. In view of the reasons advanced by the Ministry, I concluded that the complaint was not substantiated. (CS 84-169)

He had to go but knew not when

A man complained that the Ministry had refused to accept his bid for a contract to refinish park table planks.

The Ministry had invited tenders for the contract in a newspaper advertisement. As a precondition to obtaining the contract, all bidders had to attend a meeting with park officials giving them an opportunity to get specific information on the tender. But there was a problem. While the closing date was included in the advertisement, the date of the mandatory meeting was not. When the complainant wanted to submit his bid, he was told that since he had not attended the meeting, his bid could not be accepted.

Ministry officials stated to my investigator that the date of the mandatory meeting had been inadvertently omitted from the advertisement. The Ministry agreed to extend the closing date for receiving contract bids and to readvertise the contract, including a meeting date.

A second meeting was held for the complainant and any other bidders who might have been unaware of the first meeting. (CS 84-170)

A fair compromise

The Sierra Club of Western Canada came to me with the rather serious allegation that the Ministry of Lands, Parks and Housing had a policy which prohibited its employees from joining the organization.

Because the Sierra Club had written to the Minister about its concerns just prior to launching its complaint with me, I suggested that it await the Minister's response before I looked into the matter.

In his response, the Minister expressed concerns that Ministry staff might run into a conflict of interest, particularly if they assumed executive positions in the club or similar organizations. They might, for instance, have to criticize publicly the actions of the employer.

The Minister, however, instituted a policy change permitting staff to become members of any group but restricting them to general membership activities in those organizations that are clearly in an advocacy role to Ministry programs.

Initially, I had some doubts about this solution but after subsequent correspondence with the Ministry, I felt that the policy change was an acceptable compromise under the circumstances. (CS 84-171)

MINISTRY OF MUNICIPAL AFFAIRS

Declined, withdrawn, discontinued	9
Resolved: corrected during investigation	4
Substantiated: corrected after recommendation	2
Substantiated but not rectified	0
Not substantiated	6
Total number of cases closed	21
Number of cases open December 31, 1984	17

In 1984, the number of complaints against the Ministry of Municipal Affairs was half that of 1983. I also received fewer complaints against local governments. Because I do not have the authority to investigate complaints against municipalities or regional districts, I usually refer complainants to the Inspector of Municipalities or other agencies for assistance.

HOME OWNER GRANTS

The Ministry is responsible for the administration of the *Home Owner Grant Act*. In 1984, the Act was amended with the result that holders of 99-year leases, whose property is registered as an individual parcel for the purpose of property tax, are now also eligible for the grant.

Change helps complainant

A man complained that he had been denied a home owner grant on the basis that his residence, a townhouse on which he held a 99-year lease, did not qualify for the grant under the *Home Owner Grant Act*.

Our investigation showed that the complainant did not qualify for the grant because the property on which his townhouse was located was registered as an individual parcel for tax purposes. This meant that the townhouse did not fall within the definition of "apartment building" set out in the Act.

I expressed my belief that the Act was unjust and improperly discriminatory in this respect. It conferred eligibility for the grant on 99-year lessees whose property is not shown as a separate taxable parcel but denies that eligibility to 99-year lessees whose property is shown as a separate taxable parcel.

I concluded that the intention of the Act was to give home owners relief from property taxes by way of a grant if they occupy their homes as their principal residence. Distinctions based on whether or not residences are designated separate parcels on the tax roll did not appear to be related to the overall intention of the Act.

After continued correspondence with the Ministry on this issue over a period of approximately one year, the Legislature passed amendments to the *Home Owner Grant Act* which enable holders of 99-year leases to qualify for the grant. Needless to say, both my complainant and I were happy with the outcome. (CS 84-172)

In the following case, the complainant wanted an explanation for conflicting information he had received concerning eligibility to vote in local elections. He wanted a clarification of the requirements of the *Municipal Act*.

Denied opportunity to vote

A resident of a rural area complained that a polling station official had told one of his sons that he was not entitled to vote in the local School Board elections because he had only landed-immigrant status.

The complainant found this surprising because he and his wife and two other sons who have the same status had just voted in the same election without being challenged. Moreover, the complainant stated that when he and his wife had entered Canada twelve years ago, they were told by a local government official that they could vote in Regional District and School Board elections. They said they had done so ever since.

Section 35 of the *Municipal Act* describes the provisions under which a person is entitled to be registered as an elector in any municipal election. These provisions also apply to School Board and Regional District elections. The section states that only Canadian citizens or British subjects are entitled to be registered. In fact, there is no provision for a landed immigrant to be registered as an elector in relation to any level of government in British Columbia.

On the basis of a plain reading of this provision, which has been in effect at least since the complainant's arrival in Canada, I had to advise him that his son had been properly denied the opportunity to vote. Moreover, I had to tell him that the officials had wrongfully allowed him and other members of his family to vote in this and previous local elections.

I was unable to identify any way in which the Ministry's administration of the *Municipal Act* might have affected the complainant unfairly. The circumstances under which the complaint arose appeared to be entirely within the jurisdiction of the local government authorities.

I have reported this case here because it seems to me that the Ministry should monitor compliance with the *Municipal Act* by local authorities. At least one Ministry official suggested that this may not be an isolated example of unauthorized voting.

This particular complainant did not wish to pursue his complaint that the voting requirements of the *Municipal Act* were unfair. But it is conceivable that a landed immigrant who is a permanent resident of British Columbia may have grounds to challenge Section 35 of the *Municipal Act* under Section 15 of the Canadian Charter of Rights and Freedoms, which was to become effective April 1985, and reads:

> Equality Rights
>
> 15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (CS 84-173)

On occasion, I receive requests for advice and assistance from representatives of local governments concerning decisions, actions, policies and procedures of various provincial government authorities. And even though I may not conduct a formal investigation into such complaints, I may offer advice on how to approach the problem. As an example, I have included the following edited version of a letter I wrote to the Chairman of the Islands Trust.

> Dear Mr. Chairman:
>
> *Re:* Your complaint against the Ministry of Municipal Affairs
>
> On October 16, 1984, you complained to my office that the Minister of Municipal Affairs, in exercising his executive functions pursuant to section 809(5) of the Municipal Act, erred in law in declining to approve the Lasqueti Island Official Community Plan-Amendment Bylaw No.14. Specifically, your concern focussed on the Minister's position that the Trust's current practice of including its detailed resource management opinions within its official community plans is no longer acceptable. It is your belief that this position is in direct conflict with certain provisions of the Municipal Act and the Islands Trust Act which appear to require the Islands Trust to include such statements in its community plan bylaws.
>
> You have asked whether I would be able to assist the Trust in this matter or, alternatively, whether I could advise you on any other more appropriate courses of action.
>
> I understand that you are already considering two other approaches to the problem. First, from the documents you submitted I note that you have already obtained a legal opinion on the question and are in a position, if you so choose, to proceed directly with a court application with the aim of requiring the Minister to approve the bylaw.
>
> Second, I understand that you have already made an attempt to discuss the issue with the Minister and that you are hopeful that a meeting will be arranged soon, possibly with the assistance of the M.L.A. for a portion of the Islands Trust area.
>
> In weighing these alternatives I am inclined to agree with you that it would problably be more beneficial if a resolution were achieved through discussion among the elected representatives concerned. While the advisability of Court action at some stage is a matter you may wish to discuss with your lawyer, the legal opinion you have already obtained in support of such action may be of immediate value in helping to focus your discussions with the Minister. Furthermore, I believe it would be appropriate for you to ascertain whether the Ministry has also obtained independent legal advice on the matter.
>
> Since the decision whether or not to approve an Islands Trust bylaw is a matter of administration, I do have the authority to investigate your complaint. However, in deciding whether or not to conduct an investigation, I must consider whether there are other more appropriate remedies provided by the law or existing administrative procedure.
>
> For the above reasons, I have decided not to investigate your complaint at this time. However, as the situation develops, you may wish to propose that I reconsider my decision. If you think that I can be of help at any stage in the process, or if you would like to discuss the matter further, please contact me.

I also sent a copy of this letter to the Minister of Municipal Affairs. Subsequently, the Chairman reported that the Minister had sought legal advice on the matter and had modified his position to the satisfaction of the Islands Trust.

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES

Declined, withdrawn, discontinued	12
Resolved: corrected during investigation	1
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	1
Total number of cases closed	15
Number of cases open December 31, 1984	3

Once again, there were very few complaints against the Ministry of Provincial Secretary and Government Services. And as in past years, Ministry officials were extremely willing to resolve any problems I brought to their attention.

No vote for returning soldier

A Royal Canadian Navy veteran returning to Canada after years of service abroad complained that the *Election Act* and the *Municipal Act* had unfairly taken away his right to vote.

Both Acts require that a person reside in Canada for at least 12 months preceding a provincial or municipal election in British Columbia. The complainant had returned to Canada in February of 1984 and was able to vote in September's Federal election. He was not eligible, however, to vote in the municipal elections in November of 1984.

An investigator from my office discussed these residency requirements with the province's Chief Electoral Officer. He discovered that the residency requirements in the British Columbia legislation were consistent with those in six other provinces or territories, but that the Government of Canada did not have these residency requirements for Federal elections. Apparently, the intent behind the residency requirements is that new residents will have time to acquaint themselves with the nature of the voting system, the candidates and the issues before they vote.

It might be argued that these residency requirements made sense for people who had never resided in B.C. or a specific municipality, but I could not see why the 12-month residency requirement would be applied to returning Canadians or returning British Columbians who have adequate knowledge of the voting system. The knowledge of the candidates and the issues could be gained through the residency requirements of six months in the Province (in both Acts) and three months in the relevant community (in the *Municipal Act* only).

I wrote to the Deputy Provincial Secretary and the Deputy Minister of Municipal Affairs and suggested that both Acts be reconsidered so that they no longer required 12 months residency in Canada before provincial or municipal elections.

Both Deputies responded favourably to my suggestion and agreed to review the residency requirements of the respective Acts. And even though they made no commitment that amendments would be proposed, they appreciated the need for a change. I asked the Ministry to advise me of the outcome of their reviews and closed my investigation. (CS 84-174)

Forms and brochures revised

Some years ago, the provincial government established the First Citizens' Fund to provide assistance in various ways to the province's native Indian population.

The Fund's assets are invested, and interest payments are received by the Ministry of Provincial Secretary and Government Services three or four times a year. At those times, cheques are mailed out to artists, students, cultural organizations, etc., which have been approved by the Minister upon the recommendation of an advisory committee.

A young Indian woman complained to me that her application for an "incentive bursary" (to enable her to complete her education) had been refused by the Ministry. The reason given was that she had not included a letter of recommendation from a band council or similar Indian organization. She pointed out that such a letter had not been required, according to the instructions on the application form, and that she had included letters from a clergyman, a previous employer, etc., just as instructed.

My investigator obtained copies of the application forms for this type of grant, and it appeared that the complainant was right. We discussed the problem with one of the administrators of the Fund, who agreed that the application form might be defective in omitting this requirement. The official pointed out, however, that the grants were supposed to go only to persons of Indian ancestry, and the purpose of the request was to obtain confirmation of the applicant's ancestry.

Although omitted from the application form, the requirement for proof of Indian origin was clearly a reasonable one in these circumstances. An official in the federal Department of Indian and Northern Affairs agreed to provide the Fund with the available information about the complainant's ancestry, following which her application was to be considered.

The Ministry indicated to me that the administration of the fund was under review at the time. The review would include a revision of all forms and information brochures. The application form for bursaries would, therefore, soon be corrected. On this basis, I considered the case resolved. (CS 84-175)

MINISTRY OF TRANSPORTATION AND HIGHWAYS

Declined, withdrawn, discontinued	90
Resolved: corrected during investigation	86
Substantiated: corrected after recommendation	7
Substantiated but not rectified	0
Not substantiated	102
Total number of cases closed	285
Number of cases open December 31, 1984	52

The Ministry of Transportation and Highways continues to generate a large volume of complaints against its Operational Services Division and the Motor Vehicle Department.

The Operational Services Division's duties include property negotiations, road construction, repair and maintenance, as well as approval of subdivisions. The Division administers six Regions, each managed by a Regional Highways Engineer. The Regions are further broken down into Districts. Each District is looked after by a District Highways Manager.

I still get a lot of complaints against the Ministry's Insurance and Claims Office. People complain about delays, which may occur because of the high volume of work or because some other Ministry office takes too long to provide information the Insurance and Claims Office has requested.

Certain adjudicating procedures used routinely by the Insurance and Claims Office constitute a more serious problem. All too often, the Insurance and Claims Office bases its decisions regarding damage claims on reports submitted by the very District Highways Managers against whose office the claims are made. The procedure does not lend itself to administrative justice. It places the claimant in the position of a defendant looking for a good defence from the prosecutor.

Sometimes negotiations between my staff and Ministry officials will resolve a complaint, but it is a hit-and-miss method at best. The Ministry resists procedural change, citing financial constraints as the reason.

It is a short-sighted policy. A better adjudication procedure might well reduce the number of claims because it would force Ministry officials to carry out their public duties with greater care.

OPERATIONAL SERVICES DIVISION

Complaints concerning property acquisition or the status of roads often require research. Sometimes the information can be readily obtained from existing documentation. But even if the facts cannot be clearly established, an acceptable compromise can sometimes be reached.

We like the beach we got now

An irate resident of Saturna Island came to us with a complaint that the Ministry was about to close an undeveloped right-of-way providing beach access.

The closure had been requested by a land owner who planned to consolidate the existing right-of-way with his adjacent private holdings. In exchange, he had offered to transfer another public beach access to the Crown.

My complainant, along with many other Saturna Bay residents, felt that the proposed exchange was a bad deal for the public. The recreational value of the beach accessible via the existing right-of-way, they argued, was far superior to the beach at the end of the exchange right-of-way.

We soon found out that we were not the only ones who had received a complaint about the proposal. The Ministry had already a petition bearing 39 names and 17 individual letters on file, all expressing objection to the proposed closure.

Our investigation revealed that the proponent of the scheme had purchased his property about ten years after the right-of-way was dedicated in title by the previous owner who subdivided the land in 1970. The applicant stated that he had not been aware of the existence of the right-of-way when he purchased the property in March, 1981.

At that stage of the investigation, the Ministry had decided to proceed with the proposed road closure, but had not yet informed the applicant of its decision. I informed the Ministry that, according to my preliminary findings, the proposed road closure was unjust and based on irrelevant grounds or considerations. Since the applicant could be adversely affected by the outcome of our investigation, I provided him with a detailed report of the reasons for my preliminary conclusions and requested his comment before I reached a final decision.

The Ministry replied that even though it considered the exchange fair and not contrary to the public interest, it would hold the matter in abeyance, pending my final opinion.

After further investigation and careful analysis of the conflicting interests raised in this complaint, I recommended that the Ministry not proceed with the road closure and property exchange. In view of the fact that the Crown already owned the right-of-way to the beach, and the fact that the applicant had no valid claim to this land, the only relevant question was whether the exchange would provide the public with a beach access of equal potential to that which the public already owned.

Throughout the investigation, no one disagreed with the complainant's contention that the beach accessible via the existing right-of-way was superior to the beach the public would end up with if the deal went through.

In my final report to the Acting Deputy Minister, I noted that even a Ministry official who had inspected the area did not believe that the proposal was in the public's interest. According to that official, the beach accessed by the existing right-of-way was "the nicest (he) visited on Saturna Island." I also noted that the superior quality of that beach could even be discerned from an aerial photograph, a copy of which I enclosed with my report.

The Ministry finally decided not to proceed with the closure of the existing right-of-way and the proposed exchange, a decision which was welcomed by a lot of people on Saturna Island. (CS 84-176)

Roads paved with promises

In October 1981, I received a report that the Ministry had failed to require a developer to blacktop the roads of a 39-lot subdivision.

The complainant and another person who contacted my office in 1983 had bought lots in the subdivision. They relied on a commitment in the developer's prospectus that the roads would be paved, and that a performance bond had been deposited with the (then) Department of Highways to guarantee the work.

The prospectus issued by the developer on April 15, 1976, stated as follows:

"Roads — All roads within the subdivision will be blacktopped by the developer as soon as weather permits. A performance bond has been deposited with the Department of Highways."

The Ministry had made its approval of the subdivision subject to the posting of a performance bond by the developer in the amount of $13,500 to guarantee completion of the work. But despite expressions of good intentions on the part of the principal of the developer, the promised blacktopping had not been completed, either by the developer or by the Ministry of Transportation and Highways.

In view of the great discrepancy between the amount of the performance bond obtained from the developer and the estimated cost of actually completing the road (between $60,000 and $70,000 — or higher), it was clearly no longer in the developer's financial interest to honour his commitment to complete the paving.

The Ministry acknowledged responsibility for performing the work, but still tried to get the developer to live up to his commitment in the spring of 1981. At first, the developer's response to the Ministry's request appeared promising, but it soon became apparent that the company had no intention of completing the blacktopping. The primary reason for this recalcitrance appeared to be that it was more profitable for the developer to breach its commitment than to honour it.

The Ministry's only method of ensuring that the developer did not default had been to obtain securities supposedly in excess of the cost of the required work. No form of contractual agreement existed between the Ministry and the developer. The Ministry had, therefore, no leverage to force the developer to do the paving.

The conclusion could only be that the Ministry had made a mistake in calculating the appropriate performance bond for the project. The Ministry did not challenge this conclusion. In fact, it acknowledged responsibility for the promised paving in view of the developer's failure to live up to his commitment.

Despite this acknowledgment, however, I was concerned about the delay and sought a commitment from the Ministry that it would complete the work as soon as possible. The Executive Director of the Ministry's Construction Division informed my investigator that paving of the subdivision would be included in the Ministry's

1983-84 budget. But I was subsequently advised that the project was rejected during the budget review process, an assertion which I found hard to swallow.

At this point, I informed the Ministry of my preliminary findings and proposed recommendations. The Assistant Deputy Minister replied that he intended to include the project in the Ministry's estimates for the next fiscal year. But he cautioned that he could not guarantee approval of the estimates, "particularly in these days of restraint."

I reminded the Assistant Deputy Minister of my findings and recommendation based on the Ministry's failure to collect a reasonable performance bond. That was a mistake of fact. My recommendation was that the Ministry make a firm commitment to pave the roads described in the prospectus by the end of the 1984 construction season.

The Assistant Deputy Minister acknowledged my recommendation and reiterated his intention of including the paving project in the 1984 construction program. He said, however, that to commit his Ministry beyond the position previously taken would be in violation of the *Financial Administration Act*, section 25(2).

I asked my solicitor to consider the effect of section 25(2) of the *Financial Administration Act* on this case. His opinion was that this provision did not prevent the Ministry from implementing my recommendation. The Ministry could rectify the complaint by giving the project high priority within its allocated budget. I advised the Assistant Deputy Minister accordingly. He replied that the project was "eliminated during Treasury Board discussions prior to finalization of estimates." — another assertion I found hard to swallow since in my experience Treasury Board does not attend to such minutiae.

My investigator telephoned the Assistant Deputy Minister to clarify the reason for the Ministry's failure to implement my recommendation. The Assistant Deputy Minister noted that while the estimates showed a voted expenditure of $28,689,244 for highway paving in 1984-85, this figure covered only special government projects and contracts that were awarded the previous year but not completed.

It was clear that the Ministry's paving program had been substantially reduced from the previous year, when the total voted expenditure was $40,663,060.00. But the fact that money had been committed previously for future contracts appeared to be inconsistent with the Ministry's position that it could not go ahead with the paving because section 25(2) of the *Financial Administration Act* did not permit the Ministry to make commitments for funds which had not yet been allocated by the Legislative Assembly.

The complainants had now waited approximately eight years for the roads to be paved. For all I knew, they might be kept waiting for another eight years. I, therefore, submitted a report of my investigation to Cabinet in late July 1984 and asked that my recommendation be implemented or that other corrective action be taken.

On January 8, 1985, the Honourable Alex V. Fraser, Minister of Transportation and Highways, replied on behalf of Cabinet that the roads would be paved during the summer of 1985. The Ministry, he said, had always taken the position that the roads became its responsibility, once a subdivision plan was deposited. Since problems in funding had now been resolved, he added, work would start as soon as the weather was warm enough to permit road mix paving.

I considered this commitment by the Minister a satisfactory resolution of this protracted case. (CS 84-177)

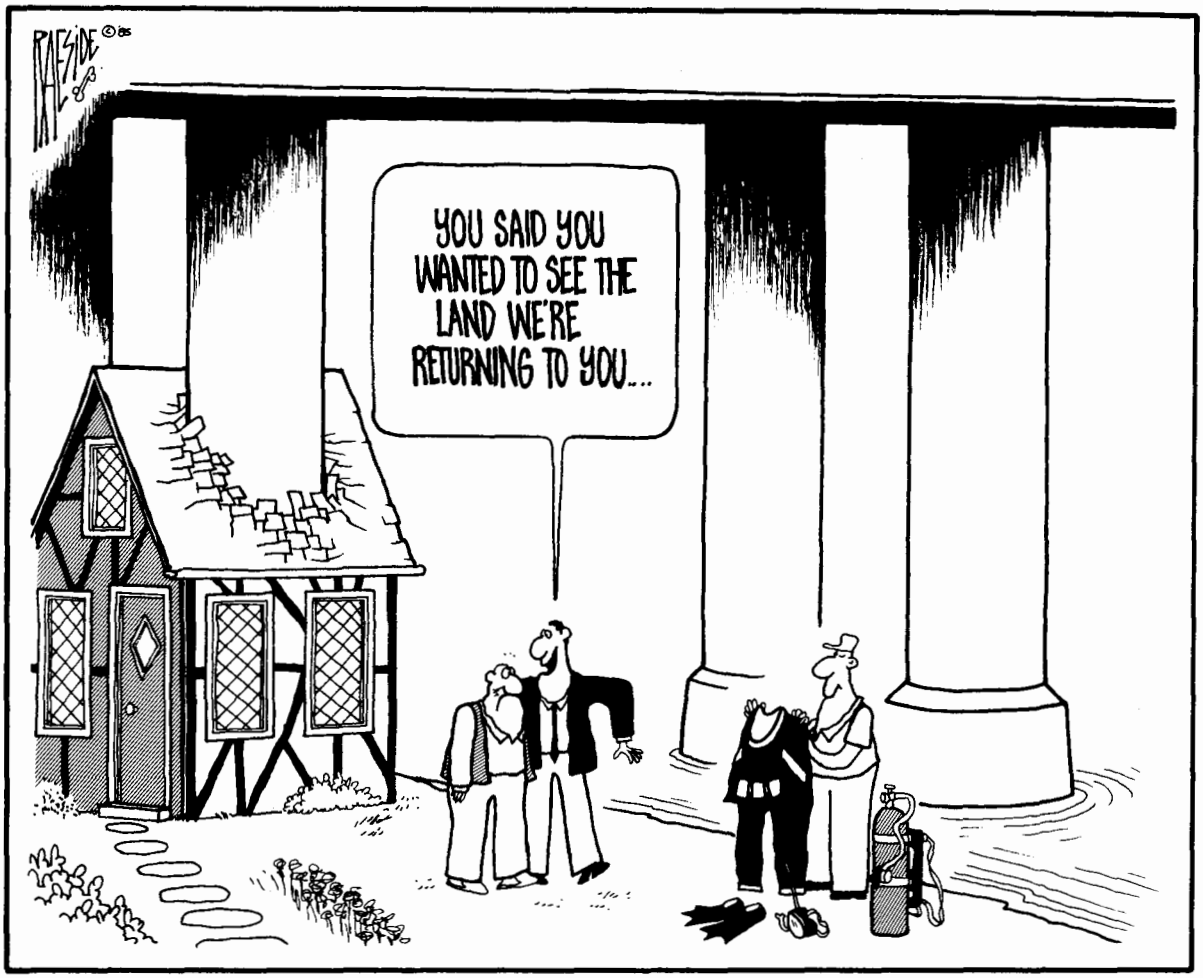
A 29-year wait

In 1955, a rural resident agreed to the expropriation of his waterfront property for the construction of a highway bridge, even though the extent of land expropriated appeared to be excessive.

Although he has no documentation to back up his claim, the complainant stated to me personally during my visit to Nelson that the negotiating officials for the Ministry had promised to return to him any land not used in or needed for the construction.

There was unused land, but the Ministry forgot about its promises. When I raised the matter, the Ministry argued that the land was below the high water mark and, therefore, Crown land. The complainant kept his case before the Ministry, even though all his efforts were fruitless. He complained to me in 1982. The issue of the "promise" to return any unused portions of the land was partially supported by documentation on the Ministry's file. The accuracy of the high water mark was questionable since an electric power development had lowered and controlled the water level and large trees now grew on the land, confirming that the natural and visible high water mark was much lower than the one claimed by the Ministry.

The Ministry agreed to return to the now 85-year-old complainant approximately 200 feet of waterfront property. The Ministry also agreed to undertake all work related to surveying and land title registration. (CS 84-178)



Residents can stay — for now

For as long as anyone could remember, a country road had meandered along a lakeshore. Land owners on the off-shore side of this road had erected summer homes on the lakeshore side. Some of these homes were built or expanded with authorizing permits issued by the Ministry of Transportation and Highways or Department of Highways, as it was formerly known.

As the community grew, the country road became a highway and some of the summer homes became permanent residences. The Ministry was aware that some dwellings were positioned in whole or in part on the highway right-of-way. The others, with one exception, were on Crown-owned foreshore land.

Following the expansion and shoreline alterations of a building by one resident, the Ministry, charging trespassing, issued an order for the immediate removal of the residence and other dwellings. The resident lodged a complaint of unfair treatment with my office. Three other residents, fearing similar treatment, also complained.

Our investigation confirmed that the country road was gazetted in 1911 with a minimum 60-foot width. There was no opposition when the dwellings were constructed, beginning in about 1940. On occasion, permits were issued. Highways was responsible for the dwellings on the right-of-way; Lands, Parks and Housing for those on Crown land.

As a result of my investigation, Lands, Parks and Housing offered the first complainant a Licence of Occupation which allows the status quo to continue but places restrictions on expansion or shoreline alterations. The Ministry also agreed to accept similar applications from the other residents. (CS 84-179)

The government's decision to privatize certain operations has generated a few complaints about tendering procedures. Complaints about the Ministry's seniority system for hiring local contractors, on the other hand, decreased in 1984.

Close-mouthed on open bids

Many ministries routinely call for tenders from competent bidders for a variety of jobs, such as building fences or digging ditches along rights-of-way.

My complainant had not previously bid for such contracts with the Ministry of Transportation and Highways, but was considering doing so. To get an idea of the profitability of these jobs, he decided to obtain information on a recently awarded contract.

When he made inquiries at the local Ministry office, he was given only the name of the winning bidder. The staff said they were not permitted to release the amount of the winning bid. My complainant felt this was ridiculous, since all bids had been announced at the public tender-opening a few days earlier, which he had been unable to attend. He contacted my office.

My investigator spoke to the District Highways Manager concerned, who agreed that his staff had been instructed to give out no information on bids except the name of the winning bidder. He said the intention of this was to prevent bidders on future contracts from basing their tenders on previous winning bids, rather than on their actual costs. However, he agreed to provide my complainant with the information he sought, and did so a few days later.

My investigator then found that the withholding of information in this manner was not a Ministry-wide policy. He contacted the Manager once more to point out that the arbitrary withholding of public information was not acceptable. The Manager agreed to change his instructions to staff, and to ensure that such requests were satisfactorily dealt with in future.

I concluded that the complaint was substantiated since the Manager's administrative decision (to withhold information) was made for an improper purpose, but I made no recommendation because the matter had been rectified.

I regard the principle involved here as a very important one: the public should have access to information in government files and records, unless there is a good reason for withholding it. In the case of information that has already been announced in public, it is difficult to imagine such a reason. (CS 84-180)

Some complaints do not fall into any specific category. The following case summary is an example.

Lion's Bay revisited

Property owners at Alberta Creek in Lion's Bay are still waiting for assurances from the Ministry that they will be protected against any future mud slides. Two people lost their lives, and a number of homes were destroyed by a torrent of debris on February 11, 1983.

The property owners live in constant fear of losing their lives in a mud slide that could occur at any time. Yet, the Ministry has taken no steps to protect the complainants' lives and property against such an event. The complainants point out that the Ministry has done extensive construction work at other creeks in the area, mainly to protect Highway 99 from mud slides.

