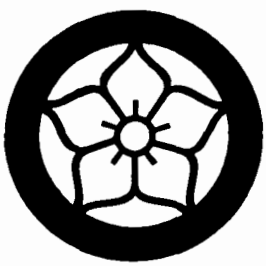

Ombudsman

Fairness for all in British Columbia

1991 Annual Report

To the Legislative Assembly

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Highlights of the 1991 Annual Report

Statistics

- The number of jurisdictional complaints increased by 19.1 per cent between 1990 and 1991 to an all-time high of 9,361.
- A total of 15,494 jurisdictional and non-jurisdictional files were closed during the year — an average of over 60 each day the office was open.

Public reports

- More than a year after the publication of Public Report No. 22 on the need for integration of public services to children, youth and their families, fragmentation of responsibilities among ministries and disciplines remains a serious problem. (page 199) In response to a government request for suggestions regarding changes to child protection legislation, we subsequently published Public Report No. 24. The Minister of Social Services and Housing subsequently appointed a Community Panel to review child protection legislation in B.C. (page 202)
- After receiving several complaints about arbitration of landlord-tenant disputes, we conducted a systemic study of the services provided by the Residential Tenancy Branch. This led to the recommendations contained in Public Report No. 28. (page 32)

Current concerns and initiatives

- Ombudsman offices are opening around the world, and have been quickly established in several countries that are new to democracy. The absence of a Canadian Ombudsman office is a matter of continuing and increasing concern. (page 18)
- Small communication problems between government and citizens can lead to major injustices. Communication difficulties are the most common theme in complaints to the Ombudsman office. (page 25)
- Professional associations are taking on characteristics and responsibilities that are increasingly similar to those of government bodies. Their responsibility for responding fairly and thoroughly to public concerns is also increasing. (page 13)
- An ever-increasing number of inmates are being placed in a correctional system with limited resources. The overcrowding that results places a considerable strain on the system and generates numerous complaints to our office. (page 140)
- A combination of new legislation and a new approach by the Workers' Compensation Board resolved many of the concerns raised in our 1987 public report on the workers' compensation system. (page 184)

Case summaries

- Steelhead were out of season. The two fly fishermen were after salmon. This didn't stop a zealous fisheries officer from ticketing them for fishing for steelhead. Their holiday was ruined, but their fines were refunded after they complained to us. (page 71)
- A 13-year-old youth was described by his mother as a "ticking time bomb". His case illustrated how difficult it can be to find a place for children who fall into the gaps between government services. (page 210)
- A debt collector towed away an income-assistance recipient's car, with her crutches inside, after she was unable to pay a bill for repairs. We helped her get it back. (page 136)
- Callers who kept getting a busy signal from the Medical Services Plan started calling us instead. We conveyed their messages to MSP and received assurances that MSP was upgrading its phone service. (page 115).
- Integrated snow management became an issue when clients of a heli-ski oper-

ation found telemark tracks on what was supposed to be a virgin run. The culprit was a cross-country skier, and the result was the cancellation of a ski-touring company's licence of occupation. (page 65)

- A woman released from a correctional centre wanted to go home to Alberta, but had no money. Fortunately she had a generous lawyer. (page 149).
- A property owner fined for late payment of taxes said it was the fault of Canada Post, which had delivered his tax notice to the wrong address. Debate raged in the Ombudsman office as to whether or not to substantiate his complaint. He lost by a narrow margin. (page 84)
- Angry motorists were incorrect in their assumption that a speeding ambulance was responding to its lunch break rather than to an emergency. In another incident, ambulance crew members were assigned to different duties following a complaint about verbal abuse of a patient. (page 112)
- He owned a condo at Whistler and rented in Vancouver, where he spent most of his time. His application for a home owner grant was turned down, even though the condo was the only home he owned. Unfair, he said. We disagreed. (page 126)
- After a flooding stream eroded a ravine bank, several houses were placed in danger. We mediated among a variety of government agencies to arrive at a solution to minimize future risk. (page 79)
- A woman placed for adoption more than 20 years ago was successful in locating her mother. The reunion was a positive event, but the mother expressed concern about the process by which adopted children and their natural parents seek to establish contact with one another. (page 219)
- Smoking in government buildings is not only not welcome these days, it is forbidden. It's a different story for one group of people who live in government buildings and have few pleasures. (page 144 and 224)
- Victoria residents argued that plans to harvest timber on Vancouver Island's west coast should be shown in their city. This was arranged, and an agreement was reached for the establishment by the Ministry of Forests of a permanent facility for the viewing of such plans. (page 93)
- The worker was injured in 1952. In 1987 he obtained a retroactive disability pension from the Workers' Compensation Board. He then went after back interest on the pension, and his persistence paid off in 1991. (page 192)
- Alberta cattle were ordered back to "wild-rose country" after B.C. ranchers complained that their presence made community pastures in the Peace district unavailable to B.C. animals. (page 101)
- A litigant wanted to subpoena a Land Title Office registrar as a witness in court. They told him it couldn't be done, and they were right. (page 54)
- Items reported missing after transfers of inmates in the correctional system included a black leather jacket (page 143) and a gold eagle with a diamond eye (page 144).
- Advocates of preserving a wilderness complained that logging was being approved even though the area was being assessed for park status. The decision had already been reached not to designate the area as a park, but it had been communicated in a way that caused confusion and anger. (page 129)
- After a court awarded custody of four children to their father, the mother complained that the custody and access report given to the judge was improperly prepared. Following our investigation, the woman successfully appealed the court's decision. (page 226)
- Insult was added to injury when a motorist who ran off the road in a rainstorm got not only a crumpled fender but also a bill from the Ministry of Transportation and Highways for damage to a concrete barrier. With the aid of a witness, presumption of innocence

won out, and the ministry agreed not to sue the complainant. (page 159)

- British Columbia's animal population was again well represented in our investigations. Two mares got into a stallion's yard and couldn't get out (page 44), and several hundred bison got out of their farm and had no intention of going back in (page 74). We also had occasion to deal with issues raised by dead fish (page 43) and live lice (page 113), as well as eagles (page 71), birdies (page 75) and bogeys (page 73).

Part I
Introduction

Current Issues

The Ombudsman Institution: A Concept for Worldwide Democracy

The reality of modern administrative bureaucracy and its massive impact on individuals transcends all forms of government. At this time of expanding democratic expression and positive structural change in many parts of the world, it is timely to consider the experience of the international Ombudsman community and the role it may play in encouraging the improvement and stability of democratic institutions, both new and old.

The Ombudsman process is fragile, particularly in those jurisdictions where it is a relatively new institution, but also in areas where it is assumed to be well entrenched. Even in the Canadian provinces, where the first Ombudsman office in the Americas was established in Alberta in 1967, we cannot take for granted that the institution is firmly grounded, as evidenced by the closure of the Newfoundland Ombudsman office in 1991.

The concept of the Ombudsman, from its classical legislative model to the many manifestations of executive, local government, special mandate and commercial Ombudsman offices, has taken firm hold as an instrument of democratic accountability between the individual and the administrative state. But in order to continue to achieve its potential, the Ombudsman process must be as flexible in its approaches as it is rigid in its principles.

The bylaws of the Edmonton-based International Ombudsman Institute, which represents Ombudsman offices in more than 40 countries and works to promote the concept and encourage its development throughout the world through research, educational programs, the publication and exchange of information and the organization of regional and international conferences, describe the characteristics of a legislative Ombudsman in the following terms: the office of a person who has been appointed or elected pursuant to an Act of a Legislature; whose role is to investigate citizen complaints concerning administrative acts or decisions of government agencies from which the Ombudsman is independent; and who makes recommendations to the Legislature as an officer of that body.

Beyond the most simple and direct forms of democracy, considerable power must be entrusted to government officials in order for them to carry out the public purpose. The need for protection for the ordinary citizen against the possible abuse of this delegated power has been recognized for many centuries. The Control Yuan of ancient China and the Roman Tribune are precedents. The Swedish institution of Justitieombudsman, created in 1809, inspired the concept and name for the most common modern model of the Ombudsman office. This model was more sharply defined and settled with the creation of the Danish Ombudsman office in 1953 and the first English-speaking Ombudsman office in New Zealand in 1962.

Ombudsmen generally hold the power merely to recommend, not to order change. It may be that this inability to force change represents the central strength of the office and not its weakness. Persuasion can be a far more effective tool for change than command, because persuasion depends on dialogue and a reasoned response. It is the exchange of ideas rather than the imposition of ideas that lends strength to democracy, and the same principle applies to ombudsmanship.

The persuasiveness of Ombudsman recommendations results from a thorough investigation of all facts, scrupulous consideration of all perspectives, and vigorous analysis of all issues. Persuasion based on such an approach, once an office has established its reputation for fair treatment, is

infinitely more powerful than the application of coercion. While a coercive process may cause reluctant change in a single decision or action, by definition it creates a loser who will be unlikely to embrace recommendations in future actions. By contrast, where change results from a reasoning process, it changes a way of thinking, and the result endures to the benefit of potential complainants in the future. If genuine change is to take place as a result of Ombudsman action, the office must earn and maintain the respect of government through its reasonableness. Without this, it will be at best ignored, and at worst ridiculed.

Although the classical Ombudsman role is that of a generalist, with jurisdiction over all matters of administration practised by a particular level of government, it is becoming increasingly common to establish specialist Ombudsman offices with limited jurisdiction covering the actions of distinct institutions such as police, prisons, armed forces, hospitals, or long-term care facilities, and distinct issues such as human rights, children's rights, and access to information and protection of privacy. Commercial Ombudsmen in the insurance, building trades, banking and newspaper businesses have also been appointed in different countries.

Understandably, concern has been expressed about the potential public confusion arising from the proliferation of Ombudsman offices which do not conform to the classical model. New Zealand has passed legislation restricting the use of the word "Ombudsman" to the official legislative office. However, what we can all celebrate is the increasingly widespread adoption, worldwide, of the principle of administrative fairness to individual citizens.

All Ombudsman offices are responding to a common phenomenon — the potential in all bureaucracies for insensitivity towards individuals. Delay, indifference, rudeness, negligence, arbitrariness, oppressive behaviour, arrogance and unlawfulness can be structural shortcomings of all hierarchical institutions in which employees receive their directions, authority and rewards from above. Fundamental to the Ombudsman concept is the ability to invert bureaucratic attention towards the individual citizens who are intended to be served. Whatever the structure of a particular democratic system or the model of Ombudsman office that has been developed as one of its institutions, the nature of state bureaucracy presents similar challenges to all societies.

Ombudsman offices must constantly evolve along at least two dimensions. On one level, they develop effectiveness and maturity through the gradual accumulation of experience, skills and community good will; on another, they constantly react to changing external trends and threats. The strong and growing links among Ombudsman offices, regionally and internationally, help them to compress the evolutionary process and to anticipate and deal more effectively with the major common challenges.

Common challenges

Human rights and individuality

The inherent worth and dignity of each person defines our humanity. It creates for every citizen the fundamental right to be treated fairly and to be respected as an individual with unique needs, interests, perspectives and circumstances.

The hierarchy of need in a democratic society must address the fundamental human rights of its citizens first. Without this first step being secured, all other rights to fairness in government administration will be at risk. Recent appointments of Human Rights Ombudsmen in Guatemala and Mexico and the brave and principled positions they have taken on behalf of the human rights of the citizens of their countries demonstrate the primacy of this concern.

In countries with a long, unbroken history of democratic government, it is easy — and wrong — to assume that human rights are guaranteed by law and tradition and there-

fore not a major issue. Democracy provides the framework for our protection and enjoyment of individual human rights. The individual is the basic unit of our democratic process, and this concept is at the root of our notions of self-government and the rule of law. Collectively, we subscribe to these principles because we believe that they will ensure that we and each of our fellow citizens will be treated with fairness. We must guard against the watering down of these principles in the day-to-day practice of democratic government through its administrative arm.

The democratic goal of fairness for each citizen is challenged by the tendency in a complex society for individuals to be categorized as members of groups. This occurs as a result of the assumption that groups provide protection, self-assurance, political and economic advantage, and efficiency.

Group definition is a dangerous threat to individual and collective rights. Generalization, either to include or exclude, dehumanizes our relationships. It does so by promoting negative stereotypes which are exclusionary and discriminatory and can become hateful, and by causing us to avoid seeking and understanding the reality of each individual. Generalization is easy to achieve, and it is both falsely comforting and wrong.

All of our professional, legal, academic, economic, political, bureaucratic and social institutions must work hard to avoid grouping which results in an inaccurate representation of the individual. This misrepresentation naturally occurs, for grouping tends to modify and erase individual characteristics for the sake of administrative convenience. The complexity of the human being is transformed to the simplicity of the statistic. Stereotyping replaces uniqueness.

Even with worthy intentions and apparently objective data, stereotyping has a destructive backlash. Members of an unjustly discredited group may bind together for protection, become dispirited and resentful, and, perhaps in retaliation, begin to exhibit the very tendencies with which they have been unfairly labelled. The result may be a downward social spiral that hardens attitudes and fuels prejudice, and individuals caught in the spiral experience increasing unfairness. Our society contains various examples of groups which have experienced this phenomenon. Increasingly, we are coming to recognize both the harm that occurs and the high cost of treating it and attempting to find a remedy.

Service providers, both government and private, often rely on grouping not only for efficiency but also because of the assumption that categorization of individuals encourages fair treatment. Yet the moment we make assumptions about an individual because of the category he or she "fits", we begin to sacrifice fair treatment. Fairness depends on individual treatment and becomes increasingly incapable of application as individual characteristics become blurred and lost in "classifications". Stereotyping has a seductive and false efficiency to it. In truth, it is a dangerous shortcut to individual evaluation which will cause serious social and economic harm.

Professionalism and the public interest

As intermediaries between individual citizens and a complex and often threatening society, professionals carry major public responsibilities as well as private opportunities.

Increasingly, medical, legal, accounting, engineering and other professions are exhibiting public sector attributes. The fundamental need for safety, shelter and financial and social stability often makes their services essential. The degree of public subsidy to professional education, professional facilities such as hospitals and courts, the payment of professional fees such as those paid for public health and legal aid, and the extensive employment by government of a wide range of professionals all tend to shift the focus of the professions towards the public side of the public/private spectrum.

Because they are essential, many professional services form part of the public health, justice, financial, social and physical infrastructure of our society. Professionals do not practise in a purely competitive market. Market failure frequently arises because of the difficulty in differentiating among professionals on the basis of quality, the existence of severe information blocks regarding the nature of professional services, and the exclusive rights to practise professions. In this situation, society must pay particular attention to the importance of holding professionals accountable for quality and fairness to public consumers.

The public is demonstrating increasing apprehension about the quality and fairness of service provided by the professions. In a recent U.S. poll, politicians, financial brokers and lawyers were identified as the professionals held in the highest disregard. This disrespect for the agents of society's fundamental political, economic and judicial institutions should shake us to the roots of our celebrated liberal democratic, free market self-satisfaction.

Politicians are acutely aware of the public's attitude towards and dependence on professionals. Self-regulation by statutory professional associations is an elegant solution for politicians because it shifts the cost and the scrutiny from government to the professionals themselves. Although professionals generally inspire the respect of their fellow citizens, their apparent privileged position in society can also cause envy. As a result, they are vulnerable to becoming political scapegoats to appease public resentment. Government will not stand by in the face of significant public criticism, and if professional groups want to maintain their control over their own affairs, they must clearly demonstrate that they appreciate their public interest responsibility, that they can ensure high quality service, and that they can provide for the meaningful participation of the public in holding professionals accountable.

Self-regulating associations play a dual role which can cause internal conflict within a profession. They have responsibilities for member services as well as the overriding public interest. While the medical and legal professions split these responsibilities between different organizations, many professions do not, and it is a major challenge, both in substance and appearance, to be both administrator and regulator. To meet this challenge, the professional association must clearly demonstrate the strong link between adequate fees, facilities and other conditions of work and the quality of services provided to the public. It must also convincingly explain, inside and outside the profession, the paramount interest of each member of the profession in seeing that incompetence or misconduct is identified and dealt with for the good of the profession as well as of the public. In this regard, the profession must convince the public that the dominant professional emotion is one of pride and not merely of internal loyalty.

The way that a professional association deals with complaints from the public about the actions of its members is the litmus test of self-regulation. In designing a complaint-handling system, the profession must appreciate that the most common concern of individual members of the public is not with the occasional, highly publicized cases of sexual misconduct, financial defalcation or gross incompetence. Rather, it is with the little injustices of delay, arrogance, rudeness, indifference and sloppiness that irritate and alienate clients from their professional agents. A process for receiving and dealing effectively with complaints must accommodate more than professional "capital crimes" and address these less dramatic but wider impact concerns quickly and effectively.

A complaint system must also be a participatory process. The complainant must understand the nature and timing of the process, be given a direct and effective role in setting out his or her concerns, and be advised of the outcome and the reasons for it. While there may well be a need for confidentiality in the process, the complainant should still be given sufficient reasons to understand, and therefore respect, the outcome, particularly if no disciplinary action

is to be taken. Otherwise, notwithstanding the validity of the outcome, public distrust will undermine the integrity of the process. As well, a participatory process will ensure that the professional regulators fully understand the complainant's perspective and, consequently, are in a position to make a better decision.

A fair and participatory process for the complainant does not mean that the accused professional should receive anything less than complete fairness in any complaint resolution, disciplinary or competency review. The professional has a fundamental economic and personal interest in the outcome and must not be sacrificed to any public or political lust to create a scapegoat. An important consideration in any review process is the sometimes greater public interest in achieving a remedial outcome rather than a punitive one, and the professional regulator must not be pressured into an overreaction.

Professional regulators should keep in mind that the public interest demands more than simply technical competence and strict ethical conduct. Professionalism should be more widely defined to recognize a general duty of fairness owed by professionals to the public because of the public nature of their services and the power imbalance that exists between the individual professional and his or her client. This imbalance arises because of the technical expertise, the often essential nature of the services, and the monopoly to provide them.

Professional associations should encourage, if not require, the use of plain language between their members and the public. While precision may be the most important feature of communication among professionals, clarity must be the essence of professional/client communication. Clear communication will ensure that the problem being addressed, the options and their consequences are all fully understood. It will lead to better decisions and a higher quality of professional service, and, not insignificantly, to less liability exposure because of a fully informed professional relationship.

Professional associations should carefully consider the value of encouraging a significant lay membership on their governing councils. This can reduce public suspicion that the regulatory organization is self-serving and can also improve the quality of the regulatory decisions by bringing a broader perspective to the important deliberations of the profession. To achieve this, lay members should truly be representative of broader opinion and not simply pseudo or would-be members of the profession.

A further important consideration for professional self-regulating associations is the value of some external review of their decisions on public complaints. Such review can lend credibility to the careful and responsible decisions of an internal review process, perhaps satisfying some members of the public who will simply never accept an internal decision as being other than self-serving. Alternatively, if the external review can identify a problem which was not discovered internally, or can suggest a more effective solution because of the broader perspective brought to bear on the problem, then the professional association should be delighted, in the public interest and its own, to receive it. However, because of the direct statutory responsibility and the special expertise of the self-governing association, it is perhaps preferable that the conclusions of the external review agency not bind the professional organization, but merely recommend reconsideration along stated grounds.

The *Ombudsman Act*, unanimously passed by the British Columbia Legislature in 1978, provides for such external supervision over statutory governing bodies of professional and occupational associations. However, this section of the *Ombudsman Act* has not yet been proclaimed into force by the provincial cabinet. Despite this lack of formal jurisdiction, the Ombudsman's office has had informal and constructive relationships with a number of professional associations including the Law Society, the College of Physicians and Surgeons, the Association of Professional Foresters, the College of Psychologists and others. In

August 1991, the Ombudsman's General Counsel was asked by the College of Physicians and Surgeons of B.C. to co-chair a special committee examining issues of sexual misconduct between physicians and patients. This committee will be publishing a report and recommendations in the autumn of 1992.

Finally, professional associations should understand the importance to the public and to government of the appropriate co-ordination of professional services among related professions. Apparent power struggles, duplication or gaps in effective service to the public will not be tolerated, particularly at a time of strained resources and structural reconsideration. Rational alliances among related professions should clearly demonstrate that training, licensing, service delivery and self-regulation are integrated effectively in the public interest.

Freedom of information

The right of free public access to government information is basic to an individual's democratic participation in government, and does not require justification on the basis of any particular need. Information should not be kept unnecessarily confidential. Such a practice helps to create an atmosphere of mistrust and can lead to misinterpretation where information is only partially disclosed. However, in many jurisdictions, members of the public have no absolute right to obtain information kept by government agencies. When decisions about what information should be disclosed in the public interest are at the discretion of ministers of government or senior public servants, the result is inconsistency and, worse, the opportunity to use the withholding of information as a means of discouraging opposition to government policies and practices.

One of the ultimate benefits of a thoughtful freedom of information policy is increased efficiency from improvements in records management systems employed by all government agencies. The public has the right to expect that every government agency knows what records it has in its custody or control and where those records are located. Information should be easily accessible for internal purposes regardless of an external policy. Therefore, while the implementation of the policy may cause some initial disruption, the effect over time should be reduced costs and increased efficiency.

In jurisdictions where freedom of information legislation is in effect, members of the public generally exhaust less formal means to obtain information from the government before making requests under the statute or to an Ombudsman or similar office. While the legislation does set the standard for disclosure, it is used primarily as a vehicle to respond to formal requests or to resolve disputes. A liberal administrative information policy not only sets the general standard, but also should become the major means of disclosure. It should therefore be designed to provide direction to all government agencies and the entire public service, as well as to provide a means for the public to obtain information. The policy should also stimulate wider disclosure of information independent of specific requests from the public.

A well written administrative policy, carefully implemented, can also support an effective and non-threatening progression to the eventual introduction of legislation where it does not already exist. It can be adapted to the specific needs and responsibilities of different agencies, with the full participation and support of the officials who will have to apply it. Relevance, realism and familiarity will reduce the likelihood of controversy or disruption surrounding the implementation of freedom of information legislation.

The only real and effective means to ensure that the public has reasonable access to information is to effect a change in attitude within the government service. Public servants are generally required to swear or affirm an oath to faithfully execute their duties, powers and trusts. Some public servants may be uncomfortable with disclosing information if they believe it would constitute a violation of their duty of loyalty. They may fear that disclosure would

embarrass their minister and would be in conflict with what they see as their main duty to protect that office. Because of these factors, it is necessary for government to provide in its policy that disclosure of information in accordance with set guidelines is required as a positive obligation of public officials and will not violate the oath taken, or any other duty. There should also be support from government at the most senior level and protection provided in respect of career advancement for those responsible for making decisions about disclosure. Some information may be potentially embarrassing for the government, and the policy should not permit any improper influence or interference with decisions on disclosure.

The basic policy should be that information within the control of government is available to the public. Exceptions to this general rule should be specific, few in number and generally subject to discretionary disclosure if there is no reasonable expectation that harm would result. Whether such a policy is established by legislation or not, the principles involved are those of administrative fairness, which must at the very least be respected in administrative policy and practice. As such, it is the duty of an Ombudsman's office to state such principles clearly and apply them as the standard in measuring the administrative fairness of any refusal of government to disclosure information to the public.

Increasingly, Ombudsman offices, either general purpose or specialized Information Commissioners, are being given specific legislative authority to review access to information complaints. Sometimes the Ombudsman office plays a mediation role, as in the case of the Information Commissioner of Canada, with an appeal to the courts where a dispute cannot be resolved. In other cases the Ombudsman may be given the statutory power to order the disclosure of information; this was the approach used by Ontario in its establishment of the office of the provincial Information & Privacy Commissioner. An interesting variation is contained in the New Zealand legislation, which provides that an Ombudsman recommendation must be complied with unless cabinet intervenes to override it by a special order within a specified time.

Public Report No. 26, published by this office in March 1991, provided a detailed description of categories of information which should be automatically disclosed, as well as those which should be exempt from disclosure under certain circumstances. It is encouraging to note the public commitment of the provincial government to enact information and privacy legislation.

The Judicial Ombudsman

The Ombudsman of Puerto Rico hosted an important Congress on the Judicial Ombudsman in May 1991, following the Annual Meeting of the Board of Directors of the International Ombudsman Institute. Academic opinions and comparative jurisdictional data were presented, and the role of the Ombudsman with respect to the justice system was intensely debated. While a variety of legitimate concerns and opinions where expressed, there seemed to be general agreement that judicial independence need not be compromised by the limited oversight role of an Ombudsman.

Most Ombudsman offices have, within their general jurisdiction, authority to investigate complaints concerning the administration of justice, including the actions of the police, prosecutors, probation and parole officers, court staff, registrars and prison officials. Many Ombudsmen also have authority to review the decisions, as well as the process, of quasi-judicial tribunals. Jurisprudence in British Columbia and Ontario makes it clear that "matters of administration" include the merits of a decision of a quasi-judicial tribunal.

Another area of potential Ombudsman oversight of the judicial system involves the conduct of judges, as distinct from their actual decisions. Judicial misconduct is reviewable in some jurisdictions, including British Columbia, by a judicial council appointed by government after an initial investigation by the Chief Judge. The action or inaction of such a council would be

reviewable by an Ombudsman, for example where a complaint was made about judicial misconduct and the council failed to take appropriate action against the judge. Alternatively, it would seem to be appropriate that an Ombudsman might be given direct authority to review the alleged misconduct of judges.

The most difficult category of Ombudsman jurisdiction over the justice system involves the decisions of judges. The review of judicial decisions is most appropriately handled through the discipline of an appeal court system, and an Ombudsman should not interfere with this process. However, an exception to this general principle might be that an apparently perverse decision could be referred to appeal by an Ombudsman where it was not, for whatever reason, being appealed by the parties. This power does exist in some jurisdictions, and there has been recent discussion in the United Kingdom of the need for some agency external to the justice system being given the authority to review questionable verdicts and refer them for appeal, following the miscarriages of justice in the McGuire, Guildford and Birmingham cases.

Conclusion

The importance of strong links between the international Ombudsman community and other international organizations dedicated to democracy and human rights must be emphasized. The Ombudsman institution must act as an integral part of any democratic system, and its essential independent quality should not suggest that it is not tightly woven into the democratic fabric of society. As neutral and trusted investigators of bureaucratic unfairness, Ombudsman offices are the repositories of valuable data on matters of universal concern. Democracy in any one country will become strengthened, not in isolation, but with arms locked and hearts open internationally. Ombudsmen are a key link in that expanding and strengthening chain.

The Need for a Federal Ombudsman

When Alberta became the first North American jurisdiction to establish an Ombudsman office in 1967, the institution was practically unknown outside Scandinavia. During the quarter century since, wide recognition has been given to the importance of having an independent agency to ensure fair treatment of citizens by the administrative arm of government. This is true not only in Canada, where Ombudsman offices are well established in eight provinces, but also in the growing number of countries enacting Ombudsman legislation. Recent additions to this list include several European, Latin American and African countries where democracy has just begun and where the monitoring of fairness has been considered so vital to the healthy development of democracy that establishment of an Ombudsman office has been given top priority. As Ombudsman offices increase in number across the continents, Canada is notable as a country which encourages ombudsmanship throughout the world but has no federal Ombudsman of its own.

Ombudsman offices are as important in long-lived as in new democracies. Complacency about fairness issues is a tempting and dangerous tendency for governments that pride themselves on a lengthy history of freedom and fairness. Complacency is tempting because an elected government may see an advantage in glossing over its faults and those of its administrators in order to present a positive appearance. And complacency is dangerous because it undermines a basic principle of democracy — that all citizens have the opportunity to seek fair treatment regardless of their level of influence or the size of their grievance.

Previous annual reports of the Ombudsman have made reference to the pressing need for a Canadian Ombudsman at the federal government level. This report will discuss in greater detail the reasons why a

federal Ombudsman office is needed and suggest a model for its operation.

Need

A strong case for a federal Ombudsman office has been made over the past 15 years by several bodies, including the Canadian Bar Association, the Canadian provincial Ombudsmen (by unanimous agreement) and the Law Reform Commission of Canada. Indeed, Canada has played a significant leadership role internationally in the successful application of the Ombudsman concept through its provincial Ombudsmen, its federal specialized Parliamentary Commissioners of Information, Privacy and Official Languages, the International Ombudsman Institute, the Canadian International Development Agency, and the International Bar Association's Ombudsman Forum.

The role of Members of Parliament as advocates of their constituents, the increase in the number of administrative tribunals to which citizens can take their concerns, the specialized federal Parliamentary Commissioners, and the expanded recourse to the courts provided by the Canadian Charter of Rights and Freedoms may indicate that an Ombudsman with general jurisdiction at the federal level is not necessary. In addition, there is a real concern about creating another large oversight bureaucracy at the federal level, with its attendant cost and possible complication of government administration. These facts, no doubt, act as disincentives for government to create such an office.

It is instructive to note, however, that despite the increase in the number of avenues of administrative review, tribunal review and Charter challenge over the past decade, the level of public satisfaction with the fairness and effectiveness of government services apparently has not increased.

The model set out in the following pages addresses each of these issues: the public disregard for government, the need to reduce the administrative cost of providing public services, and the need for a constructive relationship between parliamentary oversight agencies and the federal bureaucracy.

The oversight roles of Members of Parliament, Courts, quasi-judicial tribunals and public sector managers are essential but not sufficient in themselves to ensure administrative fairness for citizens. They have the following limitations.

1. *Members of Parliament*

Individual Members of Parliament do not have the time, resources or ready access to information to enable them to address all of their constituents' concerns in a timely and effective way A federal Ombudsman office with general jurisdiction could assist them in investigating and resolving citizen complaints of administrative unfairness. In addition, there are more fundamental reasons why Members of Parliament cannot and perhaps should not play this role alone.

Access to an effective remedy against administrative unfairness should be an equal right of all citizens. Members of Parliament enjoy a range of influence with the federal bureaucracy depending on their respective roles as ministers, back-benchers or opposition members. This can create an inequality and unfairness in itself among citizens living in different constituencies.

Further, there will often be an apprehension in individual citizens that their Member of Parliament will not address their concerns in a politically impartial manner. This may be to a citizen's advantage or disadvantage but, either way, it creates an unfairness. The distinction between the political role of a politician, which is understandably partisan and for which that person takes political responsibility, and the duty of fairness and impartiality of a public administrator is often not well understood by the public, politicians and public servants. There is an inherent awkwardness whenever a politician deals directly with a public official, and this is particularly so when an allegation of unfairness is being investigated. The public official may be uncertain as to his or her responsibilities with respect to disclosing information which might otherwise be confidential, and

also may sense that political pressure is inappropriately being applied to an administrative process. It is not only more effective but also more appropriate for an impartial and independent investigator such as an Ombudsman to conduct the investigation and make recommendations for whatever change may be shown to be appropriate.

Another difficulty for a Member of Parliament pursuing the complaint of a constituent, especially if the matter is raised in Parliament, is the public exposure that can accompany it. Most citizens come to an Ombudsman office expecting and receiving a confidential investigation and resolution of their concerns, and this is provided for in Ombudsman legislation.

Also, Members of Parliament may be unable to deal effectively with complaints that involve a variety of different competing yet legitimate interests, such as in land use and resource allocation disputes. Such interests may involve several government departments and the parties may reside in different constituencies, raising the complication of different Members of Parliament championing different interests, the matter becoming politicized, and the advantages of an impartial investigation being lost.

Finally, the range of government services is of such size and complexity that Members of Parliament cannot be familiar with the organizational structures, policies and procedures of all departments and their divisions. This lack of familiarity can act as an impediment to resolving complaints fairly and expeditiously.

2. *The Courts*

The barriers of cost and delay in the court system make it an unrealistic remedy for the concerns of most citizens regarding government. Court proceedings are inappropriate for the resolution of the high proportion of concerns that arise from simple misunderstandings and small errors that invite quick resolutions by an independent party acting informally but with authority. Further, there is often no legal remedy for the unfair impact of the legitimate exercise of discretion by public administrators. And multi-party disputes, for example concerning land use and resource allocation, which involve dynamic relationships among a variety of legitimate interests, including government, simply cannot and will not be resolved through the courts.

3. *Quasi-Judicial Tribunals*

While the many tribunals established at the federal and provincial levels are responding to specialized needs with less formality than the courts, the complexity of the subject matter and the adversarial nature of the proceedings can cause them to become more judicial-like over time, creating the same barriers to access as in the courts.

4. *Public Administrators*

Individual citizens often experience great difficulty in dealing directly with large public bureaucracies. Those agencies which are welcoming and responsive to citizen concerns can still suffer the general mistrust of the public towards government and experience difficulty in convincing citizens of their fairness and efficiency.

Bureaucracies tend to exhibit a tension between the desire to provide quality service to the public and the wish to satisfy broad government policy objectives and internal cost efficiency. This tension, which is often artificial insofar as efficiency and quality service can be synonymous, may obstruct the ability of a bureaucracy to perceive clearly and to remedy the causes of problems leading to citizens' complaints.

The proposal set out below addresses these limitations.

Elements of the Proposed Model

The federal Ombudsman office would have the following characteristics and relationship to federal government agencies.

1. It is envisioned that this would be a relatively small office which, for the reasons set out below, would not need to become directly involved in investigating the majority of the public complaints brought to it. It may be that the legislation establishing such an office

should explicitly restrict its size. The statutory responsibilities of the office would be similar to those of most provinces in that the Ombudsman would be an officer of the legislative branch, independent of the legislative branch, independent of the executive and reporting to Parliament, with broad investigative powers relating to matters of administration, a duty of confidentiality and the power of recommendation aimed at remedying the consequences of administrative unfairness.

2. The federal Ombudsman office would co-ordinate the work of the various existing federal specialist Parliamentary Commissioners. This would be an important function to reduce the confusion and drain on resources of the various Commissioners' offices, the public agencies with which they all deal, Parliament and the public.
3. Where it could be shown to be efficient and was agreed to by a particular province, the federal Ombudsman office should be empowered to enter into agreements with provincial Ombudsman offices to delegate the federal intake, investigation and mediation functions to the provincial offices. Such an arrangement would minimize start-up costs, provide single location service to citizens who may not know which level of government it is that they feel aggrieves them, and provide a co-ordinated approach to concerns involving more than one level of government.
4. A fundamentally important role of the federal Ombudsman office would be the analysis of complaint trends and timely and constructive recommendations on the administrative systems of public bureaucracies as they relate to individual citizens. Complaint analysis over time regarding any one public agency can identify underlying systemic causes of recurring problems. As well, such a general jurisdiction office, having a government-wide view of the public administration, can draw together examples of both excellence and inadequacy to be shared across government, as well as identify ways to improve the integration of services where responsibility is shared by more than one agency.
5. The Deputy Minister, President or other Chief Executive Officer (CEO) of each public agency within the jurisdiction of the federal Ombudsman office should be required by statute to appoint a Director of Public Accountability who would have the following responsibilities:
   i) The Director of Public Accountability would have a senior staff role without line responsibilities, and be appointed by and report directly to the CEO;
   ii) The Director of Public Accountability would have responsibility within the agency for ensuring that it was effectively accountable to individual members of the public for the fair administration of the agency's responsibilities, including responsibility for quality assurance programs, complaint handling and administrative review systems, the use of plain language and plain process, access to information and privacy policy, ex gratia compensation and, generally, ensuring procedural fairness in administrative decision-making;
   iii) The Director of Public Accountability would receive complaints concerning the agency from the federal Ombudsman office and would investigate, attempt to resolve and report the results to both the CEO and the federal Ombudsman. The citizen, on registering a complaint with the federal Ombudsman office and having it referred to the agency's Director of Public Accountability, would be advised in writing by the federal Ombudsman office that he or she has the right to return and have the federal Ombudsman office conduct an independent investigation if the complainant is not satisfied with the internal resolution.

Benefits of the Proposal

1. *Cost*

   This proposal would not involve the creation of a large new oversight bureaucracy. Arguably, the existing federal specialized Parliamentary Commissioners' work could be rationalized in the sense that the public agencies, Parliament, the media and the public would be dealing with a co-ordinated and centralized office. Within each public agency, the response to public and parliamentary accountability would also be co-ordinated. The appointment of a Director of Public Accountability would be consistent with progressive management practices relating to quality of service and should decrease overall costs through the preventative avoidance of administrative error, the elimination of costly appeals and the enhanced reputation of the agency.

2. *Impact*

   A powerful dynamic for excellence would be created through the interaction of CEO and parliamentary accountability. The message of the imperative of service quality would be clearly sent to the whole public bureaucracy, which would understand that they would be supported in their sensitivity to putting the public first. In turn, cost-efficiency as well as administrative fairness would be increased through effective quality control. The very name "Director of Public Accountability" is a challenge to the incumbent and the public agency to live up to this expectation.

   A sensitive, effective internal office of Director of Public Accountability would not only reduce the direct investigative responsibility and involvement of the federal Ombudsman office; it would also ensure that unfair practices were dealt with more effectively. Rather than simply submitting to external review and recommendations, the public agency would become directly sensitive to the nature and cause of unfairness by dealing with it itself. This would lead to a self-correction of systemic problems in a way that would more likely endure to the ongoing benefit of the public.

3. *Public confidence*

   The establishment of a Director of Public Accountability in each public agency would send a strong message to the public about the sincerity of government's intentions with respect to quality service and fairness. The accountability of the agency to its CEO and responsible minister would be heightened through the seniority of the Director of Public Accountability; and public and parliamentary confidence would be ensured through the residual oversight jurisdiction of the federal Ombudsman office.

   Public confidence in government would be further enhanced by the internal resolution of most complaints. While external review and perhaps censure may remedy a case of individual unfairness, it is often also likely to subtract from the reputation of the responsible public authority rather than enhance it. Referring public complaints from the federal Ombudsman office internally to the Director of Public Accountability allows the public agency the opportunity to remedy the situation itself, and to take full credit for it. Over time, as the public gains knowledge of and confidence in the internal system, fewer complaints should initiate at the federal Ombudsman office.

4. *Public profile of federal Ombudsman office*

   While it is essential that the federal Ombudsman office be clearly understood by the public to be independent of the executive branch of government, it is also important that it not be seen as necessarily the advocate of every complainant that comes to it. The public bureaucracy must respect the federal Ombudsman office as an impartial investigator of matters of administration if it is to accept the recommendations for remedying findings of unfairness. This relationship is more likely to be established where the feder-

al Ombudsman is not seen by the public bureaucracy to be enhancing the reputation of his or her office at the expense of the government and taking the credit for remedying unfairness, rather than encouraging the public agency to resolve the concern and take the credit itself.

This joint parliamentary and executive accountability model stresses the common objective of administrative fairness and effectiveness and makes it more likely that the relationship between the federal Ombudsman and government will be constructive rather than adversarial. This in turn will reduce the likelihood of the federal Ombudsman being characterized by the media and in the public mind as the champion, and in the government's mind as a self-righteous or politically motivated agitator.

The positive relationship that should exist between the federal Ombudsman office and public agencies through the liaison function of the Directors of Public Accountability would mean that systemic solutions to recurring unfairness would be developed jointly, drawing on the government-wide perspective of the federal Ombudsman office and the specific expertise of each public agency in providing its particular service. This relationship is more likely to lead to a realistic and practical solution in which the public agency's management will feel ownership and have confidence, and which it will therefore actually practise.

Measures of Effectiveness

The following can be used to measure the effectiveness of this model for dealing with complaints regarding the fair and effective administration of public policy:

1. The extent to which there is a common objective recognized and sought by the federal Ombudsman office and the public agencies within its jurisdiction.
2. The development of a constructive rather than an adversarial working relationship between the federal Ombudsman office and the public agencies.
3. The development of mutual respect between the federal Ombudsman office and public agencies regarding expertise, integrity and motivation applied towards the objective of fair and effective public administration.
4. Open and effective communication between the federal Ombudsman office and public agencies.
5. The extent to which public agencies look to the federal Ombudsman office for consultation and advice on systemic issues in fair administration.
6. The ability of the federal Ombudsman office to bring a cross-government perspective to the administrative challenges of any one agency; to analyze complaint trends and systemic problems over time within an agency for the purpose of recommending systemic change; and to identify better ways to integrate or rationalize services provided through cross-agency mandates.
7. The efficient co-ordination of the work of all parliamentary oversight offices, government agencies, Parliament and the public.
8. The ability of the federal Ombudsman office to earn public respect for its independence from government, as well as government respect for the impartiality, expertise and reasonableness of its investigations, recommendations and public reports.
9. The ability of the federal Ombudsman office to refer public complaints internally to an agency's Director of Public Accountability with confidence that they will be dealt with thoroughly and fairly; and the small and reducing proportion of complainants who exercise their full informed right to return to the federal Ombudsman office for independent investigation.
10. The decline over time in complaints coming directly to the federal Ombudsman office, in favour of complainants demonstrating their confidence in a public agency's internal review mecha-

nism by going directly to the Director of Public Accountability.

Practical Examples of Elements of This Model

As noted at the outset, the British Columbia Ombudsman office has attempted to put into practice the underlying principles of this proposal over the past five years. In particular, the office has conducted a series of systemic studies and fairness audits into a wide range of provincial government agencies. Major issues addressed in such studies are quality assurance, fair administrative decision-making processes, effective internal review, and clear and direct communication of standards and processes to the public. As well, we have issued major reports dealing with cross-agency issues such as access to information and privacy, the cross-ministry integration of services to children and youth, and integrated natural resource management.

A serious concern of our office is that costly and often unsatisfactory litigation between citizens and government be avoided wherever possible. In keeping with the general principle that it is the proper role of an Ombudsman to strive for mutually acceptable resolutions of problems rather than necessarily finding fault or the absence of it, our office has attempted to provide informal mediation services wherever such an approach may be productive. This approach not only tends to result in greater satisfaction among all the parties, but frequently provides a more rapid resolution than a full investigation oriented towards a finding of right or wrong. As well, the office has played a facilitating role in the consensual resolution of large-scale public interest disputes about issues that have included the impact of the Greater Vancouver rapid transit system, the provincial regulation of the collapse of the Principal Group of Companies, and the regulation of coastal aquaculture enterprises.

To assist public bureaucracies in becoming more sensitive to individual fairness concerns, we have developed an administrative fairness checklist to be used in consultation with public agencies to review and adapt their policies and practices regarding service to the public. (1990 Annual Report, page 15)

A positive result of all of these initiatives has been the regular and increasing requests that are made of the Ombudsman office by public agencies for consultations on administrative policy development in such areas as standard setting, contract management, information policies, appeal procedures, quality assurance programs, and internal complaint resolution. Where effective internal complaint handling systems have been established in such agencies as B.C. Hydro, the Insurance Corporation of British Columbia, the Income Assistance Division and the Corrections Branch, the Ombudsman's office is able to refer complainants to these systems with confidence, receiving a formal report from the agency on the resolution of the complaint, with the result that few complainants return to request an independent Ombudsman investigation, even though expressly invited to do so.

This experience demonstrates that a new systemic emphasis in the work of an Ombudsman office can promote greater fairness and service to the public and greater cost-efficiency for a public agency by preventing error in the first instance, and by quickly correcting it internally when it occurs. It can also increase respect for government by demonstrating its sensitivity to the rights and interests of individual citizens. Not only would the Director of Public Accountability/Ombudsman model suggested here improve public administration at the federal level; it would also be a constructive force in improving the fairness of provincial government.

Protection for Whistleblowers

Provincial government employees have the right to make complaints to the Ombudsman office about issues of unfairness in government. Where these are

received, this office insists that all reasonable efforts at internal resolution are exhausted before an Ombudsman investigation will be undertaken. However, problems sometimes remain, and occasionally public employees are concerned about reprisals from their employers for having complained to this office.

Where possible, the issues are investigated on the Ombudsman's own initiative without disclosing the identity of the complainant. When this is not possible, it is made clear to the authority involved that any reprisal or appearance of reprisal would be a very serious fairness concern to this office. In spite of this communication, uneasiness may linger. It is most important that there be nothing to deter any citizen, whether inside or outside the public service, from making a complaint to this office. For this reason, the *Ombudsman Act* should be amended to provide explicit protection for public employees, or anyone else, against reprisals for having made a good faith complaint to the Ombudsman office.

Communication — A Key to Fairness

Occasionally the comment is made that the Ombudsman office should not investigate complaints about service quality, as fairness and service quality are separate issues. We disagree. The duty of fairness affects every contact between the government and the public. Fairness is based on legal principles such as the rules of natural justice, but it by no means ends there.

A serious injustice can often stem from a small misunderstanding rather than from bad faith on the part of a government representative. Problems with service quality generally mean problems with communication, and communication difficulties are the most common reason for complaints to the Ombudsman office.

Communication means more than the passing of information — it means the successful transmission of information. Information may be conveyed, but if the recipient misunderstands, is misinformed, or is denied further information that is crucial to understanding of the message, then the communication has failed in part. This failure can result in tremendous harm to citizens who depend every day on the information government shares with them. One government representative told us, "We don't give out information — we just answer questions." This approach assumes that citizens know — or ought to know — precisely what questions to ask. It is more fair and accurate to say that government, having control of information, has an obligation to find out what information the citizen truly needs in a given circumstance and to provide it in a way that can be easily understood. It is a duty to act rather than simply to react.

Government's responsibility to communicate well with the public is a question of efficient and cost-effective management as well as one of fairness and basic courtesy. The cost of attending to the results of poor communication can be enormous. Even clarification of confusing information may generate enormous expense in time and money when multiplied many times over. Correspondence, visits and telephone calls required to "clear the air" may cumulatively create an enormous burden on government resources. Added to this are the indefinable costs of dealing with growing levels of public frustration which often originate in small misunderstandings. The high level of public dissatisfaction with government today is in many respects the consequence of feeling disempowered, and the inability to obtain and convey information successfully contributes to that feeling.

The section below identifies some suggestions for effective communication by government. These suggestions reflect the most frequent communication concerns expressed to us in complaints, including many of those summarized in this report.

It is reasonable for the public to expect the following service in its day-to-day communication with government:

1 *Prompt telephone access to information*

People who call government offices should not be met with endless busy signals and unanswered phones. If they are put on hold promptly, they at least know that there is a person at the other end of the line and that patience will pay off. If the problem results from consistent heavy demand, systems should be installed that can efficiently handle the flow of calls.

In last year's report, we noted a number of complaints from people in the Vancouver area who encountered endless busy signals or unanswered phones when they called offices of the Motor Vehicle Branch. The branch has since taken steps to attempt to remedy the problem. In 1991, a large number of similar complaints were made about the Medical Services Plan (page115).

The frustration of callers is also increased when they find themselves caught in a "telephone shuffle", receiving incorrect information about whom to call — the case summary on page 231 provides a typical illustration. This type of complaint has to some extent been alleviated by the introduction of Enquiry B.C., which provides callers with information about government services. In addition, Service Quality B.C. has published a comprehensive guide to the B.C. government. BC Guide is available at the offices of government agents and bookstores handling government publications.

The difficulty of access is increased for long-distance callers. Calls to government offices in Victoria or Vancouver can be made free of charge from the offices of government agents, but many rural residents live too far from government agent offices to make use of this service. Few government offices accept collect calls, but some will offer to call a resident directly if informed that the call is long distance. To a large extent, this problem has now been remedied by the provision of the Enquiry B.C. service. Anyone in the province can now call 1-800-663-7867 and ask to be transferred to any provincial government number in the province. As few people who call our office appear to be aware of this long-distance link, increased publicity may be needed to make the service known.

2 *Courtesy*

Our experience suggests that the vast majority of public servants treat their clients in a professional and courteous manner. We do, however, receive a number of complaints every year about rude or abusive service on the phone or at a counter. These are difficult to investigate because of the lack of hard evidence — usually it is one person's word against another's.

Courtesy is an essential element of good communication — it is difficult to give and receive information efficiently when patience wears out. For many people, the image of government is formed by the response they receive on the "front lines". Public servants who deal with dozens of "difficult" clients every month may find it difficult to be patient at all times, but basic courtesy is an essential element of fair treatment.

3 *Clear, complete and correct information*

Carelessly presented — and obtained — information results in considerable unnecessary cost to government and to the public. Whether the information is contained in a phone call, a letter, a form or an Act of the legislature, harmful effects may result if any important point is ambiguous or incorrect or left out entirely. Enormous savings — and public satisfaction — can be achieved by paying close attention from the outset to matters of detail.

Encouragement of plain language in the provincial government is important and must be emphasized at every level of the public service. "Bureaucratese" is confusing and frustrating and far too common. Letters, brochures and other written material should be written in clear and simple language and should

provide all relevant information required to answer a reader's concerns. It is of little help to the average citizen to be told that a decision has been made in accordance with a certain section of a certain Act which the citizen will likely have never seen. It may take an extra moment to describe in plain language what the section says, but it is time well spent if it makes the difference between a reader who understands and one who does not. The most successful writers are those who put themselves in the place of the reader in order to ensure that their communication is both understandable and complete.

The ability to obtain information is just as important. For a public servant this means listening to what a caller or writer is trying to say, identifying the key issues, and asking the right questions. It also means ensuring that all important information has been asked for and received before a decision is made. The case summary on page 156 shows the degree of economic damage government can suffer simply because someone neglected to check a fact.

The frustration that can be caused by vague or incomplete information was illustrated in a complaint to us from the holder of a water licence who believed that many disputes among licensees occur because the government provides insufficient information about the rights and obligations of licensees (page 76). Other complaints were made about the harm done by incorrect brochures and circulars (pages 70 and 71) and by lack of notification of the right to appeal (page 113).

4 *Access to written information*

A government manager told us that he was reluctant to provide a document to a citizen who had come with his lawyer to demand it. The manager was irritated by the citizen's attitude and by his confrontative approach. Partially as a result of the manager's refusal to provide the information, the relationship between the manager and the community group to which the citizen belonged became bitter and a drain on the manager's time. The willing release of information to which the citizen was entitled would not only have fulfilled the manager's duty but likely would have resulted in a better relationship and increased efficiency. "Openness is disarming" sounds like a cliche, but it rings true.

If information is withheld from someone who requests it, there should be a valid reason for doing so. As a general rule, information collected or prepared by government is for public benefit and should be available to the public at all times. This was the premise of our Public Report No. 26, the recommendations of which have been largely adopted in the access-to-information legislation recently introduced in the legislature.

Access-to-information legislation applies only to documents that are specifically requested. As in the case of verbal information, communication best serves the need of the citizen seeking documents if government staff help to ensure that the citizen knows what documents exist and which are relevant to his or her interest.

Complaints related to this issue are reported on pages 63, 82, 93, 116, 132, 148, 179, 219, and 227.

5 *Timely responses to requests for action*

A thorough response to a call or letter from a citizen may be delayed by workload or by the nature of the issue raised, but an effort should be made to acknowledge the receipt of a communication quickly and to remain in regular contact if a decision or reply is to be delayed. Silence causes frustration and suspicion.