The Ministry's previous plan to divert Alberta Creek into Harvey Creek, where a large catchment basin has been constructed, was dropped and, so far, the Ministry has not proposed any alternatives. (CS 84-181)

Some complaints appear to be directed against the Ministry. At closer examination, however, the responsibility lies elsewhere.

Flooding threatens homes

A rather complex complaint involved flooding in a residential area of Grand Forks. This was a historically low area but natural drainage and culverts had allowed for homes to be built towards the edge of the area.

Between 1981 and 1982, several homeowners had a nasty surpise. Their basements were flooded. It was generally believed that some recent work by a development company had caused the flooding. This company had placed "fill" in a part of the low area in an aborted development scheme. The residents complained to my office because they received no satisfaction from local authorities.

With assistance from professionals in the Water Management Branch of the Ministry of Environment, my investigator identified a number of possible causes for the unusually high water level. The work by the development company was one possibility. Another was the abandonment of a city water well in the area. The well water had become unpotable. A third possibility was the unusually high rainfall in 1981 and 1982. Since there was no conclusive evidence for any of the possible causes, a continued study of the water table appeared essential, if the source of the problem was to be identified.

By 1984, the situation had become worse. More homes were flooded. In some cases, pumps operated full time to keep basements clear of water. I reopened my investigation and again consulted the professionals. With only moderate rainfall in 1983 and 1984, they felt that accumulated rain water could be ruled out as the cause of the flooding. The well had not yet been returned to use and remained a suspect. It was also con-

firmed that the accumulation of water at both ends of a specific culvert was slowing down the flow of a natural drainage course.

Still our investigation found no single or specific cause for the continued increase in the rise of the water table. My concern, of course, was for the residents whose homes, investments and lifestyles were seriously affected. At this point, I concluded that this was a matter of responsibility for the City of Grand Forks, but my office has no jurisdiction over municipalities. After I was assured by the Ministry that if asked, it could offer some assistance to the residents, I approached the Mayor of Grand Forks.

Subject to professional evaluation, the answer may be to completely upgrade two natural drainage courses from the low area to the Kettle River. There is only a minimal gradient at best. Commercial, residential or street development in the proximity of these courses may have indirectly disturbed subsurface drainage, causing a backup of water. Abandoning the well which had been in use since 1925 may also be a major factor. Lastly, the fill placed in contemplation of development may have disturbed the balance. I hope the municipality can re-establish that balance. The promise of help from the Ministry of Transportation and Highways was communicated to the Mayor. (CS 84-182)

MOTOR VEHICLE DEPARTMENT

Relations between my office and the Motor Vehicle Department continue to be good. Complaints that have merit are usually resolved promptly by senior Department officials. I received complaints about the closure of vehicle inspection stations, but declined to investigate them.

Political matter, not administrative

A man complained that the provincial government's decision to do away with mandatory motor vehicle inspection was shortsighted and unjust. Citing statistics from an I.C.B.C. report in support of his complaint, he concluded that this decision would cause a significant increase in traffic accidents and injuries.

I informed the complainant that the issue he had raised was not a matter of administration and did, therefore, not fall within my jurisdiction.

After receiving my letter, the complainant marshalled further arguments which he felt would persuade me to investigate the matter. Since the *Motor Vehicle Act* required owners or operators to keep their motor vehicles in a safe operating condition, the government had an obligation to enforce this requirement. This, it was not doing, the complainant argued. The police — the only agency left with any means of ensuring vehicle safety — were really unable to discover mechanical defects on vehicles until after an accident had happened.

The complainant proposed that private garages be licensed to test vehicles, and that no vehicle registration be renewed without proof that the vehicle has been safety-tested.

I suggested to the complainant that he contact the police if he believed that a vehicle was operating in contravention of *Motor Vehicle Act* standards, pointing out that the Act required all vehicles to be in safe operating condition. I could not agree with the complainant's argument that the government has an obligation to ensure that the owner or operator of a motor vehicle complies with *Motor Vehicle Act* requirements. It was my belief that the Act imposed that obligation on the vehicle owner.

Still, the idea was interesting, and I forwarded the complainant's comments to the Superintendent of Motor Vehicles for his consideration.

The Superintendent questioned the conclusions drawn in the Insurance Corporation's report and noted that the matter was, in any event, a political one and, therefore, outside his authority. (CS 84-183)

Hardly a week goes by without complaints from drivers whose applications for licence renewal or reinstatement are rejected by the Ministry of Transportation and Highways because the driver owes money to I.C.B.C. The complainants usually argue that one has nothing to do with the other. They are wrong.

Unpaid I.C.B.C debts are a significant cost to the province. The Legislature has, therefore, granted authority to the Superintendent of Motor Vehicles to reject applications for drivers' licences from anyone indebted to I.C.B.C. But the Superintendent has some discretion in the enforcement of this policy. People owing money to I.C.B.C. find that the Superindendent is quite willing to renew or reinstate their licences if they make some arrangement to pay their debts to I.C.B.C. The payment schedule takes into account the debtor's ability to pay and, therefore, causes little or no hardship. Sometimes the Department oversteps its statutory authority, as in the following case.

Policy abolished — twice

In my 1981 Annual Report, I summarized a case in which the Motor Vehicle Department had refused to permit the sale of a vehicle because the seller owed money to I.C.B.C. My investigation concluded that the Department had no statutory authority for such a policy. The Department agreed with that conclusion and subse-

quently abolished the policy. In 1984, another complainant brought an identical complaint to my attention.

The *Motor Vehicle Act* was amended in 1982, and the Department thought the amendments provided the statutory authority that had previously been lacking. My staff analyzed the amendments and concluded that the Department still did not have the authority to refuse the transfer of a vehicle because of an outstanding debt to I.C.B.C.

After seeking legal advice, the Branch agreed with that analysis and once again abolished the practice. We'll see. (CS 84-184)

Often complainants question specific practices of the Department. In some cases, I have supported the Department's position. In others, I had to challenge existing practices.

Nothing wrong with policy.

A man who had recently moved to British Columbia from Alberta complained that the Motor Vehicle Department would not issue him a five-year driver's licence. He said the statute which gives the Department the authority to issue two-year drivers' licences to all former Alberta residents was improperly discriminatory.

The complainant claimed that he had an excellent driving record and that Alberta's driver examination standards were higher than British Columbia's.

Our investigation showed that all first drivers' licences in British Columbia are issued for a two-year period only. That includes out-of-province drivers and those obtaining their first driver's licence in British Columbia. The *Motor Vehicle Act* gives the Superintendent of Motor Vehicles specific authority to issue drivers' licences for less than five years, if the applicant has not previously held a British Columbia driver's licence.

Since all first-time B.C. drivers are subject to the two-year probationary licence and are issued a five-year licence after that, I concluded that the policy was not improperly discriminatory. (CS 84-185)

Changes in name-change policy

In December, 1982, I received a complaint that the Superintendent of Motor Vehicles would not allow a woman to obtain a driver's licence in her maiden name.

The woman was separated from her husband. She had already obtained other forms of identification in her maiden name. The Superintendent of Motor Vehicles, however, would only issue a driver's licence in a previously married woman's maiden name if she had officially changed her name under the *Name Act*. That required an application to the Department of Vital Statistics or the order of a court.

At the time, I found the complaint not substantiated. I could not conclude that the Motor Vehicle Department's policy of issuing a driver's licence only in the applicant's legal name was unreasonable. And it appeared that legal name changes in British Columbia were governed by the *Name Act*.

When two other women came to me with new arguments, I decided to reconsider the matter. I obtained a legal opinion on the use of names by a married woman. This opinion led me to believe that legal name changes are not limited to those under the *Name Act*. If a married woman reverted to her maiden name and reported this change to the Superintendent of Motor Vehicles, the question was whether or not she had satisfactory proof of this change.

The Ministry argued that the purpose of the *Motor Vehicle Act*, the legislation upon which the Superintendent of Motor Vehicles based the existing policy, is to ensure accurate identification of licence holders and to reduce the risk of fraudulent use of licences. It was my belief that these objectives could easily be met by accepting a birth certificate or some other reasonable proof of identity. Insisting on an application or order under the *Name Act* did not seem necessary.

Under common law, a person may acquire a name by usage, as long as it is not done with fraudulent intentions. But the many decided cases which constitute the common law may be amended by statute. It was, therefore, also necessary to consider whether the *Name Act* had altered this common law right.

After reviewing the relevant provisions of the *Name Act* and the *Motor Vehicle Act*, my researcher was of the opinion that nothing in either of these statutes indicated that a person cannot acquire a name by usage for the purposes of the *Motor Vehicle Act*.

But it appeared that a woman who married after the 1977 amendments to the *Name Act* came into force, would have to make application under the Act if she wished to revert to her maiden name from that of her husband's. Only if her marriage was dissolved, could she revert to her maiden name without an application under the Act.

Prior to the 1977 amendments, the *Change of Name Act* appeared to assume that a woman took her husband's name, but did not specifically require it. This meant that according to common

law rules, a woman could have retained her maiden name or reverted to her maiden name at any time, without contravening the provisions of the *Change of Name Act*.

On that basis, I informed the Superintendent of Motor Vehicles that I considered recommending the acceptance of reasonable proof of change of name by common law usage for the purposes of issuing a driver's licence. The required proof should allow a married woman who has reverted to her maiden name to hold a driver's licence in the name which she is presently using. I also provided the Superintendent with a copy of the legal opinion on this issue. I understand that this opinion was reviewed by the office of the Superintendent and referred for comment to the solicitors for the Ministry of Health which administers the *Name Act*.

The Superintendent revised the Department's policy. A woman who had married before September 1977 and reverted to her maiden name, could now apply for a drivers' licence without officially changing her name under the *Name Act*, as long as she could produce acceptable identification, such as a birth certificate. These changes took effect on November 30, 1984.

There was, of course, still the possibility that a woman might not be able to produce a birth certificate, but I decided to deal with that problem if and when it arose. (CS 84-186)

The Superintendent of Motor Vehicles has the authority to prohibit a person from driving if, in his opinion, that person is unfit or unable to drive. He also has the discretionary power to cancel a person's licence and issue a different class of licence if he believes that person cannot safely operate a vehicle of a certain class. And thirdly, he has the authority to deny drivers' licences on medical grounds. The latter has been the focus of a number of investigations by my office.

The number of medical appeals was reduced considerably in 1984 because the Department reviewed each case in detail before making a decision. It is often not easy for the Department to reach a decision.

We do not drive with our ears

We investigated several complaints from a man with a hearing impairment whose employment required a Class 2 driver's licence. A Class 2 licence permits the operation of a motor vehicle of any type or weight, with or without passengers.

After passing all written and road tests, the complainant obtained a temporary Class 2 driver's licence in August, 1982, and was subsequently hired to drive a 32-passenger bus. The man's employer was aware of his hearing disability, but was very satisfied with his job performance.

Before issuing the permanent licence, the Motor Vehicle Department asked our complainant to provide proof that his hearing loss was within established guidelines. His audiologist told him that according to those guidelines, a Class 2 driver should not have a corrected (with hearing aid) hearing loss of more than 40 decibels, and that his hearing fell within the acceptable range.

In late October, the Superintendent of Motor Vehicles informed the complainant that his driver's licence would be down-graded to a Class 5 because he did not meet recommended medical standards for a Class 2 licence. He was told that he could appeal this decision. The fee was $50. Medical appeals are reviewed by two medical specialists to whom the matter is referred by the Motor Vehicle Department.

The complainant objected. He said the Department had measured his hearing loss without a hearing aid. This, he said, was contrary to regulations. Under these circumstances, he added, he should not have to pay the $50 appeal fee.

My investigator learned, however, that current standards require the testing of hearing loss without the help of a hearing aid. This rule had been adopted a year or two earlier at the urging of the Workers' Compensation Board. The Board felt that drivers with hearing aids, operating commercial vehicles, would become fatigued by the amplification of sound, and that further hearing impairment might result.

I closed the investigation and referred the complainant to the Medical Appeal Board. At the same time, I informed him of the concerns expressed in the Motor Vehicle Department's "Guide for Physicians" about the effect of hearing loss on his ability to operate commercial class vehicles. This information, I believed, would assist the complainant in deciding whether or not to appeal.

The complainant came to my office again in June 1983. He told my investigator that his medical appeal had been denied. He did not believe that the reasons for the denial were relevant. The complainant's demand to retain his Class 2 driver's licence also had the full support of his employer.

One of the Motor Vehicle Department's concerns was that the complainant would be unable to speak with passengers while operating the bus. He admitted that was true, but added that passengers should not speak to a bus driver to start with while the vehicle is in motion. He said he always informed passengers in advance of what route he will take. And if an emergency

arose, there was always a staff person with him on the bus.

In October, my investigator met with senior Department officials for further discussion of the case. Eventually, the complainant was issued a restricted Class 2 driver's licence. He was allowed to work only for his present employer and could use bilateral hearing aids only. Although the complainant planned to return to university, the restricted driver's licence would enable him to work part-time.

The complainant was very happy with the outcome, but he still believed that no restrictions should be imposed on him or anyone else with a hearing impairment. He argued that the Department's restrictions were unduly rigid and not based on relevant criteria.

An association for the deaf recently raised this issue again, complaining that the Department's position is based on speculation, rather than scientifically verifiable evidence. After some discussion with my office, senior Department officials proposed that the complainants present their arguments to the Superintendent of Motor Vehicles. The Superintendent would then respond to the arguments.

If the complainants come away from this exchange with the feeling that their arguments have not been addressed in an administratively fair manner, I am prepared to consider the issue again. (CS 84-187)

Three years too long

A rancher complained to us when the Ministry established a 66-foot right-of-way and constructed a road which cut off his cattle from their water source. The complainant said the new road, which encompassed and extended a trail through his property, was built to provide access for his neighbour.

When the right-of-way was negotiated, the Ministry provided the complainant with a cattle guard and paid for labour and materials for the relocation of the fence along the original trail. But the rest of the newly-contructed road remained unfenced.

Soon after the road was completed, a few of the complainant's cattle wandered across the unfenced portion, through a gate left open by his neighbour, onto the neighbour's property. The neighbour shot and killed two of the animals, including one cow in calf. Not long after, a pony owned by the complainant's daughter was struck and permanently crippled by a vehicle on the new road.

The complainant consulted a lawyer and was informed that his animals could be impounded if they went on the road or on their neighbour's property. He asked the Ministry to provide another cattle guard and to fence the remaining part of the road. This would provide a safe stationary crossing for his cattle. The request was denied.

In my opinion, the complainant should not have been in a worse position after the road was built than before. Proper compensation for the expropriation should have included adequate protection for the complainant's cattle which had previously been able to travel back and forth across the dead-end trail. In legal terms, this would be considered compensation for the effects of severance of the complainant's property.

During my investigation of this complaint, Ministry staff suggested that the trail over which the 66-foot right-of-way had been established may already have been a public road. Under the provisions of Section 4 of the *Highway Act*, this would mean that the complainant was not legally entitled to compensation for the effects of severance of his property. After further consideration, however, the Ministry agreed to give the complainant $1,900 for labour and material for fencing, and a suitable cattleguard. The complainant agreed to this settlement.

It had taken three years to bring this matter to a conclusion. That was three years too long. The Ministry has a duty to minimize the damage and inconvenience expropriation imposes on property owners. (CS 84-188)

"When the crunch came"

A motorist came upon a highway work project. A flagman was controlling the one-way traffic flow. The motorist was positioned behind a pickup truck and a motor home. At the flagman's signal, the traffic began to move over the gravelled work site. Suddenly a rock on the road surface struck and damaged the car's exhaust pipes and floorboards.

The motorist demanded compensation for the damage but the Ministry refused to pay. The Ministry argued that other vehicles had driven the same stretch of road without incident and that the complainant's own carelessness caused the damage to his vehicle. The Ministry also argued that the complainant should have been aware of his car's restricted road clearance.

I argued that the vehicles ahead of the motorist, a truck and motor home, could be expected to have a greater clearance than a car. Furthermore, the complainant had followed the directions of the flagman and could assume the route to be safe.

The Ministry agreed with my argument that the driver and the flagman should assume equal responsibility. The Ministry agreed to pay 50 percent of the cost of repairing the vehicle. (CS 84-189)

BOARDS, COMMISSIONS, TRIBUNALS AND CORPORATIONS

AGRICULTURAL LAND COMMISSION

Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	0
Substantiated: corrected after recommendation	2
Substantiated but not rectified	1
Not substantiated	1
Total number of cases closed	10
Number of cases open December 31, 1984	1

Complaints against the Agricultural Land Commission still focus on decisions regarding applications for subdivision within the Agricultural Land Reserve or exclusion from it.

As in previous years, I found the actions and decisions of the Commission generally fair and reasonable. There were, however, three complaints which raised significant questions of natural justice and administrative fairness.

Land removed from reserve

A property owner complained that the Agricultural Land Commission had refused to remove his property from the Agricultural Land Reserve. The man felt that his situation was identical to that which had recently been addressed by the B.C. Court of Appeal.

In that case, the court had concluded that a parcel of land should be released from the land reserve because the Commission had failed to comply with the requirements of procedural fairness. The Commission had not given the property owner the opportunity to make representations concerning the proposed inclusion of his property in the land reserve.

My complainant felt that his situation was identical. Our investigation showed that my complainant's case was similar to the one dealt with by the B.C. Court of Appeal. I advised the Commission that in view of the recent court decision, I was contemplating a recommendation to consider my complainant's application for exclusion from the land reserve.

After some exchange of correspondence, the Commission accepted the position that it is bound to follow previous court decisions in dealing with applications for exclusion. The Commission considered my complainant's application for exclusion in this light, and the man's property was released from the land reserve. (CS 84-190)

Irrelevant material removed from file

A man complained that a newspaper article concerning his political activities was included in one of his Commission files.

After reviewing the contents of the article, my investigator agreed that it in no way related to his application to the Commission for exclusion of his property.

It is inappropriate for irrelevant material to be retained on an applicant's file. The practice serves no ligitimate purpose and gives rise to the impression that irrelevant factors are considered as part of decision.

I recommended that the Commission remove the newspaper article in question from the man's file, and instruct all staff not to place irrelevant and potentially prejudicial material on files without the applicant's consent.

After some discussion of my concerns, the Commission agreed to implement both recommendations. The article was removed from the file and a memo was circulated to staff concerning the placement of irrelevant material on files. (CS 84-191)

Delay made no difference

A property owner complained that the Commission had rejected two applications from him, one for exclusion of his property from the Agricultural Land Reserve, the other for subdivision of his property into smaller parcels.

The man charged that the Commission improperly discriminated against him because it had allowed his neighbours to subdivide their property into 20-acre parcels a few years earlier. He also said the Commission acted contrary to Regulations under the *Agricultural Land Commission Act* when it failed to forward his file "forthwith" to the Minister of Agriculture and Food after receiving notice that he intended to appeal the Commission's decision to the Minister.

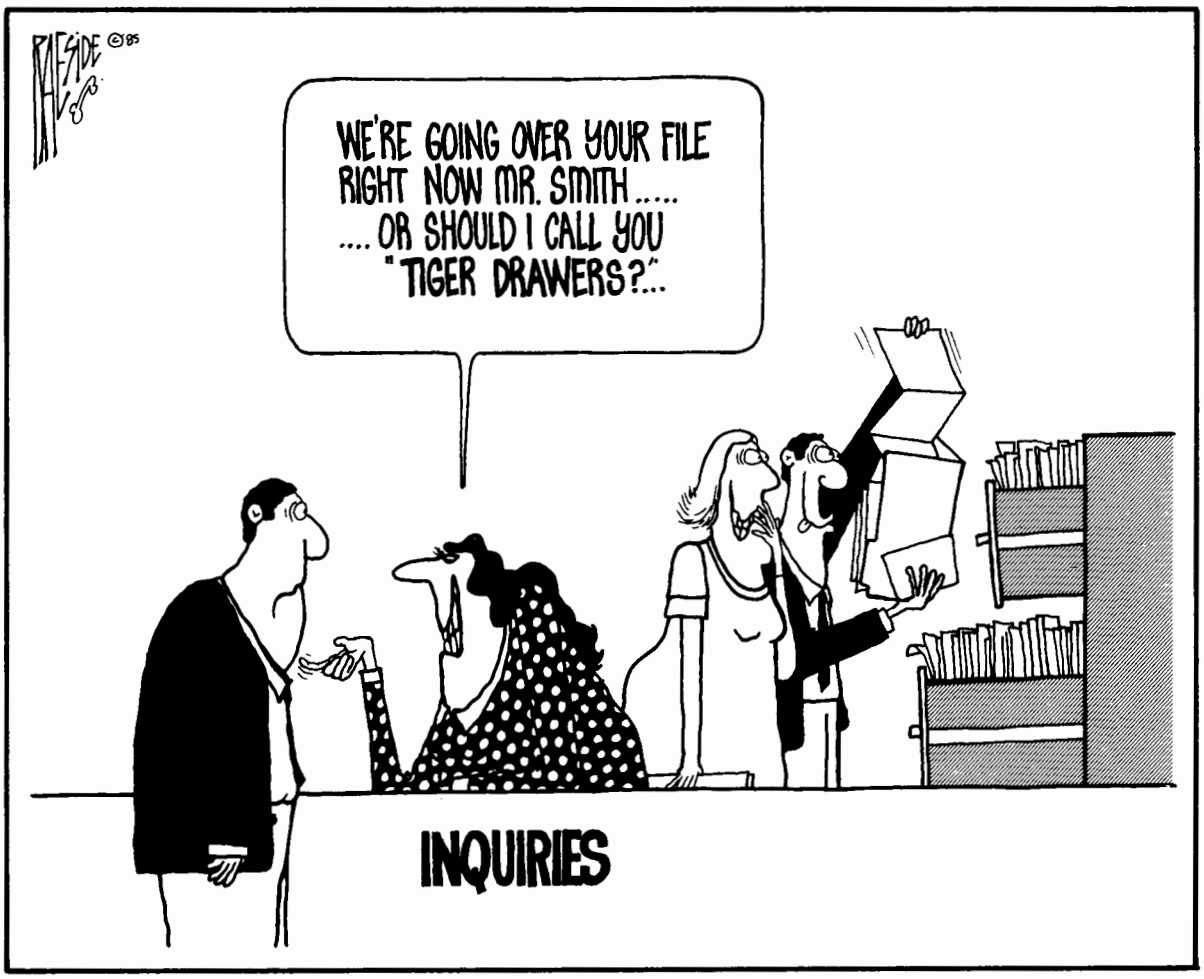
With respect to his first complaint, I concluded that several factors distinguished my complainant's application from that of his neighbours which had been allowed. The most significant difference was that my complainant's neighbours had indicated to the Commission at the time of their application that their children were actively involved in the operation of their farm, and that the subdivision was requested for the purpose of providing residences to their children.

Although my complainant had requested the subdivision to provide his daughter and son-in-law with a parcel of land, he submitted little evidence to the Commission concerning either the extent of his farm operation, or his daughter's and son-in-law's involvement in it.

The second complaint, I concluded, was substantiated. The Commission's delay of more than three months in forwarding its file to the Minister's office constituted a breach of the regulatory requirement.

The Commission attributed the delay to the BCGEU strike, staff vacation time during the Christmas break, and the general increase in work due to the reduction in staff as the result of budget cutbacks.

Although I found the complaint substantiated, there was no evidence indicating that the delay had any effect on the Minister's ultimate decision. The Commission did advise me, however, that it would make some internal changes to make sure that similar delays will not occur in the future. (CS 84-192)



B.C. ASSESSMENT AUTHORITY

Declined, withdrawn, discontinued	18
Resolved: corrected during investigation	8
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	8
Total number of cases closed	35
Number of cases open December 31, 1984	4

The B.C. Assessment Authority's requirements for granting "farm" classification to a piece of property continue to give rise to complaints.

The tax on farm property is only a fraction of that payable if the property were classified as "residential" or "commercial." Many of the complaints come from persons who have moved to British Columbia from other parts of the country where, apparently, "farm" classification is automatic for any property which appears to be a farm. In B.C. this status must be earned on the basis of the value of agricultural production from the property during the preceding year.

He had his chance

A complainant said he moved to British Columbia from Alberta in June 1981 and bought a piece of property which was already classified as a farm.

The property taxes for that year were about $80. The following year, the property was treated as "residential" by the Assessment Authority. The property taxes were now $580. For 1983, however, the farm classification was restored, and the taxes were back at about $80.

He believed that the Assessment Authority has made an error with the 1982 classification, since the property had been used for the same purpose all along — growing hay for the horses he raised. He wanted this error acknowledged. He also wanted a rebate on his 1982 taxes.

I found that the Assessment Authority claimed to have mailed information to the complainant in July or August 1982, shortly after it was advised by the Land Titles Office of his purchase of the property. The complainant, however, denied having received this information. The assessment file also contained a copy of a registered letter sent to the complainant on December 15, 1981, advising him that he was about to lose the farm status of his property.

Early in January 1982, the annual assessment notice would have been mailed to the complainant. This notice would have reflected the change, but the complainant did not appear to have taken any action on receiving the notices. Perhaps he did not understand their significance. I felt that the Assessment Authority had taken reasonable steps to alert my complainant to the impending change. I decided that I could not substantiate this complaint. (CS 84-193)

B.C. FERRY CORPORATION

Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	5
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	3
Total number of cases closed	12
Number of cases open December 31, 1984	4

We never received a flood of complaints against B.C. Ferries, but in 1984, I'm happy to say, the number dropped even further. The following is one of the few complaints we received.

Pay again, buddy

On December 31, 1981, my complainant and a friend travelled by car from Victoria to Galiano Island, paying the full return ferry fare of $10.30. There was no possibility of paying a one-way fare at that point.

At midnight, the fare structure changed. Many fares were raised, return fares disappeared, and only one-way fares were charged. When my complainant returned the next day, he was asked to pay a one-way fare of $6.50, despite the fact that he had already paid for the return trip the previous day. Protests were useless. Apparently, the ferry official's only instruction was to collect the fare from everybody.

After I intervened, the Ferry Corporation agreed to refund to my complainant (and to any other travellers who had had the same experience) half the return fare he had initially paid. The Corporation also agreed to amend its procedures and instructions to staff to prevent such problems recurring if and when the fare structure is changed again. (CS 84-194)

B.C. HOUSING MANAGEMENT COMMISSION

Declined, withdrawn, discontinued	2
Resolved: corrected during investigation	7
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	2
Total number of cases closed	11
Number of cases open December 31, 1984	4

Issues involving the quality of a person's housing, their privacy and security can be very emotional. The fact that I receive few complaints about the B.C. Housing Management Commission suggests that its staff are sensitive to this potential problem. As in previous years, the Commission responds quickly to complaints. In fact, the Commission looks upon complaints as issues to be solved rather than "problems".

Rule bent intelligently

A couple with five sons moved North, looking for work. The husband was able to find a part-time job, and applied to the B.C. Housing Management Commission for housing.

The Commission had vacant three-bedroom units in the area, but would not accept the man's application because a maximum of six people only are allowed in a three-bedroom unit. Staff offered to take his application for a four-bedroom unit, but said he would have to wait until one became vacant. The man thought this was unfair. He and his family were used to living in three-bedroom places because that was all they could afford to rent.

The Commssion resolved the problem by agreeing to accept the family as tenants in a three-bedroom unit if they agreed in writing to move to a larger unit when one became available.

I was pleased by the Commission's willingness to tailor the application of 'rules' to the peculiarities of individual circumstance. The usual rule of only six people makes sense, and is designed to prevent overcrowding. It also makes sense, however, to bend the rule when smaller units are standing vacant. (CS 84-195)

Three people — two families

A woman with a small child applied to be a tenant at B.C. Housing. She was separated from her husband who still lived in their two-bedroom unit in one of the Commission's buildings.

The couple shared physical custody of their son. The mother had legal custody, but their court order stated that the child spend four days a week with his mother and three days with his father.

This arrangement placed the Commission in a dilemma. Normally, the mother would qualify for a two-bedroom suite. The problem was that the child already had a bedroom in his father's home. The Commission found it difficult to rationalize subsidizing four bedrooms in two homes for three people. Accordingly, the Commission told my complainant that she was only eligible for a one-bedroom suite. The mother did not think this was fair, particularly since the child was with her most of the time.

I could see the Commission's point of view, but the complainant's position was also not unreasonable. There probably was no perfect solution, but there had to be a better one than this.

And there was. I argued that the Commission was wrong to relate my complainant's application to her former husband's tenancy. She should not be penalized because he was already a tenant. She should be treated as a separate "family," which legally she was. In the end, a practical answer was found. The child's father, who had the lower number of custody days, was asked to move to a one-bedroom suite to free a larger suite for the child and the mother. Not perfect, as I said, but better than before. (CS 84-196)

No pets

A family on really hard times applied to the Commission for housing. They were living in a motel and were desperate for better accommodation.

Next day, the Commission offered them a suite in one of its buildings. But there was a problem. The Commission had failed to take into consideration that the family had a dog. It seemed that fact was not entered into the computer. The Commission allows pets in its buildings only in extraordinary circumstances. Unless the family could find another home for the dog, it would not be allowed to move into the building administered by the Commission.

The family could understand the rule, but pointed out that had they known about it before, they would not have spent money on a trip to view the accommodation which was out of town.

The Commission admitted its mistake and paid the family mileage for their trip at the rate given to government employees. (CS 84-197)

B.C. HYDRO AND POWER AUTHORITY

Declined, withdrawn, discontinued	62
Resolved: corrected during investigation	117
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	33
Total number of cases closed	212
Number of cases open December 31, 1984	45

In 1984, I handled approximately 33 percent more complaints against B.C. Hydro than in 1983. Most of these complaints relate to Hydro's attempts to collect overdue accounts. Compared with previous years, complainants appear to have had increasingly more difficulty keeping their Hydro payments up to date. The suspension of services of unionized Hydro employees during the coldest period of the year had a severe impact, particularly on people who must get by on income assistance and other forms of low, fixed incomes.

In previous reports, I stated that many complaints against Hydro could have been prevented, had customer service employees adopted a less threatening and more helpful approach to customers in financial difficulty.

I noted that the remarks I had made in my 1983 Annual Report were circulated among the District Department Managers of Hydro's five regions to determine whether their employees could benefit from refresher training in customer relations. One of my investigators was also invited to speak to the Managers about complaint prevention. Subsequently, customer relations workshops were held in one of the five regions.

Following are several examples of complaints closed in 1984, mostly concerning Hydro's handling of customer accounts.

Disconnection for $9.11

A woman on limited income complained that her electric service had just been disconnected, even though she thought she had worked out a payment arrangement with the help of a local advocacy service.

The woman was on the Equal Payment Plan and was behind in her payments by about $170. The Hydro collections supervisor had refused to accept a partial payment.

My investigation revealed that a recalculation of the complainant's bill on the basis of actual electricity consumed resulted in an outstanding account of only $9.11. Since the heating season was just beginning, the payments required on the voluntary Equal Payment Plan exceeded the value of the electricity consumed.

After discussing the matter with my investigator, the Hydro supervisor acknowledged that instead of disconnecting the complainant's service, he should have cancelled her Equal Payment Plan and issued her the revised bill for $9.11. The complainant's service was immediately reconnected and her account was adjusted. (CS 84-198)

Hydro acknowledges error

On behalf of herself and other tenants on limited income in her apartment building, a woman complained that Hydro had threatened to disconnect electric service to the building, unless the tenants signed for service in their own names, effective immediately.

Electric service had been in the name of the landlord whose account was apparently in arrears. The impending receivership of his business raised collection problems for the local Hydro office.

The tenants argued that the rent which they had already paid for that month included the provision of electric service in accordance with their tenancy agreements. If they met Hydro's demand, they would have to pay twice for that month's service.

After discussing the circumstances with my investigator, a senior Hydro manager acknowledged that the demand was unfair to the tenants and contrary to Hydro's policy of giving tenants an opportunity to pursue the remedies available to them under the *Residential Tenancy Act*.

Hydro agreed to reassign the building's electric accounts to the landlord or his receiver, while my office facilitated tenant contact with the Rentalsman's office where they could apply for individual orders redirecting a portion of their rents to pay Hydro. (CS 84-199)

He paid his neighbour's account

A mobile-home resident discovered that in addition to paying his own Hydro account, he had also inadvertently been paying the account of his neighbour for a period of fourteen months.

While the mobile unit numbers differed, the addresses were the same, and both accounts were in the name of the complainant. The complainant denied that he had ever accepted responsibility for his neighbour's account and was cer-

tain that Hydro had made the error when he originally submitted his telephone request for service.

Hydro acknowledged that the complainant had paid about $250 for his neighbour's electric service over the fourteen months but refused to take responsibility for the error or to reimburse the complainant for his overpayment. Since the neighbour was under the financial care of the Public Trustee, the complainant also tried to collect from that source, with equal lack of success.

At my investigator's request, a Hydro representative wrote a letter to the Public Trustee, confirming the amount the complainant had paid on his neighbour's account. With this information, the Public Trustee readily acknowledged responsibility for the account and immediately forwarded a cheque in the full amount to the complainant. (CS 84-200)

Dispute with landlord

The owner of a rental house complained that he was unable to resolve his dispute with Hydro concerning a bill for about $60 which represented power consumption during periods of vacancy.

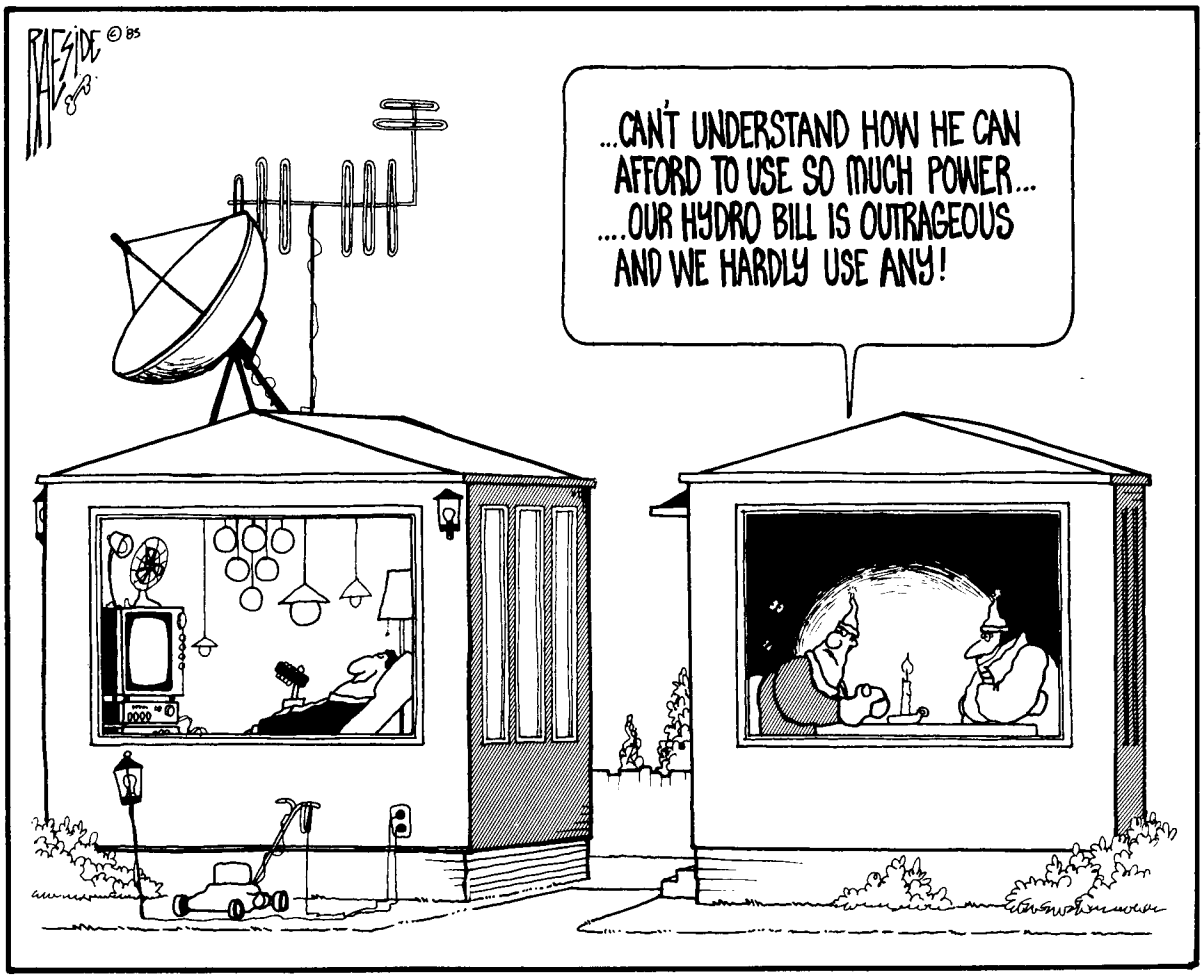
After two successive tenants had terminated their accounts, Hydro unilaterally put the house accounts in the complainant's name without his permission and without notifying him.

Hydro agreed to delete the charge from complainant's account and refer the matter to a collection agency as previously planned. (CS 84-201)

Landlord charged for tenant's account

Hydro disconnected electric service at a landlord's home residence when he refused to pay an outstanding bill of about $250 which was transferred from his rental unit after the tenants had moved out. The landlord said Hydro refused to accept his explanation and evidence that the tenants were responsible for the account.

My investigation showed the tenants were, indeed, responsible for the account. The complainant produced a tenancy agreement to that effect.



And even though the complainant could have taken more precautions to ensure that the tenants applied for service as they had promised, Hydro agreed to cancel the charges on his home account. (CS 84-202)

Arbitrary estimate

A woman whose final electric meter reading was estimated because she vacated her apartment during the labour-management dispute, complained about the accuracy of Hydro's estimating procedures.

Hydro had threatened legal action to collect an outstanding amount of about $50 on the account for which the complainant refused to accept responsibility. She rejected Hydro's claim that its estimate of her consumption was accurate. She said the only meter reading available included the consumption of the tenant who moved into the apartment after her.

After considering the inevitable margin of error in estimating consumption under these circumstances, a senior Hydro manager decided not to collect the outstanding amount from the complainant. (CS 84-203)

Service connection denied

The manager of a Native Indian Band on the north coast complained that Hydro had refused to provide electric service to one of the Band's houses.

The Band had assigned the vacant house to a new tenant, but Hydro was unsympathetic and determined that no connection would be made until the previous tenant's outstanding account was paid. Apparently, the Band had been trying for nearly two months to have the premises connected but was unable to convince the area Hydro office that the previous occupants were responsible for their own account.

Hydro's credit administration supervisor acknowledged the impropriety of withholding service under these circumstances, and instructed the local Hydro office to provide service forthwith. (CS 84-204)

Transit levy collection

Many people complained because B.C. Hydro continued collecting the transit levy for the time transit services were suspended. This issue received media attention for a time, and I am sure that the number of people who contacted my office represented only a fraction of those who complained to their MLAs or to B.C. Hydro and B.C. Transit. I was unable to substantiate the complaint for the following reasons:

According to the *British Columbia Transit Act*, B.C. Hydro is obliged to collect a levy on behalf of a Regional Transit Commission or a municipality. This levy is used to pay the municipality's or the Commission's portion of the annual operating deficit of a transit service. Section 12(7) of the *British Columbia Transit Act* states that a power levy is "deemed to be a debt owed to the collector by the person liable for payment as part of the rate payable by that person for electricity." B.C. Hydro is the collector and is, therefore, obliged to collect the levy. And the customer is obliged to pay it.

And according to the Assistant General Manager of B.C. Transit in Vancouver, any surplus in operating costs created as a result of the continued collection of the levy during the labour-management dispute will have the result of delaying an increase in the levy which might have been necessary to cover increased costs.

The cost of establishing who should get a rebate and how much, would have offset any benefit to taxpayers. (CS 84-205)

Hydro not responsible

A man returned home one evening to find that all his major applicances were malfunctioning. He called B.C. Hydro.

A repair crew checked his power line and replaced a faulty connector where the wires entered his house. After minor repairs to the appliances, the man's electrical life returned to normal. He then submitted a claim to B.C. Hydro for the cost of the repairs to the appliances and for the large quantity of food which had thawed in his freezer while the power was out. He complained to my office when B.C. Hydro rejected his claim.

My investigator discovered that electric utility companies are expected by law to meet a very high standard of care in the insulation and maintenance of public power lines. Unfortunately for my complainant, the B.C. Hydro was not responsible for the maintenance of the service line to the house. The house was set back from the road some distance and the lines were carried by three poles. B.C. Hydro was responsible only for the service to the first pole, while the owner of the propery was responsible for the maintenance of the lines between the first pole and the house.

I concluded that B.C. Hydro was not liable for the damages the complainant had suffered. (CS 84-206)

B.C. POLICE COMMISSION

The B.C. Police Commission acts as the appeal tribunal under the *Police Act*. When citizens are dissatisfied with the way their local Police Boards have handled their complaints against the police, they can appeal to the B.C. Police Commission. The Commission is also involved in setting standards of policing in the province.

You'll get shot, fella

A man complained that he had been merely "humoured and dismissed" when he went to the Commission with complaints about his treatment by the R.C.M.P. The man also alleged that an employee of the Commission had intimidated him by saying "it is very likely you will be shot down by police officers."

My investigator was rather startled when the employee in question agreed that he had, indeed, made a statement along those lines to the complainant. He qualified this admission, however, by adding that he made these remarks after the complainant had announced that he was going to fly over a certain R.C.M.P. station and drop a 500-pound bomb on it.

Further inquiries showed that the complainant was well known to several police departments, in B.C. and elsewhere, both for making bomb threats and for sending bizarre messages to police stations, usually using a code name, "Blue Tango One."

I advised the complainant that I would not investigate his complaint further. (CS 84-207)

The *Police Act* provides a four-stage procedure by which citizens may lodge complaints against the actions of municipal police forces. (There are twelve such police forces in B.C. The R.C.M.P. looks after policing in all other areas).

The first stage provides for the informal resolution of relatively minor complaints, the second, for an investigation and report by the chief constable of the municipal force involved in the complaint. If the complainant is not satisfied with this, he can request an inquiry by the Municipal Police Board, which consists of the Mayor and four other appointed members, and which is legally the employer of the police force. The fourth stage is an appeal to the Police Commission of British Columbia.

In most cases brought to my attention, the complainant has not utilized the *Police Act* procedure. In such situations, I normally decline to investigate the complaint and provide the complainant with details of the *Police Act* complaint-handling system.

In one particular case, the complainant had gone through all four stages of the *Police Act* procedure and was still dissatisfied. I agreed to investigate whether the Police Board had handled his problem in a fair manner.

Board's procedures fair

The complainant ran a small "convenience" grocery store in a residential neighbourhood. The problem arose over his obligation to provide refunds on empty soft-drink containers. As a result of an earlier incident, the complainant had sought the advice of the Waste Management Branch of the Ministry of Environment and had been told that he must provide refunds to customers only on those containers which had been actually bought in his store.

To make sure he would have to accept no bottles bought elsewhere, he put a secret identification mark on each soft-drink container he sold. One day, a customer brought in a bagful of containers, claiming they had all been bought at the complainant's store. Finding no secret mark on these bottles and cans, the complainant refused to accept them, whereupon the customer complained to the police.

At this point I should mention that the *Litter Act* and regulations are ambiguous on this question. One interpretation corresponded to the Ministry of Environment's advice to the complainant. Under the other interpretation, the complainant would be obliged to provide refunds on all containers of a type sold in his store, whether or not they had actually been bought there.

Unfortunately for my complainant, the constable investigating the customer's complaint adopted the second interpretation. After verifying that the customer had been refused a refund, and after checking that those kinds of containers were sold in the store, he issued a ticket under the *Litter Act*. My complainant was outraged by this, considering that he had already taken the trouble to obtain an "official" interpretation of his obligations. And since he and his wife could be easily identified as immigrants, he also felt that both the issuing of the ticket and the constable's demeanour during the investigation indicated racial discrimination and unnecessary harrassment. His complaint under the *Police Act* was not upheld by the Chief Constable's investigation, nor by an inquiry before the Police Board. The Police Commission refused to hear his appeal. At this point, the complainant came to me.

I had to explain carefully to the complainant that it was not my function to reinvestigate the events that led up to his receiving a ticket. That was the function of the Police Board. Nor was it my function to decide between the two interpretations of the *Litter Act* and regulations. That was the function of a court. My obligation was to examine the procedures used by the Police Board in dealing with his complaint, and to decide whether they were fair and reasonable.

Perusal of the transcript of the Police Board inquiry showed that my complainant had directed most of his efforts at trying to "prove" that his interpretation of the *Litter Act* was correct, rather than examining the normal police procedures in dealing with such problems. Under questioning, he agreed that he would not have made the complaint if he had not received a ticket. The Police Board and the Constable had their legal advisors present at the hearings. My complainant did not have a lawyer present, but the Board's solicitor had intervened on several occasions to help my complainant.

I concluded that the Board's procedures had been fair. My complainant had every opportunity to state his case and to present his evidence. The complainant was not happy with this outcome, and I sympathized with him. It was clear, however, that his difficulties had arisen because of the ambiguity in the legislation, and not because of the actions of the Police Board or its employees.

Before closing this case, I pointed out the difficulty to the Ministry of Environment, and suggested that the wording of the legislation be changed to remove the ambiguity. (CS 84-208)

EXPO 86

Expo 86 is a Crown Corporation established in 1980 under the *Expo 86 Corporation Act*. The board of directors is appointed by the provincial Cabinet. I had only two complaints against Expo 86 in 1984.

Fine arts, too, please

The first complaint about Expo 86 was from a man who was concerned that although the budget for Expo 86 allocated funding for both performing arts and visual arts exhibitions, the bulk of that funding was used for the performing arts.

He further complained that despite his experience and credentials as a visual arts consultant, Expo staff did not seriously consider the proposal he had submitted.

After I notified Expo 86 of this complaint, a meeting was arranged between one of the Directors and the complainant. Following that meeting, the complainant was satisfied that efforts were made to include fine arts exhibitions in the Expo 86 program and that he had been given the opportunity to establish his qualifications and credentials as a fine arts consultant. (CS 84-209)

Unfair competition?

The second complaint came from a computer information systems entrepreneur who alleged that Expo 86 had employed procedures which gave an unfair advantage to one of his competitors with respect to the forthcoming tendering of a major contract for an Interactive Video Information System.

He claimed that a major manufacturer of computer equipment received information concerning the specifications for the proposed system prior to its release to other prospective bidders. He said all bidders should be provided with the same information at the same time.

I learned that a representative of Expo 86 had, indeed, been in contact with the manufacturer in question for product demonstrations. But I found no indication that Expo 86 had shared information which might have placed other prospective bidders at a disadvantage. My investigation also confirmed that no representative of the manufacturer, nor any other prospective bidder, had been retained by Expo 86 to assist in the development of system specifications.

On the basis of these findings, I was unable to substantiate the complaint. (CS 84-210)

I.C.B.C.

Declined, withdrawn, discontinued	221
Resolved: corrected during investigation	172
Substantiated: corrected after recommendation	11
Substantiated but not rectified	5
Not substantiated	90
Total number of cases closed	499
Number of cases open December 31, 1984	75

I.C.B.C MUST FOLLOW THE RULES

Last year I reported that the relationship between my staff and the Corporation yielded good results. Happily, the relationship continues to be good. Unhappily, my concerns about I.C.B.C.'s errors in the area of recovering and collecting debts have not been assuaged.

Debts, whether they are collectible and how they are collected, continue to be the reason for many complaints. Following are a few examples.

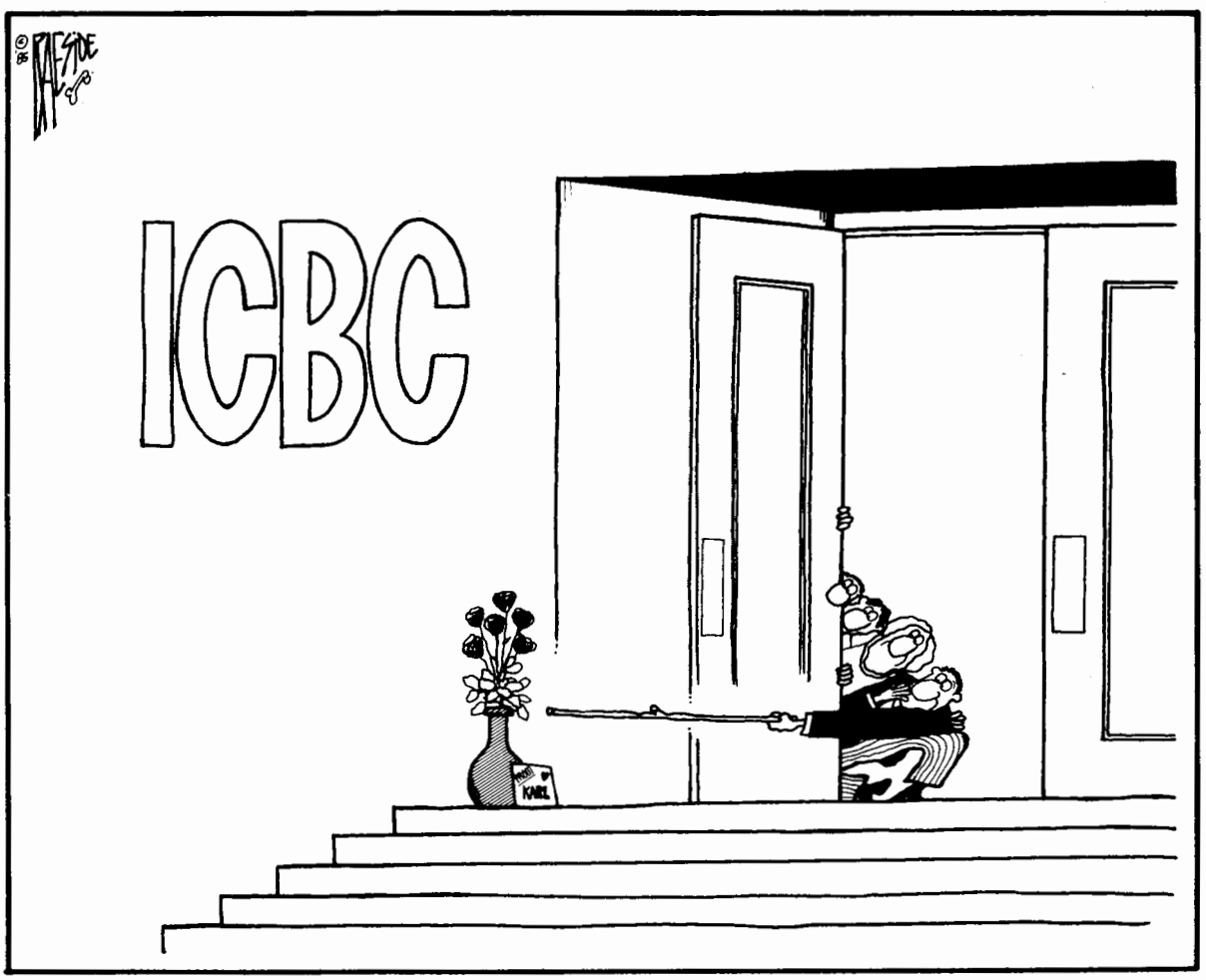
Horse sense prevails

A man complained that I.C.B.C. threatened not to renew his insurance policy, unless he paid $3,000 to the Corporation.

The alleged debt was for a repair bill I.C.B.C. had paid. The story involved a man whose car was damaged by a horse. The animal was supposedly owned by my complainant's daughter.

After examining the *Insurance (Motor Vehicle) Act*, I found no provision that authorized I.C.B.C. to refuse to renew the complainant's insurance under the circumstances. The Corporation had no authority to bill my complainant for this debt, unless it established his responsibility for the damages in court.

After pointing out to I.C.B.C. that it could not legally carry out its threat, the Corporation acknowledged its error and ceased further collection action against the complainant. (CS 84-211)



He only stole the truck

A 17-year-old boy stole a pickup truck for a joy ride. Later, he abandoned the vehicle to some other boys who drove it until they destroyed it in an accident. The 17-year-old was charged with theft, convicted, and sentenced to one year in jail.

When the boy returned home, I.C.B.C. decided to recover from him the amount paid under a claim to the owner of the damaged truck. The boy's father complained to my office when I.C.B.C. refused to allow him to renew his driver's licence or reinsure a vehicle until the debt was paid. The father argued that without a driver's licence or insurance, the boy would not be able to find a job and repay the debt.

I confirmed during my investigation that the boy had not been the driver of or a passenger in the truck at the time of the accident. When notified of this, I.C.B.C. decided to recover the debt from the other boys who had been in the vehicle at the time of the accident. My complainant was allowed to renew his driver's licence and insure his vehicle. (CS 84-212)

That's against the law

A taxi driver, operating his employer's taxi, was involved in a minor accident. A routine computer check of the man's driver's licence number showed that he owed money to I.C.B.C.

The vehicle was repaired under the employer's policy, but the adjuster informed the employer that I.C.B.C. would reject any future claims arising from accidents in company cars by this particular driver.

The adjuster not only exceeded his own authority but also that of I.C.B.C. with regard to collection powers. While the amount of a debt may be used to offset a claim, the Corporation cannot refuse a claim, unless the debt is larger than the claim. But more importantly, I.C.B.C. can collect a debt in this way only if it is owed by the registered owner of the vehicle to be repaired.

In the course of the investigation, the company owner informed me of an identical case involving another driver. I.C.B.C. informed the company that it had erred in both cases. The Corporation also instructed Claim Centre staff to keep in mind the limitations of I.C.B.C.'s collection powers. (CS 84-213)

Complainant saves $3,000

A complainant received a bill for more than $3,000 from I.C.B.C. for some 84 penalty points plus interest accumulated between 1981 and 1984.

The complainant advised me, however, that his driver's licence was suspended for the three-year period in question. According to the governing legislation, he should not have accumulated any penalty points during that time. When the matter was brought to I.C.B.C.'s attention, the Corporation eliminated the penalty point account which saved the complainant in excess of $3,000. (CS 84-214)

Father billed for son's insurance

A man complained that he received a bill for coverage for a vehicle that did not belong to him. Apparently, his son had obtained the coverage using the complainant's name. The father and son have the same first and last names, but their middle names are different. I.C.B.C. rectified the complaint by transferring coverage and billing to the son's account. (CS 84-215)

A fine distinction

A man went to jail for stealing a car. After he was released, he applied for a new driver's licence and insurance for his own vehicle.

I.C.B.C. rejected his application and insisted that he first pay his penalty point premium debt and reimburse the Corporation for the money paid out in the claim to the owner of the stolen vehicle. The complainant argued that he would not be able to find work and repay the debts, unless he had his driver's licence and insurance for his vehicle.

My investigator discovered that I.C.B.C. could instruct the Superintendent of Motor Vehicles to refuse to renew the driver's licence and refuse to reinsure his vehicle only with respect to the penalty point premium debt. It could not take these actions against the complainant for the damage to the stolen vehicle, unless the complainant's liability for the damage was established in court.

I.C.B.C. agreed with the distinction between the two amounts it was attempting to collect from the complainant. He was allowed to reinsure his vehicle and renew his driver's licence after he had paid the penalty point premium debt.

I.C.B.C. also instructed its legal department to brief the collections department on the different courses of action the Corporation was allowed to take in attempting to recover money. (CS 84-216)

Not responsible for high mortgage rate

Having declared bankruptcy more than six years earlier, and believing his credit rating was a good one, a complainant was confident he would be able to obtain a mortgage.

Several financial institutions, however, turned him down, because the local credit bureau stated that he owed money to I.C.B.C. He blamed the Corporation for having to obtain a more expensive mortgage through a broker.

There was no doubt that I.C.B.C. should have been aware of the bankruptcy and expunged my complainant's debt. But it appeared that the credit bureau and my complainant also bore some responsibility for his predicament. I did consider I.C.B.C. responsible for my complainant's higher mortgage costs. On my recommendation, however, I.C.B.C. sent a letter of apology to my complainant.

Because of the complainant's bankruptcy, I.C.B.C. should not have instructed the collection agency to collect the debt in the first place. And it certainly should not have done so within three months of the six-year expiry period for such debts. A collection agency might well be tempted to continue pressing a debtor for payment after the the limitation period has expired.

On my recommendation, I.C.B.C. instituted a procedure according to which accounts will be sent to outside collection agencies only until six months before the expiry of the limitation period. And all accounts sent out for collection now show the date on which, according to law, it can no longer be collected. (CS 84-217)

TEMPUS FUGIT

Chaos could result if the law imposed no time limitations within which to make claims, or commence legal actions. But there are occasions when I.C.B.C. should exercise its discretion, ignore a time limit and base its decision on the facts of the case. Here are two cases in which the Corporation agreed to do so.