6 *Efficient interagency communication*

Difficulty in or the absence of communication between ministries or between branches in the same ministry is the source of some of the most serious gaps in communication between government and the public. This issue was central to our discussion of services to children

and youth in Public Report No. 22, and it is a recurring theme in complaints to our office. We frequently act as either a conduit of information or a mediator in resolving complaints that affect more than one ministry, as in the case described on page 79. Other examples of problems in interministry communication are described on pages 89, 129 and 199.

The cause of poor communication is often either carelessness or innocent oversight — whether on the part of government or the complainant — rather than any deliberate wrongdoing. This is why we place so much emphasis on seeking solutions rather than attempting to determine whether or not fault exists. Depending on the circumstance and the complexity of issues raised, we may simply ensure that correct information is provided, facilitate communication between the complainant and government, or act in the role of mediator among a number of parties, including government. Once the problem has been resolved, we will often consult with the government authority against which the complaint has been made about means of improving its communication processes.

In recent years, the B.C. government has taken innovative steps to improve communication processes. Initiatives such as access to information legislation, the Plain Language Institute, Service Quality B.C., and programs to encourage improved interministry communication are timely and important. The test of their success will be the effect on the quality of service at all levels of the public service, and especially on communication in the day-to-day dealings of government with citizens.

Solicitor and Client Privilege in Government Ministries

During an Ombudsman investigation, it occasionally happens that legal advice has been provided to a client ministry by the Legal Services Branch of the Attorney General's ministry and that this advice is relevant to the actions, omission or decisions of the ministry. These opinions are covered by client/solicitor privilege and in normal situations could not be disclosed to third parties without the consent of the client ministry.

In order that the ministries, the Legal Services Branch and the Ombudsman's office have a common understanding of the need for and the appropriate use of such information by the Ombudsman's office, the Ombudsman and the Deputy Attorney General agreed to a process for disclosure.

The process was suggested in the spirit of our recognition that all government organizations share the overriding concern that the public interest be served. It was our objective to ensure that our concerns be appropriately considered in each case while also ensuring that a sensible and efficient relationship between our office and the Legal Services Branch be maintained.

The agreed upon process applies in most situations, the main exception being the provision of legal advice to ministries following a complaint to our office. (It is the policy of the branch that, in such instances, solicitor/client privilege will be waived only in exceptional circumstances). The process can be outlined as follows:

1. Where, in the course of an investigation under the *Ombudsman Act*, our office becomes aware of or comes into possession of a legal opinion prepared by the Legal Services Branch for a client ministry which would in the normal course be covered by solicitor/client privilege, we will neither seek to obtain it nor make any use of it without first advising the client ministry of the reasons for wanting to review the opinion; and suggesting that the ministry may wish to seek legal advice on the appropriateness of a waiver of privilege or disclosure of the document to the Ombudsman's office.
2. Where a ministry seeks legal advice or privilege from the Legal Services Branch, the designated solicitor for that

ministry will have general authority to advise on the matter. Such advice will be given expeditiously and, where convenient, orally so as not to impede the efficient resolution of the matter between the ministry and the Ombudsman's office.

3. While it is anticipated that in virtually all cases privilege will be waived or the opinion otherwise released to the Ombudsman's office, there may be cases where the Legal Services Branch advises against this. In this situation, the Ombudsman's office will be advised of the reasons for non-disclosure, and may request that the legal advice be reconsidered, in turn, by the Assistant Deputy Attorney General for Legal Services and the Deputy Attorney General.
4. Where disclosure of a Legal Services Branch legal opinion is made to the Ombudsman's office, the office will not consider this to constitute waiver of privilege for any purpose other than that which is within the Ombudsman's jurisdiction under the Ombudsman Act. Any publication of information contained in any such legal opinion will be authorized only by the Ombudsman personally, and only after the Attorney General's ministry has been given the opportunity to make representations on behalf of itself or the client ministry as to why such publication should not take place.

"Person to Person" Video

The 1990 Ombudsman Annual Report noted that this office had been involved in the production of a video designed to assist public service employees in serving persons with disabilities. The video was completed and has been distributed to those ministries and agencies which were involved in or had funded the production.

The consensus among the many people who viewed the video was that its message was timely and its presentation highly effective. This positive reaction was reflected in the subsequent interest shown. During the latter months of 1991, the Ombudsman office was besieged by requests for copies of the video from organizations and agencies offering a wide variety of services over an extensive area.

After the initial distribution was made to those ministries and agencies which had funded the project, it was decided that any subsequent group or individual that ordered the video would be charged a small cost for each tape. The revenues from sales will enable the Ombudsman office to create another video dealing with service quality. Negotiations have taken place with the Open Learning Agency, which has assumed the responsibility for publicity and distribution of the video. Copies of the video may be obtained at a cost of $40 for government and business or $25 for individuals by calling the Open Learning Institute at 1-800-663-1663.

Public Report Updates

Ordinarily, the findings of investigations by this office are reported only to complainants and to those government agencies consulted in the course of investigations. Occasionally, however, findings are released as public reports, under section 30(2) of the *Ombudsman Act*, either where an investigation was initiated by the Ombudsman into a matter of wide public concern or where the complaint has been the subject of significant public interest and the complainant has authorized public release of this office's findings. Some public reports (e.g., nos. 18, 26, 27) provide a systemic analysis of a service provided by government; these are Ombudsman-initiated, but generally are stimulated by a series of complaints about the service. Other public reports (e.g., nos. 21, 28) deal with a single event or issue arising from a complaint or complaints.

The following public reports have been released by this office during the term of the current Ombudsman.

1987		
April	No. 5	*The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People*
June	No. 6	*Liquor Control and Licensing Branch: Fairness in Decision-Making*
July	No. 7	*Workers' Compensation System Study*
November	No. 8	*SkyTrain Report*
November	No.9	*Practitioner Number Study*
1988		
February	No. 10	*B.C. Hydro's Collection of Residential Accounts*
March	No. 11	*Pesticide Regulation in B.C.*
August	No. 12	*An Investigation into the Licensing of the Knight Street Pub*
August	No.13	*Abortion Clinic Investigation*
October	No. 14	*An Investigation into Complaints of Improper Interference in the Operations of the B.C. Parole, Particularly with Respect to Decisions Relating to Julie Belmas*
December	No. 15	*Aquaculture and the Administration of Coastal Resources in British Columbia*
1989		
January	No. 16	*Police Complaint Process: The Fullerton Complaint*
January	No. 17	*Willingdon Youth Detention Centre*
July	No.18	*The On-Site Septic System Permit Process*
September	No. 19	*The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)*
September	No. 20	*An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd.*
1990		
July	No. 21	*Sustut-Takla Forest Licences*
November	No. 22	*Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*

1991

February	No. 23	*Graduates of Foreign Medical Schools: Complaint of Discrimination in B.C. Intern Selection Process*
February	No. 24	*Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act*
March	No. 25	*Public Services for Adult Dependent Persons*
March	No. 26	*Access to Information and Privacy*
October	No. 27	*The Administration of the Residential Tenancy Act*
October	No. 28	*The Sale of Promissory Notes in British Columbia by Principal Group Ltd.*

The issues raised by public reports resulting from systemic investigations may continue to be a matter of concern for a considerable length of time following release of a public report by this office. Implementation of recommendations made in the report may be delayed not by political considerations but simply because the process of altering policy and practice inevitably requires careful planning.

The following is an update of our continuing negotiations with government concerning the recommendations made in public reports released during the past two years. Updates on Public Reports Nos. 22 and 24 are included in the section on children and youth issues.

No. 11 (March 1988)

Pesticide Regulation in British Columbia

In the 1990 Annual Report we noted that the Minister of Environment had amended the *Pesticide Control Act* Regulation to provide an increased opportunity for public review of applications for pesticide use permits, as recommended in Public Report No. 11.

In 1991 the Deputy Minister of Environment notified us of further steps that had been taken in response to the first five of the eleven recommendations contained in the report. Those recommendations and the ministry's responses are described below:

Recommendation 1: That the Administrator develop and publish written criteria by which he, in consultation with the Pesticide Control Committee, decides whether a pesticide use will not cause an unreasonable adverse effect.

Response: The ministry has developed "Criteria for Evaluating Pesticide Permit Applications", to be published in leaflet form.

Recommendation 2A: That the Pesticide Control Program require all applicants to give public notification of the proposed pesticide use program, with no less than 30 days for interested members of the public to respond with site specific information to the applicant.

Response: Recommendation implemented as *Pesticide Control Act* Regulation 16(4) and (5).

Recommendation 2B: That the Pesticide Control Program require all applicants to provide proof of public notification of the proposed pesticide use program, and a copy of any public response received, at the time of filing a pesticide use permit application.

Response: Recommendation implemented as *Pesticide Control Act* Regulation 16(6).

Recommendation 3: That the Administrator develop standard practices, in consultation with the Pesticide Control Committee, to ensure that all relevant information will be available and evaluated by every member before pesticide use permit decisions are made. Such information should include the need for pesticide use, alternative methods of pest control, and whether there has been persistent pesticide use for a particular area.

Response: Procedures for implementing the recommendation are being refined.

Recommendation 4A: That every public notification of a pesticide use permit include the conditions to which it is subject.

Response: Recommendation implemented under *Pesticide Control Act* Regulation 18(2)(a) and (d), in instances where a pesticide permit is posted or provided.

Recommendation 4B: That section 18 of the *Pesticide Control Act* Regulation be reconsidered to provide that upon issuance of a pesticide use permit, public notification should include the right to appeal the granting of the permit, the time period, cost, method and place to appeal.

Response: This information is currently provided as a standard condition in a permit.

Recommendation 4C: That in the case of multi-year permits, public notification of the pesticide use permit be undertaken at the beginning of every pesticide use season.

Response: To date, the ministry has not seen the need to re-advertise these permits.

Recommendation 5: That the Pesticide Control Program develop a formal disclosure policy so that any person can have access to the material upon which the Administrator's decision concerning a pesticide use permit application is based.

Response: In accordance with ministry policy on access to information, all information upon which a decision to issue a permit is based is available to the public.

No. 15 (December 1988)

Aquaculture and the Administration of Coastal Resources in British Columbia

The most significant and far-reaching recommendation in this report stated that "a framework for integrated management of resources and activities in the coastal zone should be created, with appropriate enabling legislation, as a mechanism to enhance administrative fairness in all aspects of coastal planning, resource allocation, and management by provincial ministries."

To date, no such initiative has been undertaken, although there exists an interministerial Integrated Resource Planning Committee with a general mandate to develop a resource planning and public involvement framework for B.C. Spectacular technology for co-ordinated resource information management in the coastal zone was developed in 1991 by the Ministry of Environment in the form of an Oil Spill Response Information System (OSRIS).

We anticipate that the newly created Commission on Resources and Environment will incorporate the spirit of this recommendation as part of its mandate to create a comprehensive land use and planning system for the province.

No. 26 (March 1991)

Access to Information and Privacy

Report No. 26 emphasized the need for legislation in this area and proposed a model. Our concern has been substantially addressed by the introduction of Bill 50 in the 1992 spring session of the Legislative Assembly.

No. 27 (October 1991)

The Administration of the Residential Tenancy Act

Public Report No. 27 identified shortcomings in the quality and consistency of the information and arbitration services provided by the Residential Tenancy Branch of the Ministry of Labour and Consumer Services. Among the deficiencies noted were an inadequacy of resources provided to the branch and its contracted arbitrators, insufficient attention to ensuring the independence of arbitrators and consistency in their decisions, and an absence of adequate mechanisms for review of those decisions. The report also pointed to shortcomings in the provisions of the *Residential Tenancy Act*.

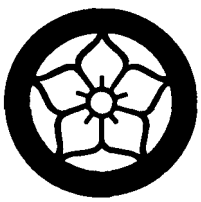
Following the publication of the report, this office discussed the recommendations of the report with senior ministry officials. We were advised that the government was

initiating a process of consultation with community groups in order to invite responses to proposed amendments to the *Residential Tenancy Act*.

In addition, the Residential Tenancy Branch has introduced the following initiatives to improve its service:

1. Introduction of an automated night-line to provide answers to the most frequently asked questions.
2. An increase in the number of speaking engagements by information staff.
3. Re-organization of the branch's Burnaby office to provide better service to clients outside greater Vancouver.
4. Development of a manual for information staff.
5. Rewriting of hand-out material in plain language.

The ministry also advised us that it had introduced a toll-free telephone line (1-800-665-8779) in May 1992 and intended to improve working relations with Government Agents to provide people outside greater Victoria and greater Vancouver with an alternative method of toll-free communication. The ministry indicated that it would provide a fuller report of its response to our report's recommendations once the consultation process had been finalized and the 1992-93 budget for the Residential Tenancy Branch was approved.



Part II
Case Summaries

The ministries in this section are identified by the titles that identified them at the beginning of 1991. A reorganization of government after the provincial election of October 1991 led to the amalgamation of some ministries and the restructuring of others.

The case summaries relating to each ministry are preceded by a statistical breakdown of the disposition of all investigations concluded during 1991. The terms used to describe these dispositions are precise in their definition. They are as follows:

RESOLVED: The problem that led to the complaint has been either completely or in large part resolved to the satisfaction of the complainant and of the authority as a result either of actions taken by the authority or of any other change in circumstances.

NOT RESOLVED: Our office has made a suggestion or recommendation for a remedy to the authority against which the complaint has been made, or to the cabinet or legislature, and we have been advised that the remedy will not or cannot be implemented.

ABANDONED: In spite of repeated efforts by our office, the complainant cannot be reached or has not responded to our attempts to establish contact.

WITHDRAWN: The complainant has instructed our office to stop our investigation.

INVESTIGATION NOT AUTHORIZED: The matter complained of is not within our jurisdiction for one or more of the following reasons: (1) the agency against which the complaint is made is not an authority listed in the Schedule to the *Ombudsman Act* or is listed in a section of the Schedule that has not yet been proclaimed; (2) the matter complained of is not a matter of administration; (3) the matter complained of does not aggrieve a person; (4) a statutory right of appeal exists and has not been used by the complainant; or (5) the complaint concerns an administrative action by a solicitor to an authority, and is therefore excluded from our jurisdiction under section 11(1)(b) of the *Ombudsman Act*.

NOT SUBSTANTIATED: Our office has found the complainant's allegations to be either unfounded or incapable of being proven.

DECLINED: Although the matter complained of is within our jurisdiction, our office has declined to investigate the complaint for one of the reasons set out in section 13 of the *Ombudsman Act*. For example, we have concluded that adequate available remedies exist that have not been explored by the complainant or that the merits of the complaint can be

assessed without conducting an investigation. Where possible, we attempt to provide the authority with an opportunity to resolve the complaint through an internal investigation; the complainant is invited to contact us again if unsatisfied with the results of the internal inquiry.

DISCONTINUED: An investigation was begun and then discontinued because of one of the reasons set out in section 13 of the *Ombudsman Act.*

INQUIRY: An individual contacted our office not to complain of wrongdoing by a provincial authority but rather to obtain an explanation of a policy, procedure or practice used by an authority or of legislation or regulations.

The entire text of the *Ombudsman Act* is printed in the final pages of this report.

Ministry of Advanced Education, Training and Technology

Resolved	32
Not resolved	0
Abandoned, withdrawn,investigation not authorized	14
Not substantiated	7
Declined, discontinued	21
Inquiries	15
Total number of cases closed	89
Number of cases open December 31, 1991	26

The Ministry of Advanced Education and Job Training deals with universities, colleges and institutes, student loans, job training and apprenticeship programs, science and technology. Complaints about the ministry usually involve universities and colleges, student loans, and apprenticeship and job training programs.

Colleges and Universities

The jurisdiction of our office to investigate complaints involving colleges is restricted to those institutions where the majority of the governing body has been appointed by the Lieutenant Governor in Council. In the case of universities, our jurisdiction is limited to complaints about actions of the boards of governors. In due course, proclamation of the Schedule to the *Ombudsman Act* will extend this office's jurisdiction to universities as defined by the *University Act* and institutions as defined by the *College and Institute Act.*

Notwithstanding the current restrictions, our office has maintained a good working relationship with colleges and universities, providing complainants with a resource to have their complaints investigated and resolved, in most cases, whether complaints are jurisdictional or non-jurisdictional.

Vindication for a disgraced student

A woman with a learning disability spent four years taking a two-year diploma course in early childhood education at a college. At the end of the fourth year, in her last practicum with only one week of school remaining and after the graduation ceremony, the student and an instructor argued, and the student's diploma was denied.

When the woman's psychologist found out what had happened, he thought his client had been unfairly treated. In an effort to resolve the matter, he contacted the instructor, the principal and the dean of instruction. Unsuccessful in his efforts, he contacted our office.

We brought the concerns expressed by the psychologist to the attention of the college president, who reviewed the file material. Unhappy with what he found, the president decided to have the matter formally reviewed. He advised us that an independent person from the community would be appointed chairperson of a review panel and that the outcome of the review would be reported to our office.

Three weeks later, we were advised that the review had resulted in the student's diploma being issued that day. Moreover, the student had quickly applied her college education towards obtaining a job. A professional supervising her work experience for a further course of study had been so impressed by her interaction with children in the office that she had been hired on completion of the work experience.

Equivocally equivalent

In 1988 a woman took a business communication course as part of the requirements for a Marketing Management/Travel Tourism Diploma at a college. She had some difficulty with the course and the instructor, and her final grade was 46 per cent. After unsuccessfully appealing her

mark, the student began repeating the course with the same instructor. Because she felt that she would not pass the course a second time if she continued with the same instructor, she approached the dean, who authorized her to take an equivalent course at another college.

The student consulted the Regional College Transfer Guide and registered in the listed equivalent course at another college. When she had successfully completed the course, she applied to transfer the credit. She was then informed that the course could not be given credit as it was not an equivalent course. She was also told that she had not met the requirement that written approval from the diploma granting college be obtained prior to taking a course at another college for transfer credit.

Unsatisfied with this, the student asked that the college review the decision, as the Regional College Transfer Guide listed the courses as equivalent. The result of the review done by the college was that the course was not deemed equivalent, and the requirement for graduation had not been met. The student had said that when she registered for the course, the staff member at the second college had telephoned to confirm the equivalency; however, neither college had a record of such a conversation taking place. The student was offered an opportunity to demonstrate her competency by writing a challenge examination at the diploma granting college. However, as a result of the previous events, she no longer trusted or respected certain members of the faculty, so she decided not to write the challenge exam.

Seeking an impartial review of the denial of her transfer credit and the resulting denial of her diploma, the student contacted our office and the Legal Services Society. The latter called us and said they would hold their file in abeyance pending the outcome of our office's review.

We concluded that the diploma-granting college had given approval for the student to attend another college to take an equivalent course. The Transfer Guide, in error, had listed the course as equivalent and transferable. The guide recommends consultation, but does not say that approval is required in writing. The student told us that there had been telephone consultation. (At the same time as the student was taking the course in dispute, she had taken another course at a third college, and this course was accepted for transfer without the student having to obtain a prior letter of approval.)

The college was made aware of our opinion that the student had been treated unfairly. It was agreed that our office would review the college file to ascertain that all the information available had been reviewed, and that our office would meet with faculty involved in the matter. Prior to this happening, our office was advised that another review of the student's request for transfer credit had been undertaken by the college and that the dean and registrar agreed that the complainant's belief that the course taken was eligible for transfer credit was reasonable. However, as the course was not equivalent, credit could not be granted.

A compromise was reached when the college decided in this case to exempt the course from the graduation requirements, and the result was that a diploma would be granted. This decision resolved the matter for the complainant and satisfied our office.

Student Loans

The Students Services Branch has the responsibility for student loans. Our office receives several complaints each year about the student loans programs.

The British Columbia Student Assistance Program (BCSAP) applies criteria established by the Secretary of State for Canada under the *Canada Student Loan Act*. The BCSAP mainly comprises the Canada Student Loan Program and the British Columbia Student Loan Program. The provincial portion of the program is intended to supplement, not replace, other

resources available to students. The award occurs in the form of a subsidized loan.

The loan lifetime maximums vary, depending on the diploma, certificate, or degree. The following case illustrates a situation where the loan lifetime maximum was insufficient.

Loans fall short for single mother

Under the British Columbia Student Assistance Program, the maximum amount of British Columbia student loan (BCSL) provincial funding available to students was $30,000; the maximum amount of Canada Student Loan (CSL) funding available to students was $20,000. Thus a total of $50,000 could be borrowed to obtain an undergraduate degree.

A single parent of two children was in the next to last semester of a general studies program at a university when she was told that she would only receive $225 funding and not the $3,570 she needed to make it through the semester. This was because she would reach the BCSL lifetime maximum of $30,000 after receiving the $225 loan. She had also received the CSL maximum of $20,000 and an additional $2,620 (overpayment) in CSL funding. Therefore the student had been funded a total of $52,010.

The student's primary concern was that she would not be able to finish her undergraduate degree without further assistance. She appealed the BCSL limit but was unsuccessful. However, the Secretary of State for Canada authorized a further overpayment beyond the $20,000 CSL maximum. As this funding would allow the student to complete her undergraduate degree, her immediate problem was resolved.

The student told us that she was concerned that the BCSL Program does not provide all students receiving funding with an equal opportunity for education. Students with dependents are allowed a maximum of $5,355 per semester ($3,570 from BCSL and $1,785 from CSL). However, single students are allowed a maximum of only $3570 (from BCSL and CSL combined).

She believed that since the majority of students with dependents qualify for the maximum amount of $5,355 each semester, they thereby borrow substantially more each semester than single students. Therefore, she reasoned, students with dependents reach their lifetime maximum limits in a shorter length of time and are therefore unable to receive an education that is comparable to that obtained by single students. The semester limits seem to take into consideration that individuals with dependents have greater financial responsibilities, but fail to consider that a higher lifetime limit may also be necessary for individuals with dependents.

Counsellors routinely suggest that, in consideration of their domestic responsibilities, students with dependents take a maximum of three courses, or 60 per cent of a full load, per semester. The obvious result is that it takes a longer period of time to complete a degree.

The BCSL Remission Program policy had also caught the complainant in a classic squeeze. In order to be eligible for full loan remission, which would reduce the BCSL debt load of $30,000 to $13,000, she would have to complete her undergraduate degree in one year beyond the normal duration of study (called "timely completion"). Funds borrowed after the timely completion are not included in the Loan Remission Calculation.

The student said that once she had graduated she would have to pay back $13,000 of the $30,000 BCSL as well as all of any BCSL funding she received up to the $30,000 limit after the timely completion. However, if she failed to complete her degree, no loan remission would be available and she would be in a position of owing $52,000 and not having her degree.

The student felt that for single parents, most of whom she believed were poor and female, the current BCSL Program does not take into consideration the different needs of single parents. Post-secondary education holds the promise of possibly obtaining a better standard of living for single parents

and their children, yet may be out of the grasp of many single parents, under the current loan program limits.

While this student was able to finish her degree program, the concerns she presented to us need to be addressed. The ministry's Standing Committee on Student Financial Assistance is currently reviewing many elements of the Student Loans Program, including the amount of assistance available. Our office has referred a number of students to the standing committee and is awaiting its report with interest.

RRSP emerges unscathed on student loan application

A 42-year-old student complained about the refusal by the Students Assistance Program to approve her student loan application. The Student Services Branch had categorized the complainant's Registered Retirement Savings Plan as an asset which could be used to finance her own education. The complainant, however, considered such a practice to be not only unreasonable but also a violation of the branch's own policy.

The RRSP, valued at approximately $13,000, had been purchased over a 15-year period by the complainant's former spouse. It had been transferred to the complainant as part of a separation agreement in September 1990. On learning of the branch's decision to include the RRSP in its calculation, the complainant had submitted a Request for Reassessment/Appeal to the Student Services Branch, at the same time asking us for whatever assistance we might be able to give in bringing the matter to a successful conclusion.

The Student Services Branch advised us that the reassessment documents had been received and were being reviewed, and that a decision would be made as to whether the reassessment would be done by the branch or whether the matter would be referred to the appeal committee.

The student's original funding application had declared the RRSP as having been received in September 1990. Branch policy is that an RRSP purchased within 12 months of commencement of an educational career will be assessed as an asset at full value, with certain exemptions. The complainant argued in the reassessment/appeal document that the RRSP had been purchased more than 12 months before she had started school and was only rolled over into her name during that time. Her age was also a consideration, as certain exemptions applied because the student was over 40 years old.

The branch review of the information resulted in a favourable outcome for the complainant, and BCSAP funding was approved.

Apprenticeship and Employment Training Branch

Complaints about the Apprenticeship and Employment Training Branch generally focus on a complainant's difficulty obtaining or maintaining an apprenticeship qualification. The summaries below illustrate typical investigations.

Written exam stumps mechanic

A man twice wrote an examination for certification as a heavy duty mechanic, and twice failed. He told us that the Apprenticeship Division ought to have provided him with a more detailed break-down of his weak points after his first try so that he could have prepared better for his second attempt.

The complaint was resolved when the division agreed to send the man a recently developed form letter which detailed all topics covered in the examination and the candidate's percentile score for each topic. The complainant thought this was a satisfactory response.

Horticulture ticket hard to come by

A man complained that the Ministry of Advanced Education and Job Training had refused to issue him with a certificate of competency or a letter of recognition which

would enable him to find employment in the field of horticulture. He explained that until recently he had taught horticulture in the apprenticeship program at the B.C. Institute of Technology. However, that position had ended, and he now wanted to work in the field. Unfortunately he did not hold a certificate, as he had never completed an apprenticeship program. This, he said, limited his employment prospects.

We were unable to substantiate this complaint. While ministry staff agreed that the man had requested some kind of certificate or letter of recognition that he could present to prospective employers, they explained that they had no personal knowledge of the man or of his work experience. Thus it was not possible to provide a letter of recognition. The ministry also explained that at present the only form of official certification in horticulture is through the apprenticeship program. Unfortunately the man had not completed such a program, and so could not qualify for a certificate.

The ministry noted that the Provincial Apprenticeship Board was considering the introduction of a Trades Qualification Certificate, which would be obtained through examination. Once such an option became available, problems of the type faced by the complainant would not arise.

Ministry of Agriculture and Fisheries

Resolved	4
Not resolved	0
Abandoned, withdrawn, investigation not authorized	4
Not substantiated	10
Declined, discontinued	2
Inquiries	1
Total number of cases closed	21
Number of cases open December 31, 1991	19

This ministry has two elements in common with the Ministry of Tourism which may not be immediately apparent to most people — promotion and protection. The primary mandate of the Ministry of Agriculture and Fisheries is to promote and protect the various industries responsible for food production in the province. Through its various programs it provides assistance and support to those involved in honey production, cattle raising, fish culturing, grain and fruit growing, and other food producing enterprises. It usually accomplishes this through specialized programs aimed at providing assistance and protection on a contractual basis through participation by the producer as a member of a program. It is within this context that misunderstandings and disputes can arise, and some of these find their way to this office.

"Real" milk or no milk

The plans of the manufacturers of a milk substitute were shattered when their product was seized by the Ministry of Agriculture and Fisheries. Made in Oregon, the powder was constituted from whey and canola oil, and when mixed with water produced a milk-like liquid. Its intended market was consumers with allergies to lactose, the sugar that occurs in milk but not in whey.

When ministry officials had confirmed that a primary ingredient of the seized substances was canola oil, they advised the manufacturers that distribution and sale would not be permitted in British Columbia due to the restrictions imposed by the *Milk Industry Act*, a statute passed in the 1940s to protect the interests of the dairy industry, and still in force today.

The order against sale of the milk substitute in B.C. led to a number of complaints to this office. The complainants argued that the conduct of the ministry was arbitrary and unfair, and that the *Milk Industry Act* itself constituted an unreasonable internal restraint on trade contrary to the provision of the free trade agreement between Canada and the United States.

Our investigation was unable to substantiate the complainants' concerns. The investigation was limited to the question of fair enforcement of the provisions of the *Milk Industry Act*. We found that the Act not only permitted the ministry to engage in such a seizure but also imposed a duty upon ministry representatives to prevent the sale or distribution in British Columbia of milk substitutes containing fats or oils derived from a source other than milk.

Although enforcement of the *Milk Industry Act* could have been interpreted as a internal restriction on trade contrary to the *Free Trade Act*, we explained to the complainants that such a determination was primarily political rather than administrative in character and thus beyond the jurisdiction of this office. In addition, questions involving the application of the free trade agreement are beyond the jurisdiction of this office due to the involvement of federal rather than provincial authorities.

This office learned that, prior to the beginning of our investigation, an "Imitation Milk Products Committee" had been created by the Ministry of Agriculture and Fisheries to review the *Milk Industry Act* and the technical merits of available milk substitutes and to make recommendations to the ministry. These recommendations could involve significant legislative change. As

the remedy sought by the complainants would require legislative change, we suggested to them that they make their views known to the committee and to government. On that basis the file was closed.

The dead fish bidding war

The complainant was one of five proponents in a competition for provincial funding to assist in the development of a fish mort composting process. "Morts" (dead fish) are an unfortunate and sometimes inescapable incident of coastal aquaculture. Plankton blooms or other factors which put stress on a fish population being reared in confined quarters can result in tons of dead fish, presenting challenging disposal problems. Coastal landfill operations for the most part no longer accept morts, and few aquaculture sites have a planned disposal facility capable of receiving large volumes of dead fish.

In 1990 the dead-fish disposal problem had become so extreme that the aquaculture industry appealed to the Ministry of Agriculture, Fisheries and Food to help find a solution. The result was a successful effort by the ministry to obtain $300,000 in funding from the Sustainable Environment Fund established by the province to assist in the creation of environmentally advantageous projects. Once this funding was secured, the ministry issued invitations to five proponents known to be interested in the establishment of commercial composting facilities. Written proposals, fully detailing the technical and commercial aspects of applicants' plans, were requested from the proponents and were reviewed by a special review committee of the Fish Waste Task Force. When the funds were ultimately granted to an academic research farm in the Campbell River area, one of the competitors in the call for proposals complained to us, alleging that the recipient of the funds had been chosen at the beginning of the process and that invitations had been requested simply to give the appearance of a fair process.

Upon investigation, we were unable to substantiate this complaint. The correspondence contained in the ministry's own files, combined with candid interviews with other proponents who had taken part in the competition, indicated that the criteria by which submissions would be analyzed had not been known to the competition participants at the time that the submissions were prepared. Nor was there any evidence to suggest that the committee had not acted in good faith. The review comments by committee members showed that the detailed criteria crafted by the committee had been rigorously applied and that each submission had been thoroughly analyzed on its merits. The research farm near Campbell River had received the funding as it not only showed promising expertise in composting technology but was also, from an academic perspective, skilled in research and development and in the distribution of the resulting information to commercial users, which was one of the goals of the composting program.

In addition, the research farm was not profit-oriented; even though it might, by charging disposal fees, attempt to operate the facility on a self-sustaining basis, profit was not to be the primary determinant of whether the composting activities and research would continue. A very real concern of the committee was that an award to a profit-driven enterprise could result in the loss of public funds should the principals of the enterprise, on finding that the facility was not profitable, choose to shut down the operations. This would not only leave the aquaculture industry in a vulnerable and critical position, but would result in the cessation of further research and information communication efforts.

The complainant felt that the academic research farm, as part of a publicly funded academic institution, should not be in competition with private enterprises in producing commercial compost for soil enhancement. On this aspect of the complaint we were again unable to substantiate the complaint's concerns. Our conclusion was that the intent of the ministry had not been to create a situation in which academic institutions compete against private

enterprise; rather, the intent had been to select the best agency for the job — one which would not only establish a facility to serve the needs of the aquaculture industry but also would engage in continuing research and development aimed at refining composting technology to the point where it is a significantly viable and profitable enterprise. This information and technology would be freely available to other commercial enterprises in the province wishing to begin such ventures — indeed, statistical estimates of the volumes of fish wastes on the B.C. coast provided significant evidence that there was sufficient compostable waste to provide more than enough raw material for many composting operations.

This office also noted that the ministry could have, in its discretion, chosen to make a direct research grant without going through a public grant competition. However, having chosen to proceed by the latter route, the ministry was obliged to conduct the process fairly. In the opinion of this office, the ministry did proceed fairly, and this conclusion was reported in detail to the complainant.

Horseplay turns nasty

Two mares broke into a neighbouring property where a stallion lived. This enabled the horses to get better acquainted. but the owner of the stallion was concerned that a dangerous liaison might ensue that would be unhealthy both for his steed and his property. He impounded the mares and called the ministry's brand inspector, who drove out to deal with the problem.

After this visit, the owner of the mares complained to us that the brand inspector had not only produced no papers to confirm his identity or his authority, but had had the gall to demand $75 in cash, with no receipt, as compensation for damage done to the neighbour's property by the mares. The complainant alleged that the brand inspector had in effect extorted the money by suggesting that refusal to pay might result in charges being laid by the police, as "the RCMP could come up with something". The complainant also noted that one of the mares had suffered a nasty gash to the shoulder, presumably as a result of the attentions of either the stallion or its owner.

We were unable to substantiate the complainant's allegation. The brand inspector claimed that he had produced both a badge and an identification card signed by the minister, confirming his identity and authority. The inspector also said he had suggested a token payment to the neighbour as a means of settling the dispute without further animosity or possible litigation. No cash had ever been demanded, and a receipt for the cheque written by the complainant had been offered by the inspector but had been declined by the complainant on the basis that his cancelled cheque would be his receipt. The inspector added that he was an auxiliary member of the RCMP and had made no attempt to extort funds from the complainant through threats of criminal proceedings.

The inspector had noticed the injury to the mare, and he attributed it to the fact that the second mare was dominant and had abused the subordinate horse by kicking and other forms of attack. He believed that the shoulder injury had probably occurred when the subordinate mare had run into the boards of the pen enclosure in an effort to escape its companion. The inspector's theory was supported by his observation of a freshly broken board at the height of a horse's shoulder. The inspector said he had applied an antibiotic ointment to the shoulder wound to prevent infection. This was confirmed by a veterinarian who later treated the horse.

This was a case, as often happens in our investigations, of one side saying "white" and the other saying "black". However, given the nature of the allegations and the substance of the information produced in reply, we concluded that the explanation provided by the brand inspector was to be preferred.

Orchardist's insurance falls short

A hailstorm devastated an apple orchard, including many young trees. The orchardist

put in a claim to the Crop Insurance Branch, and was not happy with the treatment of his application. He described to us three areas of concern. First, crop insurance staff, he argued, had been negligent in failing to advise him fully of the availability and benefits of the "young tree benefit" which can be purchased as a rider to the usual crop insurance contract. Second, the production guarantee (the projected amount of production for an orchard, which forms the basis of the calculation of the available insurance limit) had been calculated incorrectly. Finally, due to staff delays, the amount of the production guarantee — which is a matter of critical concern to any orchardist — had not been communicated to the complainant until after he had suffered his crop loss.

After investigation and extensive discussion with representatives of the Crop Insurance Branch in Kelowna, the matter was resolved. We noted that the Crop Insurance Advisory Committee, which had been set up to review and make non-binding recommendations to the Crop Insurance Branch, had endorsed the complainant's concerns and recommended that the young tree benefit be retroactively applied. In addition, the committee recommended that a different and more complex method of calculating the production guarantee be employed, so that the complainant might realize the maximum amount of insurance proceeds to which, in the committee's view, he should have been entitled.

Our investigation resulted in recommendations which reflected the committee's position only in part. First, with respect to the young tree benefit, this office acknowledged that crop insurance is a form of insurance contract and must be governed by traditional rules of both contract and insurance law. We concluded that it was inappropriate for a benefit which would have been an integral part of an insurance contract to be introduced retroactively in the absence of demonstrated bad faith by crop insurance representatives. To do so would set a dangerous precedent by which individuals could argue after their loss that they would have opted for additional coverage if only it had been made more clear to them. We concluded that the written terms of the contract should govern, and that each insured is responsible for seeing that he or she obtains the appropriate level of coverage.

With respect to the manner in which the production guarantee was calculated, we first considered the fact that the complainant had not received notice of his guarantee until after the date of loss. This naturally made it impossible to negotiate the proper level of the production guarantee or the manner in which it had been calculated. The insured was put in a most embarrassing position. However, we found that since the manner of calculation of the production guarantee is entirely within the power of the Crop Insurance Branch, it does no violence to traditional principles of insurance law to recommend recalculation of the level of the guarantee, particularly when an alternative method of calculation may be more in keeping with the policy already set by the Crop Insurance Branch.

In this instance, the Crop Insurance Branch followed our recommendation to recalculate the production guarantee, and noted that the difference between the result and the earlier production guarantee was nominal. However, the branch was able to offer something of greater benefit to the complainant. As a gesture of accommodation, the tree compensation agreement, covering loss of trees rather than loss of fruit, was re-opened between the complainant and the branch to deal with a claim which had occurred after the hail loss. This was a much more substantial form of compensation to cover significant damage to the complainant's trees as a result of unexpected cold weather which had destroyed much of the rootstock.

The complainant was more than satisfied with the willingness of the Crop Insurance Branch to continue negotiations on this claim, and on this basis we considered the complainant's concerns resolved.

Hard times for canola

A farmer from the Peace River district approached us in the fall of 1987 as a result of a referral from his lawyer, who was at that time acting on behalf of the farmer with respect to certain disputes which had arisen between his client and the Farm Income and Crop Insurance Branch.

The 1986 claim

The complainant was referred to by certain personnel at the Crop Insurance Branch as a "suitcase farmer", meaning that he did not own land or the majority of the equipment which he used; instead, he rented various parcels of land and rented, leased or borrowed pieces of equipment to supplement his own farming implements to work the land. The complainant, for the years in dispute, farmed the oil seed canola, formerly known as rapeseed. He seeded it using a relatively inexpensive technique known as broadcasting, in which the seed is scattered by a rotary spreader working on the same principle as those used for distributing fertilizer on urban lawns. The farmer then used a mounted harrow to cover the majority of seed with a thin layer of soil. While this method can produce superb yields, it tends to be more variable in result than seeding with a "drill", which places the seed at a uniform depth beneath the soil.

The complainant had been a participant in the Canada/British Columbia Crop Insurance Program for four years prior to 1986; before that, he had farmed in Alberta. Because of the variability of the broadcast method of seeding, the Crop Insurance Program had made it a requirement that fields seeded by this method be inspected by a representative of the Crop Insurance branch to confirm germination and emergence (visible growth) before insurance coverage would begin. In early June of 1986, when the complainant — according to the sequence of events he related to this office — noted reasonably uniform emergence, he went to the offices of the Crop Insurance Branch and filed what is known as a seeded crop report, identifying the number of acres seeded, whether fertilizer was used, and the type of crop grown. From this the Crop Insurance Branch calculated the crop insurance coverage that was available and the cost of the farmer's share of the premium. Fifty per cent of the premium was paid, through the federal/provincial agreement, by the federal government.

The plan is administered by the provincial government, which undertakes to collect the balance of the premium from the farmer. It was and is customary for the majority of farmers to be granted a credit deferral of their portion of the crop insurance premium until November of the same year, when the crop is expected to be harvested and the farmer is typically in a better position to pay the premium. Credit was granted to the complainant for 100 per cent of his share of the premium.

What happened — or didn't happen — next formed the substance of the dispute for the 1986 crop year. Sixteen days passed between the filing of the seeded crop report and an inspection of the complainant's fields by a representative of the Crop Insurance Branch. The representative noted no evidence of emergence of the crop and filed a report which resulted in insurance coverage being denied. The complainant disputed this and alleged that he had seen good and uniform emergence, but during the 16-day period between filing and inspection, the vulnerable newly emerged canola plants withered, died, and virtually disappeared as a result of a combination of dry weather, wind and frost.

After a formal request to the district manager for a reversal of the crop insurance position was denied, the farmer appealed the decision to a three-person tribunal provided for under the terms of the crop insurance contract. At the tribunal hearing, the complainant and his son both gave evidence concerning the emergence of the crop. They produced an expert witness who had prepared a report which included weather station data to establish that the complainant's explanation of virtual physical disappearance of any evidence of emergence due to dry weather, wind and frost

was acceptable from a scientific viewpoint and represented the probable truth.

The tribunal, with cryptic reasons that did not appear to weigh the credibility or likelihood of the complainant's explanation, dismissed the appeal on the basis that there was no evidence of emergence — that is, the crop insurance inspector found no evidence of plant germination or growth.

We were not impressed with the reasons provided by the tribunal in its decision, because it left unanswered the question of the degree to which it found the complainant's case credible. Although it could be safely inferred that the tribunal rejected the evidence put forth by the complainant, we remained of the opinion that the tribunal should have been more explicit in its reasons for judgement.

The Crop Insurance Branch pointed out in defence of the tribunal that the complainant had received the scrutiny of a tribunal as contemplated by the appeal process and that no individual with a crop insurance dispute could ask for more — in other words, the system worked as it was supposed to. Having put our thoughts on the record with respect to the tribunal's reasons, we accepted with some reluctance the position of the Crop Insurance Branch and concluded that we were unable to substantiate the complainant's concerns about the Crop Insurance Branch for the 1986 crop year.

One of the concerns addressed by the complainant was the 16-day period for inspection to occur for the purpose of confirming emergence. The complainant contended that had a more timely inspection taken place, emergence could have been confirmed and he would then have been compensated for the subsequent crop loss due to the vulnerability of the small plants to the conditions of drought, wind and frost. Given the evidence obtained from the Crop Insurance Branch concerning frequency of inspections, especially when the work load of the inspectors is heavy during the planting season, we were likewise unable to substantiate this element of the complaint.

The 1987 claim: credit denied

For the following crop year, 1987, the complainant was in the midst of initiating legal action as a result of the judgement of the crop insurance tribunal. The complainant's lawyer had suggested he contact us because his funds for legal expenses connected with judicial review were limited. At the same time, the complainant was continuing with his farming, having secured adequate financing to carry out planting operations on a number of fields for 1987. The complainant, upon confirming germination throughout his fields, went to the Crop Insurance Branch office to file a seeded crop report. As might be expected, he was careful to seek an inspection of his fields at the earliest possible date. However, upon completion of the seeded crop report, the complainant was advised for the first time that no credit — that is, no deferral — of his portion of the premium would be permitted, and that to activate insurance coverage the premium in excess of $18,000 would have to be paid immediately.

The complainant, while acknowledging his continuing dispute over the 1986 crop year, had not expected that the dispute would influence the availability of credit for subsequent crop years. He alleged that he was told, at the same time credit was denied, that the reason for the denial was his continuing dispute with Crop Insurance Branch. The individual alleged to have made this statement vigorously denied it, and told us that the reason for credit denial was a general assessment of the complainant's credit-worthiness and his lack of assets to secure credit (the elements referred to previously by which the complainant was characterized as a "suitcase farmer"). No written analysis of the complainant's credit-worthiness could be found on any of the crop insurance files; nor was there evidence that the Crop Insurance Branch had contacted the complainant prior to the planting season to advise him that he would not be eligible for this deferral of the premium. The complainant, having stretched his credit to the limit to carry out planting operations in the spring of

1987, was unable to secure the additional financing to pay the premium which was now demanded.

A policy of insurance was never issued for 1987, although the seeded crop report was received by the Crop Insurance Branch. The complainant took the precaution of having his crops inspected by a private consultant for both germination and yield. For most of the summer the canola crop matured, and it looked as though the complainant would survive quite nicely without the "safety net" provided by crop insurance. However, the variability of weather conditions in the Peace River farming district brought disaster to the complainant in the late summer, when heavy rains waterlogged the roots of the plants, causing extremely heavy losses. The complainant was able to harvest only a small portion of his crop from areas that were on relatively high ground and enjoyed adequate drainage.

Upon investigation and reflection, we concluded that the last-minute denial of credit by the Crop Insurance Branch was unfair in circumstances where the accepted practice was such as to create a legitimate expectation on the part of the complainant that credit would be available for the deferral of his portion of the premium. In January 1989 we presented to the ministry a detailed report which recommended that the complainant receive compensation for his crop loss (the extent of loss had been accurately documented privately) on the basis that the complainant should have been insured for the 1987 crop year. A long series of negotiations followed, with possible alternative remedies proposed and discussed. Ultimately, in June 1991, the ministry chose to accept our original recommendation. A payout calculation was prepared, and the proceeds of the 1987 insurance coverage, net of the required premium, was proposed. The province deducted from this amount a debt owing from the complainant to the province under the Peace River Loan Guarantee Program. The balance was paid to the complainant's trustee in bankruptcy, as the complainant had gone bankrupt in the interim.

Although the payout was not sufficient to get the complainant farming again, he was pleased with the result insofar as it recognized a principle of fairness. We were satisfied that a measure of justice had been done to remedy these unfortunate circumstances, and were pleased to close the file within a few months of its fourth anniversary.

Epilogue

In fairness to the ministry, it should be noted that many administrative changes and refinements were introduced as a result of the complainant's concerns. It should also be remembered that we never took or promoted the position that the ministry was obligated to provide insurance to any individual with no questions asked. Rather, we endorsed the efforts by the Crop Insurance Branch to engage in a continuing rationalization of the Crop Insurance Program, with the complete abandonment of coverage for certain crops, farming areas, or farming methods if such could be shown on an actuarial basis to pose an unreasonable risk of consistent loss to the insurance program. This office at no time suggested that the ministry did not have the authority to deny credit to the complainant; rather, we simply took the position that fairness demands that explicit and adequate advanced notice be provided in circumstances where an individual has good reason to believe that certain practices will continue. Adequate communication is the key.

High ceilings make good milk

A dairy farmer was refused a licence for a milking parlour because his ceiling was too low. He complained this was unfair, especially as a neighbour with a low ceiling had obtained a licence. While acknowledging that his cows were somewhat cramped, he failed to see why the Ministry of Agriculture should be so concerned with the height of his ceiling.

A review of the regulations under the *Milk Industry Act* confirmed that the neigh-

bour's ceiling height was lower than the minimum required. Ministry officials told us that the purpose of the requirements regarding ceiling height and adequate ventilation is to protect the health of dairy cattle and to prevent fungal contamination of milk caused by high levels of humidity.

After we brought to the attention of the ministry its inconsistent application of the regulatory provisions in the case of the two farmers, the ministry decided to give the neighbour a reasonable amount of time to come into compliance with the ceiling height requirements and not to issue a licence to the complainant. Our office agreed with this response for two reasons. First, it was clear that the ceiling height requirements were well founded. Second, had the ministry adopted a lenient attitude by waiving the ceiling-height requirements for the complainant because they had been overlooked in the case of his neighbour, this would have raised the prospect of other dairy farmers demanding similar treatment.

Ministry of Attorney General

Resolved	55
Not resolved	0
Abandoned, withdrawn, investigation not authorized	17
Not substantiated	29
Declined, discontinued	70
Inquiries	7
Total number of cases closed	178
Number of cases open December 31, 1991	108

Court Services Branch

Complaints to our office about the Court Services Branch generally involve either court registry staff or sheriff services.

The $10,000 monetary jurisdiction of Small Claims Court allows people to pursue substantial claims without legal representation. However, litigants sometimes do not understand that the function of court registry staff is not to provide legal advice or to collect debts. A series of informative and easy-to-read booklets on Small Claims Court have been published by the ministry to clarify the process.

We receive a few complaints about Court Services with respect to traffic ticket disputes. As with Small Claims Court matters, these complaints often allege that information was denied or was incomplete or inaccurate.

The number of complaints about sheriffs decreased last year after the privatization of debt executions against debtors' property, which are now carried out by private bailiffs. We have received complaints of excessive execution costs and have referred these matters to the sheriffs, who are responsible for administering the private bailiffs' contracts. All complaints about sheriffs in 1991 had to do with the escort of prisoners.

The investigation of complaints against the branch has been facilitated by the branch's manager of inspections, an efficient and helpful liaison person who maintains a close watch over complaints made to the Ombudsman.

No information without ID

Complaints about access to information policies generally come from people who have asked for and been denied information. One complainant proved the exception to the rule. Her grievance was that her request had been granted without her identity being checked.

The information in question was a separation agreement contained in a provincial family court file. The complainant felt that access to such documents should be restricted, and she was concerned that court registry staff had not asked her for identification. Her concern was justified. Proof of identification should have been requested, as access to such documents is limited to parties to the action, lawyers, and other persons authorized by the parties. As a result of our investigation, the Court Services Policy Section instructed Court Services managers to tighten up their procedures regarding requirements for proof of identification by individuals seeking access to information in court files.

Sheriffs' seizure casts a wide net

The complainant owned an office building which housed three different companies. One day, armed with a writ of seizure, the sheriffs entered the building to remove assets owned by one of the companies. Unfortunately, in the process of doing so, the sheriff's office also removed several items belonging to the complainant.

The building owner immediately complained to the sheriff's office but was unable to get either an acknowledgement that his items had been taken or that the sheriff's office was in any way responsible for the removal. Eventually, after having brought his complaints to the attention of senior members of the Attorney-General's min-

istry, he was advised that their internal review showed that they were not at fault. The ministry also told him that if he did not believe he had been treated fairly, he should bring his complaint to our office. He did.

This case revealed a variety of unusual circumstances. We determined that the sheriff's office had taken the complainant's articles. However, we were also of the view that given the wording of the seizure order, the sheriffs had not acted improperly. We recommended that given the unique circumstances in this case and the great power held by sheriffs with respect to the personal property of others, the province was better positioned than the individual, in this case, to absorb the loss. The Ministry of the Attorney General accepted our recommendation and reimbursed the complainant for the value of his lost goods.

Clerk's error adds months to driving prohibition

A truck driver complained that the Motor Vehicle Branch would not reduce the length of his prohibition from driving to give him credit for a period when he did not drive because the branch's records wrongly showed that he was prohibited. The complainant said that the error led him to miss job opportunities and forced him to abandon an appeal of his conviction of impaired driving.

The *Motor Vehicle Act* provides that an automatic prohibition from driving for 12 months takes effect from the date of conviction for impaired driving. The complainant was convicted of impaired driving in Kelowna on July 4, 1990. An appeal of the conviction was immediately filed, but appealing does not in itself stay the prohibition; because of amendments to the *Motor Vehicle Act* some years ago, an appellant must also apply to obtain an order staying the prohibition (or holding it in abeyance). To obtain such an order, the complainant's lawyer had to apply to a Supreme Court judge. As there was not one available in Kelowna that day, he travelled to Vernon and obtained the stay there later the same day.

Unfortunately, a clerk in the Vernon court registry office did not send a copy of the stay to the Superintendent of Motor Vehicles, as required by the *Motor Vehicle Act*. The file was reportedly returned to Kelowna about a week later, as it was said to be "a Kelowna matter." It was not until October 17, 1990, when the complainant expressed concern to his lawyer, that the stay was finally sent by Court Services to the Motor Vehicle Branch. This was about three and a half months after the Supreme Court judge had granted the stay.

The complainant said that he lost at least one job opportunity when a prospective employer in Alberta checked his driving record and found that he was prohibited from driving. This occurred some time after the court-ordered stay.