I.C.B.C. pays — two years later

A complainant's mother died in a motor vehicle accident on September 2, 1981. The driver of the other vehicle was responsible for the accident.

The complainant applied through her lawyer for accident benefits from I.C.B.C. to cover the cost of her mother's funeral and the loss of the vehicle. The lawyer submitted the appropriate documents to I.C.B.C. in August 1982. I.C.B.C. issued a $1,000 draft to cover the funeral expenses but disputed my complainant's evaluation of the destroyed vehicle.

I.C.B.C. received no further correspondence from the complainant's lawyer and closed the file in March 1983. Dissatisfied with her lawyer's inaction, the complainant asked her insurance agent to inform I.C.B.C. that she wished to handle the matter directly. Only then did she learn that I.C.B.C. had issued a $1,000 draft for the funeral expenses. She returned the original draft because it was stale-dated, and asked I.C.B.C. to issue a new one.

In September 1983, I.C.B.C. informed the complainant that it would not reissue the funeral expense draft, and would make no payment for the vehicle because the one-year limitation period had expired. More than a year had passed since the accident, the Corporation said.

I concluded that the limitation period had not expired. According to the *Insurance (Motor Vehicle) Act*, a legal action in a claim must be commenced "within one year after the happening of the loss or damage or after the cause of action arose, or as the regulations may provide . . ."

The complainant had initiated her claim within the appropriate time frame. I.C.B.C. had even issued a cheque for the funeral expenses. The dispute over the value of the damaged vehicle had to be settled by arbitration, a step which had not been taken. I concluded that the complainant's cause of action had not actually arisen until I.C.B.C. refused to reissue the draft for the funeral expenses. That was in September 1983.

After reviewing the case, the Corporation's Claim Coverage Committee allowed my complainant's claim. I.C.B.C. also changed the limitation period to two years after the date of the accident or the date the last benefit payment was received. (CS 84-218)

Theft renders car a lemon

A complainant's car was stolen in May 1980. When the vehicle was recovered, about a week later, it was in sad shape. According to the complainant, the car was dirty, the tires were worn, the ignition switch was broken and the vehicle was leaking oil and producing a great deal of blue smoke.

He filed a claim with I.C.B.C. but for some reason, the adjuster examined only the vehicle's exterior. He did not inspect the engine which, according to the complainant, was "burnt out" as a result of the reckless driving after the vehicle was stolen.

The complainant instructed a garage to take the engine apart and asked the adjuster to make a second inspection. Unfortunately, no one from I.C.B.C. showed up and shortly after, the I.C.B.C. strike occurred. The garage eventually told the complainant that the vehicle would have to be fixed and moved. The complainant had no choice but to agree to the repair.

When the strike ended, the complainant did not approach the Corporation immediately concerning his claim because, according to news reports, I.C.B.C. was handling emergencies only and had a huge backlog. When his claim was finally reinitiated, I.C.B.C. rejected it on the grounds that the limitation period had expired.

It was my opinion that the expiry of the limitation period had no bearing on this particular case. No decision on the claim had been made before the strike. A good part of the delay was due to the strike and the complainant's difficulties in trying to contact I.C.B.C. to schedule a second inspection.

Since it was difficult to establish at this late date what condition the complainant's vehicle had been in after the accident, we presented the Corporation with evidence gathered from several witnesses who could attest to the vehicle's pre-accident and post-accident condition.

The witnesses included a mechanic who had worked with the complainant on his vehicle. He stated that the automobile was in excellent mechanical condition before the theft and in very poor condition after.

This information was confirmed by several other mechanics. While there was some dispute whether all the repairs done to the vehicle were necessitated by the theft, it was my opinion that there was sufficient evidence to prove that significant damage resulted from the theft.

I suggested that this was a case in which a suitable compromise settlement could be negotiated. After considering the matter, the Corporation reopened the case to negotiate a settlement with the complainant. (CS 84-219)

I.C.B.C pays medical costs

Although she had been severely and permanently disabled in an accident and I.C.B.C. had paid for a number of medical costs, as a result, a complainant's medical expenses were minimal for a long time and she made no claims for reimbursement.

When her medical costs again became substantial, she requested reimbursement from I.C.B.C. but was refused because more than one year had elapsed since the last payment was made.

My complainant was able to establish that her expenses were directly connected to the treatment of her injuries. I recommended that I.C.B.C. pay these costs. The Corporation agreed. (CS 84-220)

TO PUT IT ANOTHER WAY

I discovered a number of weaknesses in I.C.B.C.'s forms and the vehicle owners' guide distributed by the Corporation. The following summaries illustrate the Corporation's willingness to amend the printed word:

Old form asks irrelevant questions?

A young man, who had just obtained insurance for his new motorcycle, complained that the application form contained numerous requests for irrelevant information. He recalled, for instance, that he was asked to reveal the driving records of members of his household, as well as his own. He was also asked to state if he or his spouse had previously been denied coverage for a motorcycle.

I.C.B.C. immediately agreed that some of the requests for information were irrelevant, but added that this information had not been recorded or used to determine the complainant's insurability or insurance rates for some years. Unfortunately, the Corporation had neglected to modify the application form when it changed its procedures.

The form was redrafted, and the new form covers only information directly related to the application for insurance. (CS 84-221)

Kit revised

During the investigation of the complaint of a man whose claim had been denied, I discovered he had misread the Autoplan Motorist Kit information on the transfer of vehicles. He had mistakenly believed that the previous owner's insurance would cover his vehicle for a period of ten days following the purchase.

At my suggestion, the section in the 1985 Autoplan booklet covering vehicle transfers has been reworded and now it is completely clear that the ten-day grace period applies only when number plates are transferred to a replacement vehicle. (CS 84-222)

Speakers lifted, claim denied

A complainant purchased special insurance from I.C.B.C. under a special equipment endorsement for two additional speakers for the rear of his car. These extra speakers were not bolted to the vehicle but merely held in place by velcro strips. When the complainant's car was broken into, the speakers were stolen.

The man complained to us when I.C.B.C. refused to honour his theft claim on the grounds that the speakers had not been physically and

permanently attached to the vehicle. I.C.B.C. claimed that the wording of the special equipment endorsement and the statutory regulations specified this condition for the coverage to be valid.

I reviewed the regulations and the special equipment endorsement and concluded that the wording seemed to apply to tape decks and other equipment, but not to speakers. I suggested that I.C.B.C. pay the claim.

The Corporation's Claim Coverage Committee reviewed the claim and agreed to pay it. I.C.B.C. also decided to improve the wording of the special equipment endorsement and the insurance regulations to make it clear whether or not speakers for a tape deck must be physically and permanently attached to the vehicle. (CS 84-223)

MISCELLANEOUS CASES

Virtually every aspect of I.C.B.C.'s functions generates complaints. Here are just a few examples, touching on the Corporations various responsibilities, including a complaint about I.C.B.C.'s General Insurance Division, which was sold at the end of 1984.

Corporation pays claim

A man had to leave his truck after it broke down on a lonely road in northern British Columbia in mid-winter. When he returned, the truck had been completely gutted by fire. But that was only the start of his problems.

I.C.B.C. denied the claim, saying it did not regard the loss as accidental. My complainant hired a lawyer who made some enquiries, but my complainant could not start a legal action because he was short of money. Some months later, he asked me to investigate.

From my examination of the claim file and the circumstances surrounding the loss, it appeared that I.C.B.C. had reached conclusions that were not warranted by the evidence. I found no evidence that my complainant had set fire to his own truck. The few inconsistencies between the complainant's statements and those of witnesses certainly did not indicate that my complainant had deliberately misled the Corporation.

I made a preliminary recommendation that I.C.B.C. pay the claim. After reviewing the case, the Corporation agreed to to so. (CS 84-223)

Discount restrictions reasonable

A complainant objected to I.C.B.C.'s refusal to allow him both a handicapped driver discount and a senior citizen's discount on his 1984 insurance premium.

I.C.B.C.'s Regulations state that the owner of a vehicle qualifies for a handicapped discount if the vehicle is rated in one of 11 different rate classes. The driver in question was insured under a rate class that provided insurance for pleasure use only, and which applied to vehicles owned by persons over 65 years of age.

Since this rate class was not one of the 11 categories to which a handicapped discount applied, I concluded that my complainant was not entitled to a handicapped driver discount.

I also concluded that I.C.B.C's decision not to allow any vehicle owner a discount greater than a 25 percent (either for a handicapped driver, or a senior citizen insured for pleasure use only) is not administratively unfair. As with any benefit scheme, one can argue that a greater benefit should be provided, or that benefits should be provided to a larger category of individuals. All things considered, I found that I.C.B.C.'s restrictions on discounts are a reasonable exercise of its discretion. (CS 84-224)

Owner, not driver, loses discount

In January 1981, an important change in I.C.B.C.'s Regulations was to have gone into effect. From that date on, the driver responsible for an accident was to lose the Safe Driving Vehicle Discount, rather than the owner of the vehicle.

The change was announced in the news media, but was not implemented because of the strike. In November that same year, the Regulations were changed again to reinstate the original owner-related discount.

I received several complaints from vehicle owners who lost their discounts between January 1981 and November 1981. At least two of the complainants stated that they had relied on the existing Regulations in loaning their vehicles to friends.

I recommended that the Corporation restore discounts to those people who had complained to my office. After much correspondence and discussion of the issue, I.C.B.C. agreed to reimburse my complainants the amount of their lost discounts. (CS 84-225)

Not appreciated

When the carburator of my complainant's car leaked gas, the engine caught fire badly damaging parts of the vehicle. He made a claim under the comprehensive portion of his Autoplan insurance coverage.

He complained that the Corporation had found him partly liable for a purely accidental occurrence.

It turned out that my complainant was fully covered for the accident, except for the policy deductible. What had led him to believe that I.C.B.C. held him partially responsible was this:

Because the vehicle had been driven many kilometres since my complainant had purchased it new four years earlier, I.C.B.C. depreciated the cost of replacing some carpeting and the catalytic converter. Both items were considered to have depreciated in value since their installation. Had I.C.B.C. paid the full cost of replacements, it would have appreciated the value of the vehicle.

The Corporation, similar to other insurers, must place its clients as near as possible to the position they were in before the loss. I found that the I.C.B.C. had acted correctly in depreciating the value of the parts that needed replacing. (CS 84-226)

Musical burglar

Thieves broke into a complainant's home and stole some valuable recording and electronic equipment. The equipment had been used for a part-time business, one which brings my complainant high rewards in little but enjoyment.

I.C.B.C. denied the theft claim on the grounds that the equipment had a business use and was not covered under my complainant's household insurance.

At my request, the Corporation re-examined the claim and approved payment. The dispute over whether the equipment was used for business purposes or for a hobby became irrelevant when I.C.B.C. stated that coverage for books, tools and instruments which are used for business purposes are insured when the loss occurs in residential premises, even though these items are not covered under a residential policy if the loss occurs away from home. (CS 84-227)

Claimant must prove his case

A man who was self-employed at the time he was injured in a motor vehicle accident stated I.C.B.C. had refused to pay him any wage loss benefits. He did not believe I.C.B.C. was acting

reasonably in requesting information about his earnings over the previous year.

In my opinion, an insurer is justified in insisting that claimants prove their claims. In this case, I.C.B.C. could not be expected to pay for loss of wages when that loss had not been established. I found the complaint not substantiated. (CS 84-228)

Refund expected

Having cancelled an insurance policy, a complainant expected a refund from I.C.B.C. He thought it was unfair that the Autoplan agent would not apply the anticipated refund to the cost of his new policy.

I could appreciate the logic of my complainant's argument but was unable to substantiate his complaint. I.C.B.C.'s system, which must accommodate delays in the receipt of payments and information from agents and Motor Vehicle Branch offices all over the Province, does not respond readily to special adjustments.

Many agencies are linked to the Corporation by computer, but unless and until all agents are so linked, instant adjustments could too easily result in errors. (CS 84-229)

Will the real Mr. X please stand up

My complainant's account with I.C.B.C. was always up to date. But he had a namesake who owed the Corporation a considerable amount of money.

Every time my complainant tried to do business with an I.C.B.C. agent or the Motor Vehicle Department, the computer spewed out information on his namesake's debt, and he was told he would have to pay up before he could make any new transaction. The debtor's driver's licence number was not recorded next to his name, and it made, therefore, no difference that my complainant produced his driver's licence to prove that he was not the man they were looking for.

After discussing the matter with my investigator, I.C.B.C. agreed to send a letter of explanation to my complainant. The Corporation hoped — and so did I — that the complainant would be able to avoid future problems by presenting the letter to his agent or to the Motor Vehicle Department. (CS 84-230)

From debt to refund

A complainant leased a car in 1981. He purchased insurance for the vehicle under a finance contract with I.C.B.C.

Very shortly after, the car was involved in an accident and declared a total loss. The value of the vehicle was paid out to the owner. Because neither my complainant nor the car's owner actually surrendered the number plates, and because my complainant had made no payments under the insurance finance contract, I.C.B.C. attempted to collect the balance of the premium for the year. The complainant was unable to convince the Corporation he did not owe the money.

After my investigator's enquiry, a further record search was made. It was established that the car had been salvaged. The cancellation was backdated. Not only was my complainant's account cleared, I.C.B.C. found it owed him a small refund. (CS 84-231)

During 1984, five formal recommendations I made to I.C.B.C. under Section 22 of the *Ombudsman Act* were not accepted by the Corporation. One case has since become the subject of a Report to the Cabinet. I have reluctantly decided to close the four remaining cases as not rectified. One of them is summarized below.

Eating out

People who have been injured in a motor vehicle accident and receive benefits under the no-fault program may have to travel to another city to receive necessary medical or rehabilitation treatment.

I.C.B.C. accepts such trips as necessary and routinely pays medical fees and travel costs. One complainant, however, believed his meal costs should also be covered. I.C.B.C. pays meal costs only when it requires a policy holder to travel for medical evaluation. I believe the Regulations to the *Insurance (Motor Vehicle) Act* permit the Corporation to pay these costs and found that its refusal to do so was based on a mistake of law.

Regrettably, after much discussion and correspondence, I.C.B.C. decided not to change this policy. (CS 84-232)

The Corporation is not always swift when it comes to settling claims. In the following case, it took seven years and a lot of negotiations to bring the desired results.

Elephant gives birth to mouse

A young woman who had a relatively small personal-injury claim had to wait seven years before receiving payment from I.C.B.C.

The complainant, a resident of Alberta, was injured in an automobile accident in British Columbia in August 1977. She was a passenger in an automobile registered in Alberta and driven

by another Alberta resident who was responsible for the accident. He had crossed the centre line on a winding mountain road. The vehicle and the driver were uninsured. The other vehicle involved in the accident was also registered in Alberta and driven by an Alberta resident. The young woman, my complainant, suffered facial cuts which left her scarred and self-conscious about her appearance. Her loss, including medical expenses, was about $10,500, a relatively small claim for personal injury.

In April 1979, almost two years after the accident, her Alberta lawyer notified I.C.B.C. of her claim under the "uninsured motorist" provisions of the B.C. legislation. Since the two-year limit was about to expire, the lawyer also started legal action in Alberta in June 1979.

In October 1979, I.C.B.C. took the position that the action should have been started in British Columbia and that the claim was, therefore, barred by statute because the limitation period had expired. I.C.B.C. refused to settle the claim. This was the first indication that I.C.B.C. would refuse to consider the claim if it was not supported by a legal action.

The woman's lawyer and I.C.B.C. then began a long and fruitless exchange of correspondence in which I.C.B.C. maintained its position that the limitation period had expired and that it was not liable.

Finally, in July 1981, the lawyer complained to me through the consumer advocate of the Edmonton Journal. He said that, although his client could go to court to force I.C.B.C. to pay, the cost of doing so would use up most of the amount claimed. He said I.C.B.C.'s legal position was so weak that it was unreasonable to insist on going to court to resolve the dispute.

In my preliminary report to I.C.B.C. in December 1981, I pointed out that Corporation seemed to have the weaker position on the legal issue (whether the action should have been commenced in Alberta or British Columbia). I made a preliminary recommendation that I.C.B.C. settle the claim.

When I.C.B.C. would not budge from its position, I proposed that the legal issue be brought before the court in a summary way and that I.C.B.C. pay the claimant's expenses in bringing the action. It was impossible, however, to obtain an agreement with I.C.B.C. concerning certain subsidiary legal issues, and my proposal had to be abandoned.

These unproductive negotiations took several months. I then suggested to the claimant's lawyer that he make a final attempt to settle the matter by proposing to I.C.B.C. an acceptable figure. In September, 1982, the lawyer wrote to I.C.B.C and offered to settle the matter for $10,439.

At this point, I.C.B.C. raised another problem. The occupants of the other Alberta vehicle which had been involved in the accident had also sued the driver of the uninsured vehicle. Together their claims and that of the claimant exceeded the statutory limit of I.C.B.C.'s liability ($50,000). To settle with the claimant alone I.C.B.C. said, could prejudice the position of the other parties. My investigator contacted the lawyer for the other parties. He obtained his client's instructions to settle their claim for the statutory limit minus $10,439, which would go to the complainant.

I informed I.C.B.C. of this offer in December 1982. In February 1983 I.C.B.C. replied that it would attempt to negotiate a settlement with both lawyers. This was a radical change in I.C.B.C's attitude. It seemed to herald a resolution of the case in the near future. But it was far from over. Negotiations between I.C.B.C and the lawyers for the complainants and the other parties continued through the rest of 1983 and the first nine months of 1984. My investigator had to intervene a few times to keep the parties talking and to press them for action. Finally, on October 1, 1984, more than seven years after the accident, the complainant received a cheque for $10,439 from I.C.B.C. in full settlement of her claim.

The B.C. legislation was amended in 1980 to clarify the procedure for claiming against an uninsured motorist. Since then I have not received any similar complaints. (CS 84-233)

LABOUR RELATIONS BOARD

Declined, withdrawn, discontinued	8
Resolved: corrected during investigation	5
Substantiated: corrected after recommendation	0
Substantiated but not rectified	0
Not substantiated	4
Total number of cases closed	17
Number of cases open December 31, 1984	2

I receive very few complaints against the Labour Relations Board. When I do, they are most often directed at the Board's decisions rather than its administrative functions. The Board is a fairly sophisticated agency in terms of conducting hearings and writing its judgments. Recently, there have been some complaints about delays in decisions, but even these are usually resolved in short order. Other complaints are not substantiated. Here is one example.

Fitting the definition

A shipyard worker injured his back and resigned his job. He received benefits for a while and then indicated to his union that he was fit to return to work.

Thirteen months later, when he was finally called back to work, he discovered that in the meantime, five other employees had been hired in his department. Nine months after his return to work, he was laid off.

He complained to the Labour Relations Board that by calling back these five workers before him, his union had violated Section 7(1) of the *British Columbia Labour Code*. This section reads:

"A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit, whether or not they are members of the trade union or of a constituent union of the council."

But the Board decided that the union had not acted in an arbitrary or discriminatory manner, or in bad faith. Later, the Board reconsidered its decision and came to the same conclusion. At that point, the worker brought his complaint to me.

It seemed to me that the key issue of this case had not been sufficiently addressed. That issue was the union's claim that it had contacted the complainant before offering work to the other five. At that time, according to the union, the complainant had indicated that he was not ready for heavy work. If that was true, the hiring of the other five workers was justifiable. If not, the worker might have a good case against the union.

There were discrepancies in the information the union gave me, and I concluded that the outcome of this case depended entirely on the credibility of the parties. Earlier Board hearings had accepted written submissions only. I proposed that the Board grant the worker a hearing.

Again the Board sought submissions from the parties involved. In a decision some weeks later, the vice-chairman dealing with the matter underlined what the Board considered the key to the matter — something which had not previously caught my attention. By resigning his position, the worker had placed himself outside the protection afforded by Section 7(1) which requires a trade union to represent fairly "any of the employees in an appropriate bargaining unit."

Labour legislation in B.C. does not apply to a trade union's hiring-hall practices. Section 7 of the Labour Code is restricted to employees in an appropriate bargaining unit. I agreed with this interpretation and found the complaint not substantiated. (CS 84-234)

SUPERANNUATION COMMISSION

Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	18
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, 1984	3

Once again, the Superannuation Commission has given me excellent co-operation and assistance. As I stated in previous reports, considering the Commission's mandate, I receive very few complaints. Here are some examples.

A refund and a vacation

An employee of a municipality complained to me about the Municipal Superannuation Plan, administered by the Superannuation Branch.

He was reaching the age of 60 and wanted to leave the service. He did not want a pension, but rather a refund of his contributions.

There was also the matter of his annual vacation. He was told by his employer that, in order to qualify for his vacation, he would have to retire on his 60th birthday. He was also told that, if he wished a refund of his pension contributions, he would have to retire before he reaches the age of 60. In other words, he could either have his vacation or his refund. The complainant, however, wanted both.

My investigator discussed the matter with Superannuation Branch staff. It turned out that there was no problem at all. The complainant could have a refund of his contributions, regardless of when he would leave the service, as long as he had fewer than 20 years of service. He had approximately 11 years of service which meant that he could enjoy both his annual vacation and his refund. (CS 84-235)

A rude awakening

A man had worked for the City of Prince George from 1965 to 1982. When he retired, he found that his pensionable service with the City amounted to only five months.

In discussions with the Superannuation Branch, my investigator found that the City of Prince George had not made the required pension deductions for several of its employees, in some cases going back as far as 1962. Nor had the city paid its own share into the plan in these cases.

The Superannuation Branch discovered this omission sometime in 1980 and tried to work out an arrangement with the city to make the necessary payments retroactively. The city paid some monies but refused to pay others. The matter is now before the courts.

In my complainant's case, the city not only failed to make the necessary deductions from his paycheques but also neglected to make its own contributions between 1965 and 1976. That part is included in the court case.

From 1976 to 1981, the city paid its contributions but not the complainant's. For those years, the complainant is entitled to have the pension he would normally receive for the years of service in question. Alternatively, the complainant could pay the contributions he should have made and receive a full pension for the years 1976 to 1981.

Only for the last five months of his employment with the city did the employer deduct pension contributions from the complainant's paycheques and add the employer contributions. For this short time span, the complainant is entitled to a full pension.

The Superannuation Branch agreed to calculate the complainant's pension option and to help him with his application. The City of Prince George is not in my jurisdiction, and I was, therefore, unable to help the complainant further. (CS 84-236)

Commission acts quickly

Two months after his retirement, a former public servant still did not get his monthly pension benefits.

He had chosen a pension option that would entitle his wife to receive benefits after his death, which required that he provide the Superannuation Commission with proof of his wife's age, i.e. her birth certificate.

But the birth certificate was difficult to come by because there were problems regarding his wife's maiden name.

Once the Superannuation Commission was aware of the problem, it agreed immediately to grant the man an interim pension and review the matter when the birth certificate was available. (CS 84-237)

Hello, anyone there?

The Superannuation Branch has its offices in Victoria. My complainant, a pensioner living in Vancouver, wanted to talk to the Superannuation Branch.

One afternoon, about four o'clock, he phoned the Branch and was told by a switchboard operator that he could not talk to anyone because, except for herself, nobody was there. The office, she said, closes at four.

His complaint to me was that someone answered the phone at all. If no one was there to provide services, why bother? Because the switchboard operator had answered the phone, he was out the money for a long-distance call.

The Superannuation Branch explained to me that staff are in the office until half past four, and that senior staff are available until at least five o'clock to accept phone calls. The switchboard operator was a relief person who was not properly informed. The Branch refunded my complainant the cost of his unsuccessful long-distance call. (CS 84-238)

Just a little mixup

A woman started working for the government in 1972. When she wanted to retire in 1984, some-

one told her that her pensionable service commenced in 1976 rather than in 1972, and that she was not yet eligible for a pension.

We looked into the matter and confirmed that her employment had started in 1972. But because she was an auxiliary employee at the time, she had to complete 240 days of service before she qualified for coverage under the Superannuation Plan. Her pensionable service, therefore, started in 1973.

When she complained to me, she had indeed completed 10 years of pensionable service and had acquired the right to a pension, once she reached retirement age. (CS 84-239)

WORKERS' COMPENSATION BOARD

Declined, withdrawn, discontinued	433
Resolved: corrected during investigation	125
Substantiated: corrected after recommendation	28
Substantiated but not rectified	7
Not substantiated	48
Total number of cases closed	641
Number of cases open December 31, 1984	306

My increasing difficulties with the Workers' Compensation Board are outlined elsewhere in this report. In this section, I will deal with specific complaints.

The majority of complaints involves low pension awards, termination of benefits, delay in decisions, and inadequate rehabilitation assistance. I also receive complaints about the Board's procedures for collecting money from workers who have been overpaid as a result of miscalculations in wage rates or pension awards.

Another problem arises when a worker has received unemployment insurance within three years prior to an injury. The Board does not count the unemployment insurance payments as earnings but averages the time a worker was on unemployment insurance when it determines the total earnings. This forces some workers to turn to the Ministry of Human Resources to supplement their wage, and they end up with benefits substantially below their earnings at the time of injury. I do not believe it is the intent of the legislation to reduce injured workers to this income level, and I have made recommendations to the Commissioners regarding this practice.

Workers are not the only ones who complain to the Ombudsman. Employers complain too. The Workers' Compensation Board finances its operation through assessments charged to employers. The amount of the assessment depends on the hazard rating assigned to a particular industry or category of businesses. Some employers complain because they disagree with the category in which the Board places their business. Others complain because of the Board's overly aggressive collection practices.

The *Ombudsman Act* does not allow me to investigate complaints under appeal. I cannot even investigate a complaint to which an appeal is available. I can only investigate if complainants have exhausted available appeals, or if they have run out of time to appeal.

I can, of course, also investigate complaints for which there are no appeals. This category includes the conduct of Board officials and administrative problems. In some cases, there is a remedy available to the worker, and no investigation is required. A worker who has new medical evidence related to a claim, can submit this evidence directly to the Board and ask for a reconsideration of the decision in dispute.

Wage loss benefits restored

A master mechanic who had been earning $15 an hour at the time of his injury was shocked when the Board reduced his wage loss benefits to $99.10 per week and declared that he owed the Board $4,560.

The Board had decided to average the worker's earnings over a three-year period rather than over the time he had worked in Canada. The worker had been out of the country for two years.

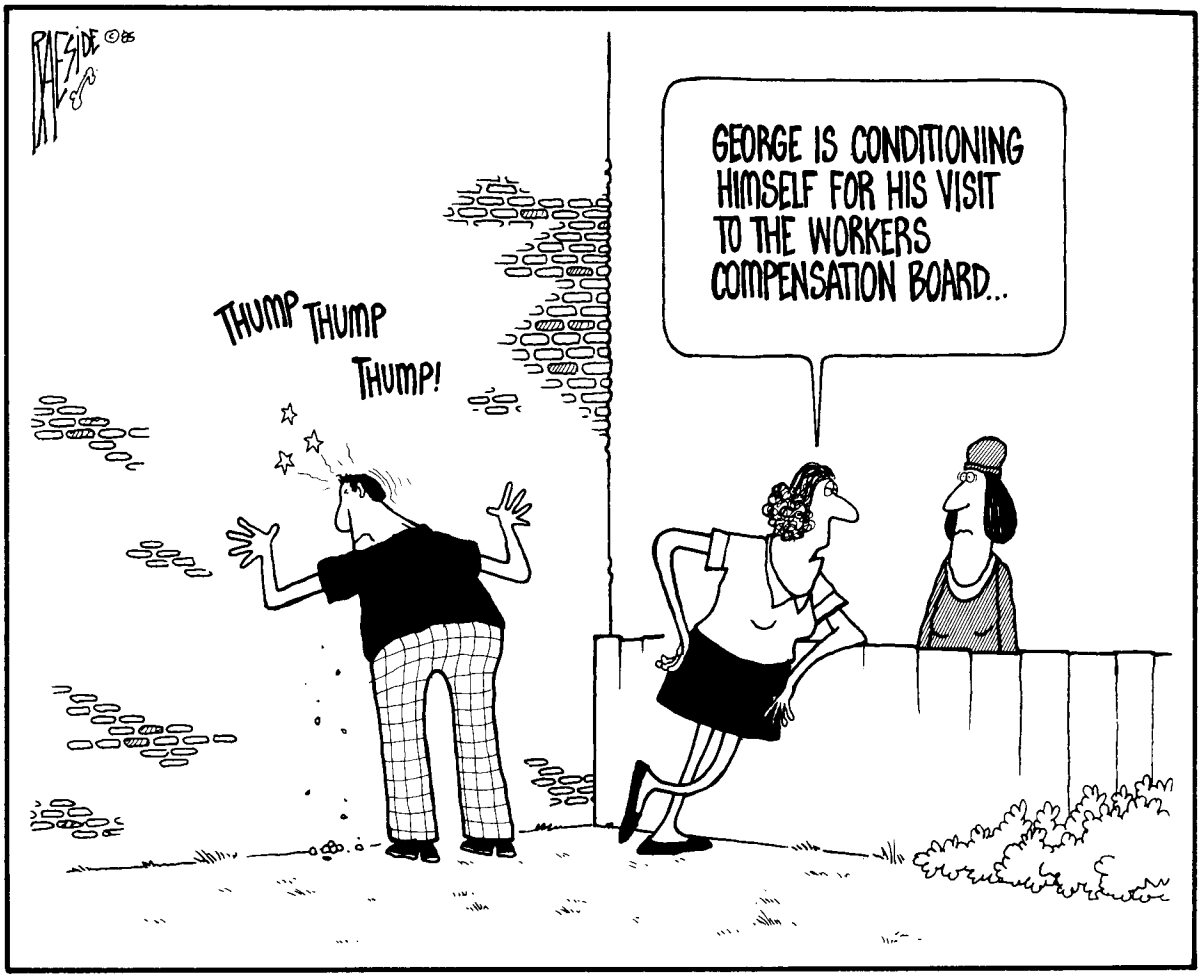
The worker did not speak English fluently. He had not understood the Board's procedures. But he was able to prove that he had a consistent work record for 16 years prior to his two-year absence. He was also able to prove that he would have been working for his last employer had he not been injured.