The driver's appeal from conviction was abandoned on November 19, 1990, before a Supreme Court judge. The judge granted an appeal from sentence to the extent of reducing the period of prohibition by several months, to end July 4, 1991. However, this order refers only to the 12-month prohibition under the Criminal Code, and it appears that the Judge would have had no authority to vary the length of the *Motor Vehicle Act* prohibition, which is imposed by statute. A copy of the judge's order was sent to the Superintendent of Motor Vehicles, who then wrote to the driver on December 17, 1990, to advise him that he was prohibited from driving under the *Motor Vehicle Act* until July 4, 1991.

When the complainant subsequently inquired about getting his driver's licence back, he was disturbed to learn from the Motor Vehicle Branch that his prohibition would remain in effect until November 19, 1991. On July 23, 1991, he complained to the Ombudsman.

The complainant's problem had been caused by an administrative error on the part of Court Services staff. However, a remedy (earlier reinstatement of driving privileges) would have to come from the Motor Vehicle Branch. During the early stages of our investigation, the driver pro-

duced letters, from potential employers and others, which provided some confirmation that he had lost employment opportunities and refrained from driving after the stay was granted by the judge on July 4, 1990.

This documentation was provided to the Motor Vehicle Branch, in support of the complainant's request. However, after consulting with their solicitor, branch officials informed us that there was no authority in the *Motor Vehicle Act* to adjust the length of the prohibition. They said that time on the prohibition stopped running on the date that the stay was granted by the judge and did not start again until the appeal from conviction was dismissed. The judge's order reducing the period of prohibition could apply only to a concurrent 12-month prohibition under the federal Criminal Code and could not affect the automatic 12-month prohibition which took effect upon conviction under the provincial *Motor Vehicle Act.*

We were troubled that although a Supreme Court Judge had put his mind to these facts and found merit in the complainant's request for a "reduced" prohibition, his decision would have no practical effect. However, after reviewing the legislation further we agreed that the branch's position was correct.

We had some questions about why the driver had not pursued the matter more vigorously. He was aware by at least August 1990 that there was a discrepancy between the fact that a Supreme Court judge said that he could drive and the Motor Vehicle Branch said that he could not. (Motor Vehicle Branch records on driver licence status are accessed by the police, through their computer system, CPIC. The complainant would therefore have risked charges for driving while prohibited during the period of delay, even though he would have had a good defence to the charge.)

In response to our questions, the driver could only recall that he contacted his lawyer early on and was sent a copy of the judge's order. He did not explain why he did not follow up further until October 1990.

The complainant was not happy with our determination that no remedy existed in his case. We then focused on finding a means of ensuring that the misfortune he experienced as a result of administrative error would not happen to other drivers. Our concern was forwarded to the assistant deputy minister, who responded promptly with a proposed solution. A circular was sent to all court registry staff stressing the importance of sending motor vehicle related orders, particularly orders staying a conviction, promptly to the Motor Vehicle Branch.

An apology was also made to the complainant. We also asked the Motor Vehicle Branch to apologize for the error in their December 19, 1991, letter. Both apologies were conveyed to the complainant.

Criminal Justice Branch

During 1991 our office had discussions with the Criminal Justice Branch regarding the extent of our jurisdiction over the exercise of prosecutorial discretion. The number of complaints we were receiving in this area was beginning to increase. Many complaints were from victims who were either unhappy with Crown counsel's decisions not to proceed with prosecutions or concerned about delays in making those decisions.

The Criminal Justice Branch has a clearly defined internal review system. In cases where a complainant wishes to have a decision reviewed, it is the policy of this office first to refer the complainant to the appropriate Crown counsel, in accordance with the branch's policy. In some cases, however, a complainant merely needs some assistance with communication, and in such cases we facilitate this with the appropriate Crown counsel office.

We did not agree with the opinion of the Branch Management Committee that the Ombudsman has no jurisdiction over the exercise of prosecutorial discretion. However, both offices acknowledged the open and co-operative relationship which has developed over the years, and there was general

agreement about the manner in which this relationship was to be continued.

The branch continues to respond to inquiries from the Ombudsman office, to advise us about decisions involving the exercise of the discretion to prosecute, and to provide explanations for such decisions.

Family Maintenance Enforcement Program

In 1991 the number of complaints to our office about the Family Maintenance Enforcement Program (FMEP) increased by over 150 per cent, from 88 to 232. Complaints from creditors typically are about delay or non-enforcement of a court's maintenance order. Complaints from debtors are usually about overzealous enforcement. Both creditors and debtors complain about problems of communication with FMEP staff.

The Ministry of Attorney General implemented the *Family Maintenance Enforcement Act* in September 1988. The enforcement part is carried out under contract by an agency in the private sector. The Attorney General has established a review procedure for complaints (from debtors or creditors) about the enforcement service.

In 1991 we continued to provide complainants who had contacted our office with the necessary form to bring their concerns to the attention of the director of maintenance enforcement for the province. We also informed them that, as there is an available remedy, we would not investigate their concerns unless they were dissatisfied with the director's resolution of their complaints.

Due in part to the substantial increase in the number of complaints received by our office, a study was undertaken to determine the effectiveness of the referral process and the internal appeal mechanism to which our office has been referring complainants.

We have been doing a follow-up with complainants to see if their complaints were appropriately addressed, and we will be sharing the results of our study with the ministry.

Like getting blood from a stone

A Vancouver woman told us that despite the fact that she had been enrolled with the FMEP for the past three years, she had received no child support payments. We told her how to ask for a review of her file by the director of maintenance enforcement for the province, and sent her a request for review form.

Two months later the woman called us again. She said that she had received a letter from the director of enforcement and was not satisfied with his response to her complaints. The letter said that the FMEP had been unable to collect any child support payments because the debtor was unemployed and living on income assistance. The caller told her that she had reason to believe that her former spouse, the debtor, worked for friends and got his money in cash. She wanted the FMEP to conduct an investigation and force the debtor to make his payments.

The woman added that the debtor was entitled to court-ordered access to his two children every second Sunday. She believed that if she were to refuse him access, she could be held in contempt of court and possibly be put in jail. It struck her as both odd and unfair that the debtor was not treated that way when he neglected to make his maintenance payments. We explained that while the two issues might appear to be related, one was not dependent on the other.

We contacted the director of maintenance enforcement for the province and confirmed what the women had told us. We discussed the woman's statement about the debtor working for cash and were assured by the director that if the woman could substantiate this they would be pleased to investigate further. However, given the limited resources provided to the FMEP, program staff are not able to carry out the kind of surveillance the woman wanted.

The director explained that as long as the debtor was on income assistance the FMEP could not force him to make maintenance payments. The FMEP had placed a "federal intercept" on the debtor, meaning that any money coming to the debtor from the federal government would be applied to outstanding child support payments. We passed this information along to the woman and explained that we were satisfied that the FMEP had made a reasonable effort to enforce her maintenance order even though it had not been successful to date.

Land Title Office

They subpoena registrars, don't they?

A man who was suing a municipality wanted to call the registrar of a Land Title Office into court as a witness. When he mentioned this to officials at the LTO, he was told the registrar was exempt from being subpoenaed. The litigant thought this seemed odd and called to ask us if it was true.

The answer was yes. Section 19(1) of the *Land Title Act* provides that "the registrar, in his official capacity, is not bound, in pursuance of a subpoena, order or summons issued from a court in a civil matter, to attend out of his office as a witness...." Such a provision is rare in provincial legislation. However, in view of the large number of real estate cases in which litigants might be tempted to produce the registrar as a witness, it is in the public interest to provide this legislative exclusion. Without it, the registrar might spend so much time in court as to be unable to perform his administrative responsibilities effectively.

The exemption from subpoenas does not mean that the registrar's evidence is unavailable to litigants. Section 19(3) provides that the registrar may be examined at his office under a commission or similar order for the examination of a witness.

Office of the Public Trustee

The Office of the Public Trustee has three main functions. The first is to administer the financial affairs of people who can no longer do so for themselves. This it does as "committee" of a person deemed incapable of managing his or her own affairs pursuant to the *Patients Property Act*; the Public Trustee also monitors in a general way the conduct of private committees by reviewing their accounts every two years. The second function is to administer the estates of people who have died intestate — without a valid will. Lastly, the Public Trustee provides various services in its guardianship capacity for persons under the age of 19.

Where the Public Trustee acts as committee for an adult person, we sometimes receive complaints from the person, and sometimes from a friend or family member. In many of these instances, the key issue is one of communication. Clients of the Public Trustee often feel vulnerable in their dealings with that office — not surprisingly, in light of the legal authority which committeeship presently entails. It is important that information be shared with clients about the state of their affairs being managed by the Public Trustee, and that the latter consult with clients whenever possible concerning the decisions it must make on their behalf. The Public Trustee's office has made serious efforts in recent years to become more responsive to clients. One example is the practice of having trust officers more frequently visit clients in person to assess their circumstances and discuss their needs.

Family members on occasion may feel excluded from a loved one's affairs after the Public Trustee has become involved. The need for open communication is again apparent. However, the considerations in this respect can be complex. The Public Trustee rightly feels that it owes a duty of confidentiality to its clients, and this often causes it to restrict the information it

shares with family members. Family members may be in the best position to identify difficulties in the individual's financial situation which have impact on his or her well-being, and to monitor the Public Trustee's performance. It is therefore important that communication between the Public Trustee and families of clients operate with some flexibility. We are continuing to work with the Public Trustee on this issue of balancing the demands of confidentiality and openness.

Disputes between family members over what is best for a relative raise some of the most difficult problems with which the Public Trustee deals. It is important that, in the first stages of its involvement with a client, the Public Trustee make an effort to contact the immediate family and canvass their views on the individual's situation. This can avoid later perceptions that the Public Trustee has taken a side in ongoing family disputes. In some circumstances, the opportunities for wide-ranging consultation may be limited, as the Public Trustee is often called in on an emergency basis to assume responsibility for an individual deemed incompetent.

A widespread consensus has developed in recent years, both in the community at large and within government circles, that B.C.'s adult guardianship laws, principally the *Patients Property Act*, are antiquated and fail to serve the needs of the many citizens who come in contact with them. Criticisms levelled at the present legislative scheme include the all-or-nothing nature of committeeship orders, whereby a person declared incompetent loses virtually all of their personal decision-making authority; the absence of a flexible method for obtaining a substitute consent to medical treatment which still protects the rights of the patient; and the inadequacy of procedural safeguards such as review and appeal mechanisms.

The Project to Review Adult Guardianship (PRAG) is an impressive community initiative directed at reform of B.C.'s guardianship laws, which has acquired considerable momentum over the past two years. It has developed a number of creative proposals, including an emphasis on legislation that would facilitate an adult's planning for the possibility of a future period of incapacity and make the public guardianship provided by a Public Trustee's office more of a fall-back position after family and community resources have been exhausted. Our office has been impressed with the energy with which the present Public Trustee has engaged this community initiative and worked to bring about a meeting of minds between government and the community on a prospective legislative framework.

We have not to date received a high volume of complaints with respect to the Deputy Official Administrator Program introduced at the beginning of 1990. The program divided the province into five regions, and deputy official administrators were appointed to handle intestate estates (of persons who died without valid wills) in four of the regions. The Public Trustee's office acts as administrator for the north region, and has a supervisory role with respect to the program as a whole. A co-ordinating committee assists the administrators to achieve consistency in service across the province, as well as to develop policy. The complaints we do receive tend to concern delays in estate administration. Often, beneficiaries do not understand some of the legal technicalities involved in completing administration and become frustrated with the time it may take. Improved communication with beneficiaries through the course of administration would likely alleviate some of the frustration.

A compromise on financial management

We had come to know the complainant well as a result of efforts on his behalf with respect to his Workers' Compensation Board claim. After his WCB award came through, he contacted us concerning problems he had encountered in dealing with the Public Trustee's office.

The work injury on which his claim was based had occurred some eight years before.

It had involved a head injury which impaired his memory functions and to some extent affected his judgement. Following years of pursuing his claim through various assessments and appeals, he was awarded a lump sum payment of well over $100,000, and a monthly pension of approximately $800. In addition, the complainant was already receiving a Canada Pension Plan disability pension of over $700 each month.

As the WCB matter approached its conclusion, board doctors who had come to know the complainant became concerned that, due to his mental condition, he could be easily taken advantage of by unscrupulous individuals. He had a recent history of making generous gifts to friends and casual acquaintances, and then running short of money for his own needs. Knowing that he would soon receive the lump sum payment, the doctors raised their concern with the Office of the Public Trustee. The Public Trustee arranged for the complainant to be assessed by a local mental health facility and, indeed, the assessment found, on what it acknowledged to be a borderline basis, that he was incapable of managing his own affairs. The Public Trustee became committee of his affairs.

While the WCB physicians had mainly wanted to ensure that the complainant was protected from quickly dissipating the lump sum award, the committeeship order extended by law to the whole of the complainant's finances. Thus, the Public Trustee, in addition to managing the lump sum award, started to collect his pensions and arrange for him to receive an allowance.

The complainant, a man in his early 40s living independently in the community, and ready at long last to enjoy a degree of financial independence, suddenly found himself having to get the approval of officials in a government office for many of his personal expenditures. He felt humiliated, and again contacted us to see what alternatives might be available.

We recognized that the Public Trustee's office had a legal responsibility to manage the complainant's affairs on his behalf in a prudent manner. Nevertheless, we noted that the lump sum payment had been the reason why the Public Trustee had become involved in the first place. The two pensions were not at risk, in the sense that they would continue to be received on an ongoing basis. We suggested that in these circumstances, it seemed reasonable that the complainant be allowed to receive his pension cheques directly, and budget his own expenses. The Public Trustee could appropriately continue to manage the lump sum account.

Officials of the Public Trustee's office met with the complainant on more than one occasion, and agreed to proceed in the fashion described for a trial period. The complainant was also advised that he could seek at any time to be reassessed in an effort to have the committeeship ended.

This case points up the value of open communication and co-operation between the Public Trustee's office and the clients whose estates it manages. It also demonstrates the delicate considerations which current statute law imposes on the Public Trustee and private committees alike in the discharge of their sweeping authority.

Report of death greatly exaggerated

The mother of a 17-year-old son was concerned that the Public Trustee's office had not been handling her affairs in an appropriate fashion. After entering a mental health facility several months before, she had been declared incapable of managing her affairs, and the Public Trustee became her committee. She had returned to the community by the time she contacted us.

She raised a number of issues about payments that had not been made on her behalf and about monies to which she was entitled that had not been collected. Our inquiries revealed that while several of these concerns were not substantiated, a surprising number of them were. The Public Trustee had neglected to arrange payments on a department store account, and a collection company had started to pursue the complainant; Hydro payments at her

residence were behind; Canada Pension cheques had ceased coming to the Public Trustee's office shortly after they started, but no follow-up inquiry ensued; a maintenance and comforts payment was sent to the lodge where the complainant resided for the month after she had returned to the community; medical coverage had lapsed, and several medical bills had been paid as a result. Most important, legal action to recover monies allegedly taken improperly by a relative of the complainant had not been commenced, despite periodic notations over several months that suggested it should go forward without delay.

To its credit, the Public Trustee's office responded quickly to most of these problems following a review of the file. It also compensated the complainant for the modest losses which her estate had incurred as a consequence.

Within a few months of contacting us, the complainant obtained a declaration of capability and took back control over her affairs. When we routinely inquired several weeks later about how she was doing, she said the problems had continued. Her pension from Veterans Affairs had stopped coming; when her son called Ottawa to ask why, he was told that it was "because your mother is deceased." Shocked, he asked where they had learned of this event. The reply: "The Public Trustee informed us she had died." Indeed, it had. A further apology followed.

The handling of this file is not, we believe, typical. When a committeeship begins, the Public Trustee must move quickly to assume a variety of financial activities on behalf of a client, and this is not always easy to do. This file emphasized the importance of having open channels of communication between clients and the Public Trustee, and ready means to have files reviewed when complaints arise.

A very long stay in a transition house

The executive director of a transition house in the Okanagan contacted our office to say that she was concerned that a 78-year-old woman who had been living in the house should be returning to the community. The woman had originally come to the transition house because she had nowhere else to go, having been the victim of possible financial abuse by two individuals who now held title to her former home.

The Public Trustee was committee of the woman's estate, and as such had commenced litigation against those two individuals. The litigation had apparently become stalled, and with it, the executive director feared, all decision-making related to the woman's financial affairs and arrangements for living. She had now resided in the transition house for several months, even though it served a generally younger population of women and children escaping male violence. The executive director had had almost no contact with the Office of the Public Trustee, and did not have a good sense of its role or of whom she might approach for assistance.

We called the Office of the Public Trustee to advise it of the executive director's concerns. We later received a call from her to let us know that the situation had greatly improved. Although the litigation was still not resolved, the increased attention given the woman's affairs, and the sharing of more information about her circumstances, had resulted in her moving into a private home in the community.

Ministry of Crown Lands

Resolved	12
Not resolved	0
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	22
Declined, discontinued	5
Inquiries	6
Total number of cases closed	48
Number of cases open December 31, 1991	28

Towards the end of 1991, the Ministry of Crown Lands was absorbed into the new Ministry of Environment, Lands and Parks. A comment on this amalgamation is included in this report in the introduction to the section on the Ministry of Environment.

Stumpage increase appals farmer

The complainant came to this office late in 1990, after having attempted to negotiate a resolution of his concerns with the Ministry of Forests for more than one year. A farmer in the northern interior of the province, he had obtained an agricultural lease the development costs of which would be provided through revenue gained from timber harvesting on the leased land. The complainant made application for the lease early in February 1987, and the Ministry of Forests instituted a stumpage policy change on October 1, 1987, which was almost two years prior to the date of actual issuance of the lease documents to the complainants. This latter date, in mid-1989, was when the complainants were able to confirm that the stumpage they would have to pay on timber coming off the land was many times what they had originally anticipated. They blamed the Ministry of Crown Lands for slow processing of their lease application, with the result that they were caught by the new stumpage policy.

Upon investigation, we were unable to substantiate this complaint. The critical time, from the perspective of this office, was between the date of application in February 1987 and October 1, 1987, being the date on which the new stumpage policy was introduced. It is important to note that the Ministry of Crown Lands had no advance warning of this change in stumpage policy; indeed, when our office asked this question, we received the following common-sense reply from one of the senior land officers:

> Can you imagine what would have happened if applicants waiting for lease approval had been advised that there would be a change in stumpage policy with a certain cut-off date that would result in them paying many times the original projected stumpage? Applicants would have been kicking our doors down. The fact of the matter is that we found out about the change when it was formally announced on October 1, 1987.

In our investigation we learned that there had been a great number of agricultural lease applications made in late 1986 and early 1987, with the result that the hoped-for turnaround time of 120 days which the Ministry of Crown Lands had to that time adopted as a benchmark had expanded to more than a year. This time did not take into account the extra time necessary for the completion of other requirements which might be imposed, such as a legal survey, or resolution of disputes over grazing range or water access. We concluded that the ministry had acted with reasonable speed and that the policy change had caught everyone without warning. The result for the complainant was truly unfortunate, yet we could not characterize this administrative policy as unfair; for every policy there must be a definite starting date, and it is unavoidable that someone will be caught in a disadvantaged position when the new policy is introduced.

Cheap land, no access? Buyer beware

A small forest company bought a heavily wooded property, almost surrounded by Crown land, with the intention of logging it.

The only obstacle to the achievement of this goal was the absence of a road to the property.

The company applied to the Ministry of Crown Lands for a permit to build a road to the property. It is the general policy of the ministry to approve such applications, after referring them for comment by other government agencies, unless there are clear reasons for not doing so. In this instance, a variety of individuals and groups raised concerns about the application. Residents of a subdivision through which the road would pass were worried that their lives would be made unbearable by the noise of logging trucks. The Ministry of Environment and Department of Fisheries and Oceans expressed serious concerns that the road would have an adverse impact on a fragile river ecosystem. The Wildlife Branch of the Ministry of Environment was worried that the road would provide easy access for hunters and poachers to an elk herd in the vicinity. The local regional district intimated that it hoped to develop a land-use plan for the area, and the Ministry of Forests indicated an intention to prepare a Local Resource Use Plan to ensure that timber harvesting operations on public lands would occur only after the needs of all other resource uses had been taken into account. Faced with this multiplicity of concerns, the Ministry of Crown Lands engaged a consultant to assess the feasibility of alternative routes for the road. Unfortunately for the company, no route could be found that was not objectionable for more than one of the reasons mentioned above. The ministry informed the company that it would not issue the permit until the regional district had completed its land use plan.

The company complained to us that the Ministry of Crown Lands was unreasonably denying to the company the right to gain access to its own land. We did not agree. The Ministry of Crown Lands has a responsibility to consider the public interest carefully before approving a private use of Crown land. Had the ministry issued the permit, it would have placed the interests of the applicant above those of other citizens with legitimate interests in the land that would be affected by the building of a road. The fact that the company was "first in line" and the fact that the regional district had not previously announced an intention to initiate a land use plan did not help the complainant's argument; what mattered was that significant resource use issues remained unresolved and would be adversely affected by the company's plans.

At the time of the purchase of the land, the company had been aware that it was obtaining inaccessible land and obtaining it at a reduced price because of that fact. The hard reality is that there is no "right" of access to private land across public land.

Trees, moose, or hay? A pedologist's dilemma

A man complained that the Minister of Crown Lands had improperly interfered to ensure approval of an application for an agricultural lease. The applicant was a farmer who was seeking a 20-year lease on Crown lands bordering his farm. His application had been twice rejected by the ministry's district office staff because the land was not considered to meet the fundamental requirement of being at least 50 per cent arable. According to the complainant, the minister had visited the land when it was covered in snow and then had ordered approval of the lease.

Our discussions with ministry staff indicated that there was more to the story. It was true that ministry agrologists had concluded that the land was less than 50 per cent arable. However, the main reason for rejecting the application was that the applicant had failed to meet another requirement, namely the agricultural development of at least 70 per cent of his own farm. The purpose of this requirement was to provide an assurance that the applicant had the tools, the knowhow and the will to make proper use of his agricultural lease. In addition, the Ministry of Forests had objected to the lease being issued because the land had potential value for timber, and the Ministry of Environment had objected because of the area's value as moose habitat.

However, the applicant was not without support. A private agrologist whom he had hired offered the opinion that the land was 70 percent — rather than less than 50 percent — arable. This opinion was supported by yet another agrologist from the Ministry of Agriculture and Fisheries, who argued that its extensive wetlands could be developed productively for agricultural purposes.

By the time of the minister's visit to the land, the applicant had developed his own farmland to the required percentage, thus removing the major reason for rejecting his application for the lease. What remained was the issue of arability.

The minister, a professional forester who had previously held the position of Minister of Forests, brought to the situation the knowledge of a forester, if not that of a pedologist (soil specialist). An appeal process was available to the applicant against the rejection of the application. However, that process would involve expense and time to both the applicant and the public purse. Instead, the minister directed that the application be processed, which would automatically require a professional pedologist's report. The Ministry of Forests, having an interest in the outcome, undertook to have an independent detailed pedologist's report completed. This confirmed that the land was 80 per cent arable. Once this was determined, the lease application was approved.

Our conclusion was that the minister's involvement was reasonable. Although the rejection of the initial application had been proper, based on the information at hand at the time, the subsequent changes in circumstances and appearance of contradictory information called for a reassessment of the application, in fairness to the applicant. The minister's involvement had merely resulted in a reassessment of the application, not approval of the lease. The complaint to us had been made in the absence of complete information. We provided the complainant with this information, and indicated that we were unable to substantiate the complaint.

Harsh words jeopardize contract bid

A resident of a small coastal community complained about the conduct of the Ministry of Lands and Parks in administering a proposal call for site security and toxic material storage monitoring for an industrial site owned by the Crown and administered by the ministry. In this instance, it was a friend of the complainant, not the complainant himself, who had participated in the proposal call for security services. However, the complainant's friend listed the name of the complainant as an alternative to provide service under the Crown contract in the event the friend was unable, for any reason, to carry out duties on a particular day. The complainant was angry that his friend's application had been disqualified on the basis that the complainant was unacceptable to the ministry as an alternative service provider.

The ministry, in response to inquiries from this office, explained that the complainant had a public profile in the community and had made statements at local meetings criticizing the way the industrial site was managed and stating clearly his view that the site should be open for use by residents of the community. When advised that the ministry had padlocked the site, the complainant stated publicly that he would cut the lock off. On the basis of the complainant's clearly articulated view of Crown land management, the ministry took the position that it could not chance the prospect of the complainant acting contrary to the interests of the Crown with respect to site security and toxic material storage monitoring. We agreed.

We explained to the complainant that his personal views on a variety of subjects might be totally irrelevant in the analysis of proposals submitted in response to a call for submissions from the ministry; however, the complainant's position with respect to matters which would have a direct bearing on site security was indeed relevant to the deliberations of the Crown in determining whether or not an application was acceptable. For this reason we were unable to substantiate his complaint.

Surveying the Crown's water

Two men got together to purchase a forty-acre parcel of sloping benchland crossed by two creeks. Their plan was to subdivide the property into two parts, with one man taking the higher section and the other the lower. They knew they would have to get the land surveyed to create the subdivision. What baffled and annoyed them was the condition that the beds of the creeks had to be surveyed as well. This requirement made no sense to them, and they complained that it was unreasonable.

A glance at section 108 of the *Land Title Act* informed us that the requirement, rather than being a bureaucratic whim, was set down in law. The primary reason for the need to establish by survey the channel of creeks is the fact that natural water on the surface of land is ordinarily the property of the Crown, which is why the boundary of waterfront properties ends at the high water mark. Surveys to establish these boundaries are necessary, with an exception sometimes being made where the absence of trees enables the information to be obtained by aerial photography.

These facts focused on the issue as a matter of law rather than one of administrative fairness, and provided the complainant with an explanation for a requirement that was puzzling until its rationale was understood.

The exception was not the rule

Several individuals, including the complainant, wanted to obtain an agricultural lease for certain land in the northern interior of the province. The policy of the Ministry of Crown Lands was to require that the land already in the possession of the applicant be 70 per cent arable, in order to justify the acquisition of additional crown land for farming or grazing. As a result of the recommendations of the Gillespie commission, the ministry changed its arability policy to require a minimum level of 80 per cent to qualify for participation in agricultural lease auctions, in the event that such auctions were to be held.

The complainant met the 70 per cent but not the 80 per cent requirement. However, because the complainant's application for the agricultural lease had been received prior to the implementation of the new policy, an exception was made for the complainant, who was allowed to participate in the lease auction. Competitive bidding drove bid levels up very high, and the complainant was the second highest bidder by a narrow margin. After the successful bidder defaulted and lost his deposit with the ministry, the land was offered to the complainant by the ministry at the price which the complainant had bid during the auction. The complainant was informed by telephone of this offer and was also advised that the written offer from the ministry would be forthcoming. The complainant's response was to inform the ministry that he considered the asking price to be excessive, given the market value of the timber which would be harvested from the land to clear it for agricultural use.

An unfortunate turn of events followed. The written offer had been sent by the ministry by a courier, who did not deliver it because the complainant wasn't home when the courier arrived during business hours. After inquiring of the whereabouts of the written offer, the complainant finally received it three days after the noted expiry date. It was on this same date that the Minister of Crown Lands signed a letter to the complainant stating that the auction process was now at a close, given the complainant's rejection of the offer.

The complainant requested an extension of time to respond to the offer. This was denied. The complainant later contended that the subsequent auction by which the land would be offered should be regarded as an extension of the first auction, which concluded unsuccessfully; on that basis, the complainant should be allowed to participate in the second auction, notwithstanding non-compliance with the policy requirement of 80 per cent arability.

We disagreed. While the late arrival of the written offer from the ministry was unfortunate, the reason could not be attributed

to negligence on the part of the ministry; in addition, the complainant had been notified of the substance of the offer and had implicitly rejected it, while stating a willingness to nonetheless look at the written offer when received. In our opinion, a motivated purchaser would have taken further steps to indicate to the ministry a willingness to purchase if such was his desire, especially in circumstances where it became apparent that time was slipping away and the written offer might have been waylaid.

With respect to the desire to participate in the subsequent auction, we agreed with the ministry's assertion that the auction processes are separate, and that a later auction of the same property should not be regarded as a continuation of the earlier one. The exemption from ministry policy provided for the first auction to the complainant was a courtesy, given the circumstances of the complainant's application. Further exemptions would only cast the ministry's policy into disrepute as there was no basis in fairness to allow further exemptions. We thus concluded that the complainant had been treated fairly by the ministry.

Highest and best use a matter of opinion

In deciding whether or not to approve applications for agricultural leases, ministry staff are frequently put in the difficult position of weighing contradictory opinions by specialists employed both by government and by the applicant. Much hangs in the balance. Agricultural leases are valuable commodities to the farmers wanting to develop them, and rejection of an application very often leads to a call to the Ombudsman office.

Fundamental to the assessment of applications for agricultural leases is the determination of the "highest and best use" of the land. This is especially the case where, for various reasons, any activity on a piece of land will preclude other activities, so that integrated management of several uses of the land becomes impossible. It is often the case, when land is used for agriculture, as for many other purposes, that the area required makes other contemporaneous uses impossible. As society becomes increasingly aware of the finite nature of land supporting a growing population, the importance of careful land use planning acquires increased emphasis that extends even to a farmer's desire to plant hay in a relatively unsettled part of the province.

An evaluation of the highest and best use is subjective to some degree and capable of different interpretations by professionals in different fields. This is why the Crown Lands ministry will often invite applicants to hire their own consultants to evaluate the capabilities of the soil on lands for which an application has been made. Such was the case when a farmer applied for a lease on land a few miles distant from his farm. The ministry rejected the application at the outset, as it appeared that the land was not 50 per cent arable. When the farmer objected, the ministry suggested that he obtain the opinion of an independent agrologist. He did so, and the agrologist supported his application, based on his opinion regarding the arability of the land. On the land inventory scale, by which soils are graded on a scale of 1 to 7 (the lower the number, the better the land), the subject land was categorized as 5, meaning that it was marginally adequate for growing limited kinds of crops, but was by no means ideal soil.

On the basis of the agrologist's opinion, the application had passed its first test, marginally. However, further obstacles lay ahead. All applications for agricultural leases, in the course of being processed, are referred to other government agencies that may have an interest in the land. In this case, the Ministry of Forests reported that the land was ideal for a seed reserve for trees of timber value. In addition, the Wildlife Branch of the Ministry of Environment considered the land to be valuable wildlife habitat. The farmer's plans for a hay crop would eliminate both of these other uses.

After considering the reports from the ministries of Forests and Environment, as well as the marginal agricultural value of

the land and the distance from the farm to the site applied for, officials in the Crown Lands ministry exercised their discretion by ruling that the farmer's application should not be approved. He complained to us vigorously, arguing that the government was throwing up stumbling blocks for no apparent reason, as no one else, whether government or private individual, had previously expressed an interest in the land. After reviewing relevant documentation and talking to officials in the various ministries, we told him that we could not support his position. It mattered little that his was the greatest current interest in the land. The fact remained that if he were to develop it now, it would be unfit for better uses that might well be of vital need in the future.

All alone on the military base

When a military base on a remote part of the seacoast closed, a mobile home belonging to BC Telephone Co., which had provided telephone service to the base, was offered for sale. After purchasing the mobile home from BC Tel as a residence for his family, the new owner applied for a Crown lease for the property on which the mobile home was located. The application was denied.

Ministry policy is to refuse to issue leases for remote and isolated locations. This property fit that description, and no other families lived within several miles of the site. The policy results primarily from a number of unfortunate experiences faced by the ministry with such leases in the past, where individuals and families found themselves unable to cope with isolation. Fortunately, the family was amenable to moving the mobile home closer to civilization, and decided to do so once the reasons for the ministry's policy were explained to them. To provide them with some breathing room, the ministry approved an extension of the time set for vacation of the site.

Great waterfront, poor accessibility

The complainant leased a waterfront recreational lot from the Ministry of Lands and Parks. His lot was one of 97 such lots on one of the southern Gulf Islands. The island does not have public ferry access or hydro.

The ministry decided to offer the lots for sale to the lessees as part of a province-wide program. It retained an independent appraiser to determine the asking price of the lots, based on their fair market value as recreational lots. Because there had been no recent sales of such lots on the island, the appraiser used sales of comparable properties on nearby islands as the basis for determining the fair market value of the ministry's leased lots.

Although a number of his island neighbours took up the ministry's offer, the complainant considered the asking price for his lot to be too high, and declined. He felt the appraiser had made insufficient allowance for the isolated and exposed nature of the lots, which made them difficult to reach, particularly in rough weather. He was also frustrated that the ministry would not provide him with a copy of the appraisal report.

Each year, the appraisals were updated, and the ministry's asking price increased. By the third year, the price of the complainant's lot had increased by over 60 per cent. He complained to our office two and a half months before the appraisals were due to be updated again. By that time, 57 of the 97 lots had been sold — 44 to lessees at their appraised values, and 13 at public auction at appraised values or greater.

This office supported the ministry's policy of seeking fair market value for the sale of Crown land, and of basing its determination of fair market value on an independent appraisal. Based on our review of the appraisal reports and records of the lot sales, the valuation methods appeared to be reasonable.

However, the complainant wanted access to the appraisal reports to verify for himself that the latest appraisal reflected the current market value of his lot. The ministry still would not release the reports to him, but agreed to give him access to them in their offices. The ministry also offered to

provide the complainant with a list of the comparable sales on which the appraisals were based.

Had the complainant been required to take a course of action based on the appraisal results, this office would have recommended that the ministry provide the complainant with copies of the appraisal reports.

In this case, the complainant needed only to determine whether to exercise what amounted to an exclusive option to purchase his leased lot. Under the circumstances, and given the time constraints, the ministry's offer of access to the appraisal reports was a reasonable compromise.

A neighbourly feud

The complainants farmed and raised cattle on a property they owned in northwestern B.C. Their deeded land covered approximately one-third of the District Lot on which it was located. Two neighbours each owned small portions of the same District Lot. The balance of the District Lot was owned by the Crown.

The complainants wanted to expand their farmland and to construct a water storage reservoir on Crown land north of their property. They obtained the necessary water licences. They also applied to the Lands Division of the then Ministry of Forests and Lands for an agricultural lease which would include all of the Crown land within their District Lot.

The Lands Division gave preliminary approval of the agricultural lease, apparently unaware that one of the neighbours held a grazing permit which included a portion of the same Crown land. The grazing permit, which was renewable annually, had been issued by the Forest Service of the same ministry.

When the neighbours' grazing permit came up for renewal, the Forest Service advised them that the area of overlap would be deleted from their grazing permit and included within the agricultural lease. The neighbours objected.

After considerable discussion, exchanges of correspondence and on-site inspections by representatives of the Forest Service, the Lands Division and other ministries, the Lands Division reached a compromise. It would divide the disputed portion along an existing fence, which had been built by the neighbours parallel to but well within the eastern boundary of their grazing permit area. Both parties were unhappy with this compromise.

The complainants protested to us that the decision left them without reasonable access to their agricultural lease, both for constructing their water reservoir and for moving their cattle from one pasture to another. They explained that there was a steep ridge on the west side of their property which became more gentle as it extended into the disputed area. That access was necessary to bring in the heavy equipment required to construct their dam and reservoir. Also, if that access was denied, their cattle would have to "slide down the cliff on their bums" to get from one pasture to another. That certainly begged some investigation on our part.

The *Land Act* gives the ministry legal authority to determine the "highest and best use for Crown lands." The issue was whether the ministry's decision was reasonable and fair to both parties (and their cattle).

A number of factors favoured retaining the western portion of the disputed area within the neighbours' grazing permit. The neighbours had fenced that area, and had used it and improved it for grazing. The ridge formed a natural drainage basin for a water storage dugout, for which they held a water licence. This was the only source of water on their grazing permit. Finally, the neighbours' home was located just below the ridge, and the trees on the ridge formed a natural buffer from the prevailing winds.

On the other hand, the neighbours had neither used nor improved the portion deleted from their grazing permit and added to the agricultural lease. That portion was to contain the dam and reservoir

provided for in the complainants' water licence.

We interviewed a number of people from the ministry, and from other ministries. Their clear consensus was that the complainants had reasonable access to their lease area through their own property. We concluded that the ministry's division of the disputed parcel was a fair and reasonable attempt to balance the interests of the competing parties. We did point out that much of the friction (excluding that experienced by the migrating cattle) might have been avoided had the ministry had a more effective referral process for land use applications.

The price of virgin snow

Conflicts among competing users of the same resource are frequently the subject of investigation by the Ombudsman office. Some of these conflicts involve fairly esoteric uses of the land. The following summary describes the first complaint brought to our office where the subject of dispute was the cleanliness of snow.

The complainants had built and operated a deluxe back-country destination lodge on Crown land in the Kootenays. Prior to construction of this lodge, they had operated a back-country ski-touring service which provided both guides and shelter facilities for individuals and groups. When the lodge was constructed, the complainants saw the two operations as being complementary to each other and looked forward to the steady expansion of their business.

This hope, unfortunately, was not fulfilled. While the lodge continued to operate successfully with the full support and encouragement of the Ministry of Crown Lands, the back-country ski-touring operation fell victim to a number of conflicts with other licensed operations in the area, and particularly a charter helicopter skiing company with licensed downhill skiing runs. The helicopter skiing company insisted that it needed virgin powder snow to provide a quality experience for its clientele, who were paying substantial sums of money for the privilege. On several occasions, it was found that the licensed runs were unusable because members of the complainants' clientele, rather than simply crossing the run to get to a destination, had submitted to the temptation to "telemark" downhill, thus blemishing the sparkling pristine surface of the slope. The heli-ski company was upset.

The original agreement by which Crown Lands had permitted the operation of the ski-touring facility foresaw the potential for such conflicts and had required undertakings from the complainants that such conflicts be scrupulously avoided. After the unfortunate occurrences, Crown Lands invoked the legal rights available to it and cancelled the licence of occupation permitting ski-touring in the disputed area. The ministry also demanded the immediate removal of the modular shelter facilities erected to service the ski-touring clientele. The complainants considered this to be unfair, as they viewed the limited number of conflicts as being insufficient to warrant such harsh action by Crown Lands. They also argued that they had a reasonable expectation that Crown Lands would permit them to operate a ski-touring operation as a commercial adjunct to the back-country lodge.

While we had some sympathy for the complainants' position, and found that the negotiations which had preceded the licensing provided some support for them, we were unable to characterize the conduct by Crown Lands as being unfair. This case served to highlight the problems which can occur in areas previously regarded as inaccessible.

Transportation technology, particularly helicopters and snowmobiles, have made accessible many areas of the province in which conflicts would not otherwise have occurred. The basic truth of the matter is that the land base of the province, particularly the areas most prized for recreational activities, has been allocated to various interests by way of licences of occupation or other legal agreements, and the challenge now facing the ministry is to find fair ways of reallocating these recreational resources

in the face of ever-increasing public and commercial demand.

On the basis that the complainants agreed to accept the ministry's invitation to negotiate further on the subject of possible alternative tenures for ski-touring, this office closed its file. While we were unable to substantiate the complainants' principal concern, we were encouraged by the ministry's vigorous ongoing efforts to develop fair and sensitive policies for recreational land preservation, allocation, and management.

Ministry of Energy, Mines and Petroleum Resources

Resolved	4
Not resolved	0
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	7
Declined, discontinued	4
Inquiries	2
Total number of cases closed	20
Number of cases open December 31, 1991	10

Shakin' all over

A Fraser Valley woman called us to complain that loud blasting at a nearby quarry was not only causing her great distress but was also damaging her property. She said her neighbours were equally concerned, and their need for assistance was urgent. As if to emphasize her point, her telephone conversation with us was occasionally punctuated by reverberating booms.

A representative of the Ministry told us that the individual in question was licensed to carry on this type of activity, and that concerns that dynamite was being used in the open, without blast shields, were probably incorrect. The blasting was being carried out as a relatively inexpensive alternative to mechanical rock crushing for the production of large boulders.

Nevertheless, the mines inspector had the authority to shut down the operation in the public interest. After visiting the site and discussing the matter with nearby residents, he concluded that such an action should be taken and shut down the operation. The residents of the area, some of whom said that the blasting was causing cracks in their foundations and walls, were extremely grateful. We considered the matter resolved.

"It's not dead, it's just resting"

A man complained that his considerable investment of time and money to develop a proposal under the Independent Power Producer Program had been wasted as a result of government intervention. The program was designed to encourage and assist rural groups and individuals to develop small, efficient hydro power generating facilities to meet local needs and reduce dependence on the provincial power grid, which was coping with burgeoning demand from the major population centres.

The complainant had been working toward approval under the program for construction of a small 200-kilowatt plant to provide an environmentally acceptable source of additional power for the rural area in which he lived. The program had been sponsored by B.C. Hydro and then apparently had been cancelled at the request of the Ministers of Energy, Mines and Petroleum Resources, and Environment.

Our inquiries led to the discovery that the program had not been cancelled. Rather, it had been postponed to enable the ministries to develop a co-ordinated regulatory response to the large number of proposals submitted under the program. Many of these proposals required detailed environmental review, and some were in conflict with one another. We found the postponement to be reasonable, as its purpose was to ensure consistent treatment of applications with minimal adverse consequences.

Our finding that the complaint could not be substantiated was not entirely bad news for the complainant. He had thought the program dead; as it was simply moribund, it appeared that he would soon regain the opportunity to continue with his project development. A "small power review process" is now in place, and deferred proposals are being reviewed for potential approval.

Impatient with environmental impact assessment

A rancher applied under the *Utilities Commission Act* for an Energy Project Certificate to construct a private hydro-electric facility. Such a certificate allows for the private generation of power which can, under contract, be sold to B.C. Hydro. The rancher complained about a delay in the processing of the application.

Any process which requires the participation of several government agencies tends to be more time-consuming than applications dealt with by a single branch or single ministry. Energy Project Certificates require the approval of both the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment.

Applications for activities that may have an adverse effect on the environment require more elaborate testing and careful scrutiny than was the case before society as a whole became aware of the fragility of ecosystems and the enormous potential for harm by seemingly innocuous projects. This was especially the case for the complainant's application, which proposed a project which, by its very nature, was likely to have some impact on a watershed. Assurance was required that the project was not likely to have an adverse impact on the levels or quality of water because of natural phenomena, such as drought, or as a result of accident. The ministries' concern was heightened by the fact that the watershed in which the proposed facility was to be located contained a chain of three lakes and connecting waterways on which a government-funded sport fishing activity had been developed. A series of professional studies was required to demonstrate the project's safety.

On conducting an investigation, it became apparent to us that the delay that concerned the complainant was more his own doing than a result of what the ministries had or had not done. By correspondence, discussion, meetings and documentation, the ministries had given the applicant all the information he needed to submit a proper application. The complainant had not done so, choosing instead to attempt to vary the ministry's requirements by hard negotiation. It appeared that the complainant had either not understood or not accepted the need to conduct a thorough assessment of the environmental impact of his proposed project. We explained to him why we considered the application requirements to be reasonable, and told him that we were unable to substantiate his complaint.

Ministry of Environment

Resolved	20
Not resolved	0
Abandoned, withdrawn, investigation not authorized	12
Not substantiated	19
Declined, discontinued	24
Inquiries	8
Total number of cases closed	83
Number of cases open December 31, 1991	38

One of the results of the change in political administration as a result of the election of October 1991 was the re-organization of ministerial portfolios. What was referred to by some as a new "super-ministry" was created through the combining of the Ministries of Environment, Crown Lands, and Parks. With the significant exception of Forests, the integration of the mandates of these three ministries provides this new ministry with a far-reaching jurisdiction over land use, conservation, and protection. In the case of Parks, there is also a promotional element, given the nature of the provincial park system as a tourism resource and a vehicle for the display of some of this province's best and most beautiful landscapes.

It is uncertain whether the integration of these ministries will alter the character of the complaints which we sometimes receive about them. The greatest number of complaints have to do with contract administration, as each ministry enters into contracts to acquire specialized services. In the case of Crown Lands, however, the issues are generally more extensive, and may include not only contractual questions as they might arise in the administration of tenures for Crown land, but also far-reaching issues about provincial land management and the resolution of disputes between various developers or occupiers of Crown land. For this reason, it is no surprise that Crown Lands is actively and continuously engaged in consultative processes leading to policy development to assist it in the administration of vast land tracts, each of them having unique characteristics and unique demands placed by both government and the private sector.

As a last note, it is useful to observe that the mandate of the Ministry of Environment was, and remains so in the new "super-ministry", environmental protection and regulation. The details of this mandate are spelled out in legislation. Complaints are sometimes received that the legislation provides the ministry with inadequate authority to ensure protection of the environment from all manner of human (both individual and corporate) practices. As the Office of the Ombudsman is not a policy or law-making office, there is usually little we can provide for a complainant if we determine that the governing statute — for instance, the *Water Act* or the *Waste Management Act* — has been complied with.

The exception to this is where legislation is found to be fundamentally unfair because it fails to observe some basic principle of natural justice. In such a case, we can make recommendations for reconsideration and amendment of the statute.

Integrated Resource Management

No consensus at Clayoquot Sound

A resident of an island near Tofino raised concerns about the structure of the Clayoquot Sound Sustainable Development Task Force and the process which the task force, a joint initiative of the Ministry of Environment and the Ministry of Economic Development, was using to attempt to reconcile deeply felt differences between logging interests and preservationist/tourist interests. The complainant was also concerned about the involvement of and tactics

utilized by the RCMP in their efforts to maintain order among competing factions.

This office chose to maintain a "watching brief" for the periods during which the task force was actively engaged in seeking a consensus on the issues before it. We considered it inappropriate to attempt to intervene at a time when a government-appointed body was actively engaged in seeking solutions to extremely volatile issues.

As it turned out, the task force, in its final report issued in April 1991, was highly critical of its own structure and processes and the resultant inability "to, by consensus, effectively deal with its shortcomings in membership and its opposing views on short-term logging issues; [therefore] the Task Force concluded that a reshaping of its structure and process is required if a sustainable development strategy is to be achieved for Clayoquot Sound." The task force provided as its first recommendation in its final report that "the Clayoquot Sound process as contemplated by the original terms of reference not be used as a model in other areas in British Columbia." Obviously, analysis or criticism by this office was not required. However, we did point out to the complainant that this office has through its public and annual reports attempted to set out what it regards as the basic principles of fair resource management. [Public Report No. 15 — "Aquaculture and the Administration of Coastal Resources in British Columbia", and the 1988 Annual Report, under the heading "Integrated Resource Management: The issue is fairness."]

We also noted the relative success of theTimber/Fish/Wildlife (TFW) agreement in Washington state, in which an agreement had been drafted among the forest industry, environmentalists, preservationists, aboriginal groups, and other public interest organizations in an environment more prone to physical confrontation, repeated lawsuits and political lobbying than to quiet, rational negotiation. It appeared to this office that the techniques used in the TFW agreement, although they were not without problems, might have fruitful application in areas such as the Clayoquot Sound process.

We explained to the complainant that he was at liberty to propose the application of such principles in the future work of the task force which, it should be noted, did manage to achieve a number of notable agreements, in addition to laying the groundwork for a restructured steering committee. Our letter to the complainant, commenting on the principles of resource management which this office endorses, explained that the Office of the Ombudsman is reluctant to involve itself in matters which are either being actively addressed by government or which have a political component to the extent that Ombudsman office intervention is inappropriate. We also pointed out that with respect to concerns about the RCMP, there is a specific federal complaint investigation office for matters involving the RCMP. After providing this information to the complainant, we closed the file.

Fish and Wildlife Management

Red tape trips up hunter

The complainant is a Canadian citizen, and a former resident of British Columbia, who is now resident in the United States. He is also an avid big game hunter, and wished to return to B.C. to hunt with friends.

The *Wildlife Act* and its Regulations require that a non-resident hunting big game in B.C. must be accompanied by a B.C. resident who holds a permit issued by the Wildlife Management Branch. The branch would not issue a "permit to accompany" to the complainant's friend.

The branch was relying on a ministry publication which contained a section entitled "Notice to Non-Resident Hunters". The notice contained an interpretation of the Act and regulations which asserted that a

person who is not a resident of Canada must be accompanied by a licensed hunting guide, unless a close relative, who is resident in B.C., obtains a permit to accompany him.

The complainant's friend was not a licensed guide and was not related to the complainant. He qualified to accompany a Canadian resident to hunt big game in B.C., but not someone from outside Canada.

The complainant protested to this office that, as a Canadian citizen, he should be treated no differently than a person who is resident in another Canadian province. He felt that he should be entitled to be accompanied by a B.C. friend with the required permit.

Our review of the legislation disclosed that the interpretation contained in the ministry publication was incorrect, and that the legislation supported the complainant's position. Under the definitions provided in the Act, a Canadian citizen, no matter where he is living outside Canada, falls within the same category as a resident of another provinces.

The ministry readily admitted that its publication was incorrect, and expressed its regrets for any inconvenience that this had caused the complainant. It has taken steps to ensure that the notice will be clarified in future editions of the publication.

The ministry also suggested that the complainant reapply to have a permit to accompany him issued to a qualified B.C. resident.

Rapturous over raptors

The complainant was a teacher who spent his summers at his parents' cottage on Shuswap Lake. He enjoyed watching the bald eagles which nested in the area. He was disturbed when an adjoining trailer park began featuring weekly fireworks displays.

Concerned about the disruption to the birds, he sought information about whether the pyrotechnics could be controlled or prohibited. He thought the area had been designated as a bird sanctuary, but was unable to confirm this.

We determined, through the ministry's Wildlife Management Section, that the area had not been designated a wildlife sanctuary, either federally or provincially. It was designated a "no hunting/no shooting" area under the Hunting Regulation. Unfortunately, setting off fireworks did not come within the prohibition.

We referred the complainant to a ministry office close to the school where he taught, for more information on wildlife protection. He said he would follow up with the ministry, and thanked us for our assistance.

He was particularly enthused to learn that the word for eagles and other birds of prey is "raptor". He thought that the word was beautifully descriptive of what he had observed of the birds.

A tale of two fishermen

Two fishermen journeyed over 800 miles to reach a northern coastal river noted for its salmon and steelhead. At the time of their expedition, salmon were in season, and steelhead were out. The fishermen had their salmon licences, and they trusted that the steelhead would respect their good intentions not to catch them.

For such men, heaven is a pair of hip-waders, the quick blue flash of a kingfisher, and the silent arc of a dry fly cast with precision onto a sunlit pool full of salmon lunging at damselflies. The serenity of the scene was absolute.

Suddenly, out of the bushes stepped the government, in the person of an auxiliary fisheries officer. Suspicious glances were exchanged. The officer approached. He asked to see the men's licences. The salmon licences were produced, inspected, and found to be in order. Our story might have ended there quite happily, and the fishermen might never have complained to the Ombudsman. It didn't, and they did.

The fisheries officer was a thorough sort, so he asked to see the men's steelhead licences. "Say what?" said the fishermen.

"Steelhead aren't even in season! For what do we need a licence?"

The fisheries officer was not prepared to debate the matter at length. Were there steelhead in the river? Yes. Were the men fishing? Yes. Was there a chance that steelhead might take their bait? Yes. Case closed. The officer handed each man a $100 ticket, and the government withdrew into the bushes.

The fishermen packed up their equipment, slogged off to their truck, and went off to buy steelhead licences that they couldn't use. The logic of it all defied them. Did this mean they would have to get a cougar licence if they decided to go deer hunting? Nevertheless, they were determined not to let the incident spoil the rest of their trip. It did. They brooded. They fumed. The offence notices in their wallets cast a heavy and a weary weight over their holiday mood.

When they got home, the fishermen telephoned the Ministry of Environment to protest what had happened. The clarification that they sought brought only confusion. No fewer than six persons in three locations were unable to explain the precise meaning of the recent "enforcement circular" on which the fisheries officer had acted or, if it meant what he said it meant, why the rule existed.

It seemed obvious to the fishermen that they ought to fight the charge. They phoned the courthouse to find out how to do it. The explanation they got sank them into further gloom. The rules of court conspired to make it impossible for them to plead their case. First they would have to travel from the Okanagan to Bella Coola just to plead not guilty. Then they would have to travel back to the Okanagan and return again to Bella Coola for their trial. They thought about the cost of travelling 3,600 miles for a matter of principle. They thought about the cost of the time lost from their businesses back home. They thought about the cost of legal fees. They thought about the fisheries officer, and their thoughts were not full of sweetness and light. It was all too much. Wretched and disillusioned, they paid their $100 fines. Then they called the Ombudsman office.

Senior staff at the ministry told us they would look into the matter. They agreed that the enforcement circular was hopelessly confusing, and said it would be amended to make it clear that you don't have to have a steelhead licence when steelhead are out of season. The ministry officials went further. They saw to it that the charges against the fishermen were ruled improper, the records of the charges removed, and the amounts of the fines refunded to the fishermen. The fishermen were delighted to hear it. Their worries and resentments fell away, and they were able once more to turn their imaginings where they belonged — to the gentle swelling on the surface of a pool that marks the wide-mouthed rush of a trophy fish.

Sharing the land between fish and houses

The owner of a rectangular ten acre parcel of property held an offer to purchase in the one million dollar range. He was considering accepting the offer when the potential purchaser decided to make a final inspection. Much to his surprise, he found the property extensively flagged with survey markers. On making inquiries, he found out that more than six acres of the property, encompassing two creek beds that formed a T shape, had been removed from development to protect fish habitat. The configuration of the creeks and their sloping banks left three odd-shaped areas for development: a narrow oblong at the west end, a halfmoon sliver at the north side, and a misshapen square without access at the southeast corner.

With this discovery, the potential purchaser lost all interest in the property and withdrew his offer, unable to believe that the owner knew nothing about these developments on his own land. But the owner had been just as much in the dark. Furious, he called every government agency that could possibly be responsible. The municipal government, the provincial Environment min-

istry and the federal Department of Fisheries and Oceans all acknowledged that they knew about the habitat reserve, but each had been under the impression that the other had notified the owner. Apologies were offered all around. This was small comfort to the owner, who was faced with the fact that his property could no longer be divided into 10 one-acre lots. To add insult to injury, he was told he had no right to compensation. Feeling somewhat disheartened, he asked us to look into the matter.

Following a study of documents and plans, we conducted an on-site visit with the Ministry of Environment biologist who had placed the reserve on the land. Along each section of the two creeks, she had ordered a setback on which no development could take place. The oblong piece of land at the west end of the property had a depth of 80 feet, and the setback here was 100 feet; consequently nothing could be built on this section. The halfmoon sliver was too small for development and, being isolated by the creeks, was without access. The setback on the square-shaped piece at the southeast corner seemed excessive to us, but the biologist was adamant that it was necessary to protect the creeks. To make matters even more interesting, a municipal sewer pipe was proposed to be laid right through the area set aside for habitat protection.

Our on-site visit led us to conclude that the requirements set by the biologist might be excessive. Senior staff in the Ministry of Environment, the Department of Fisheries and Oceans and the municipality told us they would review the matter and let us know the result. Six months later, we revisited the site with other biologists provided by the provincial ministry, the federal department and the municipality, and they agreed that errors had occurred and adjustments should be made.

These adjustments resulted in a dramatic alteration in development possibilities for each of the three portions of the property. On the oblong portion, a covenanted (non-building) encroachment of a few feet into the habitat area would allow municipal discretion for development; this, together with a relocation of the proposed sewer line, would enable five building lots to be developed. The sliver portion would provide room for one buildable lot by reducing the area required for habitat and by allowing a culverted access over one of the creeks. Finally, the square portion would provide room for further lots by considerably reducing the area required for habitat, by allowing for a lowering of the creek bank's shoulder, and by considering a rezoning from single family dwelling to a cluster-housing concept and creating a new access. In addition, the municipality agreed that the legislative requirement that 5 per cent of subdivided land be set aside for parkland might be considered met by the retention from development of the land areas reserved for habitat protection.

These compromises having been reached, the market value of the property returned to a figure close to the amount originally estimated by the owner, while the Ministry of Environment's goal of protecting the fish habitat was met. Imaginative planning and the application of common sense in the exercise of discretionary authority had resulted in an arrangement that met the needs of the complainant, the ministry and the municipality.

Saving the birdies from the bogeys

The popularity of golf has mushroomed in recent years. Nowhere is this more evident than in the spreading suburbs of the lower mainland, where tee-off times are in short supply and golfers will pay large sums to stroll through sodden grass at sunrise. This rapidly growing interest in the sport has not escaped the attention of land developers.

Any game that requires its players to walk a mile or two between the first tee and the nineteenth hole requires a substantial chunk of land. This often means land that has little use for most human purposes — otherwise it would already have been developed — but may be an admirable home from the point of view of a duck. An example of this was brought to our attention in September 1990, when we were approached

by a person representing an organization of individuals opposed to the development of a golf course in the Boundary Bay area. The complainant argued that the land in question was critical habitat to over one million birds annually travelling on the pacific flyway, along the west coast of North America. The complainant alleged that the provincial government was doing little or nothing to stop this matter, and that local government was disregarding the available environmental information gathered by both federal and provincial authorities.

It was clear from the outset that this office would have limited jurisdiction, given that the primary conflict existed at the local government level, over which we had no authority at the time of the complaint. In addition, the provincial component contained a strong discretionary political element, raising some questions as to the appropriateness of our involvement. Nonetheless, we maintained a watching brief to determine if jurisdictional issues might arise.

The file was ultimately closed after the matter of local government approval was put before the courts, with the complainants making successful application to quash the development bylaw. With a possible appeal from the court decision also pending, it became painfully clear that any further involvement by this office would be without the authority of the *Ombudsman Act*. The file was therefore closed with advice to the complainant that this office could be contacted again in the future if an element of provincial administration was the subject of the complaint.

Good Samaritan seeks reimbursement

An eleven-year-old boy came to the aid of a deer that had apparently injured itself attempting to go through a fence. With his father's help, the boy took the deer to the local veterinarian, where an unsuccessful attempt was made to save its life. The vet donated his time but charged the family for medical supplies.

When the Wildlife Branch and the SPCA both said they were unable to accede to the request for reimbursement, a local store started a fund-raising campaign which soon collected about two-thirds of the $62 bill for the medical supplies. Someone then suggested that an appropriate source of the remaining funds might be the money collected by the Wildlife Branch from the $5 surcharge levied on hunting licences. Again the ministry came back with the response that this was an impossibility, and the father of the boy asked us to have a look at the issue, as there seemed to be no sound basis for the refusal of assistance from a branch that was supposed to be looking after the interests of wildlife.

The ministry's response to our inquiries showed that there was more to its refusal than met the eye. Ministry officials told us that they receive hundreds of calls every year about injured birds and animals, including frequent requests for reimbursement of expenses. Not only does the ministry have no legislative authority to grant such requests, but the administrative costs of dealing with them would create a significant additional expense for a ministry whose staff are already overburdened.

We discussed the question of the licence fee surcharge, and were told that this money is collected for a specific purpose, namely the funding of the Habitat Conservation Fund, designated for habitat improvement and the purchase of property that makes a significant contribution to habitat.

While we expressed admiration for the public-spirited action of the boy and his father, it was clear to us that the ministry's refusal to provide compensation was the proper course of action.

Bisonic law

About 20 years ago, a guide-outfitter obtained a permit, the only one of its kind then or since, to import a herd of bison to his ranch in B.C. His intent was to develop an operation to entice big-game hunters from the U.S. and Europe. The bison flourished in the northern wilderness, and the

herd swelled from 200 to somewhere between 600 and 800. In time, a significant number of the animals roamed onto Crown land and were instantly transformed from domestic animals to wildlife, under the definition provided in the *Wildlife Act*. They thus became public property, much to the chagrin of the guide-outfitter, who challenged this new status in court and lost.

To add insult to injury, the wayward herd was allegedly given to damaging their former owner's neighbour's hay crops and sometimes goring his packhorses. He developed a scheme to offset his losses and put it to the government. His proposal was that the Wildlife Branch issue him a permit to hunt trophy bulls and reclaim 100 young bison from his own land or from Crown land for commercial hunting on his own land. When the ministry refused his request, the guide-outfitter sought our assistance to help him get a fair deal.

Wildlife management is an on-going evaluation process that includes a continuous assessment of a species' health, population, and habitat needs. The quota set for hunting licences is dependent on the ability of the animals to sustain what is euphemistically known as a "harvest". Generally, the number of persons seeking licences is far greater than the number of licences available, especially when the animal being hunted is prized as a trophy because of its size or rarity, for both of which the bison is notable. Because of this demand, it is essential that the ministry be seen to issue the licences without favouritism. Guide-outfitters are especially sensitive to the process, as the law requires all non-resident hunters to hire guide-outfitters.

When the complainant approached us, the ministry was still formulating plans for the 1992 season and had not yet set a quota; consequently the ministry was in no position to grant licences for which a quota might not exist. Moreover, to do so would have granted a privilege to the complainant to the disadvantage of his competitors. As a result, we could not substantiate his complaint.

The issue of alleged damage to the complainant's crops and horses was settled by the fact that the *Wildlife Act* specifically disallows compensation for damage done by wildlife. We suggested to the complainant that if he really wanted to press the matter, he might wish to ask the ministry to consider compensation by an ex gratia payment, cautioning him that this step is only used where it is readily apparent that an injustice has occurred for which there is no legislative or administrative remedy.

The estuary wars

A river estuary on the east coast of Vancouver Island provided an ideal location for local naturalists to watch wildlife and migratory birds. A highlight of the year was "Goose Day", in honour of the flocks of migrating geese that descended to rest and feed in the marsh. The residents were accustomed to walking to the spot by crossing a stretch of undeveloped land.

The waterfront property was sold to a developer who quickly closed off the pathway. The naturalists in turn approached the Ministry of Environment, expressing their concern that a subdivision would have a devastating effect on the estuary and its wildlife. The ministry shared their concern, and took steps to secure for the Crown, as a condition of subdivision approval, a metre-wide strip of land along the shore for "estuary protection and enhancement".

In due course, the property was divided into several lots. By now, the naturalists had formed an association to protect their interest. They began negotiating with the developer to provide more land, not only because the existing strip was so narrow as to be ineffective for its purpose but also because access was difficult, especially during the rainy season. The developer was not only unreceptive, he was hostile to their approach, having already made what he considered a major concession for the right to subdivide. The association again approached the ministry, which provided tentative approval for the association to construct a boardwalk along the foreshore adjacent to the strip.

Enter the lawyers. Legal counsel for the developer began with an aggressive stance, threatening legal action against the ministry and the association on the ground that the proposal for a boardwalk did not meet the "estuary protection and enhancement" clause. This fact, it was argued, proved that the ministry had acquired the strip of land in bad faith. Not only would a boardwalk not protect and enhance the estuary; its intrusion would be detrimental to the ostensible reason for acquisition of the strip of land. Moreover, bad faith would be demonstrated if the public were even allowed to continue walking on the strip of land, if preservation of a fragile ecosystem was indeed the issue.

The ministry's lawyer conceded the first point, and the walkway proposal was scrapped. However, the ministry did not buy the argument that Rockports would wreck the estuary, and permission to walk continued. To prove its commitment to protection of the area, the ministry enrolled members of the naturalists' association as volunteer "wardens" who would watch for and report any damage to the river bank.

The gist of the complaint to our office by the association had been that the withdrawal of the walkway proposal was unfair. Essentially our role in the business was to find out and inform the association just what had happened and why. Our conclusion was that the ministry had acted reasonably under difficult circumstances, and the association, although disappointed, agreed.

Water Management

Trouble at the slough

The complainant owned six acres in the Okanagan on which she bred horses. A slough at one end of her property drained into a nearby river. The slough would flood part of her field at high water, but the field was generally dry by July. In recent years, however, the field had taken much longer to drain. It was still wet when the complainant contacted us in early September.

The complainant attributed the drainage problem to a road which the Ministry of Transportation and Highways had constructed across the slough, and to fencing installed by the Wildlife Branch to establish part of the slough as a sanctuary for ducks. She had learned that the Ministry of Transportation and Highways had offered to put in trenches to improve drainage in the slough. They were still prepared to do so if the Water Management Branch of the Ministry of Environment would give them direction on how the work should be done. Officials from both ministries had visited the site separately, but had not decided on the appropriate course of action.

We contacted the Water Management Branch representative. He agreed to inspect the site and to contact his counterpart at Transportation and Highways. Three days later, he phoned back to say that he and his colleague from Fish and Wildlife had examined air photos, "shot some levels" and determined that there was a mound of earth, probably from the road construction, which was obstructing the water flow.

He also told us that Transportation and Highways had agreed to dig a trench to remove the mound and restore the water flow. The work would maintain the level of the slough (to preserve the wildlife habitat), but would drain off the high water a little earlier in the spring, which would allow the complainant's field to dry out earlier. By this arrangement, the complainant's difficulty was resolved.

Straight talk on water rights

Many residents in rural B.C. rely entirely on creeks for their water supply. To take water from a creek, a property owner has to hold a licence issued by the Water Management Branch, which specifies the quantity that may be taken and under what conditions. When a property is sold, the licence is also transferred to the purchaser.

Under the *Water Act*, the oldest licences take first priority. This can become a controverial issue when creek levels rise and fall from season to season, causing supplies to run low for some licensees, especially those downstream of other users. The result can be a dispute of Hatfield-McCoy proportions. Among their many other tasks, Water Management Branch officials may find themselves being called upon to develop considerable mediation skills. This is especially the case when residents suspect that neighbours are either breaching the terms of their licences or have no licences at all.

A woman who had such a licence told us she was frustrated during her attempts to obtain information from the Water Management Branch about the rights and obligations of licensees. "When I write to Victoria," she complained, "I'm referred back to the local office, where my questions remain unanswered, my concerns are dismissed out of hand, and even my credibility has been questioned."

One of the main problems, she said, was the absence of clear and comprehensive written information sent to licensees by the branch. The only regular information supplied to licensees, she claimed, was on the back of the rental invoice, urging licensees to continue to make beneficial use, pay annual rentals, comply with the terms of the licence, and comply with the *Water Act*. This, she said, was both vague and confusing. "People who have never seen their licences (new property owners taking on old licences), people who have never seen the *Water Act* (just about everyone, I would guess), and people who pay up on time are pretty well left to their own devices as to how to 'continue to make beneficial use of the water'," she wrote.

The complainant said she had written to the chief water comptroller suggesting that a brief outline of rights and obligations be sent to all — or at least new — licensees with their rental invoices. This approach, she believed, would go a long way towards clearing up and avoiding misunderstandings and misinterpretations not only between licensees and ministry staff but also among different licensees during their disputes. She was upset that she had received no response to her suggestion.

In communication between government and the public, an ounce of prevention can be worth a pound of cure. It is our experience that the small cost of ensuring clear and thorough communication can avoid what may later be a very large cost in dealing with the result of confusion. When we conveyed the complainant's concerns to the branch, we were told that the question of plain language was very much a current concern and that the branch was actively considering means of improving its communication about the rights and obligations of water licensees. This is part of an overall strategy to update legislation and policy relating to water licensing, including the rewriting of the *Water Act*.

Moratorium confounds water export company

A severe and lengthy drought in central California caught the interest of several British Columbia entrepreneurs. In its coastal streams and lakes, British Columbia had an abundance of the precise commodity that California so desperately needed: pure water. It seemed the time had finally come for profitable investment in the province's most abundant and most accessible natural resource.

One company was already in the business of exporting bottled stream water to American markets. It was authorized to do so by an export licence issued by the Water Management Branch. In addition, the company held a licence for the bulk export — i.e., delivery by tanker rather than by the bottle — of 200 acre feet of water per year from a certain creek that flowed into the ocean.

Negotiations between the company and a heavily-populated county in California looked promising. If a deal were signed, the company would need a licence to allow it to export far more water than the small quantity authorized under its existing licence. Water would be drawn from the creek near its mouth and shipped by tanker from

northern B.C. to its California destination. The process seemed wonderfully simple, and there seemed to be no serious obstacle to stand in its way. In August 1990, the company applied for a bulk export licence for 15,000 acre feet.

The Water Management Branch forwarded the application to federal agencies for screening under the Environmental Assessment Review Process (EARP). These agencies included the Coast Guard, which has responsibility for ensuring that navigable waters remain unobstructed, and the Department of Fisheries and Oceans, which has the task of ensuring the protection of the habitat of ocean-going fish and other marine life. Both agencies indicated they had no objection to approval of the licence, based on their analysis of the likely impact of the construction of the proposed tanker docking facility.

Meanwhile, the Water Management Branch was reviewing its policy regarding the approval of applications for bulk export licences. A native band had raised objections about the company's proposal because of concern both about the implications for its land claim negotiations and about the possible environmental impact of drawing large quantities of water from a coastal stream. Concerns had been raised by the band and by other groups about the potential impact on the salinity and temperature of ocean water, and hence on spawning salmon and oyster sets, caused by the removal of stream water in vast amounts and by the dumping of ballast water by the tankers; doubts were also raised about the possible impact on sensitive marine ecosystems by the wakes created by loaded tankers.

The Water Management Branch concluded that the concerns that had been raised had some legitimacy, insofar as little was known about the effects of the proposed enterprise. A policy was developed to require that no bulk water export licences would henceforth be approved without a full environmental assessment, and the company was asked to provide a more detailed prospectus to enable such an assessment to be done. The company promptly provided a new prospectus, emphasizing the importance of an early decision. The company felt that a deal with the California county was imminent; its major concern was that it might lose the contract to a competitor which already held a substantial bulk export licence.

Considerable delays followed. The proposal again entered the EARP process, with more detailed terms of reference. The Department of Indian and Northern Affairs expressed concern that the prospectus did not adequately address the land claim and environmental issues raised by the band. Other agencies requested more time for a detailed review. By this time, the issue had attracted widespread media attention, raising new concerns about the adequacy of existing environmental assessments and about whether the province was gaining adequate revenue from export of water to the United States. After the issue surfaced in the legislature, the Minister of Environment announced an immediate moratorium on the issuance of all bulk export water licences, and named a commissioner to study the issue and report to him. The result was that the company's negotiations with California were immediately stalled and appeared likely to fail.

The company complained to us on several grounds: first, that unreasonable delays in the processing of its application defeated its legitimate expectation of an expeditious review; second, that the Water Management Branch had denied the company an opportunity for a fair hearing by failing to notify the company of the case it had to meet for approval of its application; and, third, that the order-in-council which placed a reserve on unrecorded water in each stream in the province (and hence created the moratorium) was based on an incorrect interpretation of section 44 of the *Water Act*, which was cited as the legislative authority for the order-in-council.

While the company had had reason to believe that its application would likely be processed quickly (it had been told so by Ministry of Environment staff), the min-

istry had also made clear, at an early stage, its long-standing policy that the issuance of bulk water export licences is conditional on environmental and land use concerns being satisfactorily addressed. The bulk export of water is a relatively recent activity in British Columbia. There had never before been a contract of the size that the complainant company was aiming for. When the company's application was first submitted, the Water Management Branch had little idea of the complexity and subtlety of potential environmental impacts later brought to its attention. Once these concerns were brought forward, the ministry had little choice but to respond to them in as thorough a manner as possible, including the imposition of a moratorium.

The company was correct in its argument that it had been led to believe that the application would be processed relatively quickly and that it had not been fully advised of the case it ultimately had to meet. The test to be met became more rigorous with time as new concerns were presented to the government. While this appeared to the company to be a tampering with the rules, it was a necessary and responsible response — and one that was legitimized by the clear understanding that licence approval was conditional on assurance that there would be no unacceptable environmental impact. For these reasons, we were unable to substantiate the company's complaints about the application process.

Nor could we substantiate the complaint that the moratorium was not well grounded in the provisions of the *Water Act*. Section 44 of that Act provides that the Lieutenant-Governor-in-Council may by order-in-council reserve unrecorded water where it appears advisable to investigate the suitability of "a stream" for any purpose. ("Unrecorded water" means water whose use has not already been licensed.) The company argued that such language clearly implied that an order-in-council must apply to a single stream — not to every stream in the province.

We found this argument to be unsupportable. Legally, "a" means "any", and "any" may be used to indicate "all", depending on the context of the language within a statute. In this instance, we concluded that it would be unreasonable to assume that the statute intended a separate order-in-council to be issued for each stream, where the government found it advisable to place a reserve on several or, as in this case, hundreds or thousands of streams. It logically followed that cabinet acted within its authority in issuing the order-in-council.

Down by the old Millstream

About 20 years ago, a number of houses were built along the height of a steep, forested ravine. Four of them were positioned right over the lip of the bank. Current legislation would disallow such development.

Flowing through the ravine was a winding, picturesque stream. A short distance upstream, the channel passed through a culvert under a roadway. Downstream, the flow was through a rock tunnel cut under the bed of the Esquimalt and Nanaimo Railway about the turn of the century. Towards the end of 1990, during prolonged heavy rains, the tunnel became completely blocked by floating vegetation. The result was both dramatic and frightening. The ordinarily placid stream was suddenly transformed to a lake, about 20 feet deep and rising towards the homes. The loose, sandy banks of the ravine became saturated with water and mature trees toppled into the stream, causing a diversion of the channel and deep erosion of the bank. When the blockage cleared itself, the sudden drop in the level of the water (the "bathtub effect") caused parts of the bank to collapse. One family had to move when their backyard eroded and part of their sundeck fell down the 90-foot bank. Other properties suffered structural damage.

By a quirk of history, the streambed was partly public and partly private land. The area had originally passed from the Crown in the mid-nineteenth century, when, under the land legislation in place when Vancou-

ver Island was under lease to the Hudson's Bay Company, property boundaries went to "the centre thread of the stream". Later legislation allowed for the reclaiming of stream beds and banks by the Crown. Under this legislation, the Crown had taken back the stream bed and the ravine bank at the time of subdivision in the case of all except two of the properties, which still extended to the middle of the stream. The public land along the stream, acquired at the time of subdivision, had been placed under the administration of the Capital Regional District for maintenance purposes, and had, over the years, become a virtual backyard wilderness, frequented by river otters, belted kingfishers and blacktail deer.

After the disaster struck, approval was granted for funding from the Ministry of Solicitor General's Provincial Emergency Program, which covers 100 per cent of the cost of restoring flood-damaged properties up to a certain amount per home. Eight properties qualified for some degree of Provincial Emergency Program funding in the area of property restoration. Two homes might qualify for structural repair. The problem remaining was the fact that the general area of the ravine was in desperate need of stabilization to prevent further damage from erosion, and while the Provincial Emergency Program is designed to deal with disaster after the fact, it has no mandate for disaster prevention — a policy issue now under review.

To some extent, that role is fulfilled, at least with regard to watercourses, by the Water Management Branch, which administers the River Protection Fund. This fund is designed to assist property owners in the stabilization of flood-damaged properties on a cost-shared basis, with 75 per cent being paid by the public purse. Relying on this fund and co-ordinating the PEP funds, the Ministry of Environment undertook the lead role to engage an engineering firm, prepare a streambed reconstruction design, and replace and stabilize the eroded slopes. The Ministry of Transportation and Highways, for its part, undertook to do the street drainage work at the top of the ravine, which meant, in essence, gathering runoff water and piping it over the fragile ravine slope down to the stream level. The total cost was estimated at close to half a million dollars.

By mid-May 1991, design plans were drawn, draft contracts were prepared, financial estimates had been made, and the overall project planning was in place. When the contract was being distributed among the residents for their consideration, several people approached us with a variety of legitimate concerns. What, precisely, was the government obliged to do under this contract and by law? Where did PEP funding end and River Protection funding begin? Would the residents face further costs later that had not been brought to their attention? What was the real meaning of the "save harmless" clause in the contract, which appeared to have the effect of relieving the government from the cost of repairing future damage to the bank or to homes? Was such a clause reasonable? These were the types of questions that initially drew our office into the negotiations.

As spring wore into summer, time was of the essence. Due to the fragility of the ravine banks, repair work had to be done in dry weather, and by mid-September at the latest. Heavy rain could cause more erosion, more damage and eventually more need for repair. To add to the confusion caused by the unresolved issues being raised by some of the homeowners, friction was growing among some of the residents. Some wanted to sign the contract immediately and get the work done; others refused to sign until all their concerns were addressed. The former resented the latter for holding up the repairs; the latter resented the former for trying to push them into accepting an arrangement that might prove unsatisfactory or lead to difficulties later on.

When working with several interested parties and ministries, it is often our practice to act as a control and distribution base for information. The reason for this is that relayed information can become misinformation, and misinformation is the single largest cause of complaints to our office. We

then set the groundwork for the investigation by establishing — in addition to the facts — the concerns, expectations, responsibilities and capabilities of all parties. These included the residents, government ministries, the Capital Regional District, engineers, and contractors. The primary purpose of this step is to make an initial assessment of ways of arriving at a resolution acceptable to all. Once this is done, efforts are made to settle interim disputes at once and, when interim agreements are made with commitments to be met later, to document those agreements to ensure that a clear understanding exists at all times.

Our active investigation took place between May 13 and July 30, during which time 158 meetings, on-site inspections, and development discussions on site, in homes, in offices or by telephone took place. Many minor disagreements and misunderstandings arose and had to be dealt with. These focused on issues such as surveys, the type of soil to be used, the positioning of rock support for the bank, the precise manner of streambed relocation, the ownership of felled trees, the varieties of the 1,200 seedling trees to be planted, and selection of the contractor. Despite these difficulties, there remained in place a general level of co-operation that allowed the work to be completed with only a slight delay. The result was a redesigned stream with a rock-reinforced bank, the stabilization of upper banks with seeding (grass and clover) in some areas and replanting of the seedlings throughout. With the help of a sizeable contribution from the Capital Regional District, the flood debris was all cleaned out, and after an eleven-month absence the evacuated family returned to its now safe home.

Plans are in place to enhance the area further. One is to place a trash grid over the culvert leading the stream into this section, thereby preventing any upstream debris from entering the area. Another is to approach the CPR, which owns the E&N Railway, to negotiate an enlargement or restructuring of the tunnel to reduce or eliminate the possibility of any further blockage. Once these steps are accomplished, an agreement between the Ministry of Environment and the Capital Regional District regarding ongoing maintenance and stream-clearing, combined with monitoring by the residents, should ensure that there will be no repetition of the 1990 disaster.

During this investigation, we were in the fortunate position to facilitate a resolution in a manner that was difficult for any other agency or private party to assume. As investigator, mediator, negotiator, decision-maker and general clearing-house for the exchange of information in an affair that was necessarily messy and confusing, we were able to help secure, as expeditiously as possible, an agreement that was essentially satisfactory to all persons and agencies involved. This was made possible by a variety of factors, notably our familiarity with the workings of the various government agencies with a role to play, the public perception of our office as an independent body, our understanding of the vital importance of clear and complete communication in any multi-party negotiation, and the flexibility provided by our governing legislation to work towards resolutions of public difficulties by the most practical means available.

Good streambeds make good neighbours

Swollen by heavy rains in the fall of 1990, a creek near Victoria tore out the foot of a sandy bank on the top of which was perched a house. Something had to be done to control the erosion, and it had to be done quickly. The Ministry of Environment was prepared to do the work under the authority provided by the *Water Act*, but to do so it would have to run its equipment across a neighbour's property. There was no love lost between this individual and the owner of the endangered house, and the neighbour refused to permit access across his land.

A little diplomacy was practised, and the neighbour changed his mind and gave his consent for the operation. A contractor was engaged, machinery and materials were ready to be moved, and then the neighbour

changed his mind again and withdrew his consent. With visions of his home tumbling into the abyss, the owner called our office and complained that the Ministry of Environment was not taking strong enough steps to demand that access be provided so it could get on with the work.

The ministry described to us its dilemma: the *Water Act* empowers "engineers" to enter private property for emergency work, but it makes no explicit provision for the movement of machinery and materials as well. Unfortunately, there was no alternative route by which the eroded bank could be reached.

We engaged in some more diplomacy, consent was again granted, and the work was completed without interruption. To the neighbour's benefit, certain improvements to his property were required to accommodate the construction equipment. These included a vastly improved driveway access, removal of potentially dangerous trees, and a reconstructed streambed so that erosion would no longer occur on either side of the stream. The result was that both property owners were satisfied — one by the new security given to his residence, the other by his property's improvements.

No such thing as a free pipe

A public utility was in the early stages of a general upgrading program that would include the replacement of a two-inch water pipe with a six-inch pipe along the streets of a municipality. The owner of Lot 8 on one street subdivided the lot. Under the tariff set out in the *Utilities Commission Act*, he was responsible as subdivider for the cost of supplying upgraded water pipe, which in this case meant extending the six-inch diameter pipe from Lot 5, which was as far as the six-inch pipe currently reached. The cost of doing this would be about $9,700. Lots 6 and 7 were subdividable properties, each of which presently accommodated a single dwelling.

On learning that the utility planned to replace the two-inch pipe, the subdivider applied to be relieved of the costs. The Water Management Branch refused, citing the requirements of the tariff and explaining that the subdivider would be able to recoup his outlay only if and when the owners of Lots 6 and 7 subdivided their properties, in which case each would be required to pay the complainant one-third of his cost.

We supported the ministry's position. The legislation is designed to have the benefactor of any development, in this case the subdivider, take responsibility for the cost of providing services to the development. The rationale is simple: no one else acquires an immediate benefit from these services, so it is unreasonable to expect anyone else to pay for them immediately. As the complainant's development predated the utility's planned expansion, it was reasonable for him to pay the cost, with the option of seeking reimbursement if Lots 6 and 7 were subdivided within a five-year period set by legislation.

Pesticide Control

An unwelcome addition to the organic garden

A man moved to a small town in the Okanagan to escape city pollution and to pursue a healthy lifestyle. He was, therefore, distressed to encounter, on his daily walks along the back roads surrounding the town, the sickly-sweet smell of pesticides, and evidence of herbicide use. His distress turned to outrage when he discovered indications of herbicide damage in his own organic garden.

The man set out to determine who was using pesticides in the area, for what purpose, and under what authority. This brought him into contact with the Pesticide Control Branch of the Ministry of Environment. As his knowledge of the subject increased, so did his desire for more detailed information and the frequency of his contact with the ministry.

This contact included a number of telephone conversations and face-to-face meetings with the branch's regional manager. The man remained convinced that unautho-

rized use of pesticides was occurring in his area. His frustration led him to write to the regional manager requesting specific answers to a long list of questions, together with extensive documentation to support the answers.

The regional manager responded reasonably promptly to the complainant's letter, but his response dealt with only some of the complainant's concerns. More detailed information was to follow as it became available. When the follow-up information did not arrive after several months, the man sought our help.

The regional manager explained to us that the delay was due to limited resources, which made it difficult to give priority to the complainant's project. In an agricultural region, pesticide use permits are issued by the branch to a large number of qualified applicants. To answer each question in the complainant's letter would have required his staff to inspect and photocopy individual records of over 100 companies and agencies, and would have entailed a great deal of staff time and expense.

After some discussion of alternatives, the regional manager suggested that it might be preferable to give the complainant direct access to the branch's pesticide use permit files. The regional manager would ensure that one of his staff was available to help the complainant locate the files he required. The branch would also provide copies of permits and would allow the complainant to make photocopies of other documents of particular interest to him.

The complainant was happy with this resolution. It allowed him to obtain the information he required and to be satisfied that his information was complete. The branch was saved the expense of locating and compiling a large volume of information, much of which would have been of little use or relevance to the complainant.

Ministries will doubtless receive similar requests for detailed information when the province enacts access-to-information legislation. This case illustrates one approach to dealing with such requests.

Ministry of Finance and Corporate Relations

Resolved	15
Not resolved	0
Abandoned, withdrawn, investigation not authorized	8
Not substantiated	84
Declined, discontinued	31
Inquiries	15
Total number of cases closed	153
Number of cases open December 31, 1991	21

Sharing the blame with Canada Post

Property tax notices are all sent out in May, but not all are received in May. That's what a Kootenay home owner found out when his tax notice, which was correctly addressed, turned up in his mailbox in August after being misdelivered by the post office and returned to the local government agent marked "not at this address".

The man paid his taxes promptly, just as he had always done when his tax notice arrived. What he did not do was pay the 5 per cent late payment penalty, assessed on any property owner who misses the July 1 deadline. He wrote to the Surveyor of Taxes to explain why he wasn't including the extra 5 per cent, and assumed the matter would rest there. It didn't. The Surveyor of Taxes thanked him for his letter but told him that the penalty would not be waived, as the policy was to charge it in all cases where taxes were not paid on time and no payment extension had been applied for. "Most taxing jurisdictions apply late payment penalty provisions in a similar manner," he added, "in order to treat all taxpayers equally and fairly."

This particular taxpayer did not feel fairly treated at all, and phoned our office to say so. He pointed out that it was no fault of his that he hadn't received his tax notice. He said he hadn't given it a thought when no tax notice arrived in the mail. He was in the habit of paying his bills as they came in; he had no idea that taxes were due at any particular time. How could he possibly be faulted for not doing something about which he had received no notice in the first place? Did we not agree that the penalty should be waived?

Certainly the Surveyor of Taxes did not agree. Each year his office sent out over 300,000 tax notices, he said, and each year Canada Post lost some of them. He suggested that the onus lay on the taxpayer to make inquiries if his tax notice failed to arrive on time. The 5 per cent penalty was not meant to be punitive, he added; it was, rather, an administrative charge designed to reflect the extra expense created by the processing of late tax payments.

Sometimes the most simple of fact situations are the ones most likely to require the wisdom of Solomon to arrive at a fair resolution. The taxpayer's complaint was the subject of a vigorous debate among Ombudsman staff, who divided into two camps: those who (perhaps having had their own difficulties with Canada Post) agreed with the complainant's way of thinking, and those who adopted a "reasonable taxpayer" test and sided with the Surveyor General's point of view.

The consensus was that the complaint should not be substantiated. However, the Surveyor of Taxes agreed to review his policy to consider the advisability of creating a blanket exemption for property owners who could both prove that Canada Post had lost their tax notice and brought it to the attention of the Surveyor of Taxes within a reasonable time after the passage of the deadline for payment.

Subdivider hit by property purchase tax

The owner of 15 acres of rural property decided to capitalize on his land holdings at retirement time by selling most of the prop-

erty, with the exception of a parcel of land surrounding the home in which he would continue to reside. He complained to us after being forced to pay over $1,000 in property purchase tax on the lot which he retained for himself. He thought it unfair that he should have to pay the tax on property that he wasn't buying but already owned.

We were unable to substantiate this complaint. Two individuals had been involved in crafting and executing the substance of the transaction. A notary public, who was also the real estate agent retained to sell the larger portion of the complainant's land, crafted an agreement which required the entire parcel, including the land upon which the complainant's house sat, to be conveyed to the purchaser, with the house parcel being re-conveyed back to the complainant. The conveyance itself was effected by a lawyer who acted on behalf of both the complainant and the purchaser of the property. The complainant stated that neither the notary nor the lawyer had advised him of potential liability for payment of property purchase tax on the portion of land which would be re-conveyed back to the complainant.

This office found, on the facts as related by the complainant, that the Ministry of Finance and Corporation Relations had no choice but to obey the letter of the tax law and require payment of the tax by the complainant, as the land being re-conveyed into the complainant's ownership was being conveyed at arm's length from a third party in circumstances not covered by any of the specific exemptions in the *Property Purchase Tax Act*. The problem was not with the legislation, but with the manner in which the conveyance was constructed and executed. The complainant was advised that he would have to pursue this matter directly with the professionals involved, and, if ethical issues were part of the complainant's concerns, he could report those to the relevant professional associations for investigation and action.

Two statutes, two definitions of "handicapped"

In addition to the basic home owner grant against property taxes, a supplementary grant is available to home owners who are disabled and whose disability meets the criteria set out in the *Home Owner Grant Act*. A man who had previously received such a grant while receiving GAIN for Handicapped benefits called our office after receiving a form letter from the Real Property Taxation Branch. The letter asked him to provide evidence from the Ministry of Social Services and Housing that he was still receiving GAIN benefits. Although the ministry had approved his "handicapped" designation, the salary received by his wife was high enough that he was no longer eligible to receive GAIN benefits. Hence he was also ineligible for the supplementary home owner grant. He argued that it was unfair that, while one ministry had told him he was handicapped, another was denying him a tax benefit meant for handicapped people.

The relevant statutory provision is contained in section 2 of the *Home Owner Grant Act*, which provides that the additional grant is available to GAIN for Handicapped recipients and to "a handicapped person eligible under the regulations". Section 8 of the Regulations to the Act defines "handicapped person" as "a person with a permanent physical disability which is sufficiently severe that he requires either (a) physical assistance, or (b) costly environmental modifications to the home in which he resides in order to manage a normal daily functioning in the home." A doctor's certificate is required as evidence that one of these criteria is met. When we told the complainant about this requirement, he said that his doctor had refused to provide such a certificate because he wasn't confined to a wheelchair.

The wording of the statute made it clear that, although the complainant had a disability, the prerequisites for the additional grant were not met. We explained to the complainant that the legislative provisions

appeared to be calculated to attempt to provide assistance only to those with a demonstrated economic need, regardless of the nature of their disability.

The complainant was not convinced by this logic and continued to maintain that the provisions were too narrow. We advised him that the fairness of the legislation itself, as opposed to the fairness of the manner in which the legislation was administered, was not an appropriate subject of comment by our office. Instead, we suggested that he make his argument for amendment known to the Minister of Finance and Corporate Relations.

Pay taxes on time, or else

A businessman complained about the penalty imposed by the Ministry of Finance for the late remittance of social services taxes collected from his clients. He said he had been in business for 15 years and had always submitted his monthly payments on time, except for the two occasions for which he was now being penalized. He had been four days late with his June remittance and one day late with his September remittance, and the penalty for each late payment was over $200. He considered this excessive and unfair, considering how minor these delays had been and how prompt he had been in the past.

The ministry confirmed to us that the complainant had an excellent record. In general, he had assiduously met the deadline, being the fifteenth day following the period of collection for the preceding month. Ministry policy is to allow one late payment in any period of 12 consecutive months.

In January 1991 the businessman was five days late. He received a demerit mark and was issued a warning. Having thus used up his "credit", he was penalized for his late June payment in accordance with the legislative provision, which required a penalty of 10 per cent of the remitted amount in addition to forfeiture of his 3 per cent commission for collecting the tax plus interest.

The apparent inflexibility of taxation legislation, which is a frequent cause of complaint to our office, is based on the reasonable desire of government not only to discourage the temptation for abuse but also to minimize the high administrative cost of keeping track of procrastinators and processing their payments. The ministry takes great pains to spell out its requirements in advance and to apply its provisions uniformly.

We informed the businessman that we were unable to substantiate his complaint and reminded him of his right to appeal late-payment penalties to the ministry.

High taxes, fixed income

An elderly property owner in greater Vancouver was amazed that his taxes had more than doubled in one year. He told us that, as a retiree, he could not afford this amount. He came to us, he said, because the municipal property tax department had told him there was nothing they could do.

The man was not arguing that the assessed value of his property was too high. When he moved to his current address, the property had a relatively rural character and was surrounded by horse farms. Then the developers moved in and converted the horse farms to shopping malls and industrial buildings. The result was that the complainant found himself sitting on a commercially zoned piece of property that had rapidly become extremely valuable. The value of the property did not benefit him, as he intended to spend the rest of his days there. On a limited, fixed income he found the prospect of having to pay over $4,000 in taxes difficult to cope with.

The complainant had not heard about the tax deferment program offered by the Ministry of Finance and Corporate Relations. Under this program, a property owner who is either over the age of 60 or receiving "GAIN for Handicapped" benefits, or a widow or widower, can apply to have his or her property taxes deferred. Under this arrangement, the provincial government pays the taxes to the municipality in which the property owner lives, and the taxes are

repaid either when the property is sold or from the estate of the property owner after he or she dies. The program is available to all Canadian citizens who have been permanent residents of British Columbia for at least one year and who are applying to have the taxes deferred for their principal residence. As long as the application is submitted before the taxes are due, the applicant will be eligible for tax deferral in the year in which the taxes are paid. The program is not available for taxes in arrears.

We also informed the complainant about a program administered by the Assessment Authority of B.C., under which a person who lives on a property that is zoned commercial can apply to have the property assessed in a residential category if he or she has lived there for at least ten years. In the complainant's case, the result of such a change in categories would be a lowered assessment.

The complainant was thankful for the information we gave him about these programs, each of which had the potential to resolve his dilemma. As for his many opinions about the inadequacies of the tax system, he said that as soon as he got off the phone he was going to take pen to paper and donate his two cents' worth of advice to the Minister of Finance and Corporate Relations.

Tower Mortgage revisited

On pages 94 and 95 of our 1990 Annual Report, we described an investigation of complaints from investors in Tower Mortgage Ltd., a company which, in a manner roughly similar to the circumstances of the Principal Group, had suffered crippling losses as a result of a steep decline in the value of its investment portfolio, which consisted primarily of Alberta real estate.

In 1991 we received another complaint from one of the investors, who wanted a number of concerns addressed. The question of greatest importance to him was this: if the investment was supposed to be guaranteed, why wasn't it guaranteed in fact? In other words, why didn't the supposed guarantee protect the investment? The other concerns brought forward by this complainant included questions about the responsibilities of National Trust Company Ltd., which in this case was the guarantor of the secured callable term notes in which the complainant invested.

Some further review was undertaken by this office to answer the complainant's concerns in detail. Our report addressed the nature and purpose of the prospectus required by securities legislation, the nature and effectiveness of the guarantee offered with the secured callable term notes, and a summary of our findings with respect to the conduct of the Superintendent of Brokers.

One of the complainant's concerns was that he had not been issued a prospectus document, as required by the securities legislation. The prospectus is a thick, detailed document, structured according to the requirements of the *Securities Act*, and is intended to provide a potential investor with the "full, true and plain disclosure" needed to make an informed and rational decision whether or not to invest in the securities offered.

The prospectus also, by law, must outline the remedies available to the purchaser in case of a breach of securities legislation. The irony here, of course, is that an investor who is unfamiliar with the requirements of securities laws will not know about the remedies available to them if they do not receive a copy of the prospectus. Naturally, it is unlikely that all investors will know that it is an offence not to provide a prospectus to the purchaser. Further, the remedies provided by the *Securities Act* are intended to be of the "self-help" variety, meaning that that Act provides the necessary legal foundation for an aggrieved investor to commence a legal action against the seller of the securities if certain requirements of the Act are not met. On a practical level, this office considered it unreasonable to expect that the Office of the Superintendent of Brokers should have sufficient numbers of representatives in the marketplace to be able to catch every instance where a

seller fails to provide a prospectus as required by the Act.

With respect to the guarantee, this office obtained a copy of the agreement entered into between Tower Mortgage Ltd. and National Trust Ltd., by which National Trust agreed to act as a trustee with certain powers exercisable as against Tower Mortgage Ltd. These powers existed to protect the note holders. The intent of the trust indenture (agreement) was that National Trust Ltd. could literally "pull the plug" on the operations of Tower Mortgage Ltd. if Tower was in default of its obligations to note holders for a period greater than 30 days. The trust indenture did not provide any authority to the management of National Trust Ltd. to provide guidance or in any way direct the affairs of Tower Mortgage Ltd. If the trust indenture had provided such authority, it is reasonable to speculate that the management of National Trust might have steered Tower away from the somewhat hazardous route of concentrating its investments in one type of real estate in one geographic area (Alberta). Under the terms of the trust indenture, it appeared that all that National Trust Ltd. could do was to monitor the situation as it developed and take the appropriate remedial action when authorized by the terms of the indenture. This it did, immediately following suspension of sales operations of Tower Mortgage Ltd. as a result of an order of the Alberta Securities Commission.

In the end, our conclusion remained unchanged: the tragic losses sustained by investors in Tower Mortgage Ltd. could not be traced to any inaction or negligence on the part of the Office of the British Columbia Superintendent of Brokers. Although Tower had invested in a high risk portfolio of real estate holdings, it had enjoyed reasonably healthy earnings per common share in the years prior to the sudden and dramatic decline in the value of Alberta real estate. When this occurred, rendering Tower unable to meet its financial obligations, the Securities Commissions of Alberta and British Columbia took appropriate action.

Ministry of Forests

Resolved	23
Not resolved	0
Abandoned, withdrawn, investigation not authorized	15
Not substantiated	28
Declined, discontinued	17
Inquiries	9
Total number of cases closed	92
Number of cases open December 31, 1991	69

With its various responsibilities for timber management, range management and integrated resource management, the Ministry of Forests faces the unenviable challenge of attempting to reconcile all the interests competing for use of public land that has been designated as "forest land" under the *Forest Act*.

There is no shortage of sources of guidance for this task. The increasing — and increasingly vociferous — outpouring of public concern about the management of publicly owned natural resources has given birth to a number of government-appointed agencies dedicated to finding solutions to these forest-based conflicts. These agencies include the Forest Resources Commission, the Round Table on the Economy and the Environment, and the newly created Commission on Resources and Environment, which has been given a mandate to create world-leading standards for land use planning and allocation and for fair and efficient resolution of public disputes over natural resources.

In addition, the ministry has been very busy internally with projects aimed at resolving the forest land use conflicts which have plagued the province in recent years. Among these are the old-growth strategy project and the ongoing work of an interministerial committee, led by the Ministry of Forests, attempting to develop a new system for forest land management.

Not all of the high-profile disputes which erupt onto the front pages of provincial newspapers (or even international newspapers) are suitable subjects for investigations by this office. Quite often the subject of the dispute will be a political policy decision which by its nature is beyond our jurisdiction. The work of this office will likely continue to focus on the type of complaints that have occurred in the past, including disputes between licensees and the Ministry of Forests regarding contractual commitments, and disputes among communities, interest groups, and timber companies over the administration of provincial timber tenures. These are typically "matters of administration", and likely will continue to occur regardless of improvements in the system for forest land management.

Integrated Resources Management

Reprieve for an old-growth forest

Late in 1990, a man told us he was extremely concerned about a program that had originally been set up in good faith and had much merit was now apparently the subject of abuse. The program he was referring to was the Old Growth Strategy (OGS), introduced in November 1989 to develop a means by which stands of old-growth timber important to British Columbia's spiritual, ecological, economic and social values could be identified, evaluated and preserved within the context of a province-wide plan and other resource-related initiatives aimed at reconciling forest preservation with the need of forest-dependent communities for economic stability.

The initiators of the OGS realized that many individuals would consider the process to be an exercise in hypocrisy if harvesting of some of the most contentious old-growth areas continued during the years in which the strategy was being

developed and refined. For that reason, a "deferral subcommittee" — part of the "conservation of areas team" in the Old Growth Strategy project — was created. It proceeded to invite individuals throughout the province to nominate important old growth areas for a two-year deferral from harvesting.

The complainant had made one of the 89 submissions received by the subcommittee. The subcommittee, after review of the complainant's nomination, recommended in its report of September 5, 1991, that the area nominated by the complainant be deferred from harvesting.

As part of the deferral selection process, the Interministry Management Committee (IMC) — the body responsible for managing and directing the OGS project — established a review team to analyze incoming requests for review of the original deferral recommendations. This team met in October and November of 1990, by which time the complainant's deferral nomination had become the subject of passionate and near-violent dispute among residents of the town whose major employer would be significantly affected by the recommended deferral. In this second stage of the review process, the area nominated by the complainant retained its deferral status.

The recommendations of the review team were subsequently considered by the IMC, which looked at the basis for the original deferral and at any information generated subsequently about social and economic impacts of deferrals. The review by the IMC was then passed to cabinet, which made the final decision as to which contentious areas would be deferred from harvest.

Cabinet's decision with respect to the area nominated by the complainant was not to accept the area for deferral, but rather to allow planned harvesting to proceed, restricted by special protection measures to protect critical wildlife habitat.

By the time the Minister of Forests announced this decision in a news release on November 29, 1990, the complainant had already come to this office to complain about the conduct of local Ministry of Forests personnel in response to the original subcommittee deferral recommendation. The complainant believed they were biased in favour of the timber-harvesting industry and lacked either the resources or the courage, or both, to stand up to the town's major employer and force it to alter its timber harvesting and planning practices. The complainant also alleged that the impact reports generated by local government and industry in response to the deferral recommendation were inaccurate, exaggerated, and in some instances mere fabrication.

In the first half of 1991, this office received complaints of a similar nature from other individuals in the same area who were concerned about the conduct of the Ministry of Forests, the fairness of the process by which areas were selected for deferral, and the fairness of the ultimate result.

This office noted that the OGS project, including the component for identification and deferral of contentious areas slated for imminent harvesting, was in essence a political initiative aimed at responding to the concerns advanced by many citizens of the province. In other words, the government was not obligated by statute law or by existing published policy to engage in such a process. As a corollary of this fact, no individual or group could assert any legal foundation to compel the deferral or protection of any areas otherwise available within the inventory of harvestable timber in the province.

Having considered these facts, we nonetheless took the view that the government, having initiated such a strategy and identifying the process which would guide it, was obligated to administer the process fairly. For this reason the Office of the Ombudsman investigated the allegations through discussions with and requests for information to representatives of the Ministry of Forests and of other ministries participating in the OGS project. A representative of the office also travelled to the area in question in mid-August of 1991

and met with representatives of the Ministry of Forests, the complainants, and other individuals whose interests were aligned with those of the first complainant. A roundtable "bear pit" session was convened by the Ombudsman office representative and was attended by the complainants and by ministry personnel. It proved a most useful forum for getting concerns of both sides out in the open, and generating useful information.

The following day afforded an opportunity for a helicopter reconnaissance of the contentious area, in the company of the Ministry of Forests district manager, the complainant, and a wildlife biologist from the Ministry of Environment (now known as the Ministry of Environment, Lands and Parks). The visit to this area helped to confirm the value of the old-growth forest land nominated for deferral. It is axiomatic that the best habitat for a great variety of wildlife will also be excellent land for growing trees — including the tall, thick, high-value evergreens known as "pumpkins" or "berries" in the forest industry.