As a result of this information, the Board restored his original wage loss rate and cancelled the demand for repayment. (CS 84-240)

Tests show fractured knuckle

For some workers, the lack of a definite diagnosis of a problem leads to difficulties with the Workers' Compensation Board.

A drywaller injured his hand while working. He suffered pain and swelling in the hand when he tried to resume work. The Board cut off his wage



loss benefits because there was no specific diagnosis of a medical problem.

As a result of our investigation, the Board agreed to have the worker undergo an industrial assessment at the Richmond rehabilitation clinic. After a few days, the rehabilitation and medical staff observed the swelling in his hand and ordered further x-rays which revealed a fractured knuckle and bone fragments in his hand. Surgery was then scheduled and the worker's wage loss benefits were reinstated. (CS 84-241)

Board pays for homemaker

A worker who was required to attend the rehabilitation clinic contacted my assistant because the Board had denied him further assistance for a homemaker to care for his disabled wife while he was away. The Board had also demanded repayment of money he had previously received for that purpose.

The Board can provide money for a babysitter if an injured worker's spouse is unable to provide care. But in this case, the worker had not made it clear to the Board that he could not leave his disabled wife to care for their son for any extended period of time. The Board reconsidered the case and reimbursed the worker for his expenses. (CS 84-242)

Despite my difficulties with the Board, I have some good things to report. The following cases indicate a measure of success in the resolution of complaints against the Board.

Light at the end of the tunnel

My 1982 Annual Report documented the case of a worker who was plunged into a bureaucratic nightmare when an adjudicator denied his request for a reopening of his claim. (Page 140 — "Bureaucratic Nightmare").

The Commissioners at the time agreed with my recommendation to reconsider the worker's claim on its merits. Subsequently, the same adjudicator who had refused to reopen the claim was directed to review the claim on its merits. Again, she refused to reopen the claim. She believed the worker had recovered from his accident. His back problems, she decided, were unchanged from the time he previously returned to work.

The claimant appealed this decision to a Medical Review Panel, an independent panel of three doctors, who review matters involving medical disputes. The Panel's decisions are binding on the Board. The Panel found that the worker had a disability consisting of chronic low back pain. His work injury, the Panel found, had resulted in a permanent partial disability.

Because of the Panel's findings, the Board awarded the claimant a permanent partial disability pension of 2.5 percent. This pension was commuted into lump-sum cash payment of $7,126.90 plus $5707.86 in accumulated interest, for a total amount of $12,834.76. (CS 84-243)

At long last, a second look

My 1983 Annual Report included a case involving a former employee of a long-term care home who complained that the Workers' Compensation Board had refused to pay her benefits because her employer had no coverage. (Page 64 — "Caught Between a Rock and a Hard Place").

We had concentrated our investigation on the question of why not all long-term care facilities were required to have Workers' Compensation Board coverage. The Board's schedule required only rest homes with "ten or more bedrooms" to have coverage. The Board finally agreed to amend Schedule A of the *Workers Compensation Act* by deleting the reference to the number of bedrooms. I concluded at that time that although this did not help our complainant, it should prevent other employees from getting caught in a similar bureaucratic maze.

I also investigated the worker's complaint that the Board had rejected her claim on the basis that her employer was classified as a rest home with fewer than ten bedrooms and was, therefore, not required to register as an employer with the Board. The Board did not accept the argument by the worker's advocate that the employer was actually a "nursing home" and should be required to register with the Board.

In deciding that the employer was operating a rest home rather than a nursing home, the Commissioners had relied on the fact that the employer was licensed by the Ministry of Health as a Level 1 Personal Care Facility which was not required to employ professional nurses. I found that the Commissioners had failed to take relevant factors into consideration. The employer was, for instance, required to employ, and did, in fact, employ, professional nurses. Secondly, during a two-and-a-half-year period, an average of only 39 percent of the patients were classified as "personal care." The remainder were in higher care classifications. This indicated that at least a substantial percentage of the patients needed and actually received nursing care.

The Board's definition of a nursing home is "any community care facility required to have a graduate nurse on staff 24 hours a day to administer medication as required." Long-term care requires that patients in "extended care" receive "around the clock" supervision by a graduate nurse. The patient the worker was lifting when she was injured, was classified as "extended care."

It is also relevant that, according to the Board's assessment department, the distinctions between nursing homes and rest homes had grown less apparent. The department had, in fact, recommended that all rest homes be required to register with the Board. This recognition supported the conclusion that the "ongoing nature" of a facility cannot necessarily be equated with its licensing status.

I made a preliminary recommendation that the Commissioners reconsider their decision to deny the claimant's appeal. The Commissioners agreed that the employer should have been registered with the Board as a nursing home at the time of the claimant's injury. As a result of this agreement, the claimant was able to have her claim adjudicated on its merits. This was previously not possible because the Board had concluded that the employer was not required to register with the Board. (CS 84-244)

The Leslie Peterson Rehabilitation Centre in Richmond is perhaps the finest facility of its kind in British Columbia. That is not to say the clinic or the rehabilitation program are without their share of problems.

Not a good reason

A complainant had worked with a contracting firm for less than a month when he injured his shoulder on December 13, 1974, while unloading plaster board.

A number of irregularities surfaced with regard to this claim, but the worker remained on compensation, attending the Board's rehabilitation clinic in Richmond the last few months prior to the termination of his claim on November 6, 1975. His claim was terminated on that date because he was considered fit to return to work.

He appealed this decision to the Boards of Review which decided there was sufficient medical evidence that his "description of the injury indicated, vaguely, what it may take to partially tear the supraspinatous tendon."

The Board of Review concluded that despite the irregularities, which had become apparent, and even though the claim may not have been acceptable in the first place, the worker should not be penalized with respect to benefits he was entitled to under the *Workers Compensation Act*. The Board of Review pointed out that the claim was never ruled unacceptable and recommended that the claim be reopened, and that the Compensation Board pay benefits for an appropriate period. One member of the panel dissented because an orthopedic specialist had indicated on November 25, 1975, that the worker was fit to return to work.

The employer appealed the Board of Review's decision. His appeal was based on the orthopedic specialist's report, as well as on opinion of the Workers' Compensation Board's doctor who had examined the worker in January 1976. The Workers' Compensation Board replied that the worker had "been adequately compensated for any injuries he may have sustained in the compensable incident of December 13, 1974" and allowed the employer's appeal.

Despite the uncertainties surrounding this claim, I was still concerned about the manner in which the complainant's benefits had been terminated. We found, for instance, that the rehabilitation clinic had had some problems with the complainant. A memo from a clinic supervisor, dated January 14, 1976, outlined the difficulties the Workers' Compensation Board had to get the worker to follow a prescribed program. The supervisor noted:

"Once again the patient ignored the change and on several occasions failed to attend the Clinic for treatment. On account of the patient's obvious lack of co-operation and belligerent attitude towards respective therapists, Mr. ___- requested Dr. ___- to terminate the patient's treatment at the Clinic. This was done."

Just because the worker may have been a problem in therapy, did that mean he was able to return to work at that time? By November 25, 1975, however, I believe, there was clear medical evidence that the complainant was fit to return to work.

I recommended that the Workers' Compensation Board consider paying the worker benefits from November 6, 1975 to November 25, 1975. The Board declined, stating that its position was supported by medical evidence, but extended benefits, nevertheless for one week until November 13, 1975. The reason? The worker was to have been referred to the Rehabilitation Services Department for a work assessment following his time in the clinic. This apparently was not done. I was still of the opinion that the complainant should be considered for benefits between November 13 and November 25, the day he was considered by the orthopedic specialist to be fit to return to work. But the Commissioners refused to accept my recommendation to that effect. (CS 84-245)

The wrong program

While working as a logger, a man injured his left ankle in 1971. He applied for and received compensation at the time. Because he continued to experience discomfort in his ankle, he underwent surgery in 1982. The pain persisted and he was not able to return to the warehouse job he had just before the operation.

To restore the man's earning power, the Board agreed to sponsor him for a seven-and-a-half-month computer technology course. The worker, who had already completed one semester in university, tried to sell the Board on the idea of incorporating a degree program into the rehabilitation plan. When the Board would not go along with his proposal, the worker reluctantly enrolled in the computer training course. Unfortunately, he was forced to withdraw halfway through the course because his condition got worse.

Our investigation centred on whether the rehabilitation program the Board had offered the worker was sufficient to overcome the effects of his compensable injury and restore him to his previous earning capacity. Decision #62 of the Board's Reporter series deals with rehabilitation and retraining. It states:

"The Board should provide . . . the cost of any retraining or educational program considered reasonably necessary to overcome the effects of any residual disability. . . . it must appear that the candidate is able to benefit from the retraining or educational program . . . the primary guideline is that the Board should, where practicable, support a program sufficient to restore the worker to an occupational category comparable in terms of earning capacity to his pre-injury occupation."

It was the rehabilitation consultant's decision that the computer technology course would restore the worker's earning power "in the long run." The consultant estimated that it would take five years to restore the worker to his previous earning level.

The worker was not so confident. The course was only an entry level course into what was fast becoming a highly sophisticated and competitive field. And the Board knew that candidates it had sponsored for this particular course were

still having difficulty finding jobs two years after graduation.

But even if the worker were to reach his former wage level five years down the road, it is safe to assume that his wages would have risen beyond that level, had he been able to stay in the job he had before his operation. In other words, he might achieve his 1982 wage level in 1988 or 1989, but he would still lose five years worth of potential wage increases.

In this case, the Board did not meet the objective stated in Decision #62, namely "to restore the worker to an occupational category comparable in terms of earning capacity to his pre-injury occupation."

I recommended that the Board reassess the complainant and offer him retraining that would restore his pre-operation earning power now, and not in 1988. The Board rejected that recommendation. Instead, it offered to commute a permanent partial disability pension the complainant received, so he might pursue his academic goals.

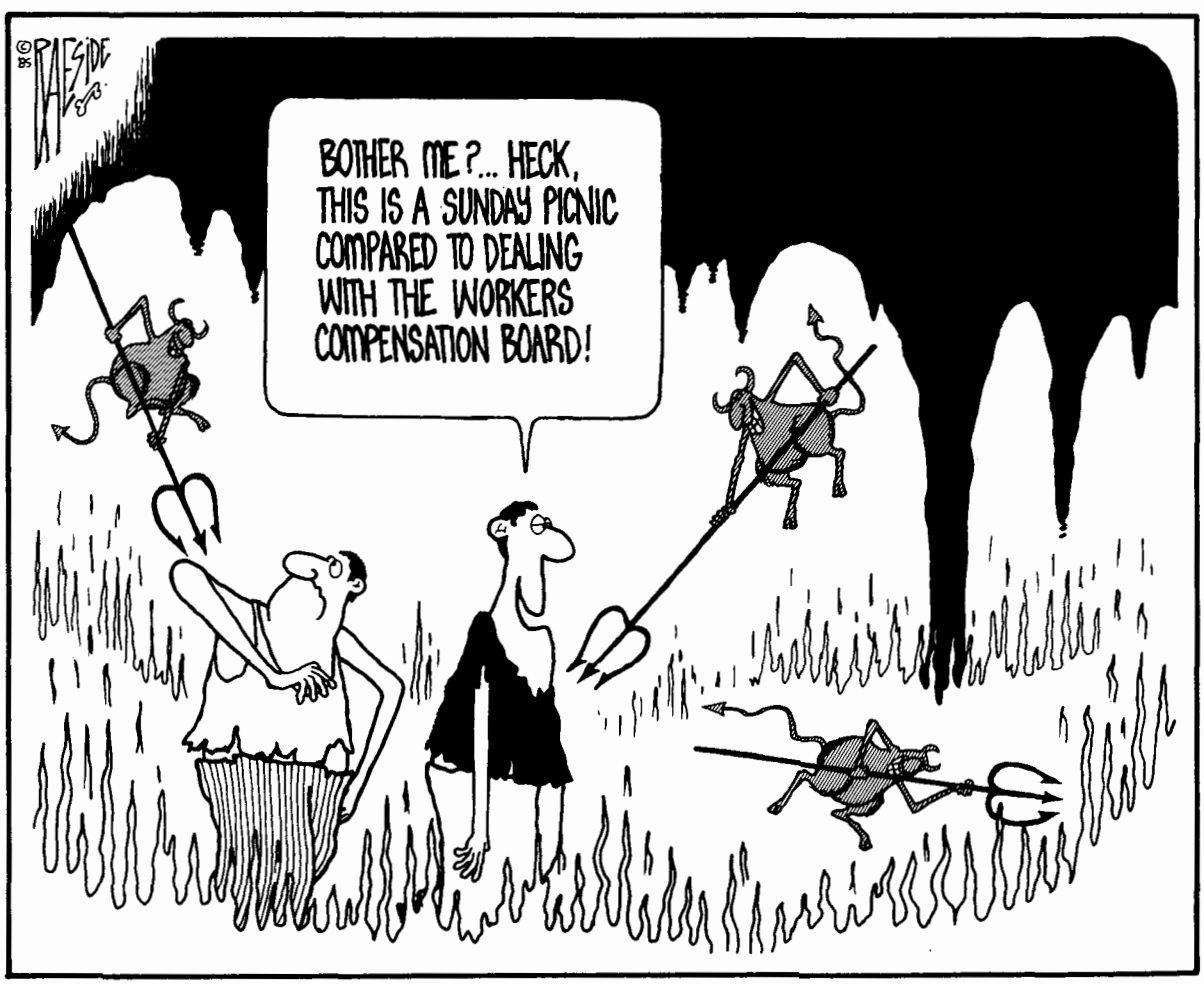
Neither the complainant nor I believed that the Board's proposal was a fair one. Why should he be forced to forego his pension for the sake of rehabiliation? But in the end, the complainant decided that this would at least bring to an end the impasse he had reached with the Board.

I closed my investigation while the complainant pursued the option of having his pension commuted. (CS 84-246)

Loss of earnings versus impairment

The service manager and shop foreman of a truck and tractor company suffered a compression injury to his cervical spine when he was hit on the head by a door at work. The Board accepted his claim.

Two years later, he underwent an operation to his neck. The Board initially rejected the worker's claim that his symptoms and the need for the operation were the result of his work accident, but a Medical Review Panel later reversed this decision. The Board then considered the claimant for a pension.



The Board considered the worker's physical impairment to be at 10 percent of total impairment. Next the Board considered whether he had suffered any loss of earnings as a result of his injury. To determine pension awards, the Board considers the degree of physical impairment, as well as the projected loss of earnings. The larger of the two provides the basis for the pension. In this particular case, the Rehabilitation Consultant concluded that the worker was capable of working as a shop foreman with no loss of earnings. His pension was, therefore, based on his physical impairment, which was assessed at 10 percent.

I found that the Disability Awards Officer wrongly concluded that the worker was capable of working as a shop foreman. The Rehabilitation Consultant had contacted the worker's former employer who stated that the foreman's job was primarily one of paper work and supervision. When my investigator contacted the employer, significant additional details came to light.

The job actually required functions or motions the worker was unable to perform, according to previous findings of the Medical Review Panel and Board staff. The worker's two doctors also gave medical support to the worker's contention that he was uable to perform the job.

The Board accepted my recommendation to reconsider its decision and asked a second Rehabilitation Consultant to reassess the worker's employability. This Rehabilitation Consultant agreed that the job of a shop foreman was not suitable to the worker, but added that he could do a number of other jobs, as a result of which he would not suffer a loss of earnings greater than his present pension. (CS 84-247)

A large bureaucracy tends to lose sight of what it considers minor details. These details, however, are very important to a worker whose life is affected by the Board's actions or decisons.

Little things mean a lot

A labourer complained to us when the Board cancelled his wage loss benefits some time after he fell about seven feet from scaffolding to a metal floor, injuring his back. The Board claimed that the accident had caused a flareup of a congenital condition, but that the flareup had subsided.

After the Board cancelled the worker's benefits, its rehabilitation department tried to assist him in obtaining employment. It also arranged for physiotherapy. But the worker did not take full advantage of these opportunities. For a number of years, he drifted in and out of short periods of employment and eventually left the province.

Five years later, he returned and requested retraining from the Board's rehabilitation department. The Board declined, offering him on-the-job training in some suitable employment instead. The worker refused. For years after that, he kept requesting rehabilitation services, but got nowhere.

I was not able to substantiate that this worker had any further claim to compensation after his benefits had been cancelled. His problem was not related to the accident but to his congenital condition, which was not the Board's responsibility. His problems may also have been complicated by a psychological condition that also was not related to his injury. The offer of rehabilitation assistance remained open to the worker, but he would accept such assistance only on his own terms which I considered unrealistic.

There was one minor issue left to deal with. Early in the handling of this claim, the worker's physician had suggested that the Board provide him with a back support. A year and a half later, the claims adjudicator wrote to the unit medical officer:

> "You will note on the claim file that this worker was given a requisition for a back support one and a half years ago and in fact the worker did present this requisition to Mr. ____. However, for some reasons unbeknownst to anybody he did not receive this back support. If you feel that this in fact will help this man go back to work, I would appreciate your providing him with the appropriate forms to obtain another such support."

The Board doctor noted that the support had not been provided, but did nothing about it. When the worker returned to British Columbia five years later and sought to have his claim reopened, the new adjudicator on the case wrote:

> "I note that a back brace was initially authorized for the worker, but apparently, the worker did not receive this item. He is now requesting that he be issued with a back brace to relieve his present symptoms."

A year and four months later, the worker still had no back brace. I recommended that the Board assess the worker's condition and give him a back brace, provided he would benefit from it. The Board agreed. (CS 84-248)

Delay seems to be endemic to large organizations. Where citizens' rights are concerned, run-of-the-mill excuses offered by bureaucracy for delay are not acceptable. Occasionally, I receive complaints about delay at the Board's initial level of claim-

handling. More frequently, complaints concern delay at the first level of appeal — the Boards of Review which are discussed elsewhere in this report. But I also get complaints about delay at the uppermost levels — the Commissioners and the Medical Review Panels.

A long time coming

In 1980, a worker sought to have her earlier claim reopened because of a further deterioration of a knee condition. When the Board rejected her application, the worker appealed to the Boards of Review. That was in November 1980.

In November 1981, the Boards of Review allowed her appeal and returned her claim to the Workers' Compensation Board to determine the actual amount of benefits due.

The claims adjudicator met with the worker in January 1982 and told her that The Board needed more information to settle her claim. No further action was taken until July because, according to the claims adjudicator, the file had been misplaced.

During September and October of that year, the adjudicator tried to collect some additional information from a medical clinic. When there was no response, he followed up with a letter in May 1983.

For several months, the worker's lawyer sent letters to the claims adjudicator, complaining about the delay. The adjudicator replied that he was investigating the worker's employment record. By now, it was February 1984.

The Board's claims procedure manual notes that some adjudicators may require field work in addition to correspondence in order to obtain the required information. The bulletin states that "the emphasis in adjudication should be to act and not simply react or wait for data to arrive. With this in mind, adjudicators should strive to pursue the field work solution to problems which they deem should best be handled in that manner."

Finally, the worker brought her complaint to me. Following our investigation, I concluded that the delay in this case was unreasonable and recommended that the Board come to an immediate decision. I also recommended a change in administrative procedures that would trigger a review of a claim file by supervisors if decisions are not reached within a reasonable time span.

My recommendation went to the Board in mid-August 1984. The adjudicator gave his decision in mid-September.

In a letter to me, the Commissioners subsequently agreed that the delay in implementing the Board of Review decision had, indeed, been too long. But they stated they did not consider it necessary to implement my second recommendation. The Board's existing policy, the Commissioners said, was to implement Board of Review decisions without delay. The Commissioners said, however, they would stress this policy at staff training sessions. They also undertook to take up the matter with the adjudicator who handled this case. Now all I need is the strength to believe the Board's assurances will make a difference in reality. (CS 84-249)

Delays getting shorter

A worker whose claim had been rejected by the claims adjudicator, by the Boards of Review and by the Commissioners, took his case to a Medical Review Panel. At the same time, he complained to us about the length of time it had taken the Commissioners of the Board to hear his appeal.

We found that the Commissioners had informed the worker of their decision nearly 18 months after the Board of Review had reached its decision. But I could not blame the entire delay on the Commissioners. It had taken two and a half months from the time the Board of Review made its decision until the Commissioners received the notice of appeal.

There followed a series of delays when the worker's lawyer tried to obtain certain medical evidence. One doctor in particular was rather slow in responding. Another month was lost when the lawyer mistakenly forwarded the worker's submission to the Boards of Review, rather than to the Commissioners. And when the Commissioners finally considered the submission, they discovered that one page was missing. Waiting for the missing information, resulted in further delay.

But even so, there were four months in this scenario during which the worker's file appeared to have done little else than sit in a pile, awaiting the Commissioners' attention.

I consider that kind of delay unreasonable. In my 1980 Annual Report, I stated that delay might be considered unreasonable whenever service to a member of the public is postponed improperly and unnecessarily, or for some irrelevant reason.

In recent years, there has been a sharp increase in the number of appeals to the Commissioners. There is a similar trend in other parts of Canada. The problem in British Columbia is that while the number of appeals increased, the number of Commissioners dealing with appeals decreased.

Despite this handicap, the Commissioners recently made some progress in dealing with the backlog. By the time this investigation was concluded, the waiting time between arrival of a file and the Commissioners' decision was approximately two months. In view of this improvement, I did not consider it necessary to make a recommendation about the issue of delay. (CS 84-250)

The work of a claims adjudicator is not easy. In addition to weighing the available evidence, adjudicators must often judge the principles involved in a claim.

Be precise

Some claimants believe enhancing the facts will help their claim. Inevitably that approach works to the claimant's disadvantage. Sometimes a legitimate claim may even be lost because a claimant will not stick to the facts.

One claimant had suffered an acute lower back strain in a work-related incident in 1969. He received wage loss benefits for about three weeks. When he continued to be in pain after that, he asked that he be permitted to seek treatment from a chiropractor. Somehow he got the impression that the Board did not then think too highly of chiropractors, and nothing came of his request. He subsequently received chiropractic treatment at his own expense.

In 1976, while working as an auto mechanic, he slipped from a box on which he was standing while installing a cyclinder head. He experienced pain in his lower back and his left leg. Next day, he reported to work but asked for light duty. Later that day, in his capacity as union steward, the worker engaged in a labour-related argument with management and quit his job.

Ten days later, he began a series of chiropractic treatments. Nine days after that, he saw his family doctor about the back pain. Next day he was admitted to hospital where a laminectomy was performed.

When the worker submitted his claim to the Board, he informed the adjudicator that he had left work because of his back. He also told the adjudicator he had seen his doctor a few days after he left work. He made no mention of the chiropractic treatment, retaining his earlier belief that the Board had little confidence in chiropractors.

There were other complications. The mechanic who had worked alongside him and had witnessed the accident had since moved to a distant part of the province. The other witness whose name he gave to the Board would only say that the claimant mentioned at work having a sore back. Nothing about the incident was reported in the shop's first aid book. And the employer had not received any report that an accident had occurred.

A medical advisor to the Board felt that because of the long time lapse between the 1969 claim and the 1976 claim, it was unlikely that the workers' recent problems were related to the earlier injury. The doctor believed that the sort of incident the worker stated he had in 1976 could have necessitated the operation he underwent. But he also found ". . . the almost three-week delay between the alleged incident and the first seeking of medical attention a little long, even for that possibility."

The Board rejected the claim. The adjudicator's decision was upheld by the Boards of Review, even though a statement confirming the accident had since arrived from the claimant's fellow mechanic. Following a number of unsuccessful appeals, the man complained to us.

I believed that the discrepancies in the claimant's testimony had earlier caused Board officials to take a dim view of this claim. I also believed that the merits of the case had been lost in the ensuing morass of appeals.

The delay in seeking treatment was answered by the complainant's physician who noted, "there is no question that a lapse of ten days occurs before people go to see their doctors, and particularly if they have had past backaches that have got better on their own. I think that is reasonable."

As for failing to note the injury in the first-aid book, we found that workers in that shop did not usually register accidents, unless stitches or an immediate visit to a doctor are required. It is even less surprising that he did not report the incident to the employer. After all, he returned to work for only one day, following his injury, and during that day got into a union-management argument with company officials.

Our investigation showed that the worker may have done himself a disservice and prejudiced his best interests because of the way in which he presented his case to the Board. The original information made the claim apear doubtful. And even when better information came to light, the lack of trust the claimant had created among Board personnel caused them to view the claim with suspicion.

I recommended that the Board accept the 1976 injury claim. After receiving a further medical opinion from its own chief medical advisor, the Commissioners decided to accept the claim. (CS 84-251)

The Medical Review Panel is the final arbiter in cases involving medical issues. The issues, however, are not always clear-cut, and there are sometimes doubts as to what the Medical Review Panel intended.

Some doubts linger

A man injured his lower back at work in 1950. His claim was accepted by the Board, but he was denied a pension because he had arthritis in his back, a condition that had existed before the work injury.

In 1958, the man had a second work injury to his back. The Board accepted the claim on the basis that the injury had aggravated his previous disability. X-rays taken in 1958 showed a more marked degeneration of his back in comparison to x-rays taken in 1950.

In 1980, the worker attempted to reopen his claim for reassessment of his condition. The Board denied his request on the basis that the degenerative changes were not the result of his 1950 accident. The worker appealed that decision to a Medical Review Panel. The Panel certified in 1982 that the nature of the worker's disability consisted of multiple levels of degenerative disc disease of the lumbar spine and fusion of the lumbosacral level. The Panel also certified that his work injuries did not have causative but had aggravative significance, and that the disability was wholly due to degenerative changes of the lumbar spine. As a result, the Board decided not to change the status of the worker's claim.

Section 7(5) of the *Workers Compensation Act*, in effect in 1950, provided that if an injury aggravates, accelerates or activates a disease or condition existing prior to the injury, compensation is to be paid for the proportion of the disability attributed to the accident. The Panel had certified that the complainant's injuries had "aggravated significance" in relation to his disability. Therefore, I found that the Board had failed to consider the question of whether his injuries caused him to suffer a temporary or permanent aggravation of his pre-existing condition.

The Commissioners pointed out that, according to the Medical Review Panel, the two injuries had not left the worker disabled beyond the periods for which the Board had already compensated him. This, the Commissioners said, meant that in the Panel's opinion, the aggravation was temporary only. No further compensation was, therefore, warranted.

I did not agree with the Commissioners' conclusion for several reasons. The Panel, for example, was asked whether the worker was disabled for longer than the time periods recognized by the Board. In both cases, the worker was temporarily disabled and received wage loss benefits. The Panel replied that the worker had been adequately compensated for his injuries.

I felt that unless the Board was very sure of the Medical Review Panel's knowledge of the law and policies regarding payment of pensions to claimants whose back injuries permanently aggravate a pre-existing condition, one cannot assume from the Panel's answer that it considered this aspect of the problem.