What we learned in our investigation was that the problems in this forest district over deferral of certain areas could be traced to two basic elements: inadequate communication and inadequate planning. Adequate communication between OGS project members and the district office failed to occur in the deferral review process, at least with respect to this district. The result was that ministry representatives at the local level had inadequate lead time to review and assess the potential impact of deferral and consult with the community with a view toward accommodating the deferral with minimum disruption of community life. As the district manager put it, "the deferral recommendation simply landed on my desk with a thud one day, and the next thing I knew I had an outraged logging community on my hands, and a major employer threatening to shut down operations entirely, with horrendous implications for the community."

The district manager also explained that the town's major employer had a rather poor track record in harvest planning. He noted that other major forest licence holders usually have cut blocks planned years in advance, and so can advance applications for expedited cutting permits for certain future blocks, if other blocks slated for imminent harvesting are removed for any reason. In this case, the employer argued that it had no alternative available sites, and that the cost of road-building and maintenance to a network of dispersed alternative winter harvesting areas would be prohibitive.

This office did not pursue further information to confirm or deny what we were told about the town's major employer; regardless of the degree to which the private company might have failed to be pro-active in its timber harvest planning, it was clear that the old-growth deferral initiative created extremely difficult situations for local resource managers in timber-dependent communities.

In January 1992, the OGS project of the Ministry of Forests published its public review draft report, "Towards an Old Growth Strategy". At page 7, a summary of the problems associated with short-term deferral of critical old-growth stands from harvest was provided. This explained with precision the basis for the problems this office was observing:

> The most contentious area of work by the project has been the short-term deferral of areas. Deferral of critical areas of old growth, especially the few remaining intact wilderness drainages and increasingly rare forest types, were seen by the environmental community as an essential starting point for the project. A number of individuals felt that the project could not proceed legitimately if rare or unfragmented old-growth forest types that might become part of an eventual reservation framework were compromised while the strategists talked. Other parties in the project were concerned that the early attempts to define areas for any form of interim reserve status would either compromise the long-term agenda or inadequately reflect immediate economic and social

> impacts on forest licensees and their dependent communities.... The extremely short time in which this deferral process had to be developed did not allow sufficient time for thorough public response to deferral proposals, communication with licensees and resource managers, or trouble shooting of specific cases. As a result, there was some misunderstanding of the reasons for, and the significance of deferrals and their relationship to the eventual strategy. In future, longer and more effective consultation would be needed if a similar process were pursued.

In the complainant's area at the end of 1991, the prospects for a peaceful and productive settlement of the conflict between old-growth preservationists and those involved with the timber harvesting and processing industry did not look encouraging. The complainant cited what he believed to be firm agreements between community environmental groups and the Ministry of Forests about timber planning and harvest practices that had apparently been denied or ignored by the ministry; about illusory harvest figures surreptitiously increased by political directive to the ministry in response to local economic concerns; and about an apparent increase of over 180 per cent in the number of clearcut blocks slated for development in the contentious old-growth area.

In the latter months of 1991, this office, due to a backlog of requests for major investigations, maintained a "watching brief" on the old-growth controversy. What happened subsequently is a testimony to hard work and perseverance on the part of the local Ministry of Forests office and community interests; as a result, the prospect for peaceful and productive co-existence between preservationists and industry interests is now very bright.

In January 1992 the complainant contacted our office to inform us enthusiastically of the many positive developments which had occurred at the local level. He informed us that the major timber company in his area had revised its plans through reduction of cutblock size, improved planning methods, and selective harvesting practices in the most contentious old-growth area. He also noted that this old-growth area had attracted the attention of federal agencies and at least one Member of Parliament. Now, in addition to possible inclusion of the old-growth area in a federally funded demonstration watershed program, there is also the possibility that the local timber company might qualify for inclusion in a federally funded model forest program.

The district office of the Ministry of Forests informed us that they had completed an old-growth inventory in the forest district, which included mapping of the entire district, field reconnaissance, and establishment of permanent and temporary sample plots along with assessment of other values in the area. In addition, seven "mosaic" units in the forest district were identified as being suitable for old-growth special management. Six planning committees with different individual responsibilities were initiated in 1991 and will continue their work throughout 1992; these committees played a role in the creation of a draft old-growth strategy for the district, which, according to the complainant, attracted the congratulations of the provincial OGS project as being the "best in the province" and a fine example of the ministry and public "working in partnership".

On the basis of what we had heard from the complainant and from the district office, we considered the matter resolved and prepared to close our file on the matter. In a subject as important as this, there will doubtless be further conflicts, both minor and major, in the future.

Nonetheless, the well-thought-out structures and processes now being created for management and resolution of these types of disputes can be applauded. Most important is a realistic view of the scope of such an undertaking. Such realism is evident in the Foreword to the public review draft of the old-growth strategy document:

> A strategy paper of this kind is not the last word on the subject. It is offered to the public and the government as a working document. This means it is

> open to continual refinement in response to changing context, as our knowledge of old growth forests improves, our social priorities change, and the structure of our resource management agencies develops.

In addition, initiatives such as the Old Growth Strategy project will not lack for expert advice and guidance: standing ready to assist are the Forests Resources Commission, the Roundtable on the Economy and the Environment, and the newly created independent Commission on Resources and Environment. The public involvement processes which will be refined in the months and years to come are important developments which suggest that "peace in the forest" may yet be achieved.

Public viewing of five-year development plans

Issuance of a cutting permit for specific stands of timber is the final stage in administration of timber harvesting plans. Prior to obtaining the permit, timber tenure holders must submit plans showing how they intend to carry out the logging and what special considerations have to be taken into account (the management and working plan) and where and when the tenure holder proposes to log specific blocks (the five year development plan). Because the forests are a public resource, the Ministry of Forests makes provision for public involvement in the review of these plans. That decision having been made, a difficult question arises: how widely should the plans be made available for public comment? Given that there is effort required on the part of the tenure holder to show the proposed plan and explain it, it is understandable that a ministry policy would emerge providing direction as to how widely the plan should be shown.

In 1988, a man asked us to consider his argument that it was inappropriate that plans for certain tree farm licences on Vancouver Island should be shown in smaller communities — which were often entirely dependent on the forest industry for economic survival — while major population centres such as Victoria were excluded. Early in 1991, the ministry formally explained its position to this office, according to the framework established by public review guidelines.

The ministry explained that there are two main planning processes attached to a TFL: the management and working plan (MWP) and the five-year development plan (FYDP). The ministry regards the MWP as the "umbrella plan", which is revised on a five-year basis. The MWP details the licensee's operating philosophy, standards, objectives and direction for the following five years; it also indicates the proposed allowable annual cut (AAC). Included in the MWP is a series of maps outlining forest inventory, operability lines, recreation potential and other forest resource uses.

The ministry explained that the licensee is required to solicit public response and to hold public information sessions on the draft MWP prior to submitting the plan for approval by the chief forester. The ministry identifies the MWP as a strategic rather than site-specific level of planning and therefore holds the view that public information sessions or open houses for an MWP cover a broader area for public response than the public information sessions associated with the FYDP.

The FYDP, on the other hand, indicates the specific areas scheduled for development and harvesting for the following five years. The FYDP is updated yearly and requires public review. All such public information sessions are attended by both the licensee's staff and Ministry of Forests representatives. The ministry views its role as explaining the planning process, while the licensee explains the specifics of the plans.

The ministry has in recent years taken the position that the five-year development plan review process should be restricted to areas local to the development and harvesting operations. The ministry explained that this practice is partly in recognition that "the local population is more likely to have the site-specific interest in the operational detail contained in the five-year develop-

ment plan". The ministry also noted the constraints on public involvement necessitated by the ministry's limited staff and resources. A compromise solution to increase exposure of the plans has been the ministry requirement for TFL holders to advertise in major centres information relating to the schedule of FYDP viewings in the areas deemed to be local to harvesting operations.

In the circumstances of this case, the ministry took the view that a requirement for the showing in Victoria of the FYDP was inappropriate, but that the MWP, which was due for review in a few months' time (the summer of 1991) would be shown in Victoria.

Representatives of this office attended the showing in Victoria of the management and working plan for TFL 46. What we found was that the licensee had set up a number of information booths about various aspects of its operations, and staffed them with knowledgeable, personable individuals. The actual plans, however, were upstairs in a smaller room and were assembled in books of maps, where each map was devoted to providing a different category of data. The practical result was that, to the lay person, the meaning and potential impact of the plan as a whole became virtually indecipherable. To obtain intelligible information from any of the individual maps required expert assistance. There was no indication that the plan showing was in any way structured to conceal information or mislead the public; however, an official of the Ministry of Forests who attended the showing candidly admitted that the management and working plan, as a tool for resource management, was virtually useless as a vehicle for informing the public.

It became apparent to us that public interest in the FYDP was consistently higher than the interest shown in the MWP, for the reason that the information contained in the FYDP tends to be less complex. The FYDP in its current form consists of maps showing where and when harvesting took place in the past and where and when harvesting will take place in the future. Proposed cut blocks are colour-coded, and the plan as a whole is infinitely easier to comprehend then the MWP. It is no surprise that individuals who are concerned about logging which will occur over the next five years in specific areas of interest will turn their attention first to the FYDP.

The issue of public review of TFL plans surfaced again when the complainant approached us in the fall of 1991. His concerns this time related to the showing of the FYDP for TFL 44, a tree farm licence which covers 450,000 hectares, or approximately 14 per cent of Vancouver Island. The FYDP was advertised for showing in Bamfield, Port Alberni, and Duncan. The complainant argued that Victorians have sufficient interest in the area covered by TFL 44 (which includes parts of Clayoquot Sound and the Carmanah, Walbran and Nahmint valleys) that the FYDP should properly be shown in Victoria. The showing of the FYDP at the three smaller centres mentioned above was in fact advertised in Victoria, but no provision was made for the plans themselves to be available for public viewing in the Victoria area.

This new complaint caused this office to revisit the ministry's policy on public viewing. The "Guidelines for advertising and public review of draft five year development plans for coastal licensees" included this statement: "The locations for the public viewing should be chosen to allow reasonable access by the public who have an interest in the area being developed". The statement invited two important questions: What is "reasonable"? And how should "interest" be defined? It appeared that the ministry had established a threshold test to be met by communities before logging plans would be shown in those communities. Threshold considerations would include distance from the proposed site as well as any functional or employment-related connection between the community where the plans might be shown and the logging operations in question.

We considered whether, given that the resources of the province are owned by the people of the province, there should be a

reverse onus cast upon the ministry. In other words, what reasons exist for not showing a plan in a particular area? This causes some of the same considerations to arise, and especially the economic and staff constraints previously referred to by the ministry. Given this office's concern with the fundamental right of access to information, we could find no legitimate basis upon which any citizen of British Columbia resident in the Victoria area should be denied an opportunity to view, in Victoria, harvesting and development plans covering significant areas some distance removed from the city but of interest to a large number of its citizens.

These concerns were discussed in detail with representatives of the ministry, who agreed on short notice to make the TFL 44 FYDP available for viewing in Victoria. In the course of discussions with the ministry, it was also agreed that a permanent facility for plan viewing should be developed so that concerns of this type do not have to be addressed on an ad hoc basis. The ministry took the step of initiating public involvement procedures for the future to deal with the review of plans for tree farm licences and timber supply areas. We were advised that this plan would include the establishment of viewing rooms in regional and district offices of the ministry, as well as at the Victoria headquarters. We were also told that the Victoria location would be given priority for implementation.

Having received this welcome information from the ministry, we considered the complainant's concerns to be resolved and the file was closed. We will be monitoring the progress of the ministry in improving its exposure of forest management plans for public review.

Timber Management

Nature's way of milling wood

Section 34(1) of the *Forest Act* provides that the Minister of Forests may designate areas of the province as "pulpwood areas" if timber in the area is of a low commercial quality or timber processing in the area produces residues and byproducts. Once such an area is designated, the ministry may invite bids for a pulpwood agreement under which the successful applicant agrees to establish a pulpmill.

When one such agreement went up for bid, a group of residents who were opposed to having a pulpmill in the area submitted an unusual application. Their application was based on a proposal to "recognize, confirm and continue a Natural Wood Processing Facility already established and operating in the area". This facility, described as "an integrated forest resource operation", would "maintain the current economy, support multiple use of forest lands and contribute to the well-being of the province and nation, at no cost whatsoever at present and with demonstrable profit in the long term". In short, the proposed "facility" was the existing forest.

On receipt of the application, the Minister of Forests wrote to the group that their application was not acceptable as it failed to fulfil the requirement to include a proposal for the continuance, expansion or establishment of a mill.

Not so, argued the applicants. Their mill, the living forest, already well established, would continue to produce fibre at a healthy rate as long as it was left in peace, and would expand of its own accord. They complained to us that the ministry had rejected their application without adequate reason.

The ministry agreed with us that the reasons given for rejecting the application had been very brief and offered to provide a fuller explanation. This led to a letter to the complainant from the director of the Timber Harvesting Branch, in which it was stated that the application was unacceptable as "for purposes of pulpwood agreements, a mill is considered to be a man-made structure, designed to convert wood into other wood products that have commercial value in the wood products market place, thereby creating new employment and associated social benefits".

To determine whether this answer was consistent with the legislative requirements regarding pulpwood agreements, we examined the wording of the *Forest Act*. Section 34(4) provides that an application for a pulpwood agreement shall include a proposal for the "continuance, establishment or expansion of a timber processing facility".

It is an accepted principle of law that statutory language must be interpreted according to the natural and ordinary sense of the words used. To determine the ordinary meaning of "facility", we consulted three standard dictionaries — one Canadian, one American, and one English. These definitions suggested to us that, in the ordinary meaning of the word, a human action is required to create a facility for the purpose of facilitating — that is, making possible or easier — a process. The creation of a facility implies some outside manipulation of naturally occurring materials. A forest ecosystem produced wood, but that of itself, to our mind, did not make a forest a facility. It was simply a forest.

Following this logic, we concluded that the reasons provided by the director of the Timber Harvesting Branch for the rejection of the application were both valid and sufficient. Therefore we found the complaint about the decision of the ministry to be not substantiated.

Short-term pain, long-term gain

A small logging outfit surrendered its forest licence to a major company. In approving the transaction, the Ministry of Forests set the condition that the major company would maintain the mills and level of employment in the community where the small company had operated.

About a year later, facing economic difficulties, the large company closed some of the community's mill operation and used its own staff and contractors for work formerly done by local people. This created an economic efficiency for the company and devastated the community, which was heavily dependent on the mills for its employment base. A resident of the community complained to us that the ministry had failed to enforce the agreement it had made.

The ministry's position was that the condition, being in a letter of agreement rather than a term attached to the licence, carried little legal weight. More importantly, from the ministry's point of view, an inspection of the company's books had shown the company's claim of economic hardship to be well founded. To force the company to maintain a non-profitable facility would be futile, so the ministry opted to negotiate, allowing the major company to revamp its operations. The result some months later was written concurrence from the company to increase the community's work level in compliance with the original agreement and as allowed by a better financial picture. A disturbing and annoying feature to the community while the negotiations were under way was the hauling of logs by the company from the area's mills to mills in the company's base community some miles distant. But only by doing so could the company remain healthy and ensure a future resumption of operations in the community.

We concluded that the ministry, by negotiating a compromise, had acted reasonably. Furthermore, the company agreed to have the original condition included in an amendment to the licence, to the long-term benefit of the community.

Excess waste, lost deposit

Wood left behind in clearcut logging operations is known as waste. "Unavoidable waste" is wood that has been cut and cannot be used for timber because of splintering, rot, et cetera. "Avoidable waste" is usable wood that has been abandoned on the site. The Ministry of Forests prescribes the amount of avoidable waste that may be left on completion of logging operations, and any excess results in a penalty.

A man secured a coastal timber sale licence in the spring of 1987, for a two-year term. Four years later he complained to us that the deposit which he had placed with the Ministry of Forests to secure proper performance of the licence conditions was improperly applied against a bill issued by

the ministry for an excessive amount of wasted wood in the course of logging operations.

Upon investigation, this office found that the complainant's situation was indeed unfortunate but not unfair; the ministry could not be faulted for the way in which it had administered the inspections and waste assessments. The major problem in this case was that a log broker had been hired to purchase the merchantable timber on the area covered by the timber sale licence and had entered into an agreement with the complainant which provided a number of conditions, one of which was a provision that ministry performance specifications, including utilization levels and waste allowances, would be adhered to. The log broker then hired a logging contractor to carry out the logging operations on-site.

To many readers the potential problem will now be apparent: the complainant was the person responsible to the Ministry of Forests for the ultimate observance of logging standards, but was at the same time at least one step removed from direct control over those logging operations. The result, compounded by the complainant's health problems and inability to maintain on-site supervision, was that a high waste assessment was ultimately issued against the timber sale licence, and more than $6,000 was deducted by the ministry from the complainant's deposit.

We noted in the course of the investigation that timber utilization requirements and waste allowances had been changed during the course of the complainant's licence tenure: what used to be the "coastal allowance" of 35 cubic metres of avoidable waste per hectare had become "zero tolerance". The ministry, to its credit, recognized that the logging operations had begun prior to the introduction of the zero tolerance requirement, and therefore deducted the coastal allowance from the actual waste assessment to come up with a net waste billing.

The complainant was advised that he would probably have to seek a legal remedy against the log broker, which, as noted above, had entered into an agreement with the complainant in which it had promised to observe ministry standards for logging operations. In all other respects we were unable to substantiate the complainant's concerns.

End run around rules, no yardage

The holder of a forest licence complained about the delay in processing his application to export logs and about the refusal by the Ministry of Forests to grant an extension to his licence.

The complainant was a small operator who ran a saw mill under the ministry's Small Business Forest Enterprise Program. The forest licence, which he obtained by submitting the successful bid in a competition, was his first major venture. Forest legislation prohibits the holder of a forest licence from bidding for wood under the small business program, so the complainant could no longer obtain the timber supplies that had previously been his bread and butter.

Between the time of his bidding and the awarding of his licence, new legislation placed upon all licensees the responsibility for replanting — a cost previously borne by public funds. Believing that the only way he could offset this added cost and get quick cash from the forest licence was by exporting logs rather than depending on the less reliable local market, the complainant decided to apply for the permit that is necessary for the export of raw logs.

To encourage local processing of timber, the Ministry of Forests places strict limitations on the export of timber, through legislation and policy. The ministry had given the complainant advance written notification of the procedures to be followed in applying for an export permit. However, he decided to take the direct route of asking ministry officials for the permit and ignoring the established procedures.

Several months passed without any timber operations taking place under the licence. The ministry offered to accept the

surrender of the licence and return the full deposit, but the complainant chose to retain the licence.

Meanwhile the complainant continued in his efforts to obtain export approval, all the while attempting to bypass the procedures that had been described to him. This was done partially on the advice of professional registered foresters who worked outside the ministry. The ministry continued to insist that its procedures be followed, the complainant saw his costs rising, and his logging operation remained dormant. His sawmill, meanwhile, continued to operate through direct purchase of logs from other companies.

The licence was for three years and was non-renewable. As the date of its expiry approached, the complainant became frantic and pressed the ministry for a resolution. The Minister of Forests and his senior staff conducted an on-site visit. The procedures for obtaining export approval were once again explained to the complainant, and he was offered help in following them and in bringing his case before the non-ministry advisory committee that evaluated applications for export of logs.

Finally the complainant got his application completed, basing his argument on economic necessity. However, as he had yet to commence his operations, and as major thrust of forest policy is to retain employment within British Columbia, the advisory committee called for greater explanation. More time elapsed.

By now the licence was well into its third and final year. The complainant requested an extension. This was denied on the ground that the licence had been advertised, bid upon and awarded for a three-year term and on a non-renewable basis. To extend the licence would be unfair to the unsuccessful bidders. Moreover, the complainant had not yet started to even build roads into his logging area and he had not followed the proper export application process.

The licence expired, and the complainant found himself without a wood supply. In dire financial straits, he engaged legal counsel and then approached this office seeking redress against the ministry.

We concluded that the complainant was himself responsible by not following set procedures for an export permit, by accepting questionable advice from non-ministry sources and by not starting any actual operations. The ministry had acted in a fair and reasonable manner throughout.

The wrong way to clear a right-of-way

Anyone needing a right-of-way through Crown land to gain access to their own property requires a permit from the Ministry of Crown Lands. If timber has to be cut to clear the right-of-way, permission of the Ministry of Forests is also required. When that permission is received, the applicant may find that he cannot simply go ahead and clear the trees himself, as the ministry maintains a list of contractors it employs for the purpose.

A logger specializing in the clearing of rights-of-way complained after being ordered by local Ministry of Forests officials to stop work on such a project. He was angry that he hadn't even been allowed to skid out the timber that he had already felled. Moreover, he said, the right-of-way clearing contracts issued by the Ministry of Forests were granted only to a select few in a manner that showed favouritism by the ministry.

The ministry told us that the complainant had gone onto the site in question without permission, and on that basis was logging illegally. The reason the complainant had not previously received work from the ministry — although he had had a previous association with the ministry through a family firm which had received work — was that he had not registered his own newly created firm under the Small Business Forest Enterprise Program. He had thus failed to meet a basic prerequisite for contract eligibility that was well known in the industry.

With regard to the logger's allegations of favouritism, the ministry maintained that

registered contractors receive work which is apportioned to contractors as equally as possible. The ministry took the initiative of explaining the system in detail to the complainant, who then agreed to register as required. On this basis we considered the matter resolved.

Woodlot bids too close to call

Several individuals applied for a woodlot licence on Vancouver Island. The district office of the Ministry of Forests which adjudicated the applications found that a number of the leading contenders were too closely matched for it to be able to make a defensible award to any one party. The applications were graded on the basis of private land holdings which would be administered as part of the woodlot licence, education and experience of the individual proposing to manage the woodlot, and management intent with regard to maintenance and harvesting of the woodlot timber.

One of the applicants, like many people who advocate small-scale forestry, held the philosophy of the woodlot program in high esteem, and supported the criteria used for the grading of woodlot licence applications. However, he objected strongly to the process used to make a decision for the award of the licence when a number of applications were closely matched.

Under the *Forest Act*, in such a situation, the district manager is required to request a bonus bid (an amount in addition to stumpage rates set by the ministry) not just from the leading applicants who are closely matched, but from all of the participants in the process. The result, according to the complainant, is that the grading criteria are effectively thrown out the window, in that the individual or organization applying for the woodlot licence may win the licence on the basis of a large bonus bid even if it ranked lowest in the grading scheme.

We determined that the conduct of the district manager in requesting bonus bids was explicitly required by the *Forest Act*. Thus, any change to the system of decision-making for woodlot licences would have to be accomplished by way of an amendment to the legislation. We learned in the course of our inquiries that the ministry was sensitive to the concerns advanced by the complainant to the extent that it was considering amendments to the *Forest Act* to remedy the situation. In addition, another positive development for the complainant occurred at the time of the opening of the bonus bids, when it was declared by the district manager that announcement of the winning bidder would be deferred to enable participants in the process to express their concerns to the Minister of Forests.

Valuation

Retroactive stumpage a necessary evil

The owner of a ski resort held a licence to cut trees to improve or develop new ski runs. A stumpage rate was set commensurate with the small amount of cutting normally needed for the creation of ski runs.

When an application was made to cut more timber for new runs, a re-evaluation of the stumpage rate was required. The resort owner was aware of this procedure and of the quarterly adjustment of stumpage rates required by legislation. He also knew that stumpage adjustments are based on a collection and calculation of recent market prices. This calculation takes four to six weeks, and the resulting rate is applied retroactively to licences.

Although he knew the stumpage rate was likely to increase, retroactive to October 1, the resort owner did a revenue versus cost projection on the existing rate. Unfortunately, a delay in the collection and calculation process delayed notification until January 11. The resulting increase in rates imposed a sizeable amount of stumpage to be paid, retroactively, by the owner. As he had made no provision for this payment, he found himself in financial difficulty.

We were unable to support his complaint that the demand for retroactive payment was unreasonable. The process required to establish stumpage rates makes retroactive

setting of rates unavoidable. Moreover, the complainant was fully aware of this process and the fact that retroactive payments would be required.

Why stumpage calculation trails market prices

When a timber sale licence is awarded by the Ministry of Forests, the licensee has an option on how stumpage (the price the ministry charges for the Crown's timber) will be assessed. The stumpage rate can be fixed for the term of the licence, or it can be variable, in which case it is calculated for each calendar quarter. In both cases, the stumpage rate is based on log market conditions and other factors, such as the costs of harvesting and replanting.

The holder of a one-year licence to harvest timber expected the market price for his timber to fall, so he chose the variable stumpage rate option. He was correct in predicting the fall in prices during the term of his licence, but was incensed to discover that his stumpage rate was adjusted upward. He complained to this office that the ministry was using data based on market conditions six months prior to the stumpage calculation, rather than on current market prices.

To calculate stumpage rates, the ministry uses an average of log prices over a fixed period. This averaging dampens down the effects of erratic changes in log market conditions, and produces more stable stumpage rates from one period to the next. Licensees generally favour more stable stumpage rates, which enable them to better project their costs.

Although this method of calculation evens out fluctuations, it also results in stumpage rates which lag behind market conditions. The lag time for collection of data, calculation of stumpage rates, and advance notice of new rates is an unavoidable component of stumpage adminstration.

We concluded that the ministry's method of calculating stumpage rates was not unfair given that licensees have the option of locking in the stumpage rate for the duration of their licence, or of choosing the potential benefit of variable rates. A licensee who is aware of the ministry's method of calculating stumpage rates can make an informed decision on whether to select a fixed or variable stumpage rate. The ministry publishes an information paper for that purpose.

Timber estimate off the mark

"Stumpage" calculation, which determines how much revenue the province receives for a harvested tree, varies according to species and location. It is generally acknowledged that British Columbia has the most complex stumpage system in existence. Rather than attempt to set arbitrary stumpage levels for broad classes of timber, the Ministry of Forests has over the years developed and refined a model which is "market-driven" and which attempts to obtain revenue in a manner which is fair both to the Crown and to the licensee.

The holder of a timber sale licence began logging, only to discover that both the quality and quantity of timber varied substantially from that which had been advertised by the ministry. This fact would not ordinarily give rise to a legitimate complaint, as licensees are warned that they should "cruise" the area they are interested in to satisfy themselves that the ministry's assessment of timber quantity and quality is correct. In this instance, the complainant based his objection on the fact that the applicable stumpage rate was calculated by the ministry not as a result of a detailed assessment of the area, but rather by using harvest figures from an adjacent tree farm licence to estimate the type and quantity of timber on the advertised licence area.

The complainant successfully appealed the stumpage calculation to the minister, producing as evidence of the ministry's error the data obtained when his harvested timber was scaled. The minister ordered the stumpage to be reduced to the minimum level, 25 cents per cubic metre, plus a $2.95 cubic metre charge for silviculture costs, for a total of $3.20 stumpage per cubic meter of wood.

The complainant was happy about the dramatic reduction in stumpage rates through this successful appeal. What he remained unhappy about, and what formed the basis for his complaint to this office, was the fact that his victory could not be made retroactive. From the time his company began harvesting to the time that the new stumpage rate went into effect, approximately 8,000 cubic metres of wood were harvested, at an "excess stumpage" — in the complainant's opinion — of approximately $56,000 total. He sought our opinion as to whether this lack of retroactivity was unfair, and, if so, what could be done about it.

The answer was contained in the appeal sections of the *Forest Act*, combined with a measure of discretion reserved to the ministry. The complainant had originally appealed the way in which the stumpage had been calculated, and then recalculated. When the minister later established an effective date at which the third revised stumpage level ($3.20) would take effect, the complainant sought to have the effective date moved back to the point at which harvesting began. However, the minister's decision as to the effective date was not appealable under the *Forest Act*.

The matter was resolved when the ministry agreed to allow the complainant to switch the subject of his appeal from the effective date for reappraisal back to the question of the manner in which the original stumpage was calculated. This provided the complainant with an opportunity to demonstrate that the procedures employed by the ministry in its original calculations were in error. At this point we closed our file, being of the view that the complainant was being treated more than fairly through a renewed opportunity to make his case and seek a refund of what he believed to be stumpage payments in excess of what should have been collected.

Range Management

Too many cattle, too little grassland

The Ministry of Forests is responsible for the management of all Crown land that has been designated forest land. "Forest land", as defined by the *Forest Act*, is land that the chief forester "considers ... will provide the greatest contribution to the social and economic welfare of the Province if predominantly maintained in successive crops of trees or forage, or both, or maintained as wilderness". People are often surprised to learn that forest land is not necessarily forested; large areas of such land in B.C. are grassland, capable of growing forests in the future, but currently of primary interest to cattle.

It is part of the function of the ministry to issue the grazing licences and leases which give ranchers the authority to run their cattle on these lands for fixed periods of time, much as forest companies obtain licences to log on Crown land for fixed periods of time. When people and cattle were few and land was seemingly infinite, competition for grazing leases was unheard of; there was always enough for everybody. But grassland, like practically every other land-based resource, has come under increasing pressure in recent years — a fact appreciated by the rancher who called us to complain that an association which held a grazing lease on a "community pasture" was breaching Ministry of Forests guidelines in order to keep her from having an opportunity to run her own cattle on the pasture.

Community pastures can only hold the number of cattle the grassland will sustain. Under the ministry's guidelines, when the pasture is full, any rancher can apply to be put on a waiting list, which the association running the pasture is required to maintain. Another requirement of the ministry is that community pastures may not be used by Alberta ranchers if the land is in demand by B.C. ranchers.

The complainant alleged that both of these guidelines were being breached. She said the association was tampering with the

waiting list and "bumping" friends of its members ahead of her. She also said that Alberta residents were trucking their cattle into the community pasture. She complained that the ministry wasn't providing any regulation to enforce compliance with its own rules.

The ministry agreed that this had been the case, primarily due to staff shortages. However, the forest district had just hired a man to do precisely the job the complainant wanted done. He would spend his summers riding the range to check whether or not grazing leases were being used to capacity and whether the ministry's guidelines were being followed.

The ministry agreed that the complainant's concerns were valid, and indicated that a public meeting would be held with the association, the complainant and all other concerned ranchers to clear the air. The association would be required to make its waiting list public on a regular basis, and the Alberta ranchers would have to truck their animals back to their own province.

The gulch war

In administering the *Range Act*, the Ministry of Forests issues leases and licences for ranchers to graze livestock on defined areas. It is difficult to define precise boundaries for the ranchers, and even more difficult to spell them out for the livestock who follow the forage wherever it grows, as there is no requirement to fence off grazing areas.

At one time, grazing areas were identified by a line on a map. Later, the practice was to redefine these drawn boundaries to coincide with the actual grazing area used by that rancher's livestock. Natural topographic boundaries were useful where they existed, but they were not always present.

Two ranchers (A and B) had licences for three grazing areas (1, 2, and 3). Rancher A was permitted to graze areas 1 and 2; rancher B, area 3. To get from area 1 to the higher elevation of area 2, the animals used a gully — known in those parts as a gulch. The gulch was in area 2. Area 3 was adjacent to the gulch.

Rancher A's migrating animals from area 1 freely roamed via the gulch to area 2, whereas Rancher B's animals from area 3 improperly migrated to the gulch to graze and eventually wandered up to area 2. The grazing value of the gulch was limited, but it was closer to and therefore of more value to area 3 than to area 2.

Following ministry policy to set grazing areas as "actually used" as opposed to "lines on a map", ministry officials met with both ranchers around 1982 to set the boundaries. As actual grazing use appeared to favour area 3, an arrangement was made to assign the gulch to area 3, with the condition that if disagreement arose, the area would revert to area 2. This arrangement overlooked the fact that the primary use of the gulch was as an escape route during winter storms.

Over the following years, animosity arose between the ranchers. Rancher A was of the opinion that rancher B was clearing paths to encourage B's livestock not only to use the gulch increasingly but also to meander up to area 2. There was a strong indication that rancher A was correct. Ministry staff made endless efforts to appease both ranchers, fencing materials were given, on-site inspections were conducted, and meetings were held, all to no avail. The ranchers had no love for one another and were not inclined to compromise.

The issue came to us for review. Rancher A based his case upon the historical aspects, then raised one other point that had been overlooked: the gulch area's value to area 2 was not so much as a grazing area but as the only way for animals to descend from area 2 in snowstorms. Rancher B disagreed, basing his case upon the 1982 arrangement that gave the gulch's value as a geographic grazing area to area 3. He argued two other points in his favour: the work he had done erecting fences and his need to safeguard his exotic breed's blood-

lines from rancher A's bulls being lured towards his female stock.

We concluded that the gulch should remain in area 2. First, and of significant importance, it provided the only way for animals to descend from area 2. The gulch's "actual use" was as a passageway rather than for grazing. Second, although the ministry had supplied fencing materials and attempted to mediate the difficulties, the problems between the ranchers were increasing. The 1982 agreement made it clear that under such circumstances, the area would revert to area 2, and it was apparent that that agreement should now be fulfilled. It followed that rancher B might have a claim for compensation for work he had done fencing, although fencing proved ineffective, and any claim in that respect warranted examination. The ministry accepted our conclusion and took steps to implement it prior to the next year's grazing season.

Recreation Management

Good gates make good neighbours

A rancher in the interior held a grazing permit on Crown forest land abutting a highway. Running across the land was a road, constructed by a neighbouring property owner with the permission of the Ministry of Crown Lands, to provide access for logging of that owner's land. When the logging was completed, the neighbour sold the property and abandoned the road, leaving piles of debris on the road right-of-way, and a barely functional makeshift gate.

The gate was at the junction of the logging road and the highway. A wire fence bordered the highway. Rather than installing a proper gate or cattle guard as required by ministry regulations, the neighbour had merely cut the wire and replaced a few fence posts with stringers. The wire gate was long and heavy and difficult to close. When recreational users of the road neglected to close the gate properly, as often happened, the rancher's cattle would wander onto the highway.

The rancher wanted the Ministry of Forests to clean up the road and convert it to a recreational trail. He also wanted them to replace the wire gate with a proper gate or cattle guard. The ministry was agreeable to constructing the recreational trail, as it would provide access to a scenic waterfall nearby. It also planned to put in a parking area at the head of the trail, which would be properly fenced. However, it did not have sufficient money in its current budget to complete the project, and it was reluctant to commit the resources to supply and install the gate.

We learned that the Ministry of Crown Lands was holding a deposit which had been forfeited by the neighbour when he abandoned the road. That ministry agreed to turn the deposit over to the Ministry of Forests to assist with the clean-up of the road right-of-way. The complainant offered to install the gate himself, if the ministry would supply it.

The ministry agreed to clear the debris left from the logging road construction and to purchase a metal gate. The ministry's local resource officer for recreation delivered and helped the complainant to install the gate.

The complainant later reported to us that the ministry had done a good job of cleaning up the right-of-way and should be commended for its efforts. He also confirmed that the gate was in place, and commented approvingly that "it's a good gate and it hangs well."

Service Contracts

Little money for campsites

A contractor specializing in forest campsite reconstruction and maintenance had made sizeable investments in specialized woodworking machinery to produce campsite fixtures and engage in a varied selection of repair work. For a number of years he had provided services to the Ministry of

Forests. He contacted us when it had become evident to him that the ministry had allocated inadequate funds for campsite maintenance. This inadequate allocation, according to the complainant, produced two results: campsites and the roads serving them were deteriorating to the point that significant environmental degradation was taking place. In other words, the campsites were "trashed", partly as a result (in the complainant's estimation) of consistent 100 per cent usage on week days and 600 to 700 per cent capacity usage on weekends — meaning that the campsite was used by six to seven times the number of people it was intended for. This called for rigorous maintenance programs which were simply not being followed to any degree.

The other concern, from the complainant's perspective, was that a comprehensive contract for the maintenance for certain sites, awarded by way of a request for proposals, would likely go only to the individual or firm who could produce a proposal bid which would come within the financial constraints within which the ministry had to work. This meant to the complainant that, to get the work he needed to support his family, he would have to accept a situation in which bankruptcy became a very real possibility.

We explained to the complainant that it would be inappropriate for this office to make any representations prior to the proposal call being concluded, and that the perceived lack of funding for the project was not a sufficient basis, in and of itself, to declare the administration of the proposal call to be unfair. This situation can be distinguished from areas in which expenditure of funds is mandated by statute to fulfil a specific responsibility to individuals — for instance, the provision of social service benefits or medical care. In this case, the discretion to set certain budget levels for campsite maintenance, even though the sites might, in the complainant's opinion, become embarrassing eyesores, was a matter for consideration as one of many political priorities, and the complainant was free to organize a special interest campaign aimed at increasing awareness of and promoting allocation of funds to rectification of these problem areas. As the amount of money allocated was a political rather than an administrative decision, and consequently beyond our jurisdiction, we declined to investigate the complaint.

Poor performance blamed on bad weather

The Ministry of Forests contracts out the work of brushing, weeding, and spacing of young trees which have been planted or have naturally seeded after logging. These three functions have a common purpose in the ministry's silviculture program, the goal of which is to stimulate the growth of "crop" species of trees. The complainant was the successful bidder on such a contract, the amount of which was in excess of $100,000, and he had paid the required 10 per cent performance deposit.

When ministry representatives found that the contract was not being performed to the required specifications, a warning notice was given to the contractor by way of delivery to one of his employees in the field. When no noticeable improvement was found during the next week, the ministry terminated the contract, causing the contractor to forfeit his deposit to the Crown. In addition, the contractor received payment for only a small portion of the total contract. The ministry explained that this was because only a small portion of the total contract had been completed, and, of the portion supposedly completed, only part was done to a standard adequate for the ministry to consider payment. The ministry pointed out it was under no obligation to make any payment, given the non-performance clause in the ministry contract. Nonetheless, the ministry considered it fair to make payment on a pro rata basis for those hectares completed to an adequate standard.

The complainant did not consider this fair. He argued that working conditions for his employees had been hampered by adverse weather conditions, including rain and snow. He also thought it unfair of the

ministry to keep his substantial performance deposit, given that the ministry was able, after terminating his contract, to continue the job with other contractors within a very short period of time. The complainant also considered it unfair that most of his employees were continuing to provide services for the ministry as employees of the new contractors. He believed that this was simply a crude manoeuvre by the ministry to get him off the project, take his workers, and cause him to forfeit the performance deposit.

Upon investigation, we were unable to substantiate the complainant's concerns. The primary reason was that the ministry had records to back up its contentions, while it appeared that the complainant did not. Ministry personnel attended the field site on several occasions, found that supervisory personnel and certain necessary equipment were not on site, and made notes of their findings. Check plots were also carried out to provide statistical sampling of the adequacy of the complainant company's work.

As weather conditions were a major factor in dispute, we attempted to obtain weather data from the various recording stations in the general vicinity of the work site; however, we found that the only station which had been operative during the period in question was a station approximately 50 kilometres from the work site. It became apparent that the only person who had kept notes of weather observations at the site was a watchman employed by the ministry. These notes were in general agreement with on site observations made by ministry personnel during their inspections. The ministry was of the view that production by the complainant's company should have been at a much higher level, and in this case there was no evidence available to refute that claim by the ministry.

Then there was the question of the rehiring of the complainant's employees. Within a week after termination of the complainant's contract, the ministry had hired two other contractors to attempt to complete as much of the job as possible before winter set in. One of the contractors, being a local native band, had direct connections with the complainant's employees, as many of them were members of the band. The ministry viewed it as no surprise that many of the complainant's employees should find employment with the new contractors. Upon review, we shared that opinion.

The loss of income represented by termination of the contract, combined with the loss of a substantial performance deposit, was indeed a tough blow for the contractor; nonetheless, we could find no basis upon which to challenge the ministry's actions in this case. The situation for the complainant was unfortunate, but we could not call it the result of unfair treatment.

Holdback paid out despite builder's dispute

A dispute over payment arose between a subcontractor and its employer, a company doing contract work for the Ministry of Forests. The ministry had sufficient funds in its "holdback" account, held under the *Builders Lien Act*, to satisfy the subcontractor's claim. The subcontractor complained to us after the holdback was paid to the main contractor, arguing that the ministry had acted improperly, since the complainant company had given notice to the ministry that the contractor owed it money.

Upon review of the facts and the requirements of the *Builders Lien Act*, this office was unable to substantiate the complainant's concern. The *Builders Lien Act* offered a remedy to the complainant, but the complainant had not taken advantage of it. Had the complainant filed a builder's lien within the required time period (31 days after completion of the main contract), and served proper notice of that claim on the ministry, the ministry would have been compelled to pay the amount claimed into court, where the complainant and the main contractor could have had the matter decided by a judge or could have negotiated a resolution of their dispute.

The contract work had been done to the satisfaction of the Crown, and the primary

contract was between the ministry and the complainant's employer. The ministry could not be criticized for making the payout of the holdback, as it was required by the terms of its contract to do so. We reported this to the complainant, along with the observation that, although it had not filed a builder's lien, it still retained the right to sue for breach of contract. As it is not the function of the Ombudsman office to provide legal advice, we suggested to the complainant that it consult a lawyer with respect to the legal remedy.

Engineering

Troubled over bridged waters

An artist lived on a mountain slope next to a small creek. A forestry road crossed the creek above the complainant's property at a point where the creek had scoured a shallow channel in the bedrock.

A mining company was using the road to conduct mineral exploration in the area. The company decided to install a culvert in the stream but neglected to obtain approval from the ministry, which had jurisdiction over the road.

During unusually heavy fall rains, the culvert backed up. The stream was diverted down the road to a point where the road crossed a natural ravine which had been filled in to construct the road. The water ran down the ravine and back to the original stream bed. It eroded half the road bed and scoured a gulley from the road to the stream bed.

Much of the eroded material was deposited on the property of the artist's neighbour, where it caused considerable damage. The artist's property was also damaged. The neighbour decided to sue both the mining company and the Ministry of Energy, Mines and Petroleum Resources, which had approved the exploration work.

The artist received compensation for the flood damage from the Provincial Emergency Program, and was not seeking additional compensation. However, he was concerned about the possibility of the remaining road bed material washing down during the next heavy rainfall, even though the offending culvert had been removed by order of the Ministry of Environment. He wanted the Ministry of Forests to rebuild the road or remove the remaining fill.

The ministry had closed the road to public use but was reluctant to take any further action pending the outcome of the neighbour's litigation. We asked the ministry to inspect the site to confirm that the road presented no threat to safety. This was done first by a ministry engineering technician, and subsequently by a ministry engineer. The ministry staff also discussed the issue with the complainant on site.

The ministry engineer concluded that the culvert had been undersized and improperly installed. Close to 300 cubic metres of material had been washed out, and approximately 80 to 100 cubic metres of material remained in the road bed. In his opinion, it was unlikely that any significant amount of material would wash out from the road unless the stream was again diverted into the temporary channel. With the culvert removed and the stream bed restored to bedrock, there was no significant hazard.

The Ministry of Energy, Mines and Petroleum Resources undertook to monitor closely any exploration activity in the area, to minimize the possibility of rediversion of the stream into the road washout channel.

The complainant agreed with the ministry engineer's assessment that there was no significant danger to him or to his property from the road washout. Thus reassured, he returned to his painting, while the other parties continued with their litigation.

Ministry of Government Management Services

Resolved	0
Not resolved	0
Abandoned, withdrawn, investigation not authorized	0
Not substantiated	1
Declined, discontinued	3
Inquiries	0
Total number of cases closed	4
Number of cases open December 31, 1991	1

Purchasing Commission

Contract in the bag — and out again

A cleaning and janitorial company on Vancouver Island complained about the way in which an Invitation to Quote had been administered by both the B.C. Purchasing Commission and B.C. Ferry Corporation. According to the complainant, the B.C. Ferry Corporation had provided telephone confirmation that the complainant was the low bidder but had indicated that further information was required to clarify the complainant's bid. This information was provided to the Ferry Corporation, which in turn provided it to the B.C. Purchasing Commission, which was primarily responsible for administering the Invitation to Quote for cleaning services on board a number of the Ferry Corporation's vessels. However, the Ferry Corporation would be the contracting party, signing the contract with the successful bidder after the conclusion of the selection process administered by the Purchasing Commission.

When the complainant called the Ferry Corporation later to determine the status of the bid and the competition as a whole, the complainant was told that it was no longer the lowest bidder. The complainant subsequently found out that the amended bid submitted in response to the request for clarification from the Ferry Corporation could not be considered in the tender process. The complainant was perplexed as to why the Ferry Corporation would advise that the firm was the low bidder and request further information, if such information would be of no practical benefit in the process.

Investigation by this office, which included a complete review of files at the offices of the Purchasing Commission, revealed that the representative of the Ferry Corporation acted without the knowledge of or direction from the Purchasing Commission, and made statements which were unintentionally misleading. In addition, we learned that the information should properly have come directly from the Purchasing Commission, and should have indicated that the complainant's options at that point were limited to two choices: to agree to be bound by the terms of the original tender, which the complainant prepared with a misapprehension of the tender requirements, or to withdraw from the competition.

The suspicion engendered by the unfortunate lack of co-ordination between the Ferry Corporation and the Purchasing Commission on this occasion caused the complainant to believe that his firm had, in fact, been the lowest bidder, even after amendment of the bid at the request of the Ferry Corporation. Our investigation showed that this was not the case. We were, therefore, unable to substantiate the complainant's concerns. Any direction to the Purchasing Commission regarding the dangers of having client agencies communicate directly with bidders, as happened in this case, was unnecessary as the Purchasing Commission realized instantly the problems involved when this type of event occurs and had reminded the Ferry Corporation appropriately.

Low bid loses to high reputation

In a somewhat unusual turn of events, a second complaint was received about the same tender competition for ferry-cleaning services described in the previous case summary. In this instance, the complainant was the lowest bidder, but by a margin of less than 2 per cent relative to the next highest bidder. The Purchasing Commission, in consultation with B.C. Ferries, had decided to choose the second lowest bidder as it had achieved a good record of performance and reliability in previous dealings with the Ferry Corporation. The complainant took issue with this practice and referred to a decision of the B.C. Court of Appeal in *Chinook Aggregates Ltd.* v. *District of Abbotsford* as authority for the proposition that, where all bidders are qualified to render the service, the contracting agency is under a duty to accept the lowest bid.

Upon investigation, we were unable to substantiate the complainant's concerns. In the Invitation to Quote, the following language was used in what is referred to as the "privilege clause" on the first page of the Invitation:

> The final contract will be awarded based upon best combination of service, price and past performance. The lowest or any bid may not necessarily be accepted. Bidders must complete price column in Appendix "A" of this Invitation and provide a brief company profile, addressing bidder's business and technical reputation. Three letters of reference to be submitted, two of which should be from customers of similar nature to this requirement....

It appeared to us that this clause had been drafted with the guidance of the court's judgment in Chinook Aggregates. In that case, the court had found that a privilege clause, in which the contracting agency purported to reserve the right to reject any or all tenders, was administered using an undisclosed policy of giving preference to local firms, provided that their bid was within a certain percentage of a lower bid from a non-local firm. The court found that this undisclosed condition created a situation in which all bidders were not being treated equally; the court awarded damages equal to the amount of the plaintiff's expenses in submitting the bid.

In the circumstances of the competition for the ferry contract, the B.C. Purchasing Commission had clearly laid out the criteria upon which bids would be considered. Our investigation revealed that the analysis of bids received was in conformity with both requirements of the law and the policy requirements established by the general management operating policy of the province, which provides guidelines for the acquisition of goods and services through the tender process. These guidelines provide that for goods and services which can be precisely defined, price shall be the principal consideration. In our view, the word "principal" indicated that price was to be the most important but not the only consideration. With the small price difference between the two lowest bidders, the Purchasing Commission, in consultation with the Ferry Corporation, was entitled to select the slightly higher bidder which had an established reputation for performance and reliability with the Ferry Corporation.

Superannuation Commission

Pension disadvantage causes ill feeling

In March 1987 the B.C. Development Corporation was merged with B.C. Place Ltd. to create the B.C. Enterprise Corporation. Through the use of economies of scale, the new corporation was able to operate with fewer personnel than its predecessors. The complainant, who lost his job in April 1987, was one of a number of employees let go during the downsizing.

The affected individuals were offered a severance package which, we discovered, had been drafted with the assistance of outside authorities on employment law. Over two years after the loss of his job, the com-

plainant learned that a group of employees, many of whom had started work with the same corporation at the same time as the complainant and had been terminated at the end of December 1987, were provided with what was, in the complainant's opinion, a superior severance package. The superior component included a privatized pension option, meaning that someone with fewer than the required ten years of service could have their pension "vest". Their own contributions to the pension plan, along with the employer's contributions, would crystallize and be kept in an account where they would not only earn a nominal rate of interest but also would be part of an indexed pension, to be calculated whenever the individual became eligible to receive pension benefits.

The complainant thought it unfair that these people, which appeared to him to be no different in substance or characteristics than the group of individuals terminated earlier, should receive such an extraordinary additional benefit. He asked that we recommend that the severance packages for the two groups be equalized, and that he be given the additional pension option.

Upon investigation, we were unable to substantiate the complaint. One of the complainant's principal contentions was that the ultimate privatization of the B.C. Enterprise Corporation which occurred late in 1987 had been foreseen as early as late 1986, when the newly elected government began planning privatization for certain initiatives. Accepting this assertion as a fact, we nonetheless found that the road to privatization involved continual policy development and restructuring of organizations through mergers and downsizing.

Although the complainant had alleged that he was assured at his "exit interview" that the terms of severance being offered to him would apply to those later terminated, we were unable to verify this statement. Our investigation indicated that the policy by which the new privatization option was created did not come into existence until the autumn of 1987; hence, the individual conducting the briefings regarding termination could not have known the substance of future policies, and it would have made no sense to provide such hollow assurances.

Finally, the complainant had voluntarily executed an agreement to receive a severance package which was, on objective terms when compared with standards relevant to fair employment practices, adequate and reasonable. The reality in this situation was that one group was treated fairly, while a later group may have been treated more than fairly — in other words a measure of privilege may have been added. In these circumstances the complainant's treatment was perhaps unfortunate, but not unfair.

Repayment demand unexpected but fair

To the average person, pensions calculations are complicated and confusing. We think about (and look forward to) our pension as a monthly cheque, and most of us have little understanding of and little interest in the process used to determine the amount.

In simplified terms, your pension amount reflects the amount of money you contributed, your age at retirement, your spouse's age and whether or not the pension is to continue to the spouse after your death, the number of years for which the pension is "guaranteed" (paid even if you have died in the interim), and the need, if any, to offset changes in other income sources, over time.

What this means is that before retirement an employee is offered a choice of pension options (and therefore amounts) reflecting different priorities and needs. The highest amount, for example would be a "life only" option, with the pension ceasing at the subscriber's death.

When Mr. B was about to retire, he was given such a range of options, and signed a form outlining his choice. The choice was a mixture: one amount to be paid only until he was 65 (when the Canada Pension Plan and Old Age Security begin, replacing that amount and giving continuity of actual combined income) or until he died, whichever came first; and another amount payable

for at least five years and until the latter of his or his wife's death if they both lived more than five years.