Secondly, the Panel exceeded its jurisdiction by stating in its certificate that the worker had been adequately compensated for both his injuries. No Medical Review Panel should adjudicate on non-medical matters. The adequacy of compensation was an administrative decision, not a medical one. Because of this error of jurisdiction, the question of whether the aggravation was temporary or permanent was never answered by the Panel. If it was permanent, the worker would be eligible for a pension.

Thirdly, the Board allowed that my interpretation of the Medical Review Panel's certificate was a possibility. And since such a certificate is final and binding on the claimant and the Board, a Medical Review Panel certificate should not leave such an important medical matter open to interpretation.

I recommended that the Board refer the specific question back to the Medical Review Panel for an answer on medical rather than legal grounds.

The Commissioners did not agree. They felt that if a reasonable interpretation can be given to the certificate within the Panel's jurisdiction, it should be accepted as binding, regardless of the nature of the wording used. They said the Panel evidently felt that any disability beyond that which the Board had already paid for, was not the result of the 1950 or 1958 injuries. They also considered that even if there was some ambiguity in the Panel's certificate, all doubts were removed by a paragraph in the Board's report accompanying the certificate. This paragraph stated that the incidents, while exerting an aggravation of the worker's condition at the time they occurred, played no significant role in causing his present back problem. His present complaints were quite consistent with the natural history of degenerative disc disease of the lumbar spine.

Although this portion of the report dispelled some doubt, in my opinion, it did not dispel all doubt. The Panel stated that the complainant's work injuries had "aggravative significance." It also stated that the worker's problems are quite

consistent with the natural history of degenerative disc disease of the lumbar spine, and that the accidents did not cause his present back disability.

The question of whether the natural history of degenerative disc disease was speeded up or worsened by the accidents has not been answered.

I felt that until the Panel clarifies what it meant by "aggravated significance," some doubt will remain whether the Board properly interpreted the Panel's certificate. In my opinion, in a matter as binding and important as a Medical Review Panel certificate, the Board should take steps to dispel all doubts.

Because the Board had rejected my recommendation, I decided to consult directly with the Medical Review Panel. The Panel clarified its certificate by stating that the "aggravated significance" was of a temprorary and not a permanent nature. This resolved the doubts I had expressed regarding the meaning of the certificate. (CS 84-252)

Not all complaints against the Board are substantiated. Sometimes an investigation will show that the Board's rejection of a claim was proper.

Soured by circumstances

A young, disabled woman complained about a conflict between her and one of the Board's rehabilitation consultants She believed the consultant had made an unwarranted medical diagnosis and had forced this opinion on her doctor.

She also said the rehabilitation consultant had failed to place on file letters to the Board from the tutor who recorded her academic progress. She further believed the consultant had tried to pry information out of her about what future action she might take against the Board.

Our investigation showed that this was a long sad story. As the result of a knee injury at work, the complainant had developed a number of orthopedic problems and had undergone several operations. In the years that followed, she developed other symptoms and her health generally deteriorated. Eventually she was confined to a wheelchair. Although diagnoses of her condition were uncertain, it was suspected that she had also developed multiple sclerosis.

The complainant had been enrolled in a rehabiliation program for a long time. At one point, a complaint from her had caused a change in rehabilitation consultants assigned to her case. The new consultant set up a plan which focused on vocational rehabilitation. The consultant spent considerable time with the worker, searching out suitable on-the-job-training possibilities, involving her in an adult basic educational program and a rehabilitation clinic program.

The consultant was also instrumental in obtaining a personal care allowance and a reading program volunteer for the complainant. She maintained constant contact with the complainant, phoning her and visiting her both at home and in hospitals. She was careful to follow up on all stages of the worker's treatment program to ensure that the worker became as functional as possible. During the earlier stages, doctors noted a beneficial effect on the worker as a result of the consultant's dedication.

Unfortunately that state of affairs did not last. As the complainant's health deteriorated, so did her positive relationship with the rehabilitation consultant.

I was not able to substantiate the worker's complaints. The rehabilitation consultant had made no medical diagnosis. As a rehabilitation expert, charged with assisting the worker in becoming more functional, the consultant naturally shared her perceptions with other professionals involved in the case. The worker's doctor found the consultant's input perfectly natural.

We found out why the woman believed that the tutor's letters had not been placed on her file. When she received disclosure (a release of a copy of her file) no copies of these letters were included. We learned that the letters were on file, but because they contained the tutor's billing statements, they had been placed in the medical receipts portion of the file — a section that is not normally provided to claimants who request disclosure.

The third part of the worker's complaint seemed to be based on her interpretation of casual comments the rehabilitation consultant had made in conversation.

Sadly, an initially good relationship had soured. As the complainant became increasingly frustrated with the Workers' Compensation Board, she aimed her dissatisfaction with the Board at the one person who had been the most helpful to her. (CS 84-253)

Earlier accident responsible

While driving west on the Lougheed Highway, near Mission, B.C., a worker was struck from behind by another vehicle. The Board accepted the fact that the accident happened in the course of the worker's employment.

The medical diagnosis was that the worker suffered from a hyperextension injury to the spine

with involvement of the thoracic, cervical and lumbar regions. Although he tried to continue working, he was forced to stay home for a while.

Because the worker claimed benefits from the Board, it took legal action against I.C.B.C., the insurer of the other vehicle's driver. The worker received more than $20,000 as a result of this court action.

A few years earlier, the worker had been treated for lymphoma, which at the time of his motor vehicle accident had been in remission. Several months after the accident, the worker continued to have problems with his neck. He developed further enlargement of the cervical glands which he attributed to his motor vehicle accident.

But medical evidence did not support the worker's claim. The Board decided that his lymph gland enlargement was unrelated to his injury.

His physicians also believed that some of his problems were caused by a pre-existing spinal degeneration. After reviewing the record, my investigator felt there might be some connection between this condition and an accident which had occurred several years before in Ontario when a steel beam fell and struck the worker across his back and shoulders.

I advised the complainant to ask the Workers' Compensation Board of the other province to reopen his earlier claim. I also told him I would be glad to ask my Ombudsman colleague from that province to assist him in any way possible if he ran into any problems. (CS 84-254)

The heart of the matter

In the early 1950's, a miner suffered a crushing injury to his right leg. Gangrene set in necessitating an amputation of the leg below the knee.

Fifteen years later, the worker underwent open heart surgery as a consequence of valvular heart disease.

Three years after that, the worker approached the Board claiming that his heart condition related to his earlier leg problem. The Board, however, would not accept the open heart surgery as part of the worker's entitlement under that claim. In 1984, the worker brought his complaint to us.

The medical evidence, provided by a number of doctors who had reviewed the case over the years, simply did not support the worker's claim. To be certain, I consulted a cardiologist who considered it highly unlikely that gangrene could have a debilitating effect on the valves of the heart, unless valvular heart disease was already present.

In the absence of any evidence, linking the heart condition with the earlier leg injury, I was not able to substantiate this complaint. (CS 84-255)

Reasons for waiting not good enough

A claimant injured his back at work in 1975. He did not submit an application for compensation until 1981. The Board disallowed his claim on the basis that there were no special circumstances which had precluded him from filing a claim within the required one-year period. The Board also stated there was no medical evidence on file that his back complaints were related to his work activity in 1975.

Over time, the claimant had given various reasons for not having filed his claim within the one-year period. At one point, he said the company doctor had given him a note, saying this was not a compensation case. On another occasion, he stated he was suffering from depression, had not understood the procedures and had problems with English. At yet another time, he said he had not been aware that he had a year to file. He also said he thought it was not worth filing a claim because he believed he would only be off work for a few days.

The Boards of Review and the Commissioners took the position that these reasons did not explain why he waited six years before filing his claim. The Boards of Review stated there was no supporting medical evidence that the claimant suffered from depression. They also pointed out that the man did not claim to have been depressed for several years. Even if his depression in 1975 and 1976 explained his delay, his depression was not a sufficient cause to explain a delay of several years, particularly in view of his own evidence that his marital problems and depression got better, but his back pain did not.

The Boards of Review also rejected his argument that he did not understand the procedures. After all, he had had no difficulties with previous claims. As for his problem with English, the Boards of Review found that he had been quite able to file successful claims in the past.

My investigator contacted the doctor who had allegedly given the claimant a note, saying this was not a compensation case. The doctor said he could not remember having written such a note and that he did not normally write such notes anyway. To top it off, the medical clinic was unable to locate the worker's file. I was, therefore, not able to verify whether the doctor had, in fact, written the note.

I did not substantiate the worker's complaint. He had given different answers to the adjudicator, the Boards of Review and the Commissioners for his failure to apply for compensation within one year. And the reasons he gave failed to explain why he did not apply for compensation until six years after his accident. Under the circumstances, the Board's decision was reasonable. (CS 84-256)

The Board finances its operation by charging companies an assessment or levy. Businesses are grouped into several classes. The different classes are charged varying assessment fees, depending on the hazards associated with the particular class of business.

Assessment fees based on hazards

Several companies complained that they had been wrongly classified. They believed that although their businesses might be similar to others in their classification, there were fewer hazards involved.

One of the complainants, for example, operated a company engaged in powder-coating certain items, including wire rack displays, light fixtures, electronic cabinetry and automotive parts. This company was in the same classification as companies involved with porcelain enamelling, a process that is considerably more hazardous than powder-coating.

I notified the Board that of my concern about the apparent inequities in the present system. The Board replied that it intended to gradually adopt a hazard rating system. Under that system, companies were to be classified according to their hazard level.

That was in 1980. When it became apparent that the new system was being implemented very slowly, I raised the matter again in April 1984. Following a meeting between my staff and one of the Commissioners, the Board informed me that a thorough study of its assessment system was planned for the immediate future. The Commissioner stated he would be travelling across the province, accepting submissions from interested groups regarding the present assessment system. A major review of the assessment system was to follow that study. I discontinued my investigation, pending the Board's review. (CS 84-257)

First information, then legal action

A complainant brought to my attention the fact that the Board did not provide employers with adequate warning before using legal remedies to collect outstanding assessment debts.

The company would be notified only of the Board's intention to proceed with legal action. Such action would then be taken without further notice. I did not consider this sufficient notice of the Board's extensive powers of debt collection. I suggested that the Board add a few sentences to its final warning letter, to let the employer know what further legal action was contemplated.

I asked the Board to inform the company that it could obtain a court order without further notice, and that the company would not have an opportunity to argue its case before a judge or registrar. I also asked the Board to inform the company that the Workers' Compensation Board can enforce a court order in a number of ways, including the seizure of goods, the registration of liens on property and the garnisheeing of securities and money.

The Board agreed to my suggestion. A copy of the new standard letter sent to my office for review, satisfied my concerns. (CS 84-258)

Changing the rules

A shake splitter sold his bundled shakes to a wood products company. As a result of a Board decision 15 years earlier, for compensation purposes, he was considered an employee of the company. And because of this earlier ruling, the company had paid assessments for him and the other independent contractors who supplied shakes to the firm.

When the man injured his right foot in December 1978, the Board decided, contrary to its original decision, that he was an independent contractor. Since he did not have optional coverage, the Board decided he was not entitled to compensation for his injury. At that point, he complained to my office.

In my opinion, the complainant had done all he could to ensure that he was covered by compensation. He had accepted the Board's decision that he was a worker. He was aware that the company paid the assessment for his compensation coverage. Had he not been classified as a worker, he would have continued paying personal coverage, as he had done in the past, in which case he would have been covered for the accident involved. The company could not be faulted either. It had accepted the Board's decision and payed the proper assessments. The error in classification was clearly the Board's responsibility.

The Board has exclusive statutory authority to decide whether a person is a worker or an independent operator. The worker, therefore, had a right to rely on the Board's determination of his employment status. The Board has the power to reconsider previous decisions, but should not use that power to place a worker at an unrea-

sonable disadvantage. If it does, it acts oppressively.

That is exactly what happened in this case. The Board used its power to retroactively alter the claimant's status from worker to independent operator. That meant he was without coverage. His claim was denied. The Board had placed him in an untenable position.

The Board agreed in general with my analysis and decided to provide the worker retroactively with optional coverage. But the Board insisted that the worker reimburse it for his share of the assessments which it had returned to the company after determining in 1978 that the claimant was an independent operator.

The Board also decided that compensation coverage would be limited to the worker's earnings with the wood products company since these were the only earnings on which assessments were paid. On these conditions, the claim was allowed. (CS 84-259)

Compromise resolves problem

A man complained that the Ministry of Forests would not allow him to bid on a forestry contract until the Board had assigned him an employer's registration number.

His application to the Board for a registration number was turned down because he was supplying labour only and could not be considered an independent contractor. On that basis, the Board stated, he was not eligible for an employer's registration number. If he received a contract from the Ministry of Forests, he was an employee of that Ministry, according to the Board. The Ministry of Forests, however, would not accept that argument.

Negotiations between my investigators, the staff of the Workers' Compensation Board, the Ministry of Forests and the Ministry of Provincial Secretary produced a compromise. The Ministry of Forests agreed to accept the complainant's bid without a registration number.

It was understood that if the complainant was the successful bidder, he would be able to quickly obtain a registration number from the Board. And since he would have to hire another worker if he was awarded the contract, he would be eligible for a registration number. (CS 84-260)

Sometimes a worker's injuries are not just physical. The following case is a good example.

Getting back to the origin

In 1975, a labourer injured his lower back while stripping two-by-fours from concrete. The diagnosis was back strain. The worker received wage loss benefits.

The worker also attended the Board's rehabilitation clinic, but made no significant progress. The doctors felt that part of his difficulties might be associated with anxiety. Medical examinations revealed no reasons for the worker's continuing pain. Doctors acknowledged that the worker experienced acute discomfort, but determined that his difficulties were not organic in nature.

The Board considered whether it had any responsibility for the worker's psychological problems, but decided that his chronic depressive reaction predated his accident. There was some evidence to that effect. The Boards of Review upheld that decision, and so did the Commissioners.

During the investigation, I located a significant report from a Board psychologist in the worker's file. The report disputed the importance of the evidence which had pointed to a pre-existing psychological condition. The psychologist pointed out that until the accident occurred, the worker had been able to work continuously and without problems. It was the accident that had changed him.

Because the Board appeared to have overlooked or misinterpreted a number of other factors, I recommended that it reconsider the question of whether the worker's psychological disability resulted from the work injury.

Eventually the Board proposed an acceptable solution; it appointed a Medical Review Panel to look into the origin of the worker's disability. When the worker objected to a panel composed entirely of psychiatrists, the Board appointed a multi-discipline panel which would be able to look at the case from both psychological and physical perspectives. (CS 84-261)

Miner should have been told

A miner applied to the Board for a fitness certificate which he needed to work in the mining industry. When his application was rejected, the man complained to my office that the Board failed to disclose to him the exact nature of his lung condition which had apparently led to the rejection of his application.

Our investigation showed that the Board wrote to the claimant in 1967, informing him of a condition of his lungs which rendered him unfit to obtain a certificate of fitness from the Board. After receiving that letter in 1967, the miner had consulted with his doctors who, according to our complainant, did not tell him that he had silicosis. He added that the doctors told him then his lungs displayed no abnormality.

The complainant subsequently got a job as a miner in the Northwest Territories, a job he held for the next 11 years. Later, he worked in a dust-free area of a coal plant.

In 1983, he was hired as a miner in B.C. The family sold its home and moved to B.C. After about three weeks at his new job, the Board advised him that he was rejected in 1967 for a certificate of fitness. This rejection, the Board stated, was still in force. Unfortunately, without this certificate, he was not allowed to work as a miner in B.C.

Our investigation clearly showed that on two occasions, in 1967 and again in 1983, the Board gave a specific diagnosis of the miner's lung condition to his physician. But the Board told the complainant only that he had a lung condition that disqualified him from receiving a certificate of fitness.

I found that it was unreasonable to expect the complainant to make decisions regarding his own health, unless he had all the information about his condition. The information should have been given in terms the complainant could understand. The complainant stated that he would not have returned to underground mining, had he known he had silicosis.

I concluded that the Board acted negligently. It should have informed the miner of exactly what the Board thought was wrong with him. I recommended that in future, the Board inform miners of the medical reasons for rejecting applications for fitness certificates.

The Commissioners replied that it is the Board's practice to notify the worker, the examining physician and the employer when it refuses to issue a certificate of fitness. The Commissioners also stated that the worker receives a copy of the letter to the doctor which contains more details, including any diagnosis of the condition.

Regrettably, the Board did not follow this practice in 1983, when it refused my complainant's request for a certificate. Board staff simply concluded, wrongly, that the complainant was already aware of his condition.

I also brought to the Commissioners' attention that at the time of the second refusal, the miner was not advised that he could appeal this decision to the Commissioners. The Commissioners later informed me that they will advise workers of their right to appeal. (CS 84-262)

NON-JURISDICTIONAL COMPLAINTS

The difficult economic times of 1984 were reflected in the large number of the telephone calls, letters and personal visits to my offices by people whose problems, strictly speaking, were not within the jurisdiction of the Ombudsman.

Often, complainants preceded their tale of woe by telling my staff they had no idea where to go for help. Many told us that no other agency they contacted had been able to help them.

My staff has a wide range of referral information for people with "non-jurisdictional complaints," that do not involve a provincial government ministry, a Crown corporation or a board or agency in which the majority of directors has been appointed by the provincial government.

A high percentage of complaints are received by telephone. Needless to say, people appreciate the toll-free number British Columbia residents can use to contact the Ombudsman. The most common non-jurisdictional complaints concern landlord and tenant disputes, personal debts, bankruptcy and foreclosure, dissatisfaction with consumer transactions, especially second-hand vehicle purchases, complaints about physicians and lawyers, municipal and regional governments, and last but not least federal government administration.

People need information on tenants' and landlords' rights and responsibilities, debt counselling, and debt collection, safety in fireplace installation, small business ventures and so on. I received excellent co-operation from government agencies in resolving such non-jurisdictional complaints.

Soccer anyone?

Although professional soccer in North America has experienced better days, the amateur sport continues to thrive — particularly in British Columbia's Lower Mainland.

A soccer referee, originally from central Europe, complained to me that he was not permitted to officiate at soccer games. A check with B.C. Soccer Association officials and officers of the league disclosed that there had been some communication problems with my complainant in the past. But he was considered a competent

referee, and so long as he maintained his standing in the Soccer Referee's Association and fulfilled all league requirements, they were quite prepared to offer him officiating assignments.

I conveyed this information to my complainant in the hope that the new whistle he told me he had purchased might soon be given a vigorous workout. (CS 84-263)

Moving on

A large number of complaints involved disputes between landlords and tenants over the return of security deposits. If a building changes owners, or goes into receivership, the original landlord who collected the deposit does not always consider that money a debt he must repay.

Even when there is no change in ownership, tenants may not always request or be able to arrange for an inspection of the premises by the landlord immediately after moving out. These inspections should be done immediately, so the tenant can get confirmation in writing that he left the premises in an undamaged condition.

According to the new *Residential Tenancy Act*, all monetary disputes must be settled by way of Small Claim Court action. Written evidence, signed by both parties, will assist a judge in making a decision. (CS 84-264)

Candid camera

Photographs are treasured for a lifetime. Important occasions captured on film evoke happy memories. One complainant nearly missed out on a lot of such photographic treasures.

The complainant had purchased a contract for photographic services from a company with franchises in western Canada. She was extremely upset when the local store refused to honour her certificate. The Manager told her that under the terms of the contract, she had to be the principal participant in any photo sessions. The complainant had different plans. She wanted to have group photos taken at her son's wedding. Even when she pointed out that she would appear in some of the pictures, the manager refused.

The woman phoned my office just a few days before the wedding. One of my investigators phoned the company president and explained the problem. That same day, the president phoned my complainant and apologized for the local store manager's refusal to honour her certificate. The manager apparently had interpreted the terms of the contract too literally. He reversed his decision.

The complainant later phoned my investigator and told her the wedding pictures had turned out beautifully. It had been a sunny day and there were only smiling faces in the pictures.

In another case, parents in a small British Columbia town had decided to have a travelling photographer take pictures of their children. They wanted to send the pictures to friends and relatives at Christmas. The company had cashed the cheque, but the complainants did not get the pictures. Time was running out. We contacted the manager of the company who admitted that something had gone wrong. The family received the photos by special delivery. (CS 84-265)

Who ruined that TV?

A family in a small northern British Columbia community purchased a console television set. It was still under warranty when it began to malfunction. A short time later, it broke down completely.

The family took the TV to the store in neighbouring city where they had bought it. The owner did not have the necessary parts in stock. He said he would send the machine by courier to the central repair depot in Vancouver. The depot would contact the family when the TV was repaired.

The family waited and waited. After several months, they began to make enquiries and got two nasty surprises. The retailer had gone bankrupt and the wood console was damaged when the TV set had arrived at the repair depot.

No one would take responsibility. No one could find out whether the set had been improperly crated for transit, or had been dropped or mishandled by the courier or the repair depot.

My investigator phoned the representatives of the companies which had handled the set. And even though they may not have had a legal obligation to repair it, the companies, agreed to a settlement. (CS 84-266)

Offensive goods

A representative of an established church contacted my office to tell us that his congregation was extremely upset because a nearby store was selling imported books which were defamatory and derogatory to the church's beliefs. Verbal requests to remove the offensive literature had brought no reslts.

I sent the complainant a copy of the Provincial Legislation entitled the *Civil Rights Protection Act*. Section 1(1) of this act states:

". . . prohibited act means any conduct or communication by a person that has as its purpose

interference with the civil rights of a person or class of persons by promoting:

a. hatred or contempt of a person or class of persons, or

b. the superiority or inferiority of a person or class of persons in comparison with another or others

On the basis of colour, race, religion, ethnic origin or place of origin."

The congregation sent a copy of the act to the proprietor of the bookstore and again requested that he remove the offensive material. The store owner realized that he was acting contrary to the law and wrote a letter of apology and explanation. He said the entire series of books had been removed. The store would no longer stock them.

In another instance, a B.C. resident bought a trivia-type game manufactured in Ontario. One of the questions and answers contained a racial slur to which my complainant quite properly took exception. We advised the complainant to send a copy of the offensive information to the Canadian Human Rights Commission and request an investigation.

The purchaser also complained to the company and promptly got her money back. (CS 84-267)

Travel plans for special persons

A handicapped young man had to travel by bus from his Central Interior home to the British Columbia coast. He was not able to travel unattended. His attempts at getting information about the "helping-hand policy" regarding the fare structure for handicapped persons had led nowhere.

One of my investigators contacted the bus company and was told that severely handicapped persons, such as the blind, or the wheelchair-bound, are entitled to travel with an attendant at the cost of one fare. We passed on this information to the handicapped young man.

Similarly, the parents of a handicapped student coming home for Christmas from the United States were concerned about problems their daughter might have transferring from one plane to another. They had encountered a very non-caring attitude from an American airline company.

My investigator made some enquiries and found that a Canadian carrier would provide the necessary service. Arrangements were made through a travel agent. The parents also contacted the airline directly to ensure that those who would be involved were aware of their daughter's needs. Everything went smoothly. Even the fog which had delayed three previous flights, lifted so the young student's trip could proceed as planned.

The airlines have a coding system for passengers in need of special consideration. It is wise to double-check a few days prior to departure that the proper coding has been entered. (CS 84-268)

The perfect bite

A woman availed herself of the services of a dental mechanic in the next town. Soon after she returned home, she found that her teeth did not fit properly and were causing her great pain. She phoned the office of the dental mechanic several times but there was no answer.

The woman was distraught when she phoned my office. My investigator got through to the dental mechanic and found out that he had just returned from an extended vacation. He said he would be pleased to make an appointment with the woman and adjust the plates. (CS 84-270)

Perseverance pays off

A woman had worked as a door-to-door salesperson for an appliance company for several years when she quit her job. She had worked on a commission basis. Sixteen months later, she still had not received her last pay cheque. Nor had she received the money held back under the terms of the Reserve Income Protection Fund. The latter makes up for loss of commission incurred when clients discontinue payment.

My investigator phoned the company's B.C. regional manager and was told that head office in Montreal was responsible for the accounting procedures and payments. A short time later, the complainant received her back pay, but the money from the Reserve Income Protection Fund was still outstanding.

It took a lot of perseverance and repeated reminders from my investigator, but eventually, the woman was paid in full. (CS 84-271)

Stove owner left freezing

A man bought a second-hand stove. He paid about two-thirds of the stove's original value. He soon found out that it did not heat properly. He called the store owner who had the stove picked up for repair.

Sad to say, the proprietor died that night, and all goods in the store were locked up, including my complainant's stove. His attempts at finding out how he could get his stove back were in vain. That was when the man came to us.

Our inquiries revealed that the store proprietor owed a lot of money for utilities, sales tax, etc. Legally, the stove could not be returned to my complainant because the store's debts were not covered by the assets.

We advised the complainant to discuss the matter with a lawyer. We also brought to his attention the Lawyer Referral Service which operates in several B.C. cities. This service provides people with an opportunity to talk to a lawyer for 30 minutes at a fee of $10.

Even though I was unable to help the complainant get his stove back, he appreciated the fact that we found out where exactly he stood. (CS 84-272)

Child finders

A young woman was given custody of her infant daughter. A few months later, her ex-spouse, a U.S. citizen, abducted the child. The mother believed they went to the U.S.

My investigator found that Canada and the United States had ratified the The Hague Convention. British Columbia, along with other provinces, is a co-signatory to the agreement which guarantees co-operation between law enforcement agencies.

We advised the woman to contact the R.C.M.P, the Legal Division of External Affairs in Ottawa, and Abducted Children's Rights of Canada, a volunteer agency that gives guidance and support to people whose children have been abducted by spouses.

As always, prevention is better than a cure. Parents who fear that their children may be abducted by an estranged spouse should make sure that child care workers and school teachers are aware of the potential problem. They should be instructed not to release the child into the custody of anyone they do not know.

Children should be told to call police if they are taken away. They should learn their address and telephone number as early as possible. (CS 84-273)

Over to you

One complainant had invested in a large corporation in Canada. He believed that the corporation had acted improperly in another country and might, in fact, have broken that country's banking laws. He requested my assistance in bringing this to the attention of the appropriate branch of the foreign government. To accomplish this, I turned the matter over to the Ombudsman for Australia. (CS 84-274)

PART IV

CHANGES IN PRACTICES AND PROCEDURES

A. MINISTRIES

AGRICULTURE AND FOOD

1. The Ministry will ensure that in future when it uses agents, whose past performance has been less than satisfactory, in the administration of Ministry programs, the agent's performance will be substantially improved over its past performance or, alternatively, the Ministry will refrain from employing such agents altogether.

ATTORNEY GENERAL

1. The Ministry agreed to replace the interiors of three sheriff vehicles because the existing design provided inadequate security.
2. The Ministry agreed to instruct sheriffs to inform creditors when debtors make any payment towards their debts.
3. The Ministry changed the way in which sheriffs advertise and sell seized mobile homes, to ensure that the purchaser is aware of any debt for property taxes on the home.
4. The Ministry now provides better security for the property of prisoners held in an up-Island courthouse.
5. The Ministry agreed to revise the regulations which govern payment for transcripts of judicial proceedings. Under the proposed new regulations, a lesser fee will be paid for pages which do not require actual transcription.
6. The Ministry changed a procedure in a Lower Mainland courthouse, to ensure that requests to transfer the location of a file for a guilty plea, are dealt with promptly.
7. The Ministry agreed that Small Claim Court Registries will begin to mail out copies of judgments made where the debtor was not in court.
8. The Ministry will produce, and sell for cost, a pamphlet which explains the process by which a citizen can contest his lawyer's bill.
9. The Ministry agreed that from now on the Public Trustee will notify a patient if the manner in which the Public Trustee administers the patient's money is to be changed, for instance, that the patient can no longer write cheques on his own bank account.
10. The Ministry has revised its procedure for granting land which has escheated to the Crown. Now applicants for the land will have to advertise their request if there is any possibility that some other person may also have a claim to the land.
11. The Public Trustee has agreed to institute a better control system in the handling of complaints brought to his attention by myself or my staff so as to ensure that any commitments made by the Public Trustee regarding one of my complainants will be fulfilled effectively and efficiently.