Happily they did live more than five years, but unfortunately the Superannuation Commission failed to stop payment of the offset (the amount to be paid to age 65), and Mr. B received an overpayment totalling almost $18,000. The Superannuation Commission wrote to Mr. B to set up a repayment schedule. He was unhappy with the idea of repaying, but agreed to repay $25 per month. Later Mr. B contacted our office.

When we reviewed the issue, it was clear that, at the time Mr. B had chosen the pension option, he had been told that the amount was only to be paid to the age of 65. The fact that this arrangement had become unclear as time passed was not enough to mean he should not repay. The pension funds are essentially a trust to guarantee pensions for all contributors, and the $18,000 overpayment was a deficit in the funds available to other beneficiaries. We believed the Superannuation Commission had acted fairly in requesting a reasonable monthly repayment, as opposed to the entire $18,000, and told Mr. B we believed he had been treated fairly.

Ministry of Health

Resolved	185
Not resolved	0
Abandoned, withdrawn, investigation not authorized	26
Not substantiated	93
Declined, discontinued	152
Inquiries	68
Total number of cases closed	524
Number of cases open December 31, 1991	142

The publication of the Royal Commission on Health Care (Seaton) report, "Closer to Home", was the most visible and most widely publicized initiative in the health field in 1991. Agencies in the Ministry of Health had long been advocating some of the changes recommended by the Seaton report. Talking to ministry staff this year, we learned of many ideas that had been put on hold — perhaps because of financial considerations, perhaps because of a reasonable reluctance to make a commitment to new policies while the commission was still active.

One issue addressed in the Seaton report was the lack of program responsibility for the cost of medical equipment for the use of residents of continuing care facilities. Facilities often have walkers, wheelchairs, et cetera, which may be used by residents, but they do not supply "dedicated" equipment (i.e., equipment needed by a resident full-time and permanently) and have no budget for customized equipment. Some residents have the financial means to buy their equipment; family members may do so for others. There remains a group, including those whose income is so low that they qualify for assistance from the Ministry of Social Services, with no ability to meet these costs. While the equipment is not necessary to maintain life, it may be necessary for mobility or independence and certainly can improve the quality of life.

Over a year ago we raised the issue with the ministries of Health and Social Services, and with the Assistant Deputy Ministers' steering committee on disability issues. The ministries resolved the question of funding for clients in group homes, but the need of clients in care facilities remains unmet. The Ministry of Health submitted a request for funding for such a program, but no decision has been made. We intend to continue to monitor this issue.

Wanted: one female doctor

A couple of years ago, the courts ruled that the provincial government could not control where physicians may practise by controlling access to billing numbers. Canadian doctors are now able to work and to bill in B.C., but foreign physicians are still subject to restriction. It is not always clear which level of government is restricting what.

A clinic offered short-term placement to a foreign doctor who was practising under a temporary permit issued by the federal government. After she began work, the other woman doctor in town gave up her practice, creating pressure from the community for a permanent female physician. The clinic advertised for a doctor in the B.C. Medical Association journal, but only males replied. The clinic then went to the B.C. Council of Human Rights and obtained an order, good for three years, allowing it to advertise for and employ a female in a gender-designated position.

On the basis of the order and the all-male response to its previous advertisement, the clinic sought to hire the foreign female temporary doctor. However, the Medical Services Commission refused to support the request and required the clinic to re-advertise the position.

When all the strands were unravelled, we determined that it is the federal not the provincial government which has the authority to issue or to refuse continued status to foreign doctors in B.C., and that the federal officials consult with the provinces and use guidelines recommended

by each province. In this case, the clinic had not met B.C.'s guidelines, in part because the guidelines differed from the advice given to the clinic by the federal government.

We did not feel it was unfair to expect the clinic to re-advertise. This would take only eight to twelve weeks and might produce results, because the clinic's first advertisement had not included some of the better "selling" features of the offer. We did ask the province to take steps to ensure better communication of the rules, the guidelines, and the decision-making hierarchy. The province agreed.

Ambulance crew accused of abuse

A man who had been transported in an ambulance had some complaints about the care he was given, but his main concern was about the care, or lack of it, given to another citizen. The complainant said that when the ambulance crew collected him they refused admission to another person who said he needed hospital care. Later, he said, the ambulance crew were paged to return for this second man and did collect him, but gave no care, were verbally abusive, and even made the man sit on the floor of the ambulance instead of in a seat or on the stretcher.

We started looking for this second patient, and in the meantime received the reports of the ambulance crew. Their reports did not match the allegations. They suggested that it had been the patient rather than the crew who had been abusive.

After several months we found the second patient and asked him if he could recollect the details of the incident. His memory was clear, and his story was similar to the original complaint to our office. Since there was no suggestion of any connection between the two ambulance patients, we asked the Ambulance Service to review the matter.

Both crew members are now assigned to different duties.

Speech therapy for children at home

The mother of an elementary school age child called us saying she could not find speech therapy services for her son. She said she had resorted to in-home teaching when her son was repeatedly victimized at school, as she felt the school principal had not responded adequately to control the situation. When the boy was pulled from school, school-based speech therapy stopped, and the local school board would not exercise its option to send its therapist out to his home.

The Ministry of Education funds all school districts to provide speech therapy to children in school. School boards can choose to extend that service to children schooled at home and, if they do so, may charge a fee. The Ministry of Health also provides speech therapy services, but only to pre or post school age (6 and under, and over 18), and to children enrolled in private schools.

We contacted both ministries to communicate our concern about this gap in service and about the fact that their protocol did not provide for children schooled at home whose school boards choose not to provide service. The Ministry of Health instructed its speech therapists to provide service to such children until the question of responsibility could be resolved.

Where's the fire?

When an ambulance came speeding down Main Street in Vancouver, sirens blaring and lights flashing, all the traffic moved to the side to make room, some cars even being forced to enter an intersection against a red light. Some of the motorists were still waiting at the intersection as they watched a police car come down the hill towards them. The ambulance slowed down and turned off its siren. One motorist called us, questioning what he had seen and wondering if it were an abuse of the "lights and siren" process.

It might have appeared as if the crew were turning on sirens to get back in time for lunch, then thought better of it when they saw the police car. However, our inves-

tigation revealed that the crew were responding legitimately to a call. This was the ALS (advanced life support) crew with special training. They and one other ambulance had been heading to respond to a "short of breath" across town. The other crew got there first, established that they did not need the specialized crew's aid, and called off the ALS vehicle, leaving it free to respond to other calls.

Community and Family Health

A lousy complaint

A woman said the head lice problem at her neighbourhood school seemed to be reaching epidemic proportions. Whole families were becoming infested. She and her three neighbours got together on the morning of her call to our office to do treatments on all the children and each other.

The woman felt that Community and Family Health was not taking any action and should be more involved in dealing with the problem than they were. We made inquiries with the ministry, and were told that head lice are not a serious health problem but simply a nuisance that can be readily dealt with. The local health unit was not involved in the screening for nits (the eggs of lice or other parasitic insects) and had not been for a number of years.

The nursing staff were, however, responding to the head lice problem by attending at schools to provide information to parents and to train parent volunteers. This service could be arranged through a request from the school principal or day care director. We forwarded this information to the complainant, who said she would call the school principal immediately.

Continuing Care

Appeal process needed publicity

The Continuing Care system authorizes care for those who are unable to function without support but do not require the kind of medical support provided in hospitals. The care may be in-home support (cleaning, personal care, assistance getting from bed to wheelchair, etc.) or placement in an intermediate or extended care facility. The Continuing Care assessor's job is to assess the care needed, both type and amount, and then either assign the hours of in-home care to a contracted agency or arrange a facility placement.

The Ombudsman's office receives calls from people concerned that they do not receive enough hours of service or are being offered a placement with which they disagree. Often we can resolve these concerns by passing information between the assessor and the client or by negotiating a compromise, but it became apparent that many of our callers had not used Continuing Care's internal review system before calling us. The reason was that clients had not been told they had any appeal available.

While we are prepared to try to resolve urgent or difficult cases, we support internal appeal procedures which give an authority the opportunity to respond to problems directly. We asked the ministry to take steps to ensure that clients who receive a refusal of or reduction in service are told of the opportunity to apply for a review of the negative decision, and the ministry agreed to do so.

Aggressive resident evicted

A senior citizen who had been living in an intermediate-care facility complained that he had been given an eviction notice for no apparent reason. On reviewing the circumstances that had led to the centre taking the eviction action, we concluded that the centre's reasons for evicting the resident had not been articulated clearly. Accordingly, we suggested that the centre clarify, in

writing, the type of unacceptable behaviour that would not be tolerated.

In response to our recommendation, the administrator of the facility cancelled the eviction notice and wrote to the complainant, describing the type of behaviour that was considered unacceptable and notifying him that any breach of the conditions set out in the letter would result in eviction.

Satisfied that the resident had received fair treatment, we were about to close our file when we were notified that the resident had breached the conditions of his continued residency — assaultive behaviour, not just once but on three occasions — and would therefore be evicted.

As a footnote to this unfortunate story, when the centre began the actual eviction process the staff found that there were no guidelines for this type of action in the service provider handbook and had to improvise. We pointed out the lack of guidelines to the ministry, which agreed to produce the information for the service providers who could be faced with a similar problem in the future.

As the day approached for the eviction, the resident's health had deteriorated to the point where he had to be hospitalized in an acute-care setting, where we understand he remains to the date of this report.

Life-sustaining, or merely beneficial?

The ministries of Health and Social Services have been reviewing the question of payment for personal-use items for clients receiving care. The topic is complex. An intermediate-care client who needs a wheelchair might be able to use one belonging to the facility if the client's size is ordinary, his usage is moderate and his mobility needs are average, but if any of those are untrue the client needs his own wheelchair. For "wheelchair", substitute any number of devices which enhance rather than sustain life, such as breathing aids or supportive cushions. Many clients or their relatives can and do pay for these supplies. Costs may be high, especially when items are misplaced or disappear in a facility, but someone pays and the client's needs are met.

Clients on GAIN or GIS cannot pay for their own supplies, and some have no family or have no family money. The needs of this group have not been met in the same way, and the ministries are considering how best to approach the resulting hardship. Should Social Services pay, and if so who owns the equipment if the client no longer needs to or can use it? Should Health fund the facility, so that the individual can "borrow" customizable equipment? What about people who can afford to pay some but not all the cost? What equipment is necessary as opposed to pleasurable but not really beneficial?

We trust the ministries will reach a speedy consensus, as we continue to hear of individuals with unmet needs because of this gap in services. An example is the woman whose physician wanted her to have a "bipap" machine, which makes breathing easier. The physician felt that the woman, an acute care patient, could be moved to an intermediate care facility and might even be able to go home with this machine. The machine cost about $3,000, an impossible amount for the woman, whose income was provided by the GAIN program. Since neither the hospital nor the ministries of Social Services and Health felt able to pay or be responsible for the cost, the woman remained in hospital. Unfortunately she died there a matter of days before the agencies involved decided how to fund this purchase.

Finding a home for disabled student

We were contacted by the doctor of a young woman who had spent most of the past 10 years in acute care hospitals. Currently, her health was sufficiently stable that she was attending a community college, but her care needs were so high that the local extended care facility did not feel able to admit her. The doctor, and the woman when we spoke to her, believed an acute care hospital was not the appropriate place for her to live. They would settle for an extended care facility but would prefer a

community placement. Funding for health care in the community was available, but the woman would need subsidized two-bedroom accommodation (a second bedroom for the live-in care aide) or some kind of congregate care facility.

Shortly after we became involved, the woman was accepted at the local extended care facility. We were able to arrange for her to be considered eligible for a housing subsidy from the B.C. Housing Management Corporation and to put her in touch with non-profit groups building or planning wheelchair-modified buildings in her area.

Medical Services Plan

All lines busy

Over several months, a large number of people complained about the difficulty of reaching the Medical Service Plan by telephone. The lines were constantly busy, and it was apparent that the existing telephone service was inadequate. No one was unhappy with the service they received when and if they were able to get through.

After we raised the issue with representatives from the Medical Services Plan, we were assured that they were taking steps to correct the situation by training new staff to answer the telephones and by investigating the availability of an automated telephone answering system. In due course, such a system was installed, with the result that callers were placed in line rather than simply being blocked by a busy signal.

This improvement, together with the staff increase, has led to a reduction in complaints to our office about telephone contact with the Medical Services Plan.

Medical necessity a prerequisite for MSP coverage

A woman living in the lower mainland had been informed that the Medical Services Plan would not cover the cost of reversing a tubal ligation. She thought this unfair.

Our investigation showed that while it is true that the Medical Services Plan will normally not cover the cost to reversing a tubal ligation, there are some exceptions. If in the opinion of the attending physician the procedure is required to correct a new and separate medical condition, the physician may ask the Medical Services Plan to cover all costs. The woman was pleased to hear this, and planned to discuss the matter further with her doctor.

No coverage, but no discrimination either

A woman claimed that the Medical Services Plan was discriminating against her by not covering the cost of in vitro fertilization. We reviewed the *Medical Service Act* and Regulations and informed the woman that in vitro fertilization is not an insured benefit of the plan. We explained that what is and what is not an insured benefit under the plan is the responsibility of our elected officials, who are in turn responsible to the electorate. In general, MSP provides coverage only for procedures that are medically necessary. The refusal of coverage was consistent with the legislation and was not unfair treatment by the administrators of the plan.

SIN numbers for one purpose only

A man complained that his Medical Service Plan number was no longer the same as his social insurance number. He wanted only his SIN number to be used to identify him, and asked us to find out why his medical identity number had been changed.

MSP officials told us that the Ministry of Health is phasing out the use of social insurance numbers as a means of patient identification. This change came about as a result of a request from the federal government because the social insurance number was only intended to be used for income tax purposes. The Ministry of Health hopes to have all use of social insurance numbers eliminated by the spring of 1992.

ICBC comes to the rescue

Medical Services Plan regulations provide that when a family moves to B.C. and the husband and wife arrive separately, the waiting period for coverage begins on the later date of arrival. New residents are eligible for MSP coverage after completing a waiting period consisting of the month of arrival plus two months. During the waiting period, coverage can often be arranged with a former medical plan from another province.

In this case, the father arrived in B.C. in December 1990 and the mother and children remained in Alberta. The father applied for MSP coverage, the cost of which was covered by his employer. He was told that MSP coverage would begin on March 1, 1991, as MSP had not been informed that the rest of the family had not yet arrived. Assuming that coverage for the entire family was in place, the father cancelled the Alberta coverage effective March 1, 1991, and received a payment refund from Alberta.

In April 1991, MSP and the B.C. employer became aware that the father was not eligible for MSP coverage, and it was cancelled. He complained to us. The ministry told us that its position was that coverage had been properly revoked under the requirements of the MSP Regulation, as MSP had only become aware that the mother and children remained in Alberta when the father had applied for Care cards for his family.

Fortunately, the matter reached a happy conclusion. The father's employer, the Insurance Corporation of British Columbia, indicated that as its practice was to cover the cost of MSP premiums for employees and their immediate families, and as the family was not eligible for coverage in B.C., ICBC would be prepared to pay the Alberta premium in this case. The family's coverage in Alberta was accordingly re-instated.

Mental Health Services

Advocate seeks access to policy manuals

The director of an advocacy organization, having concluded that certain policy manuals published by the Ministry of Social Services and the Mental Health Services Division of the Ministry of Health contained information that was pertinent to the needs of his clients, asked the ministries for copies of the manuals. He was informed by both ministries that it was not their policy to make the manuals available to the public, and his request was denied. He complained to us that there seemed to be no legitimate basis for the denial.

We agreed with the complainant. The policy manuals in question did not contain material that would ordinarily be included under the exemptions to access to information described in our public report on the subject published in 1991. In the result, the Ministry of Social Services and the Mental Health Services Division both agreed with our suggestion that information contained in policy manuals dealing with the delivery of services to the public should be publicly available.

The Mental Health Services Division announced that it would ensure that, in future, its policy manuals would be available for viewing in mental health clinics and sub-offices throughout the province, and that the manuals would be supplied to professional and advocacy organizations on request. The complainant indicated that he was satisfied with this arrangement and would be prepared to pay for the manuals if necessary.

Vital Statistics Division

Just the same old me

A man who applied for citizenship documents was told, much to his surprise, that his name had been changed in 1972. He told us he had never changed his name, and

he wanted to know whether the change-of-name documents existed or if there had been a mistake made by the Vital Statistics Division.

Vital Statistics officials told us that the complainant's name had indeed been changed in 1972 as a result of an application for a change of name. As required, the change of name application had been advertised in the *B.C. Gazette* and in a public newspaper. A letter of confirmation of change of name had been sent to the man advising him that the name change had been approved and registered.

When we related this information to the complainant, he said he had no recollection of such an incident. Nevertheless, he would now change his name back to what it was before it underwent a transition in the government records.

Health Institutions

In 1991, our staff continued visiting mental health facilities in the province, including Riverview Hospital, the Forensic Psychiatric Institute and the Maples Adolescent Treatment Centre.

At Forensic Psychiatric Institute, 1991 was a particularly challenging year. Demands for change came from a variety of internal and external sources, including the report of the British Columbia Royal Commission on Health Care and Costs, the report of an internal committee established to identify problems in the areas of patient care and staff development, and impending amendments to the Criminal Code of Canada, as a result of the Supreme Court of Canada decision in *Regina v. Swain*. Many of the problem areas identified were complex and will require considerable study and planning. We are encouraged by the administration's commitment to making necessary changes and by its preliminary initiatives. The inadequacy of the FPI facility contributes to many of the general problems at the institute, and its reconstruction continues to be anxiously anticipated.

Our staff met regularly with the FPI's Patient Concerns Committee to discuss complaints received and issues of concern. We continued to refer most complaints to the committee and were pleased with the results. The committee members maintained a remarkable level of objectivity and sensitivity when responding to patient concerns and did not shy away from recommending change. The institute's deputy director and its director of nursing became ex officio members of the committee late in the year. The move was welcomed, as it increased the effectiveness of the committee by providing it with a direct link to senior administration.

At Riverview, staff and patients worked to develop a bill of rights for patients at the hospital. The bill was seen as a necessary supplement to existing human rights legislation due to the heightened vulnerability of hospitalized psychiatric patients. The bill would guarantee the meeting of certain standards in the areas of quality of life, quality of care, and legal advocacy. Our office participated in a steering committee to design a position of "Patients' Representative". This person would be responsible for the promotion and observation of the patient bill of rights. It was hoped that the bill would be ratified late in 1992 by the hospital's governing body and that the Patients' Representative position would be filled later in the year.

Many of the complaints we receive are straightforward and can be easily dealt with by the authority. Improved communication between the authority and the complainant is often all that is required. We encourage authorities to attempt to resolve complaints without our involvement, and we appreciate the measures taken by the mental health facilities to develop internal dispute resolution mechanisms.

In our 1990 annual report, we mentioned that the Maples Adolescent Treatment Centre had set up a Patients Complaints Committee. That initiative was enthusiastically supported by this office as a complaint resolution process which would be easily accessible to the residents. Unfortunately, the

committee has not been meeting on a consistent basis. A more proactive involvement of staff may be needed to encourage patient participation and thus revitalize this committee.

During the past year we received several complaints from residents concerned about their placement following discharge from the Maples. Many of the Maples patients are wards of the Superintendent of Family and Child Services and have lived in foster homes or group homes prior to their admission to the centre. On release from the Maples they find themselves labelled as "problem kids", and most care-givers are not willing to accept youths with such a history into their homes. A similar concern is echoed by youths being released from juvenile detention centres.

Responsibility for seclusion orders reviewed

When patients at the Forensic Psychiatric Institute pose a risk of damage to property or injury to themselves or others, they may be detained in seclusion rooms until they gain control over their behaviour. Seclusion orders often last for less than a few hours, but sometimes patients are held longer.

Policy at FPI required that seclusion orders be renewed by a psychiatrist every 24 hours. If a patient spent five consecutive days in seclusion, the clinical director would be notified and, in consultation with the treating psychiatrist, would decide whether to continue or to terminate the seclusion order.

We received several complaints about the length of time that certain patients were held in seclusion. Our investigation showed that while there may have been valid reasons for extending the seclusion orders, the policy described above was not followed, insofar as the clinical director was not notified after the patients had spent five consecutive days in seclusion. The explanation provided by the senior psychiatrist was that there was no clinical director at the institute — the responsibilities of the clinical director were shared between the executive director and himself, but neither person had assumed the duties relating to review of seclusion orders.

The seclusion policy was rewritten, and one of the amendments reassigned the clinical director's role to the senior psychiatrist.

Weight loss caused by thyroid, not food

The mother of a patient at Riverview told us she was concerned that her son was suffering from malnutrition, as his weight had dropped considerably. Medical staff informed us that the patient's weight loss had occurred during the previous 12 months. The reason for this was not initially clear, but later it was discovered that the patient suffered from an overactive thyroid gland. The condition caused the patient to burn energy at a much faster rate than normal, resulting in weight loss. Treatment was initiated and his condition improved.

Months after we closed the complaint, we learned that the patient had steadily gained weight and was just within the normal weight range.

Altercation over medication

From time to time it is necessary to medicate patients against their will. Physical restraint is sometimes necessary when patients actively resist the treatment. After one such incident, a patient complained to our office that excessive force had been used by the staff who restrained him.

The complaint was referred to the Patient Concerns Committee. Staff and a patient who witnessed the incident told the committee that the restraint was not unnecessarily rough. A doctor who had examined the complainant immediately after the incident found that the patient was sore but required no medical treatment. The complainant agreed that he acted aggressively in resisting the medication but still felt that the measures taken were not warranted.

The committee decided that the nursing supervisor should be present during physical restraint procedures and made this recommendation to the director of nursing. We

agreed with the committee's handling of the complaint.

Miscommunication about drug raises concern

The mother of a patient at Riverview was concerned that her son's psychiatrist planned to prescribe what she believed was a dangerous experimental drug.

We spoke to the patient's psychiatrist, who informed us that the drug in question was not experimental. At one time its use was restricted because it caused serious side effects in some people. However, the drug was re-introduced several years ago, after effective measures to prevent the side effects were discovered. The psychiatrist wanted the parents to be comfortable with the choice of medication, and he had not yet prescribed the drug. An explanation had been provided to the complainant regarding the nature of the drug and the reasons for prescribing it, but apparently the explanation was not fully understood. The psychiatrist invited the complainant to discuss her concern with him further and gave the name of another psychiatrist at the hospital with whom she could discuss the pros and cons of the medication.

The complainant was satisfied with the information relayed through our office and agreed to contact the psychiatrist.

Patient given benefit of doubt

A patient in the Forensic Psychiatric Institute complained that he had lost $22 while being transferred to a seclusion room. The matter was referred to the Patient Concerns Committee, which was unable to determine what had happened to the money. The committee felt it was appropriate in the circumstances to give the patient the benefit of the doubt and recommended to the director that the patient be reimbursed the $22. The director agreed, and the patient received the money.

Better safe than warm

A patient who worked in the root house on the farm at the Forensic Psychiatric Institute complained that in winter some of the farm vehicles were warmed up inside the building with the doors closed and that this practice produced unsafe fumes in his work area.

After referral to the Patient Concerns Committee and investigation by the Rehabilitation Department, a new policy was distributed. It directed that vehicle engines were to be kept running inside the farm buildings only during the actual backing-up or driving-out of the vehicles and that all doors to the buildings were to be open during those manoeuvres.

Fresh food, please

A resident at a long-term care facility complained in 1990 that the food provided to the residents was prepared, cooked and frozen elsewhere, then transported to the facility and reheated. The result, said the complainant, was unappetizing. He argued that the residents had a right to expect fresh food, cooked on the premises.

A few weeks later, a similar concern was voiced by another resident at the centre. He said that he had been a member of the Food Advisory Committee and that there were a number of other residents who objected to the reheated tray method. He wanted to know why recommendations from a consultant's report on the food service method at the centre had not been implemented.

The centre had opened in the spring of 1988 with a capacity for 300 residents. The first food-related complaint surfaced one month after the centre opened, and concerned an earlier-model tray system. A newer model of the tray system had then been introduced, but the complaints continued. As a result of the ongoing complaints, senior staff at the centre had requested that a consultant review the centre's food service system. In October 1989 the consultant's report made a number of findings.

About the same time as the consultant's report was received, some of the residents had written to the Minister of Veterans' Affairs asking that his department investigate and change the food delivery service at

the centre. This request generated more studies, but the system was not significantly changed. Some of the residents had also contacted the Premier and the Minister of Health about the problem.

In 1990, a nutritionist student on secondment at the centre conducted an internal survey and made several suggestions and recommendations that there be choices for different types of lunches and suppers.

Despite these studies, when our office began to look at the situation and attempted to determine the levels of dissatisfaction with the food, the delivery service and the method in which the food was served, it was apparent that no comprehensive assessment of the level of resident dissatisfaction had taken place. After developing a questionnaire designed to provide that information, we arranged for students from a nearby senior high school home economics class to become involved. The students conducted the survey, and 129 of the 300 residents responded.

The survey results did not indicate a significant level of resident dissatisfaction with the existing food service system. In fact, the results, on a scale of poor to excellent, tipped toward the excellent end.

As a result of our investigation and in light of the survey findings, we felt that some fine-tuning of the system might be in order. Therefore, in a report to the centre's board in May 1991, we made the following recommendations:

1 The centre should continue to explore the eventual replacement of the existing tray system. A new system would offer the residents a more home-like table setting using individual dishes rather than a tray with compartments.
2. Freshly prepared salads, soups and sandwiches should continue to be offered as alternatives to main courses on the menu.
3. The occasional in-house prepared meal should continue to be served to provide variety and to break the monotony of the meal service.
4. The centre should continue to offer in its small canteen a selection of light snacks to provide a change to those residents wanting less than a full meal. Also, the centre should continue to provide vending machines for other snacks and drinks.
5. Residents' menu choices should continue to be regularly monitored, and menu changes should be made quickly when requested by the resident.
6. Families, friends and staff should be consulted regarding all aspects of the food service for residents who might otherwise be unable to speak for themselves.
7. The Food Service Advisory Committee meetings should continue. Where practical, recommendations made by the committee should be acted on expeditiously.
8. Where possible, residents' complaints should be funnelled through the Food Advisory Committee for action.
9. Membership on the Food Service Advisory Committee should be altered at least annually to provide fresh resident input.

We concluded that the food service at the centre adequately met the requirements set out in the *Community Care Facility Act*. Any institutional food delivery service can become routine and monotonous; however, the food service staff at the centre had consistently tried to introduce variety and changes to the residents' daily routine.

We concluded our report by remarking that, as anyone who has ever been hospitalized can attest, meals become an increasingly important part of each day. No food system would ultimately satisfy each of the 300 residents every day and there would undoubtedly continue to be sporadic grumbling and complaints about meals, so it was in both the centre's and the residents' best interest that an effective Food Service Advisory Committee continue to be utilized.

The report was submitted to the board for consideration. They agreed with our recommendations and assured our office that the centre was committed to providing the

highest quality food service within the limits of established funding. Ongoing monitoring and adjustments would continue, and the centre's staff would respond to as many individual preferences of the residents as possible.

The final hurdle was passed when the members of the Residential Council, with a representative of the Ombudsman's office in attendance, endorsed the contents of the report at one of their monthly meetings.

Ministry of Labour and Consumer Services

Resolved	35
Not resolved	0
Abandoned, withdrawn, investigation not authorized	30
Not substantiated	30
Declined, discontinued	89
Inquiries	19
Total number of cases closed	203
Number of cases open December 31, 1991	107

Employment Standards Branch

The partnership was strictly personal

A woman complained that the Employment Standards Branch had unfairly deemed her to be part of her boyfriend's business, and therefore responsible for the debt owing to his former employees. The branch had issued an order to pay and a demand notice to her employer, which resulted in the loss of her wages.

She told us she could not afford to pay the fee required to obtain a director's review of the branch's decision. The *Employment Standards Act* requires payment of $100 or 10 percent of the wages owing, whichever is greater, in order for an employer to file a request for a review. In this woman's case, she would have had to pay $1,291, an amount she claimed was well beyond her means.

The matter was resolved after we asked the branch to review the matter. The woman's boyfriend was able to provide further evidence that he was the sole proprietor of his business. The branch then amended the order to pay, deleting the woman's name, and withdrew the demand notice against her employer.

Unpaid wages gone in bankruptcy

A man complained that the Employment Standards Branch had done nothing to obtain wages which he said were owed by his former employer.

We were unable to substantiate this complaint. We found that the branch had taken all actions possible under the *Employment Standards Act* in order to obtain payment. The man was employed from December 30, 1990, to January 25, 1991. His employer had a sub-contract with a construction company to clear a right-of-way near Tumbler Ridge. However, the employer abandoned the job in mid-February 1991, before completion of the project. The Employment Standards Branch, in its investigation, found that the employer had no assets. All of the equipment used had been rented. Further, the construction company which contracted the man's employer did not owe the employer any money which could be attached by the branch.

The branch estimated the total wages owing to seven former employees at $30,360.14, including $5,668.00 owing to the man. The branch issued a certificate against the employer on March 26, 1991. However, the employer went into bankruptcy on April 8, 1991. The branch filed proof of claim with the trustee, but the trustee told the branch that the former employees should not expect anything from the bankruptcy.

Liquor Control and Licensing Branch

Deterrence for big and small alike

The complainant, a consultant and agent for the sale of liquor, was upset at being charged a $100 fine by the general manager of the Liquor Control and Licensing Branch

as a penalty for late renewal of a $50 agent's licence. He considered the amount of the fine excessive and questioned the authority of the general manager to levy such a fine.

Upon investigation, which included a review of the *Liquor Control and Licensing Act* and its regulation, this office was unable to substantiate the complaint. We reviewed the considerable correspondence exchanged between the branch and the complainant, as well as a legal opinion prepared by a lawyer of the Ministry of Attorney General for the Liquor Control and Licensing Branch, dealing with the issues raised by the complainant. We found the reasoning in the legal opinion to be sound and concluded that the general manager does indeed have the authority to levy such a fine.

We did not consider the amount of the fine to be excessive, given that its purpose was to encourage compliance. When one considers that the cost of the licence itself is somewhat modest, a smaller penalty could in some instances be considered simply a "licence fee for non-compliance", and the necessary deterrent factor would be lost.

After we reported these findings to the complainant, he posed the following question to us: what about the case of a brewery with a high production level that may pay a licence fee of as much as $100,000 per year? Does a $100 fine — which would apparently apply under the Act and Regulation — promote compliance in that case also? On a relative basis, can this be said to be fair?

The complainant had indeed raised an interesting point, which we proceeded to review. Our review of the legislation showed that it is possible for a brewery with a licence fee in the $100,000 range to be faced with a mere $100 fine for late renewal of the licence. However, the legislation also provides for such non-compliance to be treated as an offence, for which the penalty would be in the amount of "not less" than the unpaid fees plus $150 for each day on which the default continues. The only catch is that this penalty would be levied not by the general manager but by a judge, following a successful conviction of the offending company under the provisions of the Act. We considered this option to be a realistic deterrent, at least to the extent that the system as a whole was not brought into disrepute. We reported these further findings to the complainant and closed the file.

Liquor Distribution Branch

Consistency at any cost

As the result of an accident where one of its employees had his toes torn off, the Liquor Distribution Branch introduced a policy requiring all of its store employees to wear steel-toed safety shoes while on duty.

A long-time employee was unable, because of a foot abnormality, to wear steel-toed safety shoes. As he could not follow the directive with respect to footwear, he was not permitted to go to work. The branch referred him to the Workers' Compensation Board to get a "variance", for medical reasons, from the requirement to wear steel-toed safety shoes. The WCB refused to grant a variance because it had not required the employee to wear steel-toed safety shoes in the first place. The branch refused to allow the complainant to return to work because he could not obtain a variance. Exhausted and frustrated, the employee contacted our office a few days before the branch intended to terminate his employment for failing to return to work.

With the assistance of the WCB's director of occupational health and safety and of the acting general manager of the Branch, a resolution was speedily reached whereby the employee was granted a variance allowing him to wear fibreglass-toed safety shoes.

Our office also requested that the branch and the WCB work together to develop a policy to be applied to individuals whose medical situation made it impossible to

comply with the requirement to wear steel-toed safety shoes while on store duty.

Regrettably, the development of this policy proceeded slowly. Several months after the first complaint, our office was again contacted by two more branch employees who had also been effectively laid off because of the footwear policy. Once again we were able to resolve the complaints of the employees and get them back to work with modified footwear. However, we also ensured this time that the branch and the WCB worked effectively together to produce a policy that would allow the resolution of these sorts of problems without the necessity of involving our office. The branch and WCB have now developed such a policy.

Residential Tenancy Branch

The Residential Tenancy Branch is responsible for the administration of the *Residential Tenancy Act*. The Act provides that landlord and tenant disputes are to be resolved through arbitrations administered by the branch. The branch also has a staff of inquiry officers who provide information to people asking about their rights.

In October 1991 the Ombudsman's office published Public Report #27, *The Administration of the Residential Tenancy Act*, which addressed a number of concerns about the legislation and the administrative structure developed by the branch to put the legislation into effect. The report made several recommendations for change, including that investigative and mediation services be provided in order to limit the number of disputes requiring arbitration, that arbitrators provide full written reasons for their decisions, and that those decisions be subject to an effective process of review or appeal. A comment on the ministry's response is included in the public report update on page 32.

The majority of complaints received by the Ombudsman's office involving the branch relate to a landlord or tenant's dissatisfaction with the outcome of an arbitration proceeding. Although the Ombudsman's office has the power to investigate complaints made against arbitrators, it is rare for us to be able to provide a practical remedy. There are technical legal reasons for this. The Act does not provide an avenue of appeal from arbitrators' decisions. It states that the decisions are final and binding on the parties. Thus, once an arbitrator has made a decision, he or she has exhausted the power to consider the issues. This means that the decision cannot be changed after the fact, with a possible exception for cases in which a fundamental legal error has been made. The only remedy presently available to an unhappy party is judicial review — a proceeding before a judge of the B.C. Supreme Court. This remedy is not useful to many landlords and tenants because it tends to be legally technical, and therefore expensive.

A variety of other issues have been brought to our attention by complainants. These include occasional difficulties with the scheduling or location of arbitration hearings, problems in getting through by phone to branch inquiry officers, and the limited means available to enforce certain types of arbitration orders or to prevent intentional or repeated violations of the Act. We have received calls from tenants who did not understand that when termination notices were served on them, the onus was on them to apply for an arbitration hearing to present their side of the story. By the time they call us, it is often too late to get their story heard.

The latter point underlines the importance of information services and communications in the residential tenancy area. Too often, parties to an arbitration hearing do not have a clear idea about how to prepare for an arbitration hearing or the type of evidence that will be considered relevant or admissible by an arbitrator. They are often surprised to find that the hearing is not a mediation session, and that the order made at its conclusion is final and forecloses the possibility of providing further evidence. The branch has produced useful written materials which deal with many of these

matters. The development of plain language forms and a standard lease agreement would also greatly assist in this respect.

Monthly tenancy, or yearly?

A tenant complained to our office concerning the result of an arbitration hearing. She and her landlord had several years before entered into a one-year lease. She had continued to rent the premises since the expiry of that initial one-year period, providing 12 post-dated monthly cheques for each successive year.

At a certain point, the tenant decided to move, but failed to give notice by the end of the month. The landlord claimed that a one-year fixed-term agreement was still in effect, and sought damages for the entire portion of the year still remaining. The tenant relied on section 7 of the *Residential Tenancy Act*, which deems that where a tenancy continues after the expiry of a fixed term, and in the absence of an express agreement to enter into a new fixed term lease, it does so on a month-to-month basis. Nevertheless, the arbitrator found in favour of the landlord. He apparently concluded that the provision of 12 post-dated cheques was evidence of an agreement to make a new one-year lease.

The tenant applied to the B.C. Supreme Court for judicial review of the arbitrator's decision. The judge set aside the arbitrator's order and also disagreed with the arbitrator that the landlord had made reasonable efforts to mitigate his loss by re-renting the apartment during the one-month notice period for which the tenant was obliged.

For us, the complaint illustrated problems with aspects of arbitration procedure quite apart from the merits of the decision made. The written order of the arbitrator was perfunctory and did not explain the factual basis on which it was made. Further, no record of arbitration hearings is kept by way of transcript or audio recording. This makes it difficult for parties seeking judicial review to point out to the court specific errors of law or procedure. In this instance, the tenant was fortunate to achieve a positive result.

When and where, but no why

A landlord reported to us that he had received notice of an arbitration hearing by way of a letter from an arbitrator setting out the date, time and place of the hearing, but not specifying the nature of the application to be dealt with. He believed this did not constitute an appropriate notice for an arbitration, because it was not served by the other party and did not state the matter at issue. We agreed. He wondered what options he had and, in particular, whether or not he should attend the hearing.

We spoke with staff at the Residential Tenancy Branch to see if there was an explanation for notice being given in this way. It turned out that the arbitrator had made a ruling in a previous application between the landlord and tenant, but had added a comment that the tenant could have a further issue related to a security deposit addressed at a later time. On hearing back from the tenant, the arbitrator had proceeded to set a new hearing date and notify the landlord. As this involved a new application, however, the branch agreed that notice could not be made by letter from the arbitrator.

We discussed the situation with the landlord and reviewed with him our understanding of the hearing procedure. He later advised us that he had attended the hearing and raised his objection to the notice, and that the matter had been resolved to his satisfaction.

Ministry of Municipal Affairs, Recreation and Culture

Resolved	7
Not resolved	0
Abandoned, withdrawn, investigation not authorized	7
Not substantiated	16
Declined, discontinued	24
Inquiries	5
Total number of cases closed	59
Number of cases open December 31, 1991	16

The Office of the Ombudsman does not have jurisdiction to investigate complaints against municipalities and regional districts. The part of the *Ombudsman Act* which would give us such jurisdiction has been passed by the legislature but not brought into force by the cabinet. This office, therefore, refers complaints against municipalities and regional districts to the Office of the Inspector of Municipalities, which is a part of the ministry.

In cases where a complaint involves both the provincial and local levels of government, we will discuss the issues with the local government administrators. Generally, local governments are co-operative in providing information, and, despite our lack of formal jurisdiction, we are often able to reach a resolution of issues brought to our attention.

We also receive a relatively small number of complaints against the ministry itself, which had responsibility for housing issues added to its portfolio late in 1991. Our experience in resolving these complaints has been positive.

Battle of the boundaries

The vice-chairman of an electoral area in a regional district complained that the ministry was acting improperly by showing a willingness to approve an application by a municipality to extend its boundaries to encompass a single property. The property owner wanted to come within the municipality's boundaries, the property was adjacent to the municipal boundary, and no other properties were affected.

The addition of single properties or small communities to existing municipalities is common in B.C. In this case, however, the regional district was opposed to a change that would diminish its area and taxation base by moving the property from the jurisdiction of the regional district to that of the municipality. The regional district had spent money on the provision of services, and removal of the property from its boundaries would deny the regional district the opportunity to collect taxes to pay for the services already provided.

A previous attempt to expand the borders of the municipality significantly had been abandoned when public opposition mounted; but with a single property the issue was between its owner and the municipality, both being willing partners. The application in question was uncomplicated, and it met the letter and spirit of legal requirements. The fact that the regional district might have incurred planning or actual costs to provide water of fire pressure standards in anticipation of this property's potential development needs was recognized. If supportable, this development cost aspect would be "shared" by the municipality through a negotiated process in which the ministry would participate.

We concluded that the ministry had and was continuing to discharge its responsibilities fairly in what was an understandably annoying situation faced by the regional district.

Home, sweet home — Vancouver or Whistler?

The complainant was denied a home owner grant for property which he owned in Whistler. He argued that this was unfair, as he had received the grant for a number

of previous years and did not own any other property in the province. He acknowledged that he spent most of his time in Vancouver, where his business was located, and maintained an apartment there. Nonetheless, he believed that as all of his valued possessions were located in his condominium at Whistler, that should be regarded by the province as his principal residence, and a home owner grant should be available to him.

We found that the reason that the home owner grant had been given and then taken away was that the Assessment Authority had asked the Municipality of Whistler to do its own assessment of whether properties owned within the municipality qualified for the home owner grant. The municipality found in the complainant's case that he "lived" — that is, spent most of his time — in Vancouver, not Whistler. On the basis of his physical domicile being elsewhere, regardless of the question of other property ownership, the municipality concluded that the Whistler residence was not his principal residence. The administrator of home owner grants in the Ministry of Municipal Affairs, Recreation and Housing concurred with this assessment and explained that position to the complainant.

After reviewing the facts, we agreed with the ministry's position. This was not a case of "principal residence" being defined using the same criteria as might be employed by the federal *Income Tax Act*. The Home Owner Grant Act was designed to help individuals meet the financial obligations of municipal tax in connection with a home in which they normally resided. The intent of the Act was clear, and, on the facts as understood by this office, the complainant's Whistler residence did not meet the definition.

Ministry of Parks

Resolved	1
Not resolved	0
Abandoned, withdrawn, investigation not authorized	2
Not substantiated	5
Declined, discontinued	3
Inquiries	0
Total number of cases closed	11
Number of cases open December 31, 1991	2

The Ministry of Parks was incorporated into the new Ministry of Environment, Lands and Parks towards the end of 1991. A comment on that amalgamation is included in this report in the introduction to the section on the Ministry of Environment.

Friends of the park demand a hearing

A member of the Friends of Mount Douglas Society complained that a subdivision of Mount Douglas Park had been registered with the Land Title Office, apparently in violation of the historical trust by which the Province granted the Mount Douglas Park land to the City of Victoria in 1889. The agreement setting up the trust contemplated that the City of Victoria would hold the land "forever upon trust to maintain and preserve the same as a public park or pleasure ground for the use, recreation and enjoyment of the public."

A pending conveyance of the parkland from the City of Victoria to the District of Saanich lent urgency to the complaint, so we began an investigation immediately. The two main areas in the park that concerned the society were a transmitter site near the summit of Mount Douglas and roadways through the park. The roadways and the transmitter site had both existed for a long time and had been accepted by the community, even though they might constitute a violation of the terms of the park trust. The transmitter had originally been installed as a wartime defence measure during the 1940s and had subsequently been modified for municipal communications and emergency use.

The procedure for the conveyance of the parkland from Victoria to Saanich appeared to us to be proper. Since the city held the land as trustee, it could not legally effect a direct conveyance of the parkland to the district; the property first had to revert to the original owner, which was the provincial Crown. The reason for the conveyance was the desire of the City of Victoria to transfer administrative control of the parkland to the District of Saanich, in which the parkland was physically located.

However, we concluded that the conveyance could not legally be effected without legal recognition of the uses which were incompatible with the original terms of the trust, namely road allowances and communications use of the transmitter site. The Ministry of Crown Lands therefore took the logical step of surveying the parkland and subdividing out the areas designated for these uses; the balance would be conveyed to the District of Saanich upon terms similar but not identical to those contained in the original trust document of 1889.

In the course of this expedited investigation, we were unable to find any reason for asserting that subdivision was improper or unfair. Shortly after our reporting letter to this effect was sent to the society, another member of the approached us, urging that we re-examine the case from a different perspective: that of proper public involvement and consultation in the administration of significant public resources.

The society's contention was that the Ministry of Crown Lands, acting by internal consultations and negotiation with the local government administrations in Victoria and Saanich, had not fulfilled a responsibility to the people of Saanich and the citizens of British Columbia, who had a right to expect that the terms of the park trust would be respected, particularly by the Crown. The

Friends of Mount Douglas argued that decisions of this magnitude should be made with public consultation and discussion. They also noted that when Victoria city council approved the transfer of the Mount Douglas Park land, it had specified that the trust of 1889 — which included the legal description of the entire park — should be conveyed to Saanich with the property.

This later complaint greatly expanded the scope of the original request for investigation which had been made by the society. In response, we conducted a far more thorough investigation which included the review of numerous volumes of documents held by the Ministry of Crown Lands relating to the creation of the park and the various actions which had been taken in preparation for conveyance.

What we found was that the efforts by the Ministry of Crown Lands to arrange the conveyance of the parkland had been made in good faith, but had completely excluded any public hearing process. The Friends of Mount Douglas could not hope to find a remedy in Saanich municipal politics, for by the time the conveyance was complete, the subdivision would be registered and the parkland would be under the direct administration of the District of Saanich. A reasonable option, we felt, was for public hearings to be convened jointly by the Ministry of Crown Lands and the District of Saanich, perhaps with involvement by the City of Victoria, to receive public opinion on the future of the park site.

Although we conducted our investigation prior to the completion of the conveyance, it was ultimately concluded — albeit somewhat reluctantly — that there was little that we could do or recommend. There were several reasons for this.

First, while there had been no public hearings, the Ministry of Crown Lands had engaged in considerable consultation with the respective local administrations. The ministry advanced an argument that if public hearings were held and produced no substantive change in the administrative plan for the park, they would be perceived by the public as a sham.

Second, the jurisdiction of the Office of the Ombudsman to make recommendations in this instance was somewhat clouded as a result of the political content of the decisions being made. When the property was conveyed from the City of Victoria to the provincial Crown for the purpose of a further transfer to the District of Saanich, the Crown acquired the political right to dispose of the property as it saw fit, subject only to its observance of the intent of the original park trust, as a matter of public policy. In other words, the fate of the park became not simply a matter of administration, which the *Ombudsman Act* identifies specifically as the type of matter which this office can review, but also a political matter. To the extent it is political, it is beyond the jurisdiction of the Office of the Ombudsman, which was not intended to occupy a policy creation role.

Third, with the process being so advanced, even prior to the original request for investigative assistance, there was not a great deal the Office of the Ombudsman could do to change what had gone before, from a practical perspective. However, we were encouraged that the Ministry of Crown Lands and the District of Saanich were both, at various times since the involvement by this office began, consulting with the Friends of Mount Douglas as advocates for the park.

We closed our supplementary investigation after being informed by the Ministry of Crown Lands that the conveyance would proceed after an alternative transmitter site, negotiated between the District of Saanich and the Friends of Mount Douglas Park, had been surveyed for a revised subdivision plan. We stood by our original observation that early and extensive public consultation would have made for a fairer and perhaps less protracted process.

Future of a wilderness at stake

The number of incidents of civil disobedience in disputes about logging sharply increased in 1991. In one of these incidents,

over 60 people were arrested after attempting to block the construction of a logging road into a large tract of pristine wilderness. Just before the blockade was set up, two of the protestors complained to us that the Ministry of Forests should not allow the logging to go ahead, as the area in question was being assessed for its suitability as a park. This was being done, it was said, after the area had been put forward as a candidate for study under a government program called Parks and Wilderness for the 90s.

Parks and Wilderness for the 90s exemplified an increasing effort by government to apply a co-ordinated rather than a divided approach to land use planning outside urban areas. Under the *Forest Act*, the Ministry of Forests is responsible for designating and managing "wilderness areas" to be exempted from timber harvesting plans. Consequently, when it became evident that both ministries were engaged in efforts to identify areas that might be prospective "candidates" for parks and wilderness areas, it made administrative sense to amalgamate, to some degree, the planning processes of the two ministries. Following the announcement of the initiative called Parks and Wilderness for the 90s, the ministries invited suggestions from the public to be considered for designation as parks or wilderness areas.

In April 1991, a community group submitted a comprehensive proposal that the area in question, which was bordered on two sides by a large lake in the interior, be designated a park. The proposal provided a detailed description of the natural assets of the region that were worth preserving. It also detailed the long-term economic benefits that would flow from tourism if the area were preserved as parkland, and argued that the tourist industry was being harmed by clearcut logging.

Soon after the request was made that the area be considered for parks designation, the local MLA, who was also a cabinet minister, began pushing for a quick decision on the park proposal. The reason given was that part of the area was under forest licence to a company whose five-year development plan for timber harvesting had been approved. The Ministry of Forests agreed that an acceleration of the process was desirable.

After the Ministry of Forests made its desires known, the Parks ministry conducted a "coarse sort" of candidate areas in the region. Under the parks planning system, the province is divided into 59 "regional landscapes". In the South Columbian Mountain region, four areas had been identified as possible candidates for wilderness area or park. The area in question was absolutely wild, with no roads; it had miles of lakefront and an abundance of streams; and it featured spectacular views from its heights. However, after measuring the area by the six criteria that are used to establish how representative an area is of a biogeoclimatic region, the ministry concluded that one of the other three areas was more suitable for further study, and indicated that it had no objections to the timber harvesting plans that had led to the request for an accelerated process.

The Ministry of Forests then issued a press release announcing that the decision had been made to carry on with the timber harvesting development plan, as it had been determined that priority was not to be given to the area under Parks and Wilderness for the 90s. The Ministry of Parks made no announcement, and there continued to be public uncertainty about the status of the park proposal until our office clarified the matter. To make matters worse, a resident who wrote to the Minister of Parks asking about the status of the proposal received in return a form letter saying that no decisions had been made; the letter in question was a stock response to queries about the Parks and Wilderness program generally, and the fact that the resident had asked about a particular area that had been "fast-tracked" had unfortunately been overlooked. As a result, the minister's letter created further confusion and a sense that two ministries were working at cross purposes.

We were unable to support the complainants' argument that a moratorium should be placed on development in the

area, as it had been made clear from the outset that the gathering of inventory under Parks and Wilderness for the 90s was not to result in interference with current development plans, and the ministries involved had taken reasonable steps to establish priorities among areas proposed for parkland before giving the green light to the logging company's plans. However, we were highly critical of the apparent lack of care with which the ministries of Forests and Parks had handled their public communication with respect to the process.

The importance of clear communication among government agencies and between those agencies and the public cannot be too highly emphasized. Careless communication sows seeds of distrust and confusion that may be both long-lived and destructive to future planning processes, as well as time-consuming and expensive to dissipate. More than anything else, this case illustrated the difficulty government can create for itself when co-ordination of planning is not coupled with an emphasis on co-ordination of public communication by agencies working together.

Ministry of Provincial Secretary

Resolved	3
Not resolved	0
Abandoned, withdrawn, investigation not authorized	1
Not substantiated	8
Declined, discontinued	5
Inquiries	4
Total number of cases closed	21
Number of cases open December 31, 1991	0

For Canadians only

Responding to an advertisement posted at a Canada Employment Centre, a woman submitted an application to work as a poll clerk during the 1991 provincial election. She received a phone call from the office of the Registrar of Voters inviting her to attend a training session, and then a few days later was surprised to get another call telling her she was ineligible for the job because she was a landed immigrant and not a Canadian citizen. She complained to us that the denial of her eligibility was unreasonable, as she understood that the government had recently changed the policy that had previously prevented non-Canadian citizens from working for the B.C. government.

The change in policy to which the complainant referred had come about as a result of a court ruling that found the blanket barring of non-Canadian citizens from employment to be in breach of the Canadian Charter of Rights and Freedoms. However, poll clerks are appointed under the *Election Act* rather than the *Public Service Act* and are in a type of employment justifying special consideration. Section 7 of the *Election Act* requires Deputy Returning Officers to be registered voters, and registered voters have to be Canadian citizens. The *Election Act* also provides that, if a Deputy Returning Officer cannot perform his or her duties, the poll clerk shall act as Deputy Returning Officer. The Registrar of Voters had determined this to mean that poll clerks must be Canadian citizens, and we agreed with this reasoning. Consequently we were unable to substantiate the complaint.

The complainant, while accepting our conclusion, offered the opinion that such a requirement ought to be clearly noted where it applies to job applications posted by the government. "I think government employees should specify better in the advertisement at the Canada Employment Centre," she wrote, "so that people who are looking for work don't spend time on the phone or attending tests."

Too slow for a story needed fast

A journalist preparing a story during the provincial election asked the Lotteries Branch for a list of all recipients of lottery grants during the previous six months. He was told that the latest annual report of the branch listed all grants made between April 1, 1990, and March 31, 1991. However, the information he sought was not yet publicly available and could not be supplied to him. He complained to us that the response was unreasonable and in conflict with the principles that ought to govern access-to-information requests.

The Lotteries Branch told us that the problem was not so much that the information was not available, but that it would probably require two weeks' work by an employee to put it together. Apart from the sheer cost of such a project, there was no way it could be completed to meet the requirements of the complainant, who was working to deadline during the short span of the election campaign.

We reported this information to the complainant and offered to conduct a more detailed investigation. However, as it was apparent that he could not get the result he wanted in time for his story, he decided to withdraw his complaint.

Ministry of Social Services and Housing

Resolved	680
Not resolved	0
Abandoned, withdrawn, investigation not authorized	204
Not substantiated	280
Declined, discontinued	1873
Inquiries	179
Total number of cases closed	3216
Number of cases open December 31, 1991	727

A significant portion of complaints received against the Ministry of Social Services and Housing in 1991 affected children and youth. The majority of such complaints involved the Family and Children's Services Division or income assistance issues. Examples of investigations and discussion of topical issues are included in the Children and Youth section of this report.

Income Assistance Division

In last year's report, we discussed the implementation of a system whereby our office would refer complainants back to the ministry, prior to any investigation by our office, in cases where the complainant had not sought some type of resolution by the local district supervisor. It was our opinion that, as there was no prior ministry involvement in the majority of income assistance complaints received by our office, the ministry should have the opportunity to complete the first line of review at the district supervisor level. If the issue complained about met the criteria for the structured ministry appeal system, the district supervisor could advise the complainant of the procedures. If the substance of the complaint turned out to be not appealable, we felt that the district supervisor was the logical person to initiate some type of mediation or resolution process to attempt to resolve the person's particular problem.

The above procedure is appropriate under the terms of the *Ombudsman Act*, which permits our office to decline to investigate a complaint if we feel the ministry has an adequate avenue of appeal/review that the complainant has not utilized. We did, however, inform each of the complainants that if they were unable to contact the district supervisor within 48 hours or were unhappy with the eventual actions of the district supervisor with respect to their complaint, they should contact our office again.

1991 was the first full year to judge the effectiveness of this new referral system. Out of a total of 2,120 complaints closed by our office involving some aspect of the income assistance delivery system, 1,725 were declined and referred to the district supervisor for follow-up. An insignificant number of complainants called back later to say they were dissatisfied with the ministry's response.

During 1991 staff from our office were also actively involved in a review process, conducted by a independent consultant group, that examined the manner in which one of the ministry's regions was handling complaints. We are encouraged that the ministry is taking an active role in examining its complaint-handling procedures in order to find ways of improving and streamlining the system.

By and large, complaints arise in situations where a person has been refused some type of assistance or a particular ministry service. During the last few years we received a large number of complaints concerning aspects of the income assistance delivery system. It therefore seemed obvious that the ministry should be examining the manner in which these types of decisions are transmitted to the clients by the workers. A number of factors can trigger negative reactions from clients — the work-

er's choice of words, body language, or simply the fact that the worker has no other choice than to say "no" to a request. The absence of simple, straightforward explanations, backed by appropriate written resources such as pamphlets or posters, may also result in complaints to our office. We are pleased that the ministry is taking a look at the issue, and we look forward to the consultant's report, which is expected by the summer of 1992.

Our officers have been actively involved in the training of financial assistance workers at the ministry's training centre, and we are scheduled to continue the process in 1992. We will also be included in the district supervisor training modules in 1992. We see a concrete benefit, both for ourselves and for the ministry, in our staff being able to interact with the district supervisors on a regular basis, since the district supervisors are the primary ministry contact for those complainants we have referred back to the ministry.

We also believe that continued interaction with ministry staff, particularly at the supervisor and worker level, has allowed us to "put a face" on our office and, by working together in a positive manner, has resulted in a decrease of apprehension felt by workers when they hear of our office's involvement in one of their cases.

Tribunal chairman jumps the gun

We were contacted by a paralegal who was to represent a ministry client before an appeal tribunal in a few days. The caller said that the tribunal chairman had already investigated the matter on his own, without the knowledge or consent of the parties or of the other tribunal members. Having apparently concluded that the appellant's case had no merit, he had drafted a letter to help her withdraw her appeal.

Ministry officials, when contacted by us, had their nominee to the tribunal contact the appellant's nominee, and both agreed to withdraw their consent for the appointment of the chairman. A new chairman was chosen by both nominees, and the panel proceeded.

The case demonstrated the importance of ensuring that members of quasi-judicial tribunals are well informed about the principles of natural justice, one of which is the requirement to provide an appellant the right to be heard.

An awkward point to pull the funding

A dentist received authorization in 1989 for a treatment plan which included having some of a man's teeth removed and dentures made. Removal of the teeth occurred in 1990, but when the man went to get his false teeth in 1991, he was told that the ministry would not approve payment for his dentures or completion of the treatment plan, as the authorization had expired in 1990. Toothless and frustrated, the man sought our assistance.

Once we informed ministry staff of the complainant's dilemma, they agreed to provide immediate verbal authorization to the dentist and to follow that advice with a letter, as there were no changes to the original authorized treatment plan. This was done, and our file was closed as resolved.

Torn between school and kids

A single mother of two children contacted our office when the ministry told her she would not receive income assistance while she returned to school to complete a certificate program. The woman had started the program in September 1990 while being supported by the ministry under an agreement known as an Individual Opportunity Plan (IOP). However, the workload was rigorous, and on the advice of her instructors the woman dropped two courses in order to maintain a good grade point average.

As the courses she had dropped but still had to complete were offered only in the spring semester, the woman got a job in May 1991 with the intention of leaving it in December 1991 to complete the program in January 1992. However, the ministry said she was ineligible for further assistance as she had not completed the program within a year, as stipulated in her original IOP contract. Also, any person quitting a job

automatically disqualifies themselves from receiving ministry benefits.

While both reasons for refusal were technically correct, we felt that the ministry was being unfair in its strict application of the regulations. The woman's reasons for not completing the program within the prescribed time period seemed to be valid. Also, as the availability of the courses was out of her control, she should not be penalized for leaving the job she had taken in the interim.

We discussed our concerns with ministry personnel, who explained that the woman had not yet formally made application for benefits. They said that once she did, the matter would receive careful consideration. If her application was denied at the district office level, she could initiate appeal procedures.

UIC too little for medication costs

A woman complained that the ministry had refused her husband assistance for prescription drugs he urgently needed. She explained that she and her husband did not qualify for income assistance, as she was receiving unemployment insurance benefits. However, her husband had a heart condition, and her limited income could not cover the medication he required on a regular basis.

The district supervisor confirmed that the family's income from the UI benefits ($492 every two weeks) made them ineligible for income assistance. The complainant and her husband had not submitted an application for assistance when they went to see a financial assistance worker, and a formal decision had not been made. However, as the cost of the medication was substantial, the district supervisor assured us that she would take an application for hardship assistance if they returned to the district office and that she would issue an Emergency Drug Form, which would cover the prescriptions he needed to have filled immediately. She also indicated that she would be prepared to ask the area manager to consider special approval for the cost of the medication to be covered. This was done, and the complainant was able to get his medication.

Rent subsidy for apartment, but not for house

A mother of five children reported that she had been involved in legal proceedings with the Superintendent of Family and Child Service for the past two years over custody of her children. The Superintendent had apprehended the children and placed them in foster care.

The mother had been granted access visits in her home with the children during this period. To facilitate these visits, the Income Assistance Division of the ministry had provided a director-authorized subsidy which permitted her to rent a two-bedroom apartment at a cost significantly higher than the maximum shelter variable for a single person.

It was only a matter of weeks until the trial, when the Superintendent would ask the court for a permanent order of custody and the mother would be seeking an order returning custody to her. The mother decided that the apartment did not provide adequate living conditions for her children on a long-term basis. She put together an arrangement with several acquaintances to rent a house that had front and back yards and other amenities. Her share of the rent amounted to virtually the same figure she had been paying for the apartment. She gave her notice to the apartment landlord.

However, when notified of her intention to move, the ministry told her that the rent subsidy would not be extended to the house. On contacting the ministry, we learned that among several considerations which led to this decision was the view of staff familiar with the legal proceedings that the mother would likely lose the case and not obtain custody of her children.

We suggested that this was not an appropriate consideration. By acting on it, the ministry would effectively prejudice her case before the court. Not only would she be unable to tell the court that she could offer the children a house to live in, she might be

without any stable accommodation at all. It might appear that the Income Assistance Division had acted to buttress the Superintendent's case at trial, even though this was not its intention. Following our discussion, the ministry quickly moved to change its decision and extend the rent subsidy to the complainant's new housing arrangement.

Towtruck gets both car and crutches

A woman in her 60s receiving income assistance called to tell us that three weeks earlier her car had broken down. She had believed that the problem would likely fall under a six-month parts and labour warranty provided by the major automobile service company which had serviced the vehicle earlier in the year; however, it turned out that the warranty had just expired. The company did the repairs and presented the complainant with a bill for $185. She did not have enough money to pay the bill. A service representative agreed to let her take her car away on her promise to pay the bill as soon as possible.

The complainant hoped to take some money from her support allowance for the following one or two months to pay the bill. Just over two weeks later, however, her car was seized at night from the parking lot of her apartment building, and towed to the lot of a debt collection company in a distant municipality. It turned out that the service company had registered a repairer's lien on the vehicle and authorized its seizure. The woman learned this when she received a notice stating that it would now cost her $550 to recover the vehicle, which included the original $185 and towing, storage and other costs of seizure. If this amount was not paid, the collection company would be at liberty to sell the vehicle.

At this point, the owner approached the district office of the ministry for a crisis grant to be able to recover the car. Crisis grants are available to income assistance recipients for extraordinary items of need which, if not obtained, would put at risk their health or safety. It is unusual for the ministry to pay for clients' car repairs or transportation costs by way of a crisis grant. In this instance, the district office refused the crisis grant.

The woman informed us that the car was essential to her mobility in the community because she had had hip replacement surgery and used crutches to get around. Indeed, her crutches were in the back seat of the car when it was seized. We brought this health factor to the consideration of the area manager, together with our view that the woman had been the unwitting victim of some overzealous debt collecting. Following further discussions, the district office agreed to assist the woman with a crisis grant.

Broke in Hope

A man complained that the ministry had refused to provide any assistance to his family. He explained that they had just moved to British Columbia from Ottawa. After receiving $440 income assistance in Surrey, they had bought an old car for $50 and then began driving east. The car had broken down near Hope, and the remainder of the $440 had been used to pay towing bills and motel accommodation for the family. He said that he had no money for food or shelter.

We were unable to substantiate this complaint. We found that the man had received $500 in income assistance in Ottawa, as a single person. His spouse had also received $1,000 as a single mother from Ontario. Further, she had presented herself as a single mother when she was issued benefits in Surrey. The *GAIN Act* and Regulations require the ministry to consider income assistance issued by another province as unearned income to be deducted from any entitlement in British Columbia. Since the man's family had received $1,500 from Ontario and $440 from British Columbia — $1,940 in total — there was no eligibility for further income assistance when the family reached Hope. However, acting under the hardship provisions of the GAIN legislation, the ministry had arranged for emergency food and shelter for the family. Full benefits could then be considered at the start of the next calendar month. It was this offer to

which the man objected. He wanted full benefits issued by way of cheque.

Rehabilitation and Support Services

No money for leg braces

A Vancouver Island man needed new leg braces. The Ministry of Social Services and Housing had always taken responsibility for the purchase of such equipment in the past, so the man was surprised when the ministry told him it would not buy the braces. Without the income to buy the braces, he would be forced to rely on a wheelchair. The man felt he was being treated unfairly and asked us for help.

Our investigation found that it was not the Ministry of Social Services and Housing that had refused to purchase new leg braces for the man. The problem arose when a therapist working at a hospital required a new assessment to be completed prior to making a recommendation about leg braces for the man. Once this was explained to the man, the assessment was carried out and a decision was made to rebuild his old braces. The cost of this was borne by the Ministry of Social Services and Housing.

No harm in silence

The purchase of service for ministry clients from private agencies has become common. Emergency housing, day programs, child-care work and outreach to street kids are examples of services delivered by corporate or non-profit agencies under contract to the Ministry of Social Services and Housing. Frequently all runs smoothly, but sometimes roles get confused or the public misunderstands the government's functions.

We were called by a man who had worked for a society, delivering life skills and other group services to teens. The society is funded by the Ministry of Social Services and Housing to provide these services. The man was suspended and then fired by the society. He felt that the ministry had interfered by pressuring the society to fire him and threatening to withdraw the funding.

An assessment of the merits of the complaint required a consideration of the proper role of the ministry. It purchases service and must assure itself that the service is appropriate and that there is no risk to clients receiving services; on the other hand, not being the employer, the ministry cannot instruct the society about or impose internal government personnel practices or standards on the society. In this case, the ministry staff had emphasized repeatedly that the society must make its own decision, and had attempted to duck the society's questions about any effect of its decision on future program funding. Instead, ministry staff had said as little as possible. The reality remains that a listener can interpret what is not said as well as what is, but the mere fact of silence would not be an improper use of the ministry's influence. Accordingly, we were not able to substantiate the complaint.

Transitional Services

For most people in our society, reaching the age of majority (19 in British Columbia) means an increased sense of independence, with the ability to control one's own destiny, to decide how to make a contribution to society, and to make decisions about where to live, work, and play. The average person is now accepted as a fully empowered member of society, but there are exceptions. The following summary provides a good illustration of the problems that may face young people who have difficulty exercising responsibility without some assistance.

Into adulthood and on his own

We received a call from the parent of a young man who had been in the care of the Ministry of Social Services and Housing for several years and had recently reached the age of majority. The young man had been diagnosed as a paedophile, in addition to having other disabling conditions, and had

been provided with extensive services by the ministry until reaching the age of majority.

As the young man did not have what is considered to be a major mental illness, he was not a candidate for residence in a mental health facility. While his IQ was low, it was above the range where he would be considered developmentally delayed and therefore eligible for specialized services. His physical disability was also not severe enough to require a high level of care. Everyone involved with the man knew he required special services, yet he fell among "the cracks" in the rules and was eligible for none of them, now that he was an adult.

The Ministries of Health and Social Services and Housing and the man's parents and doctors all scrambled to develop an appropriate plan. Their efforts were complicated by the fact that any option arrived at must be acceptable to the man.

As the man was no longer entitled to the many specialized services he had been receiving from the Ministry of Social Services and Housing as a minor, he was provided with a short extension of services which could only be provided to people under the age of nineteen, with the hope that an appropriate plan could quickly be developed. As this could not be done quickly, his file was transferred to an income assistance office and he was provided with a semi-managed version of income assistance. He was given help in finding a boarding home and was offered a variety of services by the Ministry of Health; however, he was not always willing to accept these services.

All parties are concerned about what the future holds for this young man and for any potential victims of his behaviour. To date, so far as we are aware, he has broken no laws, and even though all of the professionals involved in his case would like to see him living in a more controlled and therapeutic environment, the man is now legally in a position to choose for himself.

Ministry of Solicitor General

Resolved	633
Not resolved	0
Abandoned, withdrawn, investigation not authorized	116
Not substantiated	566
Declined, discontinued	802
Inquiries	94
Total number of cases closed	2211
Number of cases open December 31, 1991	242

Corrections Branch

For the last several years the relationship between the Corrections Branch and the Ombudsman's office has been generally co-operative and productive. We particularly appreciate the assistance we have received from the office of the assistant deputy minister and the Division of Inspection and Standards.

For the most part, our interaction with staff at individual centres has been positive as well. From time to time, however, some correctional administrators seem defensive when, for example, they perceive us as possibly intruding too deeply into their domain. Such administrators might find comfort in the thought that we do not claim to be experts in all aspects of their particular operation. We do have some expertise in dealing with fairness issues, and this may result in our having to question certain administrative practices. The comments that follow are based on the premise that both this office and branch officials ultimately have the same goal — a corrections system that functions both efficiently and fairly.

On occasion a local director will perceive an issue raised by a resident to be inconsequential. To an outside observer as well, many of these "burnt-toast" issues do not appear to be of great importance. However, as a wise and experienced local director once commented to a visiting Ombudsman investigator, "I don't care if you deal with two thousand burnt toast matters. When the big issue comes, you'll know our centre and the people in it." He was suggesting that our understanding of the centre's operation — gained through dealing with the many perceived minor injustices that arise from institutional living — would be useful when we were called upon to address matters of universally recognized significance. His point is well taken. The other reality of which we try to remind doubters is that they have the capability of leaving an institution upon the completion of their workshift, but when one's life is circumscribed by the walls and the rules of the institution, then what may have been a trifling matter in a different context can suddenly assume large dimensions. The quality of food served, the thickness of a mattress, the availability of a shower curtain, and a hundred other "trifling" matters become major issues to the person who must cope with these as the daily realities of his or her existence.

Some directors express puzzlement that inmates complain to our office instead of to the management of the local institution. This is a legitimate concern, because complaint issues should be resolved at a local level whenever possible. We encourage residents as much as possible to utilize a centre's internal grievance system or communicate their concerns to the Division of Inspection and Standards. It may be that inmates will complain to us because of the profile and visibility of our office, or because they regard us as being outside the "system". Sometimes a previous experience — his own or that of a fellow resident — makes a complainant reluctant to voice his concern within a centre.

The majority of staff will respond objectively and in a professional manner to resident concerns. However, we have heard claims of resident grievances or special requests being "lost"; claims of subtle and not so subtle threats to transfer an inmate

who complains; claims of flaunted authority arbitrarily imposed on those who have little power to defend themselves. We have observed rampant bureaucracy overcome common sense — for instance, when one centre creates a petty annoyance by refusing to permit a transferee to bring with him a tube of shampoo from a different centre.

Some officers are more professional than others; and some are more willing to assist inmates than are others. An officer's primary duty is to ensure the safety and security of the institution and the people in it, but the importance of providing assistance to residents in small matters should not be underestimated. It is unfortunate that a few staff appear to find that aspect of their work beneath their dignity. We regard this as a short-sighted attitude which ignores the obvious benefits of keeping inmates' frustrations at a low level. We too become frustrated when we have to become involved in resolving what should have taken a few minutes of effort at most, had staff been willing to assist.

Nevertheless, we are seeing a greater degree of professionalism in the system overall. While we could comment positively on what we see happening in several centres, perhaps we could hold up one centre as exemplifying this professionalism. We find consistently in our dealings with Vancouver Island Regional Correctional Centre a spirit of concern and co-operation from staff at all levels. Our phone calls are returned promptly, commitments are kept, and staff do what they say they will do.

Inmate committees

In our last annual report we discussed the establishment of inmate committees and the fact that not all centres employed this method of addressing collective inmate concerns. In November 1991, the assistant deputy minister advised us that this problem was being rectified. He informed us that while not all centres had initiated formal inmate committees, all centres had established a process by which inmates, as a group, could address collective inmate issues. To ensure that this practice would be consistent throughout the province, a standard would be added to the branch's Service Delivery Standards Manual addressing this concern.

The assistant deputy minister concluded his message by noting, "I am confident that this approach will provide an open forum for discussion between inmate groups and centre administrators and that the end result will be a co-operative and productive attitude in our correctional centres." We commend the branch for this positive step.

Psychological services

One feature of life in adult correctional camps which may become an increasing focus of concern is the relative lack of ready access to psychological counselling for inmates. Both staff and residents have commented on the need for increased service in this area. At the present time in some camps, inmates may wait more than a month to see the psychologist and then must repeatedly re-apply to obtain follow-up visits. A few years ago this issue would not have been viewed as one of pressing concern; however, as inmate populations change and more residents who have need for psychological counselling appear in minimum security settings, the branch will be challenged in the allocation of its resources.

Some positive steps have been taken in secure remand centres, where a new approach has been implemented to deal with the mentally disordered offender. Community co-ordination of services with psychologists and psychiatrists should assist staff during the period of a person's incarceration by ensuring continuity of service between the institution and the community. These steps are commendable, as they bring together the resources of Corrections, Health and Social Services in dealing with a disturbed or disordered person.

Overcrowding

The last third of 1991 saw the number of complaints related to the overcrowding of correctional centres rise to a December high of 14 percent of complaints from institu-

tions. The replacement of the Lower Mainland Regional Correctional Centre (Oakalla) with two new centres, the Fraser Regional Correctional Centre and the Surrey Pretrial Services Centre, was long overdue. Unfortunately, the problems with overcrowding in the last quarter of the year were exacerbated by the fact that the two new centres did not replace the bed capacity of the old centre.

On a provincial basis the average resourced capacity of all adult centres dropped by 115 beds from 1988 to 1991 and emergency capacity dropped 235 beds over the same period. The closing of the LMRCC for men removed a facility that could take more than 667 inmates on an emergency basis. It was replaced with two facilities that together could take only 404. At the close of the year, as pressures mounted, the centres of the lower mainland sent inmates to Vancouver Island and to the interior, where overcrowding was already a problem. Kamloops considered sending inmates to Prince George, and the pressure continued to increase.

Overcrowding affects the ability of correctional centres to supply normal services whenever they exceed the capacity for which they were designed. Medical assessments and services are under pressure to see the number of persons who want an appointment with the doctor or dentist. The ability of the centre to move a difficult inmate to another cell in another unit is also impaired. Using the recreational areas attached to the units to accommodate inmates means that these areas are not free for use for the inmates' normal activities. Such areas were not set up for sleeping quarters, and security is difficult. For example, when men are housed in an activity room or on the gymnasium floor, they require greater security supervision. The lack of toilet facilities means that an officer must be available to supervise persons leaving the area to use a washroom.

At the Prince George Regional Correctional Centre — the last of the old-style secure centres in the province — periodic overcrowding has resulted in double-bunking. Placing two people to a cell creates tension and dissatisfaction. At this institution there is no plumbing in the cells. When double bunking becomes necessary, one inmate must share the floorspace with the "honey bucket".

A number of investigations of complaints about overcrowding were discontinued because further investigation would not be of benefit to the complainant. For example, a director must make difficult choices in sending someone from Kamloops to Prince George or from the lower mainland to Victoria. These transfers separate inmates from their families and visitors and create discontent among inmates. Other inmates who request to transfer closer to their families may at times be denied a move because the receiving centre is already overcrowded and unable to accept more.

Inmates who are moved to accommodate others coming in are often moved on short notice and do not have time to put their personal possessions, especially hobby work, in order. Some goods cannot be taken on the transfer, and leaving them behind means they may go astray. Mail must be returned to the sender or rerouted.

Although we sympathized with inmates who were on remand and were moved prior to their court dates, we could not substantiate their complaints that they should not have been moved, even though moving them made it more difficult for their lawyers to see them. We were able to resolve a complaint from several inmates that when they were moved to a more distant location, all calls to their lawyers were charged at long-distance rates. The institution agreed to permit access to an office telephone, without charge, for these persons.

When a selection had to be made to move some remand inmates to another centre, we found that the officers had set out criteria by which they would make the difficult decisions. In that case we supported the criteria and found the complaint not substantiated. Consideration not to transfer had been given to persons who had immediate

court dates, had medical procedures scheduled or whose court appearances were to be held in the court adjacent to the centre.

Upon release from custody, an inmate must be returned to the place of sentencing, at the cost of the releasing centre; thus the need to transfer inmates to distant locations also results in increased cost to the Corrections Branch.

Overcrowding increases tension among inmates when those who are usually separated from other general population inmates are placed together on the same unit. If half of the unit must be locked in their cells while the others are out, then half of the unit is annoyed at the other half most of the time.

Although a multitude of factors may explain why there is overcrowding of the prisons, administrators are hard pressed to find solutions which are fair to all. The number of intermittent offenders who appear on the weekends to serve their sentences appears to be growing. Prisons have no control over the number of inmates who are sent to them from the courts, nor do they control the scheduling of transportation between centres. In Prince George, this limitation restricts the director's ability to return an inmate to the previous centre even when there is room to do so. The director must wait for the Sheriff's Service schedule and priority to move persons between centres. Much of the pressure, however, arises as the Corrections Branch, along with other government services, attempts to cut down on expenses while faced with a greater number of persons who require more expensive services.

Continuity after transfers

Overcrowding often results in inmate transfers, creating a concern about prison life that our office soon may be scrutinizing more closely: the continuity of a resident's status or condition as he or she moves from one centre to another.

We receive numerous complaints on this subject. Some are from individuals who are scheduled for a medical procedure or placed on a particular prescription and who then transfer to a different centre where their medical regimen undergoes a bewildering transformation, with altogether different treatments than occurred before. The individual finds the disruption inexplicable and frustrating. We also hear from young offenders who achieve a particular level or status in one youth centre as a result of their performance, and immediately upon transfer to a different setting are relegated to the bottom of the heap. Other inmates may be engaged in positive, rehabilitative programs in one institution, only to find that such vital programs exist in name only in the centres to which they are moved.

Consistency of treatment or approach has generally proven to be beneficial in institutional living. Knowing that important treatments and programs will continue can help ease the discomfort of a move to an unfamiliar location. Easing that discomfort benefits more than the individual; clearly it makes for a calmer, more easily run institution.

Posting of complaint summaries

We repeat the invitation issued in last year's annual report for centre directors to post on staff bulletin boards the copies of monthly summaries they receive concerning complaints (with identifying information blocked out) to the Ombudsman against the centre. Some directors do this regularly, while others apparently feel no need to do so. We encourage this practice, as line staff who have been involved in the processing of a complaint often have no way of knowing for certain what became of an issue in which they may have a personal stake. Posting these summaries also gives line staff a better understanding of the variety of issues dealt with by this office and a clearer perception of our role as impartial investigators rather than as advocates for complainants.

* * *

So nice to hear from you...

A resident of a Calgary correctional centre contacted our office to complain about the

difficulty he was having in getting Corrections Branch officials to locate his personal effects, abandoned in a minimum security centre from which he had escaped in B.C.

The records department at the centre and staff there obliged us by tracing the missing goods to storage at a regional correctional centre. They then undertook to make arrangements for the goods to be delivered to the complainant in Calgary.

Ironically, until the complainant had contacted officials at the centre, they had no idea that the escaped inmate was back in custody. Most congenially, they agreed to return the personal effects to the inmate — with an added bonus. B.C. Corrections officials would send a notice to Alberta Corrections officials that the person was to be held upon completion of his Alberta sentence and returned to B.C. to fulfil his sentence obligations here.

Out of sight, out of mind

At the time of his arrest and transport to the Lower Mainland Regional Correctional Centre, a man was wearing a black leather jacket which was then stored with his personal effects at the centre. On being transferred to a forest camp, the inmate had a chance to inspect his possessions. He was not pleased to find that his leather jacket had been mysteriously transformed into a black vinyl-covered jacket. His personal effects sheet from the original Centre listed only a "black jacket", and as far as the Corrections Branch was concerned, that was precisely what the inmate had. At the inmate's suggestion, we interviewed the RCMP officer who had arrested him, and showed the officer the jacket that the Corrections Branch had claimed belonged to the inmate. The officer was certain that this was not the jacket the inmate had been wearing at the time of his arrest; that jacket had definitely been a leather jacket. With this information, we proposed to the Corrections Branch that they undertake to negotiate a settlement with the complainant. Some hard bargaining followed, and after the complainant agreed that his original jacket had shown some wear, he accepted $250 as compensation.

This was not the end of the story. We believed the matter to be concluded in the last week of May, but in the second week of September the complainant contacted us again to say that he had waited throughout the summer for the cheque to arrive. Finally, he had contacted corrections officials, only to be advised that the "paperwork" on his claim had been lost when the Lower Mainland Regional Correctional Centre closed down and the operation moved to Surrey Pretrial Services Centre (SPSC). No one had taken the trouble to advise him of this mishap, and he was now told he would have to report to SPSC and complete a new release form.

A week later he contacted the centre to inquire what was happening, only to be advised that the paperwork had not yet been sent to the branch's account section in Victoria. He was assured, however, that the claim would be immediately processed and he would likely have his cheque in about ten days. Two weeks later, he again contacted SPSC and this time was told that they were "going to process the paperwork now". The claim had not yet been forwarded to Victoria. At this point, we discussed the issue further with Corrections officials. The staff in the central accounts section were cooperative and expedited the processing of the cheque so that it was finally issued before much more time had gone by.

As another similar complaint had been made about the same facility, we raised the matter with the district director in charge of the centre. He told us that he had recently learned that an administrative staff member at the centre had been found hiding documents in drawers. As the centre was already acting to rectify the problem, we concluded that processing delays were likely to be eliminated from then on. We will watch this situation carefully.

The missing letter

An inmate was in the midst of the complex process of applying to transfer her official Indian status from a band in one

province to a band in another. She told us that the Department of Indian Affairs had sent her a letter about her application and that her father had handed this in at the correctional centre. He had also brought her a few items of clothing and toiletries. These she had received, but her inquiries to staff had failed to locate the letter.

At our request, a diligent search was made, to no avail. The acting director of operations agreed to help the inmate contact Indian Affairs by allowing her to make any necessary long distance calls at the centre's expense. As the lost item had no monetary value, the offer of practical assistance seemed to us to be a fair resolution.

Smoking in segregation

We received numerous complaints soon after management at one of the pretrial services centres decided to prohibit smoking in its segregation area.

The director of operations at the centre believed that segregated inmates posed a serious risk of arson. He felt the threat would be reduced by eliminating the presence of matches or lighters on the unit. He also felt that the move was supported by a provincial government policy which banned the smoking of tobacco products in government workplaces. The deputy minister granted exemptions from the policy to correctional centres, but added that local directors would decide which areas within each correctional centre would be subject to the exemption.

The Correctional Centre Rules and Regulations dictate that inmates confined to a segregation cell shall retain customary access to tobacco products unless this would pose a special danger. We could not reconcile the apparent conflict between this requirement and the centre's decision to prohibit all smoking in its segregation area, so we contacted the Inspection and Standards Division of the Corrections Branch for its view on the matter. This body shared our position and discussed the issue with the director of the centre. The director agreed to revise the centre's policy to bring it into compliance with the regulations. Inmates are now permitted to smoke in the segregation cells. The smoking issue continues to challenge the entire correctional system.

On the trail of the eagle

During an inmate's travels from one centre to another, an anti-theft ignition device, attached by a chain to a gold eagle with a diamond eye, disappeared from the inmate's personal effects. He valued these items at $450.

An attempt was made to track the missing items through the various centres at which their owner had been incarcerated. Few of the officials who had to deal with them seemed to know exactly what these items were. At the youth centre where the inmate was first incarcerated, they were listed correctly as "One key with an eagle pendant. One key with ignition three point". The sheriff services which transported the inmate from Vancouver Island to the mainland listed the items as "One lock and key. One key with gold colour eagle pendant". Three institutions later they were described simply as a "door lock and two keys". The inmate recalled a conversation at that centre with an officer who was baffled as to what these items were.

The inmate moved on to two more centres, but his mystery items failed to move with him. Following his complaint to us, we established the trail of the goods, determined where they had likely disappeared, and wrote to the relevant district director in support of the inmate's claim. The district director referred the issue to the Corrections Branch's Division of Inspection and Standards, which concluded that, as the investigation had been completed, all that remained was the issue of compensation. The district director then arranged for full compensation to cover the lost items. Reimbursement was to be sent to the inmate at the centre where he had been incarcerated following his return to the correctional system.

Sweet smell of success

The Correctional Centre Rules and Regulations, which govern the operation of all provincial correctional centres, state than "an inmate shall be provided with or given access to those toilet articles necessary for his health and cleanliness".

At Fraser Regional Correctional Centre, newly admitted prisoners are given basic toiletries. Thereafter, they are expected to purchase their own from their earnings. The centre encourages its inmates to be productive in a variety of work settings. As a disincentive to voluntary idleness, inmates who are considered fit for work but who refuse to work, have quit a job or have been fired receive no pay. Thus, after a while such inmates have no funds left with which to purchase toilet items, making it difficult to meet the standard the jail imposes on its inmates to be clean and well groomed.

We believed the jail was failing to meet the standard imposed on it by the Corrections Branch to provide or give access to basic items necessary for hygiene, and felt it was an appropriate concern to refer to the branch's Division of Inspection and Standards. The division quickly obtained compliance with the standard, and non-working inmates without funds were provided with basic toiletries.

Security vs. spirituality

A native Indian in custody at a federal institution returned to provincial custody when he obtained a new trial on appeal. While at the federal institution, he had become deeply involved in native spirituality and was trusted by other native inmates to carry religious objects used in ceremonial acts. He had been visited by elders and participated in smudge ceremonies in his cell.

Federal custody officers have been trained to recognize the importance of sacred bundles. These bundles are not to be touched by anyone other than the person to whom they belong. This practice may lead to difficulties when staff want to examine a sacred bundle to ensure that it does not contain contraband. Provincial staff in Vancouver have less experience with native spirituality practices but have shown the ability to accommodate the beliefs of those who are incarcerated.

The complainant contacted our office because he anticipated problems when he entered the remand centre. He feared that staff might try to remove his sacred bundle from him or desecrate it by handling it or the objects inside. We contacted the district director, who set up contact between his records staff and the federal preventive security officer. The admission was handled well and proceeded without difficulty.

A question of taste

A number of persons in custody complained that they had been denied the opportunity to look at mail and other material brought to the prison by their visitors. The prisoners asked why they could read some "men's magazines" in one prison but not in another. One institution permitted inmates to purchase men's magazines at the canteen, while others would not allow inmates to have such magazines in their cells.

On examining the Corrections Branch policy and regulations, we found nothing to support the position taken at the centre that all nude pictures were to be denied to inmates. The regulations permitted inmates to receive books or periodicals sent directly from the publisher. However, we agreed that it was reasonable to restrict inmates from posting or displaying pictures in their cells which might offend an officer or another inmate.

On concluding a review of the policy and practices at the centre, the director emphasized that it was the role of the officer in charge to exercise discretion in permitting inmates to possess such materials, with the proviso that the materials not be displayed. In such instances, the officer in charge was to document his decision in the inmate's progress log. We considered the issue to have been resolved by the director's review.

Husband and wife, but hard to prove

Open visits, where visitors and inmates sit and talk in an open area, are permitted only for immediate family members in one regional correctional centre. An inmate complained that he had been denied a family visit with his common-law wife. A check of the information recorded when the man was first admitted listed no next-of-kin, although it was not clear whether he had actually been asked for that information. When he had first started sharing accommodation with his girlfriend, the apartment and utility bills had been in her name, so he was unable to supply the usual proof of a common-law relationship. However, the visitor was able to produce other evidence that the relationship had existed for some time.

At our request, the deputy director met with the visitor and reviewed the proof she offered. He approved family visits, and the matter was resolved.

Spoils of victory go missing

To help make the Easter long weekend pass more quickly, competitions such as table tennis and pool tournaments were staged for the residents of a secure centre. Small prizes were awarded for victories, and one inmate won four packs of cigarettes and six chocolate bars. Before he received his award, he was transferred to a forest camp. He was assured that his prizes would quickly follow him.

When neither smokes nor chocolate bars arrived, the inmate made inquiries. He was told the goods had been sent from the secure centre. He was also told by staff at the forest camp that the goods had never arrived at the camp. Since neither centre considered it had any unfulfilled obligation, it appeared that the matter would rest there.

When the inmate contacted us to complain about the missing items, he acknowledged that this was not an earth-shaking issue. But when one's circumstances prevent his having many commodities, even the most trifling items become precious. Staff at the two centres told us they had fulfilled their responsibilities, but no one seemed able to explain the disappearance. Since both centres were located in one region, we contacted the regional director to discuss the problem. Two days later, the goods were delivered to the inmate.

Bag lunches under scrutiny

Inmates being held in custody on remand may need to appear in court a number of times before and during a trial. Often, the time spent away from the correctional centre means they miss a regular meal. When this happens they are served a bag lunch or dinner in the admissions and discharge area.

We received a complaint from an inmate that the bag lunches were small, starchy and unvaried from day to day and that they did not meet the standards suggested by the *Canada Food Guide*. At our request, the contents of the bag meals were reviewed. It appeared that although the food contractor was providing the bag lunches and dinners, the nature of those meals had not been described in the contract. The centre and the food contractor quickly negotiated a bag meal menu which provided more calories and variety and which met the *Canada Food Guide* standards.

Penalized inmate denied fair hearing

A forest camp resident who was employed at a kitchen job earned $6 a day — a respectable sum in provincial containment centres. He was surprised to learn at the end of one pay period that he had been docked $12. He asked why.

He was told that he had spent the $12 on canteen items, but he knew this to be untrue. On pursuing the matter further, he learned that he had been docked the amount because a supervising officer had observed him wearing his kitchen "whites" — his work uniform — in the "nuke" room, the hobby area where a particularly messy compound is applied to woodcraft products.

The resident told us he was upset because he had not been informed of any wrongdoing. Moreover, he said, he had never been

told not to wear his whites in the nuke room.

The lack of communication with the resident was traced to an officer who had been told by the supervisor to explain the situation to the resident and had instead passed the information to another officer to be relayed to the resident. The identity of the other officer could not be recalled.

The rule was that kitchen whites were to be worn only during working hours, and the infraction occurred after that time. Other kitchen workers said they understood that whites were not to be worn in an area such as the nuke room.

We could not find in the resident's record any reference to a charge ever having been laid against him, nor was there any information concerning the loss of pay. The supervisor explained this by stating that some infractions are so minor they do not merit a charge, but still require an institutional response. An offender could lose "good time" — time off from his sentence earned for good behaviour; but as this affected one's discharge date, often a fine was preferable. It was a matter of staff discretion.

When an inmate is charged with a correctional centre offence, he is supposed to be granted a hearing, be told what the charges are against him, and have a chance to state his case. If disciplined, he is informed of the disposition and advised of his appeal routes. These procedures are required by the principles of natural justice, and when an inmate is deprived of freedom or funds instead of being charged, the same principles should apply. This had not happened in the case under consideration. What was disturbing as well was that there appeared to be no authority in the Correctional Centre Rules and Regulations for dealing with infractions in this manner.

We discussed these points with the centre's director, who agreed to restore the resident's pay and to discontinue the practice of docking pay for misdemeanours unrelated to work activity. Residents could still be docked for such actions as refusal to work or wilful destruction of work-related property, but in future the fair procedures we described would be applied.

New life for an old coat

Consideration was being given to allowing a forest camp resident to attend Alcoholics Anonymous meetings outside the camp in the community. For such attendance, he would require "street clothes", so his mother brought in some blue jeans and a leather jacket. These were placed in the inmate's personal effects pending final approval for the program.

Before such approval could be given, the inmate was transferred to another forest camp. While in transit at an overnight stop at a regional correctional centre, the inmate inspected his clothing and discovered a number of severe tears in the lining of the jacket. He believed that this had been done purposely.

Once he arrived at his new camp, he complained to us about the condition of the jacket. The inmate's mother confirmed that the jacket lining had not been torn when she brought it in. It seemed to us that the most expeditious manner of dealing with the situation was not to try to assess responsibility, but simply to find someone willing to repair the lining. The director of the regional correctional centre agreed that since his centre had a tailor shop, the jacket could be sent there for the necessary repairs.

A footnote to this story arose when the tailor at the regional correctional centre received the jacket, inspected it, and concluded that the tears or separations in the lining were simply the result of the jacket's well-advanced age. Nevertheless, it was mended and returned to the owner.

Archaic language, unnecessary information

An inmate had been granted a temporary absence a week or two before his release date. He was to spend that time at a community resource near the correctional centre, and he had been given a travel warrant

which he would use to return to the place where he had been sentenced. The man contacted our office to complain that the staff member who had issued the warrant had placed a check mark on the form identifying the user as a prisoner. He felt it was unnecessary for the bus line staff to know he had been incarcerated, and he pointed out that he would in any case be a free man by the time he actually used the warrant.

We believed there was some merit to the complainant's argument, and we asked the branch to consider redesigning the warrant. We also suggested that an effort be made to update and simplify some archaic language on the warrant. The assistant deputy minister later advised us that a new form was being designed and would be issued very shortly.

Inmate seeks transcript of his own evidence

Following the death of an inmate at a pretrial services centre, the staff conducted an internal inquiry and the coroner held an inquest, as required by law. An inmate who had been in a nearby cell at the time of the death was asked to give evidence at the inquiry and at the inquest. When he appeared at the inquest, he asked for a transcript of the oral evidence he had given at the internal inquiry. The lawyer for the Corrections Branch objected, and the inmate was referred to our office.

After reading the transcript, we concluded that an objection based on security concerns was unfounded, especially as the document being sought was a transcript of the complainant's own words. The Corrections Branch was also concerned about setting a precedent, but a ruling in favour of the applicant would do nothing to bind the branch if a similar situation occurred in the future. The inquiry had turned all of its reports over to the coroner's office. We supported the request of the inmate for his oral testimony, and after reviewing the matter the assistant deputy minister agreed to provide the transcript.

Parole becomes a revolving door

A man serving a sentence in a provincial jail in Saskatchewan was released on parole and moved to B.C. Later the National Parole Board suspended his parole, resulting in his reincarceration, this time in a British Columbia provincial facility. The inmate's luck then took a turn for the better when the National Parole Board held a hearing at which it was decided to cancel the suspension and reinstate the man's parole.

Following the hearing, the jail received a form which said the suspension was cancelled, but the form was unsigned and no other documents were attached. This seemed woefully inadequate to staff of the correctional centre, who were used to the more elaborate documentation routine that occurs when provincial inmates are paroled or reinstated on parole. The staff consulted with the B.C. Board of Parole, whose staff agreed it would be wise to await more documentation before releasing the inmate.

The following day, the inmate contacted our office to say that as far as he knew, the centre was still awaiting additional documents and still refusing to release him. We contacted a National Parole Board official. She assured us that, although additional documentation could be expected in a day or two, it was perfectly acceptable and entirely legal for an applicant to be released immediately after a hearing. The official said she would immediately telephone the centre.

Her call must have been persuasive, as the man was released from custody within the hour.

One man's meat...

Over a period of years we received a number of complaints from prison inmates who claimed to have followed a vegetarian lifestyle before they were incarcerated. They said they were unable to obtain vegetarian food in jail, yet eating only the non-meat portions of meals provided them with less than adequate nutrition. Corrections Branch policy states that special diets may

be provided only for medical or religious reasons. This policy was followed by most correctional centres, although a few managed to provide non-meat alternative menus without incurring additional costs.

Our office recommended that the Corrections Branch consider providing a vegetarian alternative diet at all centres. The matter was referred to an internal advisory group, which endorsed the concept. The branch then embarked on developing new policy and drafting actual menus. Before the end of the year, the branch had developed a detailed menu plan with a three-week rotation and directed that it was to be available in all centres by April 1, 1992. The menu, while not strictly vegetarian, is described by the branch as devoid of red meat, low in cholesterol, sodium, fat, sugar and preservatives, and high in fibre and nutritional value.

Alberta bound, but no bucks

The complainant was transported by the sheriffs from a correctional centre for women to a Vancouver court. She believed she would be granted bail by the court and would be permitted to return to her home in Alberta pending trial. However, her request to be allowed to take her personal effects with her was refused by correctional centre staff.

At court she was indeed released on bail. She thus found herself a temporarily free woman without a penny in her pocket and with no means of getting back to the centre to collect her clothing, her personal effects, and any money being held for her in her trust account. She later told us that telephone calls to the centre had brought no help. As a result, she finally gave up, accepted bus fare from her lawyer and headed for Red Deer.

The woman contacted us after she had apparently been unable to find out if the institution had received her letter requesting that her effects and money be forwarded to her in Alberta. We discovered that there had been a mix-up at the centre, where each of two areas of the administration thought the other one was handling the request. The centre later advised our office that the woman's belongings and funds had been forwarded to her.

We were told that the sheriff's escorts, who are responsible for moving inmates back and forth to court and between correctional centres, make it a practice not to transport all of a person's belongings when taking him or her to court. Often it is not known whether a prisoner will be released by the court, and every time personal effects are collected and moved, the chance of loss or damage increases. It appeared that the practical way to ensure that a similar problem did not arise in the future was not to change the sheriff's practices but rather to make it possible for an inmate to return directly to the correctional centre to retrieve her effects. The centre instituted a new practice whereby a person released at court would be able to return by taxi to the centre, which is far from any bus route, with the cost being borne by the centre.

We considered the complainant's problem to be resolved, and we were satisfied that the centre had taken steps to ensure there would be no similar problems for other inmates in the future. We then heard again from the complainant. She told us that, although she had received her clothing and other items by bus courier express, the centre had inexplicably sent some jewellery, which the complainant valued at $15,000, via air cargo. The airline would not forward it to the woman, but instead insisted she collect if from the Edmonton airport. She said that she had no job and no car, and could not afford the $32 cost of a return bus ticket to Edmonton from Red Deer to retrieve her jewellery before the deadline set by the airline, after which the goods could be sold or destroyed. She complained that the correctional centre had refused to pay that cost for her.

The centre told us it had decided to send the jewellery by air freight because courier companies would not accept so valuable a package. The airline provided proper insurance. When asked why they had refused to pay the complainant's bus fare to and from Edmonton, staff of the centre said they felt

they had already gone the extra mile for this woman and simply would not go another inch. We agreed that a great deal of effort had already been expended. Nevertheless, we asked the director to consider putting the matter to rest by paying the amount requested by the complainant. She agreed to do so, and arrangements were made for the complainant to pick up a prepaid ticket at the Red Deer bus station.

The computer informant

There is no carefree existence in jail for a "rat". This is the label attached to any inmate believed to have given information about other inmates to jail staff or to have testified against another inmate in criminal court. Such inmates are usually designated as "protective custody" inmates and kept separately from the general population because of the likelihood of their being assaulted.

The complainant had served previous sentences and had always been a general population inmate. Then he was assaulted by others who told him it was because he had given evidence for the Crown against another inmate and that the information that he had done so had come from the jail's computer records. Staff confirmed for him that there was indeed a computer notation dated some months earlier at a remand centre that the complainant should be housed separately from a certain other inmate against whom he was testifying. The complainant vehemently denied ever appearing as a Crown witness, and was anxious to correct the record.

The supposed author of the computer notation denied to us that he had made the entry, but pointed out that someone else could well have used his computer terminal to do so, which would have automatically entered his name as the person inserting the information. This officer also pointed out that such computer entries should include the name of the senior officer authorizing the action. No such authorization had been included in this case.

The man against whom the complainant was supposedly testifying was before the court around the time the computer entry was made. We were able to verify that the complainant did not appear as a Crown witness in the trial. Because there was bad blood between the two men, the complainant did not wish us to obtain further confirmation from the other inmate.

At our request, the complainant was interviewed by a senior correctional officer. The note was expunged from the record, and the complainant was furnished with a letter confirming that the entry was in error, thus providing him with evidence in case he was confronted by inmates who might still doubt him.

This resolved the complaint, but we found it impossible to determine how the erroneous information came to appear on the computer record. Even more disturbing was the fact that there was no way of telling how other inmates might have learned of the entry.

Jumping to conclusions

The complainant admitted he had been convicted of assaulting his common-law wife; however, he said their relationship had since improved, and she had been a regular visitor when he had been at a pretrial centre. He contacted our office when he was told by staff of the correctional centre where he was then housed that he was not permitted to telephone his common-law wife, who had been hospitalized. He said her condition was not connected in any way with the assault.

The complainant said he had been threatened with "the hole" (segregation) if he made a call to the hospital. He had also been told the ban had been imposed because there was a restraining order barring him from contact with his common-law wife. He said his lawyer had confirmed that no such order was in existence. The man was later told that the woman's parents had asked that he not be permitted to call, but he said he had spoken to her father, who denied making any such request.

At our request, a senior staff member checked into the reasons for the decision,

and found that it had resulted from a series of misunderstandings. Busy hospital staff found it onerous to have to wheel the patient to the telephone when the complainant called. A staff member who realized that the man was calling from a correctional centre thought it would be appropriate to call the Vancouver City Police. An officer then contacted the correctional centre, and someone decided to prevent the complainant from calling his common-law wife.

The ban on telephoning the hospital was lifted, and the inmate agreed to make his calls only during visiting hours, so that a visitor might be available to take the patient to the telephone. We discussed with correctional centre staff the need to be sure of the facts before reaching conclusions. In all likelihood, had a correctional centre staff member asked a question or made a telephone call when first contacted by the police, a good deal of time and energy could have been saved.

Disciplinary review reconsidered

An inmate approached us concerning a review by the Division of Inspection and Standards of a disciplinary decision at a remand centre. We obtained a recording of the initial hearing conducted by an officer and the relevant papers. The complainant had been punished with a total of 30 days in segregation for three offences against the "good order" of the centre. The review upheld the decision of the institution.

After looking into it, we suggested that the division reconsider its initial findings, as we felt that some serious concerns had been overlooked. The division objected that having once reached a decision, they could not reopen the matter. However, a general review under the terms of the *Correction Act* was found to be possible with the concurrence of the minister or the commissioner (now called the assistant deputy minister).

This complaint established some important principles for our office with respect to the review of disciplinary hearings. First, we agreed that the inmate's request to the division would set off a review of the disciplinary hearing and a response to the inmate on broader grounds than just the points raised by the inmate. Inmates are not always able to articulate the grounds for a legitimate appeal. In the longer term, a broadly based review with feedback to the local institution might significantly improve the quality of the hearings and reduce the number of appeals in the future.

Second, we established that where a decision is flawed for some reason, the division should be able to reconsider its own decision. Neither the *Correction Act* nor the Correctional Centre Rules and Regulations state that the review is final or conclusive. An alternative review by the courts would be possible but is not practical for most inmates to consider.

A third component in this case involved the inmate's request to receive advice from legal counsel or to have his lawyer present. The disciplinary panel chairman should be prepared to answer this request and to consider whether in the case in front of him or her, a lawyer would be required. The courts have provided key considerations which should be made if this request arises at a disciplinary hearing.