CORRECTIONS BRANCH

1. The Willingdon Youth Detention Centre agreed to purchase substantial amounts of new clothing for resident youths in order to resolve a long-standing shortage problem.
2. Willingdon YDC increased the quantity of food provided to resident youth by ten percent to resolve continuuing complaints about insufficient food.
3. Willingdon YDC increased the amount of gym time available to residents.
4. Numerous complaints about toiletry items at Willingdon YDC, for example, shampoo and soap, were resolved by providing residents with new products which had been approved by the instititution's medical staff.
4. The laundry equipment at Centre Creek Camp was repaired and new mattresses for the residents have been ordered.
6. The Corrections Branch agreed that adult inmates would be allowed to have small tape decks with earphones in their cells.
7. The Lower Mainland Regional Correctional Centre (LMRCC) is ensuring that protective custody inmates are able to have one full hour for each visit even when they are late for their appointed visiting time because of delay by guards in escorting them from their unit to the visiting area.
8. A doctor at LMRCC reviewed the medication prescribed for a transsexual inmate to maintain his stage of transsexuality. The Corrections Branch is now developing medical policy for treatment of transsexuals.
9. The Vancouver Island Regional Correctional Centre (VIRCC) reviewed the excessive lock-up for inmates for minor infractions. The director gave a verbal warning to officers who failed to follow the standing orders.
10. The LMRCC business office posted a memo explaining canteen price increases to inmates.
11. Secure institutions introduced procedures to monitor the quality and consistency of inmate food services after receiving numerous inmate food complaints.
12. The Corrections Branch reviewed its "informed consent" policy after an inmate refused medical assessment, armed himself and resisted an order to leave his cell.
13. A deputy director in a secure institution took appropriate steps to move inmates into a secure setting and thus reduced the tension level between groups of inmates.
14. The Corrections Branch set aside the findings of a disciplinary panel, deleted file references to the hearing and considered policy concerning expenses for witnesses at a panel hearing.
15. The Corrections Service Canada clarified a procedure for an inmate to send a sum of money and personal effects from federal custody to provincial custody.
16. The Lower Mainland Regional Correctional Centre tightened an existing policy to escort inmates from the reception to the normal living area within one hour of arrival.
17. The Marpole Community Correctional Centre provided inmates who were without access to community recreational facilities, with an appropriate indoor game to satisfy the Corrections Branch Manual of Standards.
18. The director at Vancouver Pre-trial Services Centre reviewed segregation practices to enable inmates to make phone contact with their lawyers at times other than during the inmates' exercise periods.
19. A director at Lower Mainland Regional Correctional Centre reaffirmed the policy which allows inmates to refuse visitors. (When an inmate refused to meet a visitor, he had been improperly ordered to go).
20. The Lakeside Correctional Centre reviewed the search practices of female officers on female visitors. A sign regarding the search of visitors was placed at the L.M.R.C.C. entrance gate. The Lakeside director addressed herself to written procedures for searching visitors. A separate room adequate for searching female visitors was identified as a need.
21. The Corrections Branch revised the Manual of Operations to ensure that both the inmate and visitor be informed of a decision to terminate or deny a visit and of an appeal of the decision to the district director.
22. The Corrections Branch accepted my suggestion that incidents between officers and inmates could be analyzed on the basis of five questions to determine if unreasonable force had been used.
23. The Lower Mainland Regional Correctional Centre corrected a weakness in approving the withdrawal of funds from an inmate's trust account. An inmate request must now be witnessed by an officer who knows and can verify the inmate's signature.
24. The Vancouver Pretrial Service Centre instituted a policy to open privileged correspondence, such as lawyer's mail, only in the presence of the inmate.

25. The Lower Mainland Regional Correctional Centre implemented a policy which provides that intercepted or monitored telephone call information would be provided to the inmate prior to its use in a discipline hearing.

27. The Parole Board reviewed and revised its criteria allowing re-examination of decisions to grant or deny parole. The Board resolved a potential conflict of interest in procedures where the chairman re-examines his own decision.

EDUCATION

1. The Student Services Branch of the Ministry agreed to revise its work-study program brochures and forms to clarify that students applying for the program must also apply for — and be eligible for — a B.C. student loan.

2. The Student Services Branch agreed to provide photocopies of BC Student Assistance Program application forms upon request in writing from the student involved. Prior to this, students had been refused copies of their own application forms.

3. The Student Services Branch agreed to change its requirements for students applying in modified Group "B" category (independent) due to a family rift. Henceforth, instead of requiring an affidavit from the student and a letter from the estranged parent, the Branch will accept a statement or letter from the student accompanied by a letter from a relative or other third party having first-hand knowledge of the student's family situation.

4. The Student Services Branch agreed to send a policy addendum to all colleges and institutes clarifying admissions for foreign students. This was to avoid Canadian students applying from abroad being put lower on the list of applicants to these institutions.

5. The Student Services Branch agreed to amend its policy on appeals from students. The result is that students are to be given a copy of the Financial Aid Officer's final appeal submission; FAOs might, but were no longer required to, attach their recommendation; and, students would be allowed to submit a separate letter and accompanying documentation, in addition to the formal appeal form.

6. The Director of the Modern Languages Branch, which had relocated from Richmond to Victoria, agreed to arrange for mail to be forwarded or redirected following the basic three months allowed for by Canada Post.

ENERGY, MINES & PETROLEUM RESOURCES

1. The Ministry agreed to notify placer miners whose leases had been rendered invalid by section 8 (2) of the *Mining (Placer) Act,* of the need to restake their claims.

2. The Ministry agreed to amend the *Mineral Act* to permit the recording of assessment work which had been filed incorrectly under the provisions of the Act. The amendments allow for the corrections of administrative errors arising from misinformation.

ENVIRONMENT

1. The Environmental Appeal Board agreed to compile statistical information on appeals for previous years and provide this information to members of the public upon request.

2. The Ministry of Environment adopted a new policy and new procedures, dealing with the "cancellation of trapping privileges for inactivity". These new procedures appear to provide adequate safeguards to ensure that trapline areas are not cancelled unfairly or without notice.

3. The Ministry changed its policy and procedures by which people apply for sustenance permits.

FINANCE

1. The Ministry agreed to reconsider a regulation under the *Social Service Tax Act* that excludes shelf companies from certain tax exemptions.

2. The Ministry agreed that long distance telephone calls made by Indians from an Indian Reserve are not subject to the payment of Social Service Tax. The Ministry agreed to a refund process for tax collected improperly.

3. The Government Payroll Office, in cooperation with Ministry pay offices, took further action to ensure that public servants are paid promptly when they are laid off.

4. The Ministry, through the Inspector of Municipalities, caused a regional district to live up to its responsibilities under the *Financial Information Act* and to disclose information about the gross salaries of district employees in the future.

5. The Ministry of Finance has accepted and ensured implementation of my recommendation to the Ministry of Municipal Affairs that the *Home Owner Grant Act* be amended so that individuals who reside in detached residences and who own shares in a co-operative will be eligible for the grant.

FORESTS

1. The Ministry agreed to revise its procedures to prevent "drift" during aerial spray pesticide applications.
2. The Ministry, in conjunction with the Ministry of Environment, developed new policy whereby trappers will be properly notified in advance of industrial development which may disrupt their activities.
3. The Ministry developed new policies and procedures for short term equipment rental to avoid conflict of interest situations which had occurred in the past.
4. A new policy was established whereby the Ministry will not award tree planting contracts to contractors who do not pay their employees in accordance with the Employment Standards Act.

HEALTH

1. Hospital Programs agreed to instruct hospitals that where a person was admitted as an in-patient to more than one hospital in one calendar day, the patient will be charged the user fee only by the last hospital to admit the patient that day.
2. The Ministry amended its conflict of interest guidelines to allow the release of information, about a professional employee, to a professional association only with the authorization of the Deputy Minister.
3. The Personnel Office reminded staff of the Ministry that they should not obtain, copy, or keep any personal letters or correspondence of fellow employees.
4. The Alcohol and Drug Program agreed that its physicians would ask patients for permission to exchange medical information with their family doctors. Before such information is exchanged, patients will have to sign a consent form.
5. The Medical Services Plan agreed to accept a series of post-dated cheques up to ten working days in advance of the due date of the premium payment.
6. The Medical Services Plan agreed to remove the "W" designation following the Medical Services Plan identity number, and use a common number to identify Ministry of Human Resources clients. The "W" obviously stood for the word welfare and had a derogatory connotation.
7. The Public Health Inspection Branch, in cooperation with the Electrical Safety Branch of the Ministry of Labour, developed a procedure for obtaining information about recent electrical permit applications for use by Public Health Inspectors in some areas of the province. This information will alert the Inspectors to the location of proposed buildings in order to monitor new construction and ensure that sewage disposal permits are obtained prior to the installation of septic systems.
8. The Ministry and the Forensic Psychiatric Services Commission agreed to provide $105,000.00 for improvements to the outdoor exercise yard of the Forensic Psychiatric Institute. The Institute agreed to record the number of residents receiving outdoor exercise per day.
9. The Forensic Psychiatric Services Commission agreed to a 5% increase in the amount of money that residents who participate in work programs receive at the Forensic Psychiatric Institute.
10. The Medical Advisory Committee of the Forensic Psychiatric Institute agreed that where there are complaints from residents concerning their psychiatrist or medication, an independent committee consisting of the Psychiatrist in Chief and two doctors appointed on a rotational basis and who are not involved in the complaint, would hear the complaint and decide on its merits.
11. The Forensic Psychiatric Institute changed the visiting hours so that visitors will not have to wait for residents to finish their previous activity.
12. The Forensic Psychiatric Institute issued a written directive to all staff requesting that where funds are retained on a ward that the amount should be noted on an envelope, and any withdrawals should be recorded and signed by the resident and staff.
13. The Forensic Psychiatric Institute agreed to establish a Patient's Concerns Committee, which will provide an internal grievance mechanism for residents in the Institute.
14. The Director of the Clinical Services, Forensic Psychiatric Institute agreed that where a resident requested a second medical opinion, and the medical opinion was medically required, the Director would refer the patient to an outside, independent psychiatrist.
15. The Financial Policy and Procedures Branch agreed to amend the financial administration policy such that where a resident of an institution had U.S. funds, the exchange rate would be provided in all cases.
16. Officials at The Maples agreed to make changes to the facilities and equipment in the

following areas: mirrors, lighting, heating and ventilation systems, water temperature, bathroom fixtures and the repairing of furnishings.

HUMAN RESOURCES

1. The Ministry agreed that the practice of one Region to retain a Family and Child Service file about an unfounded allegation of child abuse would be discontinued.
2. The Ministry agreed that whenever a child is apprehended, the apprehending Social Worker will confirm in writing to the parents what he/she has done and give the time, date, and place where he/she will be reporting to court about the circumstances of the apprehension.
3. A District Office agreed to discontinue the practice of denying clients Income Assistance because they chose to live in a hotel.
4. A District Office agreed to provide information about income assistance in a courteous manner, without immediately demanding rent receipts, utility bills, etc.
5. The Ministry of Human Resources agreed with the Ministry of Health to remove the "W" designation from the medical insurance cards issued to some Income Assistance recipients covered by the Medical Services Plan.
6. The Ministry agreed to take further action to provide information about the *Child Paternity and Support Act* to clients bearing children out of wedlock.
7. A Regional Office agreed that workers within the region would now document the current eligibility of clients for use in tax rebating forms.
8. The Ministry agreed that once clients have returned to work after a labour dispute, but have not yet received a pay cheque, they will be entitled to "hardship" shelter benefits.
9. The Ministry agreed that the 30-day appeal period during which time the client can appeal a reduction in benefits begins at the point that the reduction actually takes place, not at the time that the client is informed of the intended reduction.
10. A Regional Office agreed that the Region would no longer require dependent children not in school to seek work, before granting income assistance to their families.
11. The Ministry agreed that eligibility for Income Assistance is contingent upon the terms of the *G.A.I.N. Act* and Regulations and cannot be withheld to meet other ends.
12. The Ministry agreed to clarify its "hardship" policy with its workers, that clients did not have to establish hardship before being granted assistance.
13. The Ministry agreed that if an individual was denied federal social assistance benefits on the basis that he/she was a non-Band member living on a Band land, that person could apply for Income Assistance benefits.
14. The Ministry agreed to change the wording on its appeal form which referred to "G.A.I.N. policy" since appeals should be decided on the basis of whether the decision being appealed complies with the *G.A.I.N. Act* and Regulations and not whether it complies with Ministry policy.
15. The Ministry agreed to allow individuals living in institutions to accumulate two months' comfort allowance ($120) in addition to the basic $500.00 asset exemption for a total of $620, before reducing income assistance benefits.
16. The Ministry agreed to provide "hardship assistance" to applicants without adequate identification for up to three months to provide time for such persons to obtain or replace the needed identification papers.
17. The Ministry agreed to amend the Income Assistance Manual to ensure that a letter of clarification is given to relatives applying for Child in the Home of a Relative benefits, explaining that the form which establishes continuing eligibility refers only to changes in the child's circumstances, not the family's.
18. The Ministry agreed that individuals classified as "sharers" will only include those applicants/recipients who fall within the terms of SAFER Regulations as eligible renters.

LABOUR

1. The Ministry agreed to reconsider that section of the *Workers Compensation Act* dealing with widows' pensions with a view to eliminating a widow's age as a criterion for the calculation of widow's benefits.
2. The Apprenticeship and Employment Training Programs Division agreed to undertake more careful consideration before revoking a trade certification.
3. The Gas Protection Branch undertook to ensure that anyone having a licence revoked would be advised of his or her appeal rights.
4. The Apprenticeship and Employment Training Programs Division agreed to revise its literature on the Jobs for Youth Program so that applicants can be aware of the procedures of the Division in handling applications.

5. The Employment Standards Branch has made a list of employees who speak languages other than English for usage by the Branch's personnel so as to avoid as much as possible communication problems with the public.

6. The Employment Standards Branch will ensure that complainants are given the information pamphlet that describes time limits and complaint procedures.

LANDS, PARKS AND HOUSING

1. The Ministry modified its conflict of interest policy so that its staff members now are able to become members of any organization of their choice; activities will have to be restricted to those of general membership only where an association involved is clearly in an advocacy role relative to programs administered by the Ministry.

MUNICIPAL AFFAIRS

1. The Ministry accepted and ensured implementation of my recommendation to amend the *Home Owner Grants Act* so that holders of 99-year leases whose property is registered as an individual parcel for property tax purposes will be eligible for the grant.

TRANSPORTATION & HIGHWAYS

1. The Motor Vehicle Department agreed to seek repeal of Section 29 of the *Motor Vehicle Act* so as to eliminate the situation of double jeopardy wherein the Branch was authorized to impose a $25 fine for every 10 points recorded against an individual's driver's licence in addition to the premium charged by the Insurance Corporation of British Columbia for the same penalty points.

2. The Motor Vehicle Department agreed to permit women married prior to September, 1977 to revert to their maiden name for the purposes of issuance of a driver's licence without requiring a change of name under the *Name Act*. Applicants are nevertheless required to provide acceptable identification by means of a birth certificate. A further requirement imposed by the Department for the production of a marriage certificate as well appears to me to be unnecessary and this issue remains under investigation.

3. In late 1984 the Motor Vehicle Department established an appointment system in Victoria, to address complaints of unreasonable delay for road tests. The Department also implemented an automated driver's licence application system in January 1985, in all offices, which is estimated to result in a 20% time savings per customer. Plans for these new systems were already under active consideration when my office began investigating related complaints of delay.

4. A new telephone routing system was introduced in October, 1984 to address complaints that telephones were not being answered at the Department's high volume Hornby Street office in Vancouver. With the new system, the telephone automatically begins ringing at the Burnaby Motor Licence office when staff in the Hornby Street office are unable to answer the phone within four rings.

5. The Motor Vehicle Department agreed, again, that it did not have the authority to refuse the transfer of a motor vehicle because of an outstanding debt to I.C.B.C. and the practice of refusing such transfers was again abolished.

6. In response to a complaint that an unfair advantage was being given to the B.C. Safety Council's motorcycle training service, the Motor Vehicle Department agreed to remove the reference to this service from it's "Safe Riding Guide" handbook.

7. The Ministry agreed to correct an error in its metric conversion weigh scale which affected trailer registration.

8. The Motor Vehicle Department agreed to revise its notice to drivers, whose licences were up for renewal, to explain that a driver's licence renewal will be refused where the driver owes money to the Insurance Corporation of British Columbia.

B. BOARDS, COMMISSIONS, TRIBUNALS AND CORPORATIONS

AGRICULTURAL LAND COMMISSION

1. The Commission agreed to advise its staff not to retain irrelevant information on applicants' files.
2. The Commission agreed to follow court decisions in dealing with applications for exclusion from the Agricultural Land Reserve.

COLLEGES

1. The President of the Open Learning Institute agreed to rectify a misleading statement that could be construed as a racial slur in a school text book and to publish an erratum.

INSURANCE CORPORATION OF BRITISH COLUMBIA

1. The Corporation has agreed to ensure that the Vernon Claims Office personnel provide claimants with more detailed reasons for the denial of their claims.
2. The Corporation has agreed to reword the Special Equipment Endorsement to indicate clearly that there will be coverage for loss to speakers in a vehicle only if they are permanently attached to the motor vehicle.
3. The Corporation agreed with my recommendation that private investigators be informed by written memoranda of the appropriate standards to be met in investigating claims.
4. The Corporation agreed with and sought implementation of my recommendation that the *Insurance (Motor Vehicle) Act* be amended so that its limitation periods conform with the provisions of the Limitation Act.
5. The Corporation now routinely notifies claimants of the provisions of Part 7 of the *Insurance (Motor Vehicle) Act* and entitlement to no-fault benefits.
6. The Corporation has improved its communications with claimants so that they now receive notice of claims decisions, are given an opportunity to discuss the decisions, are notified of the final decision, are given the opportunity to obtain written reasons from the Corporation and are advised of their appeal rights.
7. The wording of the section in the 1985 Autoplan Booklet was changed to make the rules governing the transfer of vehicles clearer.
8. The Corporation amended an application form which had become outdated and which required the customer to supply personal and irrelevant information.

WORKERS COMPENSATION BOARD

1. The Board undertook to review the safety of the "man-in-the-bucket" or "gondola" system of cone picking.
2. The Board changed its standard letter to employers about the consequences of not paying outstanding assessments to provide more information.
3. The Board agreed to implement procedures to ensure that disability award files required by Rehabilitation Services will not be delayed.
4. As part of its overall review of assessment policy, the Board agreed to reconsider granting registration to some contractors it previously did not regard as employers.
5. As a result of an adjudicator's delay in implementing a board of review decision, the Board agreed to speak to the specific adjudicator and also more generally address at staff training sessions the need for speedy implementation of board of review decisions.
6. The cafeteria manager agreed to meet with residents to discuss their concerns about the quality of food in the Rehabilitation Residence cafeteria.
7. The Chairman of the Board issued a memo to staff advising that where a Board physician may have been previously involved in a medical decision about a claimant, he or she should not be involved in the implementation of a Medical Review Panel decision about the same complainant.
8. The Board agreed to remind claims department staff of the need to bring to the attention of the Board's legal department any claim where there is a possibility of third party action, particularly when there is a possibility of liability on the part of a manufacturer.

9. The Board undertook to change procedures in an area office to ensure that workers' telephone calls were returned and complaints referred to the area manager.

10. The Board agreed to suggest to the Medical Review Panel Chairman and Panel members that as a matter of procedure it might be preferable for all members to sign any letter clarifying a certificate.

11. The Board agreed to recalculate a worker's pension entitlement on the basis of his actual earnings rate at the date of his injury in 1945 rather than the arbitrary rate which had been set and for which there was no clear explanation.

PART V

TALK BACK: CORRESPONDENCE FROM COMPLAINANTS AND OTHERS

"Please accept my sincere appreciation for the assistance your office provided in settling the I.C.B.C claim. The cheque from I.C.B. C. has arrived. Mother's death left me emotionally weak. The emotional loss made me unable to deal with the frustraton experienced in resolving the claim. Nick Coleman's most professional assistance was, therefore, the essential ingredient in resolving this matter.

This experience has restored my faith that the B.C. Government bureaucracy can respond to me, the citizen, when the Ombudsman's office acts on my behalf."

Coquitlam
January, 1984

"I would like to thank you and your staff for their help and counsel over 1983. I especially appreciate the efforts and concern of Mr. Bergen Amren. Mr. Amren has been very understanding and realizes I do not plan to make hasty decisions which could be detrimental to my land and family in the future.

Thank you very much for the pertinent copies of the Utilities Commission Act and the Water Act. I have perused them and feel that they will be beneficial to my business transactions. I plan on keeping in touch with your office to inform you of any results concerning the Utilities Commissioner and utilities involved."

Rossland
January 14, 1984

"In this period of gross criticism towards you and your office, I wish to go on record expressing the opposite view. Regretfully, I can only speak for myself, but I know that many inmates at both L.M.R.C.C and V.P.S.C. have had quick and courteous aid from your diligent staff.

"As for myself, in two dealings with your office, I stand firm and unswayed with the highest levels of confidence and gratitude to your staff. The professionalism and integrity of your swift dealings with my medical problems were worthy of high acclaim, and so given. The treatment accorded me, gives me relief and assurance that when a problem of substance arises, both I and other inmates have recourse which is not superficial or simply pacifying.

"I have no doubt that the endless waves of political rhetoric are solely responsible for the shameful, and despicable comments made towards you. If a human being cannot err, then they are not human. In your apology to Cabinet, and the Minister's blatant disregard for your courageous stand, I find Cabinet as wholly unreasonable and caught up in political hardball, at your expense, Dr. Friedmann.

"I contend that this matter should resolve and get on with business of concern, not business of politics, with various attacks. Please do not sway, Dr. Friedmann. You are an asset and an essential part of the province. Many of us need your continued excellence to prevail for years to come.

"Thank you, everyone in the Ombudsman office for being there. Please keep your chin up, and keep fighting. We need you. My best wishes to all of you."

Vancouver
February, 1984

"We just wish to thank you for your efforts on our behalf with regards to our problems with I.C.B.C.

Today we received a letter from I.C.B.C stating our claim had been reconsidered and all charges and interest had been cancelled. It is good to know the Ombudsman's office is available when all else has failed."

Vancouver
February, 1984

"The date for the hearing of the small claim of $700 has been fixed on February 3, 1984, at the Small Claims Court in Surrey. Your kind assistance and co-operation has given me a boost, and you surely have lifted my morale. I'll let you know of the outcome of the case."

Burnaby
February 1, 1984

"Until quite recent I did not even know there were people called Ombudsman. One day I overheard an interview on a radio program with an Ombudsman. Curiosity got the best of me and sometime later I obtained a brochure. Very recently we've really be hearing and I for one have been with great eagerness and thankfulness how you, Mr. Friedman, risk your neck in the name of justice.

As a small back down-trodden backwoodsman who has been trying to be polite when the bigs keep tromping on my toes — boy it's hard to, as they say, keep your kool — but we smalls don't dare voice our opinions or we're charged — run off or run in by the law and the bigs keep on destroying timber, wasting, polluting, destroying habitat. Other folks livelihood, jobs, contracts are given to others from out of the area and all we have left is their logged off high stump graveyards of tombstones.

Large and small trees left to rot, blow down areas when asked for to salvage — no you can't have it — it belongs to . . . — but they can't be bothered with blow down it is easier to leave it so the bugs hatch (spruce beetle) to such great forces that they can infest the entire mass forests. Meanwhile the blow-down areas are left to rot — later to be burned.

Cedar logged off with over 90% waste! Many good logs with thick shells crushed down in the field or shoved into huge piles and burned and buried. I've got photos to prove. They've destroyed many miles of horse-guide outfitter trails — trapline sets — thousands of acre large slash burns destroy untold numbers of furbearing animals when they strike off these huge areas when fire hazards are at highest — the loggers tell the local forester what they're going to do and they do it time after time year after year.

At these times, late August, is when the wild berries are ripe in the logged areas and all types of birds and animals feed on the huckleberries currents, raspberries and other seeds. With jet fuel sprayed from flame thrower torches from jet ranger helicopters nothing has a chance to escape the sudden death and except the fire into standing green timber leave corridors which are to be game protecting corridors but the big timber barons greed they have to have it all. So any dirty tactics whereby they then get the timber for salvage stumpage rates.

A few times when I've got job falling timber they've put me into doing dirty jobs where no other faller would do a good job. They know I'd be concerned to keep the regulations. A few of the biologists and technicians and conservation officers are my good friends — meanwhile the other loggers keep on raping down the beautiful stands of green timber after a few gyps like this I realised they were actually using me for toilet paper as it were. Pardon me. So I've been criticized for cutting too low stumps. Any wood wasted in high stumps is wood wasted for ever. Besides it causes more breakage and hangups with most all kinds of timber moving equipment.

Cedar now is a great premium even at 90% waste — but a few years ago it was a complete waste — millions of cedars were slashed — cut down after the good spruce, fir and pine were logged out and as much as possible the cedar were torched to burn and what didn't burn is rotten now. I know I've had to slash much of this and saw thousands of acres of slashed torched cedar stands, very many of which would have been best quality #1 cedar power telephone poles besides the precious lumber — millions of cedars wasted. Sometimes I wonder how come I haven't received a bullet in my back before now. Boy — do I know a little of what you mean, Mr. Friedmann, and boy do I feel proud of you — please don't you ever give up.

Unpoliced logged off areas receive overkill. For years was illegal to trap wolves. Protected wolves have killed off game, mountain goat, caribou, moose, mule deer and beaver, now have moved low down in the ranch area of the Horsefly river. Last summer my neighbour lost over 50 beef calves. European and American guests won't come back — no game. Hardly any tracks anywhere. 12–15 years earlier dozens of small and larger groups of game would be seen on benches, basins, ridges, slopes, swamps, valleys, now lone track is a rare occasion.

You (not you literally) try to tell my new ranch neighbours, wolves need protecting and he's trying very hard to be polite. May the God Lord Guide and Protect you, Mr. Friedmann in your great efforts.

I've not had any U.I.C. for about 4 years. Last in 1979. I've never had welfare and I don't smoke, drink and no drugs, not even aspirin."

Horsefly
February 20, 1984

"You do not know me and I shall not sign my name, not out of cowardice, but because I am writing for many people, some unable to write and some fearful.

We are the people who exist on welfare. We try to be mother, father, aunts, uncles to our children. We do our best.

For this we are labelled "welfare bums." We know what it is to have insults hurled at us. We understand that you may become discouraged.

You and your office have many times been the only people who stand between us and the System — the System which too frequently does not view us as striving humans, but as the dregs and some thing to be shoved aside.

So, I am writing to you to say, "Fight the good fight." For the sake of the powerless, please fight on! Don't be down-hearted. We are for you all the way."

Victoria
February 24, 1984

"Please accept my sincere congratulations and thanks for a job well done on behalf of the people of B.C. Having seen you again recently on the Webster program, you continue to impress me with your common sense approach to your job. I believe that if every public servant in B.C. from the Premier on down practised your open, honest style in the performance of his duties, this province would be extremely well served.

In view of the recent personal attacks upon you both in and out of the Legislature over that Forestry business in which I believe you acted rightly and well, I am writing to the Premier on your behalf.
It is most essential that you keep up the good work."

Castlegar
February 25, 1984

"Thank you. You have certainly shown you are capable of handling your job superbly. You have done exactly as you set out to do: receive fair treatment for one and all.

"I am sure you are aware the liquidation company for the bonding company, in our case, is willing to reopen our file and are currently planning to meet with our solicitor. This is what we hoped for, of course the outcome is yet unknown, but we hope justice will prevail. My family and I just wanted to thank you and send you our regards and respect."

Vancouver
March, 1984

"I wish to take this time to thank your office, Rosemary Pelly and Sonja Hadley for all your help with my complaints against W.C.B. Every time I contact your office, the problem is always straightened out very quickly. After your office contacted Mr. . . ., he was very easy to get along with for a while, then back to the old routine of arguing again. Also thank you for the brochures you sent. They will be very helpful. The brochure on "Compensation Advisory Services" should be very helpful, since I didn't know there was such an office. Thank you again for all your help.

Walton, Ontario
March, 1984

"Many thanks to your wonderful help. I do not know what we would do without your office."

Victoria
March 4, 1984

"I am writing this letter to thank you, your office and the work of your assistant on my case against I.C.B.C. Although I know this case is not a big case, yet I am deeply impressed by the speed and follow-up procedures of your assistant in handling my complaint.

"If not for the follow-up phone call from your assistant, I would have already given up any further pursuit of claims from I.C.B.C. I guess this is just typical that a little man cannot always afford the time and pressure to deal with government organization or any Crown corporations.

"The existence of your office is vital to most of the little citizens in British Columbia. I wish you would continue to fight for the people, in spite of any possible threat of closing your office."