A copy of the findings was placed on the inmate's file, as nothing could be done to restore the time already served in custody.

Coroner's Office

Criticism of coroners turns to support

A man said he had cause to believe that a forthcoming inquest into the death of his son was unlikely to address all the issues adequately. The reason for his skepticism was a previous inquest which he had observed and had judged unsatisfactory. The set of circumstances leading to the earlier death was almost identical to that surrounding his son's death.

We encouraged the complainant not to prejudge the inquest. Aware of the interest in the case both by the complainant and by the general public, the Coroner's Service

took steps to ensure that the father would have standing at the inquest and, thereby, an opportunity to ask questions. In the end, the complainant found himself deeply impressed by the thoroughness of the process, and his earlier fears were replaced with an expression of support for the inquest process.

Motor Vehicle Branch

The road test had a reason

The father of a youth with a muscular disorder complained about the fact that the Motor Vehicle Branch required his daughter to take a road test every couple of years in order to retain her driver's licence. He suggested that the test served no useful purpose, as the fatigue which was the primary symptom of his daughter's ailment would not be evident until after an extended period of activity. He also objected to the fact that his daughter had to pay $75 each time she had to take the road test.

In exercising his discretion whether or not to issue a driver's licence, it is the responsibility of the Superintendent of Motor Vehicles to take reasonable steps to ensure protection of the public using the roads. The guidelines suggesting procedures to be used in the assessment of known medical conditions suffered by applicants for driver's licences are contained in the "Guide for Physicians in Determining Fitness to Drive a Motor Vehicle", published by the British Columbia Medical Association in consultation with medical consultants to the Motor Vehicle Branch and the Canadian Medical Association. Commenting on disorders affecting co-ordination and muscle strength and control, the Guide states that "if the disorder is not progressive, one medical examination and road test will usually suffice. If, however, the condition is one which usually tends to grow worse, the patient must be followed closely and driving discontinued when the disability reaches a point that makes driving unsafe."

The road test is not the sole indicator used to assess a person's fitness to drive; however, in conjunction with medical examinations, it can provide valuable information to enable the Superintendent of Motor Vehicles to make an informed decision about whether or not a driver should retain a driver's licence. In some cases, rather than remove the licence of an individual who has a medical condition that affects his or her capability to drive, the Superintendent may attach to the licence certain restrictions designed to minimize the likelihood of a medical disorder interfering with a person's ability to drive safely. The guidelines attempt to strike a reasonable balance between the protection of public safety and the recognition that the right to drive is regarded as crucial by most individuals in modern society.

We advised the complainant that if he wished to pursue the matter further, he or his daughter should consult with her physician, who would be in a position to decide whether or not it was appropriate, depending on the current diagnosis of the daughter's condition, to write to the medical consultant to the Superintendent of Motor Vehicles expressing an opinion about the need for a road test.

With regard to the fee for the road test, we advised the complainant that we consider it appropriate for the Motor Vehicle Branch to charge for such tests, even though the cost may create a hardship for persons with medical conditions. It would be discriminatory to distinguish between drivers who are required to take periodic road tests for a variety of reasons other than the existence of known medical conditions.

Public purse pays for keyboard error

Motor licence offices and government agent offices in most parts of B.C. have a computer link with the Victoria-based personal property registry at the Ministry of Finance and Corporate Relations. This provides to the public a convenient means of obtaining information about liens on a various types of property, including vehicles.

A woman who was considering the purchase of a late model car went to a motor licence office and requested a search of all outstanding liens against the automobile. Unfortunately, a command error prompted the computer to generate a "partial screen print" which omitted a bank lien amounting to $1,856.75.

Believing that she had received complete information from the registry, the woman purchased the car, only to have the bank demand payment of the outstanding amount. She complained to us that someone had made a mistake, and it wasn't her. This was confirmed by registry staff after comparing the information contained on the computer with the printout that the woman had received. As the cause of the problem was evidently an error by a government employee, the Province compensated the bank for the amount of the lien, enabling the woman to obtain clear title to the car. The right of the Province to take action against the original debtor left hope that the public purse would be reimbursed for its loss.

Murphy's Law times two

Murphy's Law says that if things can go wrong they will go wrong. A resident of the interior ran afoul of Murphy's Law twice in quick succession, and only managed to avoid the consequences by a call to our office.

In 1989 the man had gone to the Motor Vehicle Branch and turned in the licence plates on a Greyhound bus which he used as a recreational vehicle but no longer intended to drive. From then on, branch records showed the licence plate number, which began with the letters RNW, as having been terminated.

In 1991, the man was surprised to receive a letter from the City of Vancouver demanding payment of a $20 fine for a parking offence alleged to have occurred two months earlier. This was followed by a summons to appear in court. And that was not all — a couple of weeks later he received a demand for payment of $37.50 from a private parking firm. In both cases the offending vehicle was described as a Nissan Pathfinder bearing the licence plate that the man had turned in two years earlier.

Unable to convince the authorities issuing the demands for payment that he was not the guilty party, the man sought our assistance. The Motor Vehicle Branch confirmed that the licence number was no longer in use but was unable to shed further light on the matter, so we called both the City of Vancouver and the private parking firm.

When the original tickets that had been issued were checked at our request, the puzzle was solved. Both tickets showed a licence number beginning with the letters PNW, and in both cases the P had somehow been changed to an R in the paperwork required to initiate collection proceedings. The result was that the dead licence number was revived — twice — and the unfortunate victim of this most unlikely pair of coincidences was the complainant.

As a result of our investigation, both tickets were cancelled and the summons was withdrawn.

No way to duck traffic fines

A man applied for reinstatement of his driver's licence after the expiration of a period of driving prohibition. The Motor Vehicle Branch refused to re-issue the licence because of unpaid fines.

When the man had declared bankruptcy, ICBC had waived moneys owed for penalty point premiums. He had expected that his unpaid traffic fines would also be forgiven.

The *Motor Vehicle Act* provides the Superintendent of Motor Vehicles with the discretion to withhold issuance of a driver's licence until traffic fines are paid. The *Bankruptcy Act* specifies that an order of discharge does not release the bankrupt person from any fine or penalty imposed by a court.

In light of this provision, we concluded that the Superintendent had properly exercised his discretion. The result was that the man was unable to regain his driver's licence until the fines were paid.

Police Services Branch

Gumshoe gives job the boot

An employee of a detective agency was licensed by the ministry as a "private investigator under supervision". He resigned his position when he was instructed to carry out assignments which he considered unethical and illegal. He also reported his former employer to the ministry.

As required by the legislation, he surrendered his licence when he left his employment. In his letter to the ministry, he wrote that he hoped his report against his former employer "will not cause me any problems when I re-apply for another licence." He and his lawyer then met with the deputy registrar of the ministry's Security Programs Division to discuss his complaint against his former employer and to inquire about having his licence reinstated.

Shortly before that meeting took place, the man filed a complaint with us that the ministry had not returned his licence. Without it, he could not obtain employment with another firm. He contended that the ministry's refusal was related to his report against his former employer.

The deputy registrar confirmed that he had discussed with the complainant and his lawyer the requirements made of applicants for a private investigator's licence. He had also provided them with a copy of the relevant Regulations. However, the complainant had neither requested that his licence be returned nor applied for a new licence. The complainant confirmed this fact, and said he would now take those steps. We outlined to him the appeal procedure under the *Private Investigators and Security Agencies Act*, should his application be denied. We then closed our file.

Service Contracts

Administrative restructuring ends diversion contract

The complainant wrote to us on behalf of a society which had in the past offered services relating to the diversion program established by the Corrections Branch. "Diversion" is a process whereby individuals who voluntarily acknowledge responsibility for certain specified acts which are prohibited under the Criminal Code are "diverted" into an alternative justice scheme where the emphasis is on restitution, service to the community and demonstrated capacity to function as a law-abiding member of the community.

The society tendered a submission to the ministry after its contract ran out and the ministry issued a new call for submissions. Ultimately, a committee established by the ministry decided that the contract for diversion services should go to a different society, which was well known in the community for its services to convicted offenders. The complainant's society advanced a number of reasons why the selection of this competing society was unfair and, among other things, argued that an administrative merger of community service programs dealing with convicted offenders with a diversion program dealing with "legally innocent" individuals would result in an unfair and inappropriate stigmatization of the latter group. It should be noted that the notion of legal innocence is derived from the fact that participants in the diversion program, while acknowledging responsibility for breaches of the Criminal Code, do not carry the burden of a criminal record if their participation in the diversion program is successfully completed.

The complainant also argued that the ministry's quest for administrative efficiency and cost reduction was philosophically flawed, that the complainant had been dealt with unfairly in the submission evaluation process, that incidental start-up costs were not properly taken into account, and that the ministry's decision injured both the

interests of another society with which the complainant shared operating expenses and the interests of employees of the complainant's society, who were offered employment by the winning bidder on a basis which involved reductions in available hours of work, pay scales and authority.

Upon investigation, we were unable to substantiate the complainant's concerns. There was inadequate evidence to suggest that stigmatization would take place when participants in the diversion program faced the prospect of mingling with individuals convicted of criminal offences. Indeed, such a combined program had operated in smaller communities of Vancouver Island with considerable success.

In addition, we found that the committee charged with reviewing the submissions had followed detailed criteria relevant to the program objectives, and had made its decision in good faith. While the effects of this decision were unfortunate for the complainant's society, its employees, and a society with which the complainant shared operating expenses, we could not fault the ministry for selecting an administrative option which provided for the attainment of program goals and objectives while at the same time reducing total costs.

Ministry of Transportation and Highways

Resolved	56
Not resolved	0
Abandoned, withdrawn, investigation not authorized	20
Not substantiated	23
Declined, discontinued	25
Inquiries	6
Total number of cases closed	130
Number of cases open December 31, 1991	41

The duty of the Ministry of Transportation and Highways to construct, improve and maintain the province's highway system provides a high public profile and much potential for criticism, both by highway users and by landowners affected by highway operations. The majority of complaints are resolved by the ministry's 28 district offices, and many of the remainder find their way to our office. Typical complaints focus on the contract tendering process, disruption and damages resulting from construction and maintenance activity, road access issues, and subdivision approvals.

The ministry encourages the resolution of complaints at the local level by requiring road maintenance contractors to designate representatives in each area to handle public complaints and by employing area managers with similar responsibilities within the ministry.

Late in 1991, the new premier transferred responsibility for B.C. Ferries Corporation from the Ministry of Transportation and Highways to the Ministry of Finance and Corporate Relations. The case summaries involving the Ferry Corporation are included with those regarding other Crown corporations at the end of this report.

Mall business disrupted by highway project

A group of retailers leased space in a commercial mall which was affected by the project of four-laning the Vancouver Island highway. They complained to our office and to the media of lack of communication by the ministry regarding the project. The retailers recognized the necessity, and the future benefits, of the work being done. However, they felt that it was unfair that commercial tenants in the mall were not receiving proper notice of disruptions to vehicle access, water supply and other services.

We discovered that the ministry's project supervisor had been communicating with the mall manager, who had not been passing the information on to his tenants. We therefore arranged a direct liaison between the project supervisor and a representative of the retail tenants.

Apparently this intervention was successful. That section of the highway project was completed without another appearance of the retailers on the six o'clock news.

Free fill buries idyllic setting

The owner of a one-acre parcel of land with a stream running through it took great pains to care for his property. Over the years, he improved the property and the mobile home which was on it. He thinned out the trees and brush and groomed the lawn and stream banks. It was, by all accounts, an idyllic, parklike setting.

After all this was done, the owner found it necessary to move to Nova Scotia. He rented the property to a relative who, unknown to the owner, acquired the notion to start a heavy equipment repair business on the site.

The relative also had a friend who had been awarded his first road building contract with the Ministry of Transportation

and Highways. The project required the removal of a significant portion of a hillside. For several days, the contractor hauled the waste material to the dump site designated in the contract. However, the complainant's property was closer and more convenient to the project. The tenant felt that the property could use some fill to level it. Apparently the tenant held himself out as being the owner of the property when the matter was discussed with the ministry representative who approved changing the dump site.

The tenant felled the trees, and they were covered with 700 truckloads of heavy, wet clay. One neighbour described the transformation thus: "There used to be big, beautiful cedars, three feet at the butt, beautifully manicured lawns, and a creek lined with flowers. They took SuperNatural B.C. and turned it into a war zone, a sea of mud."

The fill did level the property — with several feet of quivering clay. It also clogged up the creek, covered the septic field, and knocked the mobile home off its foundation. Not surprisingly, the tenant vacated soon afterward. The next tenant was also forced to vacate when raw sewage from the malfunctioning septic field began seeping onto the neighbour's property.

Without income from the property, the owner was unable to pay his property taxes. The threats of the tax collector were added to those of the health inspector, the flood control officer, and angry neighbours. Collectively, these were the complainant's first notice of what had happened to his property.

When he complained to the ministry, he was directed to the contractor and the contractor's insurer. The contractor was bankrupt, the insurer denied liability, and the relative had become somewhat estranged from the owner and was not inclined to compensate the owner himself.

By the time the owner contacted this office, the ministry, while denying liability, had agreed to rehabilitate the stream bed and had made an offer of compensation for the damage. However, the ministry maintained that the greater legal liability rested with the contractor and his insurer.

We suggested that the ministry was in a better position to assert that claim than was the complainant. We also suggested that the property had been so substantially damaged that the most reasonable course of action would be for the ministry to acquire the property from the complainant.

Rather than becoming directly involved in the negotiations, we discussed with both parties the factors we would consider in reviewing the fairness of any offer made by the ministry. We asked the parties to deal directly with each other and to advise us of the outcome.

After factoring in the complainant's loss of rental income and the damage caused by the tenants, the ministry offered to purchase the property for a sum which a third party had advised us earlier was the approximate value of the property before the fill was placed on it. The complainant accepted the offer.

Although he was satisfied with the settlement, the complainant was angry that we would suggest that the damage caused by his tenants should be considered a mitigating factor in assessing the appropriate compensation. He felt that the ministry's error in not contacting the property owner listed on title, before the fill was dumped, overrode all other considerations. We were unable to agree with him on this point.

Timing of crack destroys foundation of argument

A resident of the interior of the province was upset by road repairs being done near her home in March 1989. The vibrations from the mechanical compactor used by the contractor "shook the house like an earthquake", she said. Later she noticed cracks in her walls, which she attributed to the road work. In April 1990 she wrote a letter of complaint to the ministry's district office. When she hadn't heard from the ministry by October of that year, she contacted us.

The matter was quickly resolved. The ministry's insurance and claims office

explained that the delay was partly due to the need to have a site plan prepared by their survey crew before the ministry could conclude its investigation. They assured us that the complainant would be contacted shortly regarding her claim.

We informed the complainant of the ministry's response and invited her to contact us again if she had further concerns. She did so a few weeks later. The ministry had taken the position that liability for any damages rested with the contractor. The contractor had referred her back to the ministry.

After a review of the terms of the contract under which the road repairs were done, the ministry acknowledged that it was responsible for damage caused by the contractor. However, the ministry maintained that it was unlikely that the compactor had caused the damage, because the work took place at least 70 metres from the complainant's home.

The complainant responded that the B.C. Assessment Authority had inspected her home, both before and after the work in question, and that the court of revision had approved a reduction in her property assessment on the basis of those inspections. Records provided by the Assessment Authority confirmed that their inspector had made a written recommendation, supporting a reduction in the assessment, and noting that the "foundation was showing very bad cracks that were getting wider."

Unfortunately for the complainant, the inspection report was completed in November 1988 — several months before the road repair work was done. A subsequent inspection by the Assessment Authority had merely confirmed the earlier evidence of damage. As the evidence supported the ministry's position that the damage to the complainant's property was unrelated to the work performed by their contractor, we were unable to substantiate the complaint.

The mathematics of rain

The complainant was a retired mathematics teacher who had moved with his wife from the city and bought a home in a semi-rural area, in what is referred to as "unorganized territory" — within a regional district, but outside of any municipality.

The home was below a road embankment, which was covered in brush. It was the middle of a dry summer, and the vendor apparently neglected to draw the complainant's attention to a 12-inch diameter culvert under the road above the property.

The culvert did come to his attention during the first heavy rainfall. Water gushed from the embankment "like Niagara Falls". It was then that the complainant discovered the purpose of the long, shallow depression in his front lawn. It directed water from the culvert into an open sump in the corner of the yard. The sump, in turn, was drained by a six-inch plastic pipe and an eight-inch drain tile. This system provided the perimeter drainage for the home's septic field.

The complainant approached the ministry, which responded by clearing and landscaping the road embankment, and by placing an elbow on the end of the culvert to direct the water flow downward rather than spouting in an arc from the end of the culvert. This was satisfactory until November 1990, a month of record rainfalls, with more than triple the normal rainfall for that time of the year. There were two 25-year flood level rainfalls and two 50- to 140-year flood level rainfalls. The rains were so extreme that water overtopped the road a short distance from the property, forcing a temporary closure of the road.

The rains also taxed the capacity of the culvert. As any mathematician, retired or otherwise, will confirm, a six-inch diameter pipe and an eight-inch diameter drain tile are insufficient to carry the flow from a 12-inch diameter culvert. The complainant's yard flooded and his septic field backed up. When several calls to the ministry failed to provide relief, the he called our office.

We confirmed that the culvert had been in place long before the subdivision went in, and that it had been placed at the low point of the road, so as to preserve the natural

drainage course. An intermittent stream had once flowed where the complainant's septic field was constructed.

The culvert was where it should be. We could not substantiate the complaint against the ministry.

The regional district would accept no responsibility for surface water drainage. Since our office has no jurisdiction over municipalities and regional districts, we did not press the issue with them.

We did discover that a regional district inspector had ordered and approved the perimeter drainage for the septic field. We suggested that the complainant might wish to take up the adequacy of the perimeter drainage system with the regional district.

During our initial investigation, we had interviewed a neighbour who confirmed that the rainwater had crested the road above her property, and had flowed down her driveway and into her basement. She said she would be willing to consider granting an easement should the ministry wish to install a closed culvert from the road to the stream below her property.

When we discussed this option with the ministry, they agreed that correcting the overtopping of the road was desirable, but, since it occurred so rarely, a new culvert could not be a spending priority for the ministry. However, the district highways manager undertook to discuss the possibility of a cost-shared arrangement with the regional district.

With some encouragement from the complainant, the ministry decided to install the new culvert, even without regional district participation. They graded the roadside ditch so that the new culvert would take most of the flow under normal runoff conditions.

The problem having been resolved, the complainant sold his property and moved to an area where he could enjoy full municipal services, including both sanitary and storm sewer connections.

An unwelcome bill for damages

The complainant was driving through a mountain pass. It was late in the day, and raining heavily. She lost control of her vehicle on a corner and slid across the road and into a concrete barrier.

Another motorist happened on the scene seconds later, and stopped to give assistance. Together, they inspected the damage. Her car had a crumpled fender, but it was driveable. No one was hurt, and there was no other apparent damage. The complainant proceeded home.

The following day, the complainant filed an accident report with the local RCMP, and arranged, through her private insurer, to have her vehicle repaired. The repairs completed, she put the incident behind her.

Nine months later, she received notice from the Ministry of Transportation and Highways that she would be expected to pay for the damage she had caused to government property. She later received a bill for the costs of realigning a concrete barrier, in the amount of $340.

The complainant was certain that her vehicle had not struck the abutment with sufficient force to move the concrete barrier. She contacted her witness, who agreed that there had been no indication that the barrier had been damaged or disturbed.

In addition, the witness, who commuted regularly on that stretch of road, recalled that she had seen a highway crew working on another concrete barrier close by. This had occurred only two or three days after the accident, which corresponded with the work report completed by the highway crew.

She presented this information to the ministry. The ministry, like the concrete barrier, was unmoved. When the ministry threatened legal action to recover the payment, the complainant contacted this office.

The ministry's position was that the correct positioning of a barricade is critical to the safety of the driving public. The slightest misalignment results in a greater risk of physical damage and personal injury.

We did not question this position. This office supports the priority the ministry gives to public safety.

We did question whether it was fair to put the complainant to the cost of defending the ministry's legal action, if the ministry did not have clear evidence that the barrier which they realigned was the one struck by the complainant's vehicle.

The ministry agreed to review the matter, and later advised that it would take no further action to recover the damages.

An interest in the principle

In the late 1960s, the Ministry of Transportation and Highways expropriated land from the complainant's father to widen a highway. Some years later, the highway was resurveyed. The survey disclosed that the ministry had used more of the property than it had taken and paid for. The parties agreed that $98 was reasonable compensation, given the value of land at the time of the taking. What they could not agree on was the method of calculating the more than 20 years' interest on that amount.

The parties had discussed three different methods of calculating the interest. The complainant wanted the ministry to do all three calculations so that he could choose the most favourable.

The interest payable was to be based on treasury bill rates over the period. With the interest rate adjusted quarterly, a detailed calculation would have involved close to 100 different interest rates. The interest calculations would have taken a significant amount of time.

The ministry's regional property agent was not prepared to commit the time necessary to do the calculations without some assurance that the complainant would accept the result. The complainant would not give any assurances without seeing the calculations.

It appeared to us that the principle involved in this case had eclipsed the principal involved. To break the stalemate, we suggested that the ministry use the highest treasury bill rate for each year, and compound the interest annually rather than quarterly. The highest interest rate in each year would apply for the full year. On the other hand, annual compounding would reduce the number of calculations.

Both parties agreed to this method of calculation. Shortly thereafter, the complainant's father received a settlement from the ministry of just over $1,000.

Access 101: Introductory Principles

The legal access for many private lots in the province is by way of a road allowance dedicated for public use by the developer who subdivided the lots. Often, in the case of older subdivisions, no road has been constructed on the dedicated road right-of-way. This brings many inquiries and complaints to this office.

A young couple bought a lot on Vancouver Island on which they planned to build a home. The property was an open field. A road had been cleared to the property, but it was overgrown and ungravelled.

The young couple was aware that the road was on a public right-of-way, and assumed that, since the ministry "owned" the road, the ministry would upgrade it for residential use.

The district highways office advised them that, if they wanted the road upgraded, they would have to do it at their own expense. They would also require a permit from the ministry before commencing the work.

The young couple contacted us to inquire whether the information they had received from the district office conformed to normal ministry policy. We were able to confirm the ministry's policy with respect to "unopened road allowances".

The ministry does construct new roads on dedicated road allowances. Each district office ranks potential road opening projects on a priority list. Projects which will alleviate traffic problems or which will benefit the greatest number of parties are given a higher priority.

The district office completes as many of these projects as its annual budget will per-

mit. Uncompleted projects are carried over to the next year's budget, but low priority projects may not come to the top of the list for many years.

The complainants could request that their road be placed on the priority list, but, since the road would serve only their property, it would have a low priority. They also had two other alternatives, both of which required a construction permit from the ministry.

The property owners could construct the road to ministry "highway" standards — that is, to the same standard that the ministry would apply if it constructed the road. In that case, the ministry would assume responsibility for maintaining the road in the same manner as all public roads.

The property owners could also choose to construct the road to a lesser "driveway" standard. They would be responsible for maintaining the road themselves, but the road would remain on the district's priority list for possible future improvement by the ministry.

In some cases, the ministry will assist property owners who are constructing an access road, by providing necessary culverts or surface gravel. This assistance would generally apply only where the road is being constructed to highway standard.

When we advised the complainants of the ministry's policy regarding expenditures on unopened road allowances, they understood and accepted the policy, and decided to apply for a permit to upgrade the road themselves.

Access 401: How Life Gets Complicated

The complainant purchased a plot of raw land which he wanted to develop as a farm. He was told that the access to the property was by a road across an Indian reserve. When the complainant brought in a contractor to improve the road, the native band objected that the road was on its property and that he would require its permission to use or improve the road.

The ministry's district office confirmed that the legal access to the parcel was not across the reserve, but from the opposite direction altogether. Although the ministry's records indicated that a public right-of-way existed, the complainant would require a construction permit from the ministry to build a driveway access on it.

When the complainant filled out the application form for the permit, he was advised that there was another complication. The road right-of-way was immediately adjacent to the Indian reserve, and there was some question whether it was inside or outside the reserve boundaries. There would be some delay, while the ministry researched the issue, before issuing a construction permit.

The complainant was not pleased. The vendor had assured him that there was no problem with access to the property, yet he was encountering a great deal of problem with it. His frustration led him to contact this office with a complaint that the ministry was unduly delaying issuing the construction permit.

From our previous experience with the ministry, we were aware that the status of roads on or near Indian reservations has been a sensitive issue for a number of years. In some cases the issue has led to road blockades and extensive litigation.

We advised the complainant that the ministry had good reason for wanting to confirm the status of the right-of-way before issuing a construction permit. The ministry does not want to inadvertently authorize a trespass on private property, particularly in a sensitive area.

The ministry had also acted expeditiously to initiate the necessary research. When the complainant contacted this office, less than one month after making his application, the district office had already referred the matter to the regional office, and the regional office had written both to the ministry's Properties Branch in Victoria and to the Office of the Surveyor General, requesting assistance with the necessary research.

When we provided this information to the complainant, he responded: "I guess I've been a little hasty, then." He said that he would be pursuing the vendor while the ministry researched the status of the right-of-way.

Snow removal a hot topic

Each winter this office receives complaints regarding highway snow removal. Highway maintenance is performed by private companies contracted to the ministry. The ministry monitors the performance of the maintenance company to ensure that ministry standards are adhered to.

Often, complainants have not discussed their concerns with the maintenance company or with the ministry before contacting this office. Both the maintenance contractors and the ministry have local representatives who deal with complaints from the public.

The practice of this office is to provide the complainant with the names and phone numbers of the maintenance company's area superintendent and the ministry's area manager. We advise the complainant to contact us again if the problem is not resolved locally.

It is rare for a complainant to come back to us with an unresolved complaint.

An ice gesture

In addition to ensuring that public roads and highways are properly ploughed and sanded, the ministry will also plough the private driveways of seniors and disabled people who live in remote areas where it is difficult to arrange private snow removal services at a reasonable cost. This service is provided at no cost to the property owner.

One district highways manager decided to reduce costs by revising the criteria for providing the service. The complainant and his neighbour, both seniors who had received the service in the past, no longer qualified.

Before contacting the ministry, our investigator phoned the complainant to discuss the matter, and was advised that the district manager had reconsidered. The ministry would continue to provide the service to him and to his neighbour. We surmised that the district manager had applied a "grandfather" provision to exempt them from the new policy.

No sand for icy roads

A driver travelling with his family through the interior on a winter's day was upset to find the driving conditions rapidly deteriorating between one area and the next. It was obvious to him that the reason had less to do with the weather than with the maintenance of the roads. As a frequent traveller, he was aware that winter road conditions were consistently good in the first area and consistently bad in the second. He put the blame squarely on the company that had acquired the maintenance contract sometime after road maintenance responsibilities were privatized in the late 1980s.

As the day wore on, the road conditions became so poor that the driver pulled over, as he was concerned about the safety of his family. His wife called the company with the maintenance contract to express her concern. The response was not what she had hoped for. The person she spoke to seemed to be indifferent to her concern and to leave the implication that the cost of sanding the road wasn't worth the effort.

Returning home later that night, the driver came across the scene of an accident that was so severe that a child had been killed. Furious, the man called our office to complain that the negligence of the maintenance contractor had very likely contributed to the accident.

Our office has limited authority to investigate private companies, but ministries have a responsibility to ensure that companies performing privatized services are fulfilling the terms of their contracts. We in turn can investigate the manner in which this monitoring takes place. We called the Highways ministry district manager, who confirmed that the company in question had been a troublesome contractor. The ministry conducted an inquiry, and less than three weeks later the ministry announced that

the company's contract had been cancelled as a result of its unsatisfactory performance.

One termination leads to another

A book-keeper with a road maintenance company lost her job when the Ministry of Transportation of Highways cancelled the company's road maintenance contract. She complained to us that the province's action in terminating the contract was unfair. In the time she had been with the company, she said, she had been impressed with the dedication and hard work of the principals and staff of the company. That being the case, she failed to understand why the company should lose a contract which she assumed was being properly fulfilled.

It was apparent that the woman's primary concern was her own termination, which was motivated by reasons beyond her employer's control. She therefore looked to the province as the wrongdoer. Although we had the authority to conduct an investigation, we concluded that the complainant had an insufficient personal interest in what would be the direct substance of the investigation, namely the provincial contract termination. Were such an investigation to be conducted, with the result that the termination was considered unfair, the principal beneficiary of this finding would be the corporation and its shareholders. We considered it appropriate that such a request for investigative assistance should come from the principals of the corporation. Consequently, we declined to investigate the complaint, and instead suggested to the woman that she discuss with her former employer the appropriateness of requesting an investigation into the contract termination. She considered this a reasonable response to her concern.

One legal maxim deserves another

Construction of a major urban highway interchange necessitated the expropriation of a property rented out to businesses. One of those businesses was a long-established veterinarian's clinic. The ministry's property agent told the veterinarian that the ministry would compensate him for the cost of duplicating his premises elsewhere, including the cost of his time, advertising, interior design, and construction. The latter would be expensive, as it would cover facilities such as a crematorium, a lead-lined x-ray room, and so on. There was no written agreement, but the details appeared to have been clearly understood on both sides.

The veterinarian followed these arrangements precisely. He found a new building, took into account the local building standards and landscaping requirements, engaged an interior designer, and obtained bids for construction. The successful contractor was selected and the work was done.

When the bills started to come in, the veterinarian asked the ministry about the method of payment. He was somewhat taken aback to receive the response that a mistake had been made and the ministry could pay only about a third of the agreed upon costs. The ministry was most apologetic, but explained that the law was such that it had no choice in the matter. Faced with a faltering cash flow and what he regarded as a broken promise, the owner sought our assistance.

The difficulty faced by the ministry, it turned out, was that while its original commitment had been in keeping with existing policy, ministry officials had come across a previous ruling the findings of which were somewhat relevant to the arrangements with the veterinarian. The import of the ruling was that, in the case of expropriation of renters, the ministry was justified in prorating the amount of the compensation offered to take into account the length of the existing rental agreement. With this new information at hand, the ministry had concluded that its arrangement with the veterinarian exceeded its legal duty, and that the proper thing to do was decline to pay any more than would have been required under the law as it was understood.

We approached the problem from a different perspective. A promise had been made,

relied upon, and broken. It was clear to us that an unfairness had occurred, whether or not the ministry had acted in good faith. The ministry had cited a principle of common law in reneging on the agreement with the veterinarian. We responded with another principle of common law which in recent years has received much attention. This was the doctrine of legitimate expectation, into which the veterinarian's grievance appeared to fall four-square. With this principle in hand, the veterinarian would have been well armed had he elected to sue the ministry rather than seek our assistance. We suggested to the ministry that it review its position. In the end result, the ministry acknowledged that the principle of legitimate expectation was relevant to the present circumstance and tripled its original compensation offer. The complainant, while immensely frustrated by his initial treatment by the ministry, was happy with the resolution.

No help for a flagging operation

The operator of a company which provided flagpersons for highway construction pursuant to contracts with the Ministry of Transportation and Highways came to this office with two concerns. The first was that the ministry had unfairly failed to contact the complainant's firm by telephone, as was the practice and understanding, to arrange for flagpersons as needed, but rather had contacted one of the complainant's competitors for this service, even though the contract between the complainant and the ministry was still in force. The complainant contacted us after the ministry was unable to produce telephone records to substantiate its assertion that messages had been left on the complainant's answering machine. Secondly, the complainant was concerned that a five-month extension clause in his contract was not utilized to the benefit of his company, even though the ministry had acknowledged that the complainant had provided good service and, in the complainant's view, there was no reason to prevent renewal.

Upon investigation, we found that computerized telephone records to confirm calls between numbers were unavailable in this case, as the provincial Prov-net system, by which the government of British Columbia purchases telephone time in bulk from BC Tel, did not provide for the itemized recording of individual calls within the province. The ministry was, however, able to produce some notes which suggested that the calls had been made to the complainant's answering machine, as alleged by the ministry. We were unable to substantiate this element of the complaint because of a lack of evidence to support the complaint, as well as some evidence to contradict it.

On the question of contract renewal, we were informed by the ministry that the five-month extension provision is in essence an emergency clause provided in the contract for the benefit of the province, to be used in circumstances where additional services are required but public tender is impractical. We were advised that the five-month extension clause has seen virtually no use in reference to renewals under normal circumstances. Instead, the contract is as a matter of practice put out to public tender, and the previous provider of the service is forced to compete once again for the government contract. This is a process which this office was unable to criticize. For that reason, we were unable to substantiate the complainant's second concern.

The flooded road to home

A woman told us that flooding of a creek which ran through her property led to repeated washouts of the private road and bridge giving access to her home. She explained that the problem appeared to have originated when the Ministry of Transportation and Highways constructed a new highway and altered the stream course.

After initial contact with the ministry, we held the file in abeyance while waiting for further information. When no such information was forthcoming, we contacted the complainant, who gave us happy news. She had obtained aerial photos of her property

taken at different times, showing the road before and after construction. These photographs largely substantiated her claims of the physical relationship between the road construction and subsequent flooding. With some assistance from her MLA, she had been able to secure from the ministry a promise for the construction on her property of an access road that would not be prone to flooding or washout.

This was not only an excellent prospect for the complainant, but might even save the province money in the long run, as the Provincial Emergency Program, by the complainant's estimate, had already spent over $40,000 repairing damage done to her property by the flooding creek. With the news of this accommodation by the ministry, we considered the complainant's concerns to be resolved.

Other Authorities

B.C. Assessment Authority

Resolved	4
Not resolved	0
Abandoned, withdrawn, investigation not authorized	2
Not substantiated	2
Declined, discontinued	9
Inquiries	8
Total number of cases closed	25
Number of cases open December 31, 1991	6

In plain English, a house

A man owned two adjacent lots, A and B. He lived in a small house on Lot A, and Lot B was vacant. When he looked at his tax notice, it showed improvements to the value of $10,000 on Lot A and $2,000 in improvements on Lot B. Puzzled, he called us. He said he hadn't made any additions or renovations to his house in the last year, so what was this $10,000 in "improvements"? And as lot B was vacant, what was the $2,000 supposed to represent?

The man was also upset because he had only received a $6 home owner grant. He wanted to know why.

The matter of the $10,000 improvements on Lot A was cleared up when we explained to the man that "improvements" referred to all the man-made structures erected on the land at the time of the appraisal and had nothing to do with recent additions. Like any other branch of law, the law of land uses terms that are not in everyday use by the average person. The man's misunderstanding of the word illustrated one of the main reasons for the current trend to transform bureaucratic and legal language to plain English.

When we called the office of the area assessor to discuss the man's concern about Lot B, staff at the office discovered that a mistake had been made. The $2,000 improvement referred to a structure that once existed but had been torn down. The area assessor immediately prepared a supplemental assessment notice, which would result in a reduction of the man's property taxes.

Our familiarity with the *Home Owner Grant Act* enabled us to provide a quick answer to the man's question about his $6 home owner grant. Schedule 1 to the Act provides that, on any property on which the taxes are less than $780, the home owner grant is calculated by deducting $350 from the current year's taxes. This represents the minimum amount of taxes that must be paid even if a property owner is eligible for the grant. In this case, the total taxes on Lot A were $356, so the owner was left with only a $6 grant after paying the $350.

We told the man that if the amount of the home owner grant was a significant concern to him, he might consider taking steps to combine the two lots under one registered title. His home owner grant would then be based on the total taxes of what was currently Lots A and B, rather than on Lot A alone. The drawback of such a scheme was that, if the man were later to decide to subdivide again, he might be faced with zoning regulations and expenses that would cost him more in the long run than the money he gained by increasing his home owner grant.

British Columbia Buildings Corporation

Resolved	0
Not resolved	0
Abandoned, withdrawn, investigation not authorized	0
Not substantiated	5
Declined, discontinued	4
Inquiries	0
Total number of cases closed	9

The British Columbia Buildings Corporation administers a massive portfolio of buildings and office space for provincial ministries and crown corporations. In many instances the provincial Crown is the owner of the building; where it is not, BCBC administers the lease between the Crown and the private property owner on behalf of the ministry or Crown agency which occupies the space.

The responsibility of BCBC, like that of the Purchasing Commission, is to secure the best value for the tax dollars being spent. In some cases, this mandate will mean that BCBC will adopt the role of a property developer and arrange for the construction of suitable facilities on land secured by a purchase or lease. In dealing with the private marketplace of developers, architects, and construction firms, BCBC will on occasion attempt to tap this source of expertise by issuing what is known as a Request for Proposals (RFP). Although it is a competitive process, it does not carry with it the predictability that might be expected from a process such as the sealed tender, where precise compliance with specifications is mandatory, and — in general — the lowest bid wins. The administrative discretion and flexibility built into the RFP process can work to the advantage of the public contracting authority, but has the potential to create a great deal of suspicion and ill will among the "proposers". One such case follows.

Right proposal, wrong side of tracks

It was not surprising that a developer should have thought of complaining to us when told by a representative of B.C. Buildings Corporation that the proposal call in which the developer was participating was being held in abeyance because the process had "gone political". The developer alleged that the proposal call competition administered by BCBC for the construction of facilities to be leased as office space to the Ministry of Social Services and Housing (SSH) had been improperly interfered with by representatives of both the municipal and provincial governments.

The developer had spent considerable time and money to produce a proposal which BCBC had told him was the best one received — in fact, BCBC had gone so far as to say that it "would be going with" the complainant's proposal. However, the end result was that all proposals were rejected and a new proposal call was issued for a specific development site chosen by the ministry.

We found the complainant's concerns to be legitimate and understandable. Anyone in the complainant's position would be suspicious of a process which developed as did the proposal call in this instance. A "proposal call" differs from the traditional tendering process in that government does not seek a fixed package or unit price for a precisely defined product or service; rather, the basic requirements are outlined by government, and proposals are requested which will use the basic requirements as a starting point. The intent is to tap into the imagination and expertise of the private sector to obtain ideas for the provision of goods or services which will go beyond basic specifications to provide greatest value for money. In its proposal call document, BCBC expressly reserved the right to negotiate with the offeror of a successful proposal or to reject all proposals entirely.

The site proposed by the complainant for construction of the SSH facilities was on

land owned by the developer near a lake front. Unfortunately, the site could only be reached by crossing train tracks which were frequently blocked by the passage of freight trains carrying coal to the west coast. This led to opposition from citizens concerned about the cost to taxpayers of constructing an underpass. Other opposition came from people concerned about the potential impact of the proposed development on wildlife and aquatic habitat. The municipal council expressed its displeasure with the provincial government by stating publicly its frustration at not having been adequately consulted by the government before the proposal call was initiated.

BCBC's response to this measure of political notoriety was to put the process on hold while consultations were made and matters sorted out in general. The complainant interpreted this to mean that political interference was taking place behind the scenes and that a legitimate process was being undermined in a manner which harmed the complainant directly.

Our investigation revealed that, although inquiries had been made by elected officials, there was no evidence of inappropriate political interference. When all of the tenders were ultimately rejected by BCBC, the complainant assumed that the political process had triumphed over fair administration. Interviews with SSH personnel, combined with a review of extensive electronic inter-office memos, revealed that the final decision to reject the complainant's proposal, which had up to that time been regarded as the preferred option, was the result of a decision by the regional director of SSH. He concluded that, although SSH staff might be delighted to be working in spacious new accommodations near the waterfront, the primary obligation of SSH was to its clients, many of whom would be forced to cross a busy railway track with their children to gain access to the offices. The director concluded that this was unacceptable and posed an unreasonable risk of harm.

Thus the final rejection of the complainant's proposal had been the result of a decision made in good faith and within the mandate of BCBC's client ministry. BCBC's premature announcement to the complainant that BCBC would be "going with" the complainant's proposal was unfortunate but, given the powers reserved to BCBC explicitly by the terms of the proposal call, the statement was not such as to create a binding legal commitment. The complainant was understandably disappointed at the outcome of the process, but we could not describe the process as unfair.

The signs, they are a-changin'

Shortly after the 1991 provincial election and change in government, we received a complaint from a Victoria businessman who owned a building which was leased by the B.C. Buildings Corporation and occupied by a government ministry.

When the man saw BCBC workers replacing the signs on the building to reflect the change in the ministry's name, he took objection. He began to imagine the combined cost of changing signs on ministry buildings throughout the province and purchasing new letterhead, envelopes and other stationery, as well as the administrative and moving costs resulting from the shifting of various programs and responsibilities from one ministry to another.

As a business person, he felt that this activity was an unconscionable waste of money and resources which merited investigation by this office. We had to disagree with him on the latter point.

The reorganization and renaming of ministries is the prerogative of the Premier of the province. He or she decides how government ministries should be structured to provide the most effective services to the public, and who will serve as minister. These decisions, although they may be seen as being administrative in a business sense, are matters of government policy rather than matters of administration which would come within the purview of this office. The Premier is answerable to the electorate for such decisions. We therefore declined to investigate the landlord/taxpayer's complaint.

B.C. Council of Human Rights

Resolved	0
Not resolved	0
Abandoned, withdrawn, investigation not authorized	0
Not substantiated	5
Declined, discontinued	5
Inquiries	5
Total number of cases closed	15
Number of cases open December 31, 1991	6

Of the few complaints against the Human Rights Council, some had to do with the concern, also expressed in previous years, that the time taken by the council to process a complaint and reach a decision is too long. Since our office also had concerns in this area, we had discussions with council staff to determine what measures the council were taking to speed up their system.

Generally speaking, the council has made a concerted effort over the past few years to shorten the complaint processing time. However, some causes of the delays are beyond the council's control. As in all government departments, the number of staff available is limited by budgetary restrictions. Having no investigative staff of its own, the council relies on Industrial Relations Officers (IROs) from the Employment Standards Branch of the Ministry of Labour to conduct investigations of complaints to the council. As a result, the council has to compete with the other investigative priorities of the Employment Standards Branch and the Industrial Relations Council, which also relies on the services of the IROs. The effect of this impediment to the efficient operation of the council's affairs becomes more apparent when the number of complaints received by the council increases, as has been the case in recent years.

These inherent problems have been offset to some extent by attempts by the council to expedite its procedures. For example, the council has introduced "fast-tracking" of some complaints for resolution and mediation. These, we understand, are relatively straightforward complaints, where either a quick initial investigation or some early mediation action can help provide a resolution.

Other complaints against the council relate to its jurisdiction. These are commonly received from people who have been told by the council that the council has no jurisdiction, under the provisions of the *Human Rights Act*, to investigate their complaints.

Harassment charge provokes dismissal

The local office manager for a national company, dismissed after a co-worker raised allegations of harassment, complained to us that the firing had taken place after the British Columbia Council of Human Rights became involved. She suggested that the council had improperly interfered in the matter.

We found her information to be incorrect. At the time of the dismissal, following a complaint to the employer, the council had not even been made aware of the allegation. The council's usual practice is to notify all parties to an allegation as soon as possible after a complaint has been received. As it was evident that the complainant's grievance was against the employer rather than the council, we suggested she contact a lawyer to discuss the issue.

Let's hear the evidence first

A woman who operated a gas station franchise reported that an investigator acting on behalf of the Human Rights Council had approached her about a former job applicant. The investigator had told her that the person had filed a discrimination complaint after she had not been given a job that the employer had advertised. The employer complained to our office because she felt that the investigator had tried to talk her into settling the matter even though she

believed the complaint to be without merit. She also thought the matter was taking too long to conclude.

When we checked with the council, we were told the parties had only recently been sent copies of the investigator's report and the council was awaiting their replies. Senior staff at the council assured our office they would follow up on the complainant's remarks about the investigator's comments. The council agreed with our suggestion that if the employer's interpretation of the investigator's remarks was correct, the investigator should perhaps not have been so insistent on a resolution when faced with the complainant's opinion on the merits of the complaint.

B.C. Council of Licensed Practical Nurses

History of mental illness plagues applicant

A woman from the interior complained that she had been denied licensure as a practical nurse because of her history of mental illness. She said that she had demonstrated her current stability by completing a clerk-typist training course, but that the Council of Licensed Practical Nurses would not accept this as proof of her stability.

Like other professional colleges, the council registers persons as qualified to practise. For licensed practical nurses, "practise" means a variety of nursing and care tasks: the nurse may work as part of a team in a hospital or facility or may deliver care alone to people in the community. Whatever the situation, the patient or client relies on the practical nurse. Because of this vulnerability of clients, the council expects proof that any element of risk or uncertainty regarding the nurse's skills or personal suitability has been overcome.

In this woman's case, the council wanted a letter from a physician currently treating the woman, stating her stability and fitness to practise nursing. Since the woman had been out of practice for more than five years, she also had to meet the general rule of passing a refresher course. We told the woman that we believed these requirements were reasonable.

B.C. Ferry Corporation

Resolved	4
Not resolved	0
Abandoned, withdrawn, investigation not authorized	2
Not substantiated	7
Declined, discontinued	7
Inquiries	0
Total number of cases closed	20
Number of cases open December 31, 1991	3

Ocean views and ferry queues

In 1964 two people bought a waterfront property on one of the Gulf Islands as a long-term investment. The plan was for one of them to live in the house and act as custodian of the property.

This scheme met a substantial obstacle a few months later, when the government announced it was building a ferry terminal nearby, as a result of which the house would have to be torn down and a swath through the middle of the property would be expropriated to allow construction of a curved access road. A settlement regarding compensation was reached.

Some years later, as the owners were becoming elderly, they considered selling the remainder of their property, which was split in two by the road. On the inside of the "elbow" of the curved road was a piece of land made unattractive to potential buyers by the fact that its main feature was a fine view of ferry line-ups. The outside piece looked saleable enough, apart from the fact that, to all appearances, it too might eventually be required for expansion of the ferry terminal. This fact made it very unlikely that the owners could sell the piece for normal market value.

The most logical solution, in the owners' minds, was for the Ferry Corporation to purchase the land, thus resolving the problem it had created in the first place. The Ferry Corporation announced that it had no interest in making an offer, as expansion of other terminals was a higher priority. The landowners thought this position unreasonable, and sought our opinion and assistance.

The Ferry Corporation's policy is that land should be acquired when "current need is proven" or when an asking price is so attractive that the public interest is well served by a purchase. The owners were asking the normal market value. Furthermore, as compensation had been agreed upon for the land previously taken, the Ferry Corporation did not consider that it owed any remaining obligation to the owners of the land. We agreed on that point.

The corporation acknowledged that it was unfortunate that two elderly people were apparently facing economic hardship, in part as a result of the impact of the corporation's actions on their long-term investment; however, corporation officials believed it would be irresponsible to purchase a property out of compassion alone.

We concluded that no fault could be found with the position of the Ferry Corporation, as the original compensation had been intended to take account of all negative effects of the expropriation. However, there later arose a new development — the question of access to the two properties. With the development of the terminal and the roads leading to it, accessing the properties at the locations set at the time of the expropriation in 1966 would now be troublesome to the ferry traffic flow. The issue is again under review for possible acquisition now by the Ferry Corporation.

Restaurant troubles blamed on ferry schedule

The owner of a restaurant on Saltspring Island complained about the scheduling of the ferry which arrived at Long Harbour from Vancouver just after the noon hour. In previous years the ferry had arrived earlier, providing his business with considerable

lunchtime traffic. The scheduling change, he argued, had played havoc with his business. The change had resulted from a decision by the Ferry Corporation to withdraw one vessel from the island runs and divert it to the new Nanaimo-Tsawwassen route.

The complaint could not be supported. Factors influencing any schedule include passenger service, availability of suitable vessels, and economic considerations. Each island has its own Transportation Committee, which appoints representatives to the Southern Gulf Islands Scheduling Committee. This committee meets each spring with B.C. Ferry Corporation officials. By a negotiated consensus, the committee arrives at a schedule.

Because of the number of scheduled stops, a certain amount of give-and-take is necessary, and no schedule can be made to work to everyone's best advantage. With the current schedule, the earliest departure from Long Harbour on Saltspring was 6 a.m. The route goes to Pender Island and on to Mayne Island, where the ferry makes a rendezvous with the Swartz Bay to Saturna Island to Mayne Island ferry. The ferry then proceeds to Galiano Island and over to Tsawwassen on the mainland. The return route is structured in reverse.

Records of passenger loads, servicing, staff employment controls and other factors are taken into account. On occasion, scheduling adjustments are made, but only after the apparent needs of all the islands are carefully reviewed. While the complainant's economic situation was extremely unfortunate, it was evident that the rescheduling was carefully designed to accommodate the best interest of the public at large, after reviewing all relevant factors.

Veer at your own risk

Every year we receive one or two complaints from vehicle owners who have had an encounter with the inside of a ferry and lost.

This year, one such complaint came from a man who had driven onto a ferry with a bicycle mounted to the roof of his car. The attendant directed the driver into lane 3, designated for overheight vehicles. The car followed a line of vehicles down lane 3, and then was redirected by another attendant into lane 2, which was also an overheight lane.

While driving off the ferry at the end of the trip, the motorist veered slightly out of the lane and towards the centre of the ferry. The bicycle struck a raised platform deck, and the bicycle, roof mount and car were all damaged. The driver complained to us after the Ferry Corporation denied liability for the damage. The corporation said that if there was any fault in the matter, it was the driver's.

The driver based his claim on the fact he had been directed to change lanes. Our conclusion was different. After talking to the driver and to officials at the Ferry Corporation, we came to the finding that the accident had occurred because the complainant had misjudged his car's position and had swerved slightly out of line. Certainly lane 2 had been closer to the raised deck and called for increased driver caution, but the fact remained that it was a safe lane for overheight vehicles if care was exercised. In short, driver error had caused the damage, and the Ferry Corporation had been justified in denying responsibility.

B.C. Housing Management Commission

Resolved	28
Not resolved	0
Abandoned, withdrawn, investigation not authorized	10
Not substantiated	12
Declined, discontinued	4
Inquiries	7
Total number of cases closed	61
Number of cases open December 31, 1991	10

Bad neighbour? Says who?

It's difficult when you don't get along with your neighbours, but most of us at least know the source of irritation and can try to resolve a conflict. For tenants of the B.C. Housing Management Commission, that is not always true. We received several calls in 1991 from tenants concerned that they could not face their accuser.

An investigation by the commission, with the identification of the complainant kept hidden, can lead tenants to suspect that someone is maliciously stirring up a problem for no good cause, while remaining anonymous. From the commission's perspective, there is a concern that people might not "complain" if they feared that retribution might occur if the source of the information is revealed and the matter escalates to a disputed eviction.

When considering the elements of fair process, our office must try to balance the interests of the parties while bearing in mind the basic fact that people need to know enough to allow them to accept or refute an action or decision. We also have to consider that the commission is dealing with two different types of information: landlord-tenant allegations about noise or damage; and information suggesting misrepresentation of household income, resulting in an exaggerated rent subsidy. We talked to commission staff about this, and suggested that it was not always necessary to protect the identity of a source. For example, the commission could tell a tenant, "If you want us to act on this, you must understand that we will use your name," except in those situations where a genuine fear of reprisal