Vancouver
April, 1984

To the Editor, Osoyoos Times:

"Dear Sir:

"After some twenty years of dispute with the Workers' Compensation Board concerning a toxic substance used widely in industry, causing cancer, disabling dermatitis, respiratory problems and sensitivity, not to mention many other possible side effects, I reported my complaint to the provincial ombudsman, Dr. Karl Friedmann, who had my case investigated and concluded that I do have a legitimate complaint.

"Following the Board's refusal to accept the Ombudsman's recommendation, Dr. Friedmann has submitted my case in his Special Report No. 8 — to the Legislative Assembly under the date of April 12, 1984 for their consideration.

"Pending the ruling of the Legislature, I feel since the W.C.B. has not seen fit to advise workers of this hazard through posters in the work place, it is my duty as a concerned citizen to make this hazard to health publicly known. After all, an ounce of prevention is worth a pound of cure.

"I also feel the Minister of Health should be deeply concerned about the wide use of this 'carcinogen,'

and together with the other members of the legislature will give full credit to the Ombudsman for bringing this serious matter to their attention; and take the necessary measures.
"Should one person be spared the misery, discomfort and loss of earnings I have suffered over the span of 22 years, I would be satisfied that my efforts of the past will not have been in vain."

Osoyoos
May, 1984

"I am writing to inform you that my long-standing dispute with the Workers' Compensation Board has been settled in my favour. All monies owed me have been received, and the file has been closed.

"I wish to convey my appreciation to you and your staff, particularly Mrs. Isabel Otter, for the advice and assistance provided. I would also like to mention that once the Appeal decision was rendered in my favour, the staff of the W.C.B. were most efficient in closing the claim."

Victoria
May, 1984

"I just received your letter of February 29, 1984. I cannot believe that you have reviewed this matter carefully even though your signature appeared on the bottom of the letter. As it comes from your Vancouver office, however, anything is possible, as I have been led to believe in the past that you had reviewed matters carefully when in effect it had been handled by one of your investigators. Is this your signature or did someone else write this letter and sign it? The point I am trying to make is that I have never been impressed by the work of your senior investigator and I want to know whether you have reviewed this matter yourself.

"Have you read my last letter of Jan. 31, 1984? Certainly this reply of February 29, 1984, does not reflect that you have read it and reflected carefully on the issue. My first name also is . . . not . . . as the letter is addressed. It is indicative of the superficial and careless nature of the letter. It just seems that you are playing games with me with no intent to resolve this matter or support me at all and that you would like to appear as having done so when in effect and in reality you do not want to take a stand here to support me or my case at all. I could understand somewhat better if you would have the courage to approach the Employment Standards people and then to have been unable to convince them to reconsider. But playing games with me concerning evidence acceptable leads me to have doubts about your motives and intent and leads me to believe you are not interested in pursuing this issue with them. I hope I am wrong and would ask you to review my last letter again carefully."

Prince George
May, 1984

"Just a note to let you know that things have turned out well for me in my dispute over Motor Carrier Permit denial. I followed the course you suggested with the addition of involving this area's MLA, Bruce Strachan. Your assistance was of immeasurable help to me and I thank you for it."

Valemount
May, 1984

"A mere letter seems inadequate but I have no other way of thanking you for your interest and hours of work on my behalf. What I thought would be just a "prod" from your department, turned out to be almost a campaign. Again, many thanks."

Fulford Harbour
May 1, 1984

"It's becoming increasingly more evident that I may have to resort to more desperate measures to get the ball rolling. Up until the time I was arrested, I didn't know what I wanted to do with my life, but now I do. It may be fine and dandy that I have a desire to help others, but I can't do it alone. That's why I wrote you. I need help before I can help anyone else. I need support and positive direction, and more information, and people who believe what I believe. All I've been getting is letter's like your's."

Burnaby
June, 1984

"Many thanks for sending the copy of the B.C. Ombudsman's Annual Report for 1983. It is rather fascinating to read about the many complaints and how they were dealt with by the Ombudsman. The use of cartoons and the amusing captions used to separate the various complaint descriptions and report sections make for easier reading. It is interesting to note the circumstances which lead up to the complaints. The large number of complaints that were apparently not worth considering by the Ombudsman would indicate that the complainers were trying to get away with something which did not have much chance for success."

Oliver
June, 1984

"Many thanks for your help with my 21 year fight to get the Workers' Compensation Board to recognize my claim. I am excited and happy now that my life is going to be much easier."

Cranbrook
July 12, 1984

"Several weeks ago you gave me assistance regarding an I.C.B.C. insurance claim. It involved (name withheld) Body Shop and an apparent overcharge of their fees. Your assistance in connecting us with

the I.C.B.C. manager of the North Vancouver office, gave surprising results. He contacted the body shop and relayed the story. The long and short of it was, they agreed to cut the amount owing by one-half ($400) which you saved us."
I would like to thank you for your interest in our problem, we were at wit's end and thankful someone could inform us where to turn. Thank you again for your help and concern."

North Vancouver
July 12, 1984

"We have heard that the provincial government is not renewing your term of office. This is felt by myself and all I've talked to, to be a serious error of judgment on the part of the government. It is probably also an act of bias, as it is well known that you haven't hesitated to go after the government or its bureaucracies if you've believed they have been out of line.

"People, especially those confined in institutions, people on welfare, people trying to have justice done by government bureaucracies, people who would generally be regarded as the downtrodden or underdogs, look up to you as the champion of their causes. You have fulfilled your function with fairness, impartiality and persistence, and if a public vote were held, would be returned to office by a landside.

"For the provincial government to not renew your term is a travesty, but typical of their attitude to public sentiment. I am writing a letter to my MLA expressing my feelings, and if there is anything further I can do as an individual, I would appreciate you letting me know.

"As one life-long B.C. resident, I thank you for what you've done and hope your work has not finished on the province's behalf."

Prince George
July 25, 1984

"I would just like to take this time to say I sincerely appreciate the efforts and expediency demonstrated by your staff in assisting me with my complaint relating to the above noted matter. It is refreshing to find such service available after lengthy and previously futile confrontations with a government agency."

Kamloops
August, 1984

"I received my paycheque from (name of company withheld) but if it wasn't for you I would never have got it. So I would like to say thank you very much for your help."

Prince George
August 7, 1984

"I have just received your letter forwarded to me from Kamloops. Fortunately for me, I have been transferred to Alouette River in Maple Ridge (A.R.C.C.). Since arriving here, I have seen the doctor and he has prescribed for me what medication I need. I'm sure if the people that I have known and talked to would have been more informed as to who you are, and what you do, you'd have more letters coming your way concerning medical treatment at K.R.C.C."

Maple Ridge
September, 1984

"This letter is my feelings and comments on the letter of Aug. 28th from the Minister of Environment to you about the issue of Wildlife damage to agricultural crops which concerns mostly elk.

When first reading the letter one gets the impression that everything will soon be alright but when one looks at it a little closer the situation won't change very much. Near the end of the letter the Honourable Minister points out it makes more economical sense to raise elk than agricultural products. Sure, from the government's point of view that is right because they collect all the licences and royalty fees etc. and the private landowners raise and feed them. The fish and wildlife have no intention of drastically cutting the elk herd down. Like in their management program a bull elk with less than 3 points on their antlers is fully protected. I have had 14 head of spike elk come into and destroy my garden in a single night. In the 1983-84 sustenance permit program only calf elk could be taken which doesn't cut down the herd. Elk are very mobile and by far the most damage is done in early spring and summer on newly seeded fields. The only true non migratory elk is the ones that happen to have the bad luck to collect a bullet in the right spot. As the government is opposed to compensation then the landowner or conservation officer should be able to shoot any kind of elk at any time of year that is creating damage of any kind.

The Fish and Wildlife think nothing about shooting a blue heron, a mink or any other rare species of wildlife that stops at the fish hatchery for a free meal. The orchardists can get a permit to get rid of an elk or deer any time they set foot in an orchard. Because we are not raising fish or apples does that make us a second class citizen? I will agree with the Minister that given enough time everything will come out alright as the ranchers and farmers may go broke and give up and after they quit the elk and deer will disappear as their food supply will be gone. There was practically none when the first settlers came to this valley. Our livestock association imports about 40 tonnes of salt a year and in my estimation 10% is utilized by wildlife. I have never seen the Fish and Wildlife distribute any salt for wildlife to keep them off highways or farm land. If

they really want to keep game away from civilization then they will have to spend some money and put salt, minerals and fertilizers into remove areas and close that area to all hunters.

This is just my personal observation and comments."

Wardner
September 20, 1984

"I am now pleased to advise you that I am today in receipt of a trust cheque in the amount of $10,439 received from the solicitor for the I.C.B.C. in full settlement of this matter and I am most pleased to be closing this file.

"I am tempted at this time to comment upon the conduct of the I.C.B.C. throughout these proceedings but inasmuch as I have already done so through copious correspondence which you have copies of, I will refrain at this time from doing so.

"However, it is my belief and I have so advised my client that without the involvement of the Ombudsman's Office of the Province of British Columbia and without the interest of the SOS Department of the Edmonton Journal who brought this matter to the attention of the British Columbia Ombudsman's Office, the I.C.B.C. certainly would not have had the slightest compulsion to have settled this matter.

Both this writer and Mrs. . . . wish to take this opportunity to express our gratitude to your lengthy involvement and active participation which ultimately lead to the settlement of this matter which would not have otherwise been possible."

Edmonton
October 1, 1984

"Thank you for responding to my previous letter. I was very happy to receive it, that is, until I opened and read it. It may be true that I may be facing a difficult period ahead, but what is even more difficult than that, is trying to get someone with some authority to take me seriously.

"I have received your letter of October 25, 1984, and we are most grateful to learn the information it contained. When it came, there was some tension. Gosh. Should I open it or wait awhile. There had been so many rejections over the years. Again we are most grateful and we thank you for your efforts on our behalf."

Seattle, Washington
November 2, 1984

"I am writing to congratulate the Ombudsman's office on the very fine service they are offering to the people of B.C. When I contacted your office regarding my problems with W.C.B., I received immediate and kindly support. Patricia Anderson was concerned and motivated to help me in every way possible. I am very grateful to her since I felt under a great deal of stress from the long and inexplicable delays from the W.C.B.

"I have decided not to pursue the matter further, especially since I have to "battle the Feds." That is enough for anyone. I do think we need an Ombudsman's office in the Interior, but I am sure the possibility of that is extremely remote. Continue the good work."

Kelowna
November 5, 1984

"Everything went off without a hitch. I have my licence again and I believe everyone's happy. Thank you for your time and effort. I really appreciate what you did on my behalf. Thank you."

Vancouver
November 6, 1984

"I was recently informed by telephone that the Alberta Compensation Board will reinstate me. This was followed by a cheque. I wish to thank you for your help in solving this dilemma. The B.C. Board is helping me with financial help for night school and a seminar, so things are starting to brighten up. Again thank you."

Vancouver
November 13, 1984

"I'm not sure who to direct this to, although it was a lady who responded initially to my request for some assistance in my ongoing dispute with I.C.B.C. I would like personally to thank this lady and anyone else who worked so diligently in the resolution of this problem.

"I am today in receipt of a cheque in the amount of $967.46 in settlement of this claim. I remain quite convinced that without the intervention of your office, there would not have been any voluntary settlement of this dispute. Thank you again and may the Ombudsman office remain a force for fairness in the bureaucratic jungle."

Langley
November 16, 1984

B.C. SUPERINTENDENT OF INSURANCE DISPUTE

by J. Alvin Speers

Two insurance licences were qualified for by successfully written test
Both required sponsor to sign applications, the Superintendent was to do the rest.

He is instructed by the Insurance Act which makes no difference between licences two,
It stipulates coincidentally what he is required to do:

"Issue, or refuse to, licence to applicant", appointing agent to sell general insurance, or life.
If this had been done, per existing law, with his department we would have no strife.

But the Superintendent, for reasons inscrutable to democracy,
Issued both licences bearing our name but one he refused to send to me.
Instead he sent it out of Province to the office of the sponsor signor,
Without even advice or copy to us who it had applied for.
After long and patient wait we asked what was cause for the delay.
Only then did we learn what had happened and this our patience blew away.

We asked his staff to retrieve the licence that bore the applicant's name
And make us first-hand recipient thereof like the general licence came.
This they adamantly refused to do, saying policy it was not.
As I perceived their violation of our freedom, angrier I got.

We notified the Superintendent in writing our life licence application we withdrew,
Simultaneously requesting fee refund which was certainly due.
Curiously then the Superintendent, via staff, also refused that reasoned request,
So we entered Small Debt Court claim and by his default that body granted Judgement for our behest.

This disconcerted the Superintendent. Expensive lawyers he did rapidly arrange,
After time spaced hearings, the Court's first judgement to change.
This left the good civil servant appearing then to have the right
To arbitrarily deny free people Justice, for which our forbears did fight.

The Provincial Minister responsible was next asked basic freedom to uphold.
The taxpayer with such alleged temerity was seen as being awfully bold.
The M.L.A. had better things to do he thought than valid Justice to request
From a senior civil servant who argued that he knew best.

In between we actually received fifty per cent of due rebate.
They did not explain their change of heart or why we did this rate?
They seem to suppose we are at their mercy, catering to bureaucracy's whim
In the name of Justic and Freedom, we have news for them!

The Ombudsman now wrestles with the problem, overworked and restrained as is his creditable department's case.
'Tis most gratifying that we have such people who discern and appreciate that freedom we must not erase.
It has been said that "they alone have freedom who dare it to defend."
This I believe, so I will pursue it right up to a proper end.

November 30, 1984

"Thank you very much for your letter dated 23rd and your kindness and consideration taken in looking into my complaint against I.C.B.C. Also please thank your staff for me."

West Vancouver
December 3, 1984

"This letter is to express my appreciation to you for your concern about my father's problems. Although my father has not received the additional allowances, he has received the forms to be filled out monthly regarding these allowances and I anticipate that he will start receiving these allowances in the near future.

"My father has applied to go into an intermediate care home, so the additional money will be used to improve the quality of care he will receive, plus the maintenance of his present home. My mother is still in the hospital and goes to cobalt treatments at the Cancer Clinic five days a week. I would also like to bring to your attention all the effort and attention that Pat Anderson made on behalf of my father. She was always willing to listen to me and offer encouragement and helpful suggestions. Thank you for your help in dealing with this problem."

Victoria
December 3, 1984

PART VI

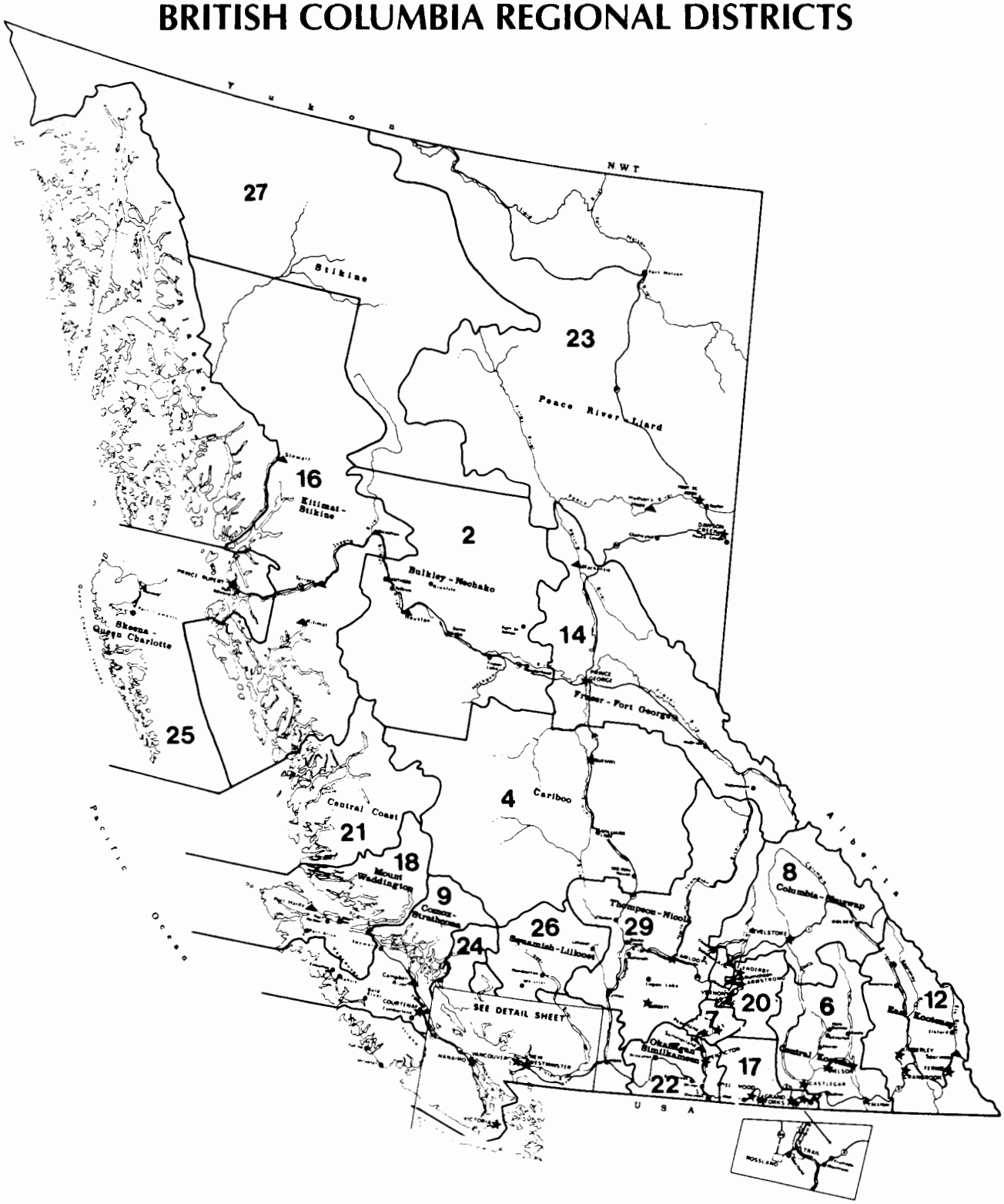
TABLES

TABLE 1

Profile of Complainants, and Complaints Closed Between January 1, 1984 and December 31, 1984

		Number	Percent
COMPLAINANT GROUP	Individual/Family	10,937	96.4
	Business	189	1.6
	Union	6	0.1
	Group	158	1.4
	Public Servant	18	0.2
	Others	35	0.3
	TOTAL	11,343	100.00
COMPLAINT INITIATOR	Aggrieved Party	10,334	91.1
	Relative/Friend	710	6.3
	M.L.A. and M.P.	28	0.2
	Professional	160	1.4
	Ombudsman	50	0.4
	Public Servant	18	0.2
	Others	43	0.4
	TOTAL	11,343	100.0
INITIATOR'S GENDER	Male	6,607	58.3
	Female	4,585	40.4
	Family	59	0.5
	Group/Other	92	0.8
	TOTAL	11,343	100.0
FIRST CONTACT	In Person	1,440	12.7
	Letter	861	7.6
	Telephone	8,994	79.3
	Not Applicable	48	0.4
	TOTAL	11,343	100.0
COMPLAINT INITIATED AT	Victoria Ombudsman Office	7,072	62.4
	Vancouver Ombudsman Office	3,329	29.3
	Local Visit	942	8.3
	TOTAL	11,343	100.0

BRITISH COLUMBIA REGIONAL DISTRICTS



Regional Districts

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

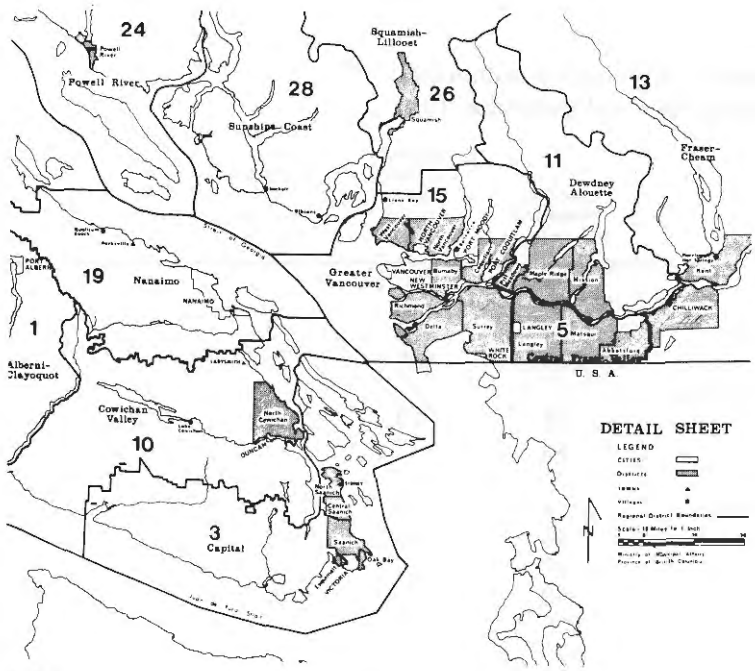


TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1984

Regional Districts	Percentage of Total B.C. Population (June 1981)	Percentage of Total Ombudsman Complaints Closed (Jan to Dec., 1984)
1. Alberni-Clayoquot	1.2	1.2
2. Bulkley-Nechako	1.4	1.5
3. Capital Region	9.1	14.6
4. Cariboo	2.2	2.8
5. Central Fraser Valley	4.2	7.2
6. Central Kootenay	1.9	3.3
7. Central Okanagan	3.1	2.2
8. Columbia-Shuswap	1.5	1.4
9. Comox-Strathcona	2.5	3.0
10. Cowichan Valley	1.9	2.8
11. Dewdney-Alouette	2.2	0.6
12. East Kootenay	2.0	2.6
13. Fraser-Cheam	2.0	1.1
14. Fraser-Fort George	3.3	4.4
15. Greater Vancouver	42.6	28.7
16. Kitimat-Stikine	1.5	1.1
17. Kootenay Boundary	1.2	1.2
18. Mount Waddington	0.5	0.7
19. Nanaimo	2.8	3.4
20. North Okanagan	2.0	2.4
21. Central Coast	0.1	0.3
22. Okanagan-Similkameen	2.1	2.2
23. Peace River-Liard	2.0	3.4
24. Powell River	0.7	0.7
25. Skeena-Queen Charlotte	0.9	0.7
26. Squamish-Lillooet	0.7	0.8
27. Stikine Region (Unincorporated)	0.1	0.4
28. Sunshine Coast	0.6	0.4
29. Thompson-Nicola	3.7	4.1
Out-of-Province	N/A	0.8
TOTAL	100.0	100.0

TABLE 3

Disposition of Complaints (Proclaimed Authorities) Closed Between January 1984 and December 1984

	Declined Withdrawn Discontinued	Resolved: Corrected during Investigation	Substantiated: Corrected after Recommendation	Substantiated but Not Rectified	Not Substantiated	TOTAL
A. MINISTRIES						
Agriculture and Food	4	5	3	0	3	15
Attorney General	291	405	26	4	262	988
Consumer and Corporate Affairs	53	19	4	2	25	103
Education	14	7	2	0	9	32
Energy, Mines and Petroleum Resources	3	3	1	1	4	12
Environment	45	32	4	0	37	118
Finance	27	28	4	5	32	96
Forests	30	20	10	2	28	90
Health	109	121	7	0	64	301
Human Resources	578	459	8	2	322	1,369
Intergovernmental Relations	1	2	0	0	0	3
Labour	38	37	7	16	22	120
Lands, Parks and Housing	61	38	2	2	28	131
Municipal Affairs	9	4	2	0	6	21
Provincial Secretary	12	1	1	0	1	15
Transportation and Highways	90	86	7	0	102	285
Tourism	0	1	0	0	0	1
Universities, Science and Communications	2	0	0	0	1	3
SUB-TOTAL	1,367	1,268	88	34	946	3,703
PERCENT	36.9	34.2	2.4	0.9	25.5	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	0	2	1	1	10
B.C Assessment Authority	18	8	1	0	8	35
B.C. Board of Parole	5	1	1	0	4	11
B.C. Buildings Corporation	6	2	0	0	1	9
B.C. Ferry Corporation	4	5	0	0	3	12
B.C. Housing Management Commission	2	7	0	0	2	11
B.C. Hydro and Power Authority	62	117	0	0	33	212
B.C. Railway	2	0	0	0	1	3
B.C. Transit	4	1	0	0	9	14
College Boards	19	9	2	0	6	36
Criminal Injuries Compensation	10	2	0	0	1	13
Environmental Appeal Board	3	1	0	0	4	8
Forensic Psychiatric Services Commission	65	98	9	0	55	227
Government Employees Relations Bureau	1	8	0	0	0	9
Insurance Corporation of B.C.	221	172	11	5	90	499
Labour Relations Board	8	5	0	0	4	17
Medical Services Commission	0	1	0	0	3	4
Motor Carrier Commission	6	1	1	0	0	8
Municipal Police Boards	20	0	0	0	3	23
Public Service Commission	1	0	0	0	4	5
Superannuation Commission	6	18	0	1	16	41
The Maples	6	39	0	0	5	50
Tumbler Ridge	2	0	0	0	0	2
Workers' Compensation Board	433	125	28	7	48	641
WCB Boards of Review	22	4	4	1	6	37
OTHERS	40	13	1	2	11	67
SUB-TOTAL	972	637	60	17	318	2,004
PERCENT	48.5	31.7	2.9	0.9	16.9	100.0
TOTALS A and B	2,339	1,905	148	51	1,264	5,707
PERCENT	41.0	33.4	2.6	0.9	22.1	100.0

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities
(Sections 3–11 Schedule of the *Ombudsman Act*)
Closed between January 1984 and December 1984

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Municipalities (Section 4)	1	150	11	162
Regional Districts (Section 5)	5	59	9	73
Public Schools (Section 7)	1	62	9	72
Universities (Section 8)	0	4	0	4
Colleges and Provincial Institutes (Section 9)	1	2	0	3
Hospital Boards (Section 10)	0	23	9	32
Professional and Occupational Associations (Section 11)	0	5	3	8
TOTAL	8	305	41	354
PERCENT	2.3	86.1	11.6	100.0

TABLE 5

Extent of Service

Non-Jurisdictional Complaints
Closed between January 1984 and December 1984

	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	23	739	104	866
Marketplace matters — requests for personal assistance	84	2,676	633	3,393
Professionals' actions	6	260	27	293
Legal and Court matters	26	308	43	377
Police matters	4	122	18	144
Miscellaneous	5	171	33	209
TOTAL	148	4,276	858	5,282
PERCENT	2.8	81.0	16.2	100.0

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		48	2.1
2. Abandoned by Complainant		187	8.0
3. Withdrawn by Complainant		280	12.0
4. Statutory Appeal (Section 11 (1) (a))		328	14.0
5. Solicitor (Section 11 (1) (b))		2	0.1
6. Discontinued by Ombudsman (Discretionary)		1,494	63.8
a) Over 1 year old	5		
b) Insufficient personal interest	16		
c) Other available remedy	955		
d) Frivolous	5		
e) Investigation unnecessary	198		
f) Investigation not beneficial to complainant	315		
TOTAL		2,339	100.0

TABLE 7

Level of Impact

Resolved and Rectified (Jurisdictional) Complaints
Closed between January and December 1984

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	1,642	200	61	2	0	1,905
Rectified Complaints	56	16	60	5	11	148
TOTAL	1,698	216	121	7	11	2,053

TABLE 8a

Budget Estimates

Year	Salaries	Operating Expenses	TOTAL
1980/81	631,203	387,000	1,018,203
1981/82	955,405	504,720	1,460,125
1982/83	1,251,497	508,843	1,760,350
1983/84	1,110,744	508,000	1,618,744
1984/85	1,144,295[1]	793,725[2]	1,938,020[3]

[1] Includes provision for Employee Benefits not included in earlier Budget Estimates ($183,501).
[2] Includes provision for Telecommunications not included in earlier Budget Estimates ($225,222).
[3] Includes provision for the amounts mentioned under 1 and 2 above ($408,723).

TABLE 8b

Actual Expenditures

Year	Salaries	Operating Expenses	Salaries paid from Contingency Vote	Summer Student Program paid by Ministry of Labour	Cash Benefits	TOTAL
1980/81	709,166	430,826	109,004	26,903	41,214	1,317,113
1981/82	970,199	482,406	100,229	—	35,466	1,588,300
1982/83	1,227,378	463,378	9,825	—	53,948	1,754,529
1983/84	1,118,880	499,359	—	—	56,870	1,675,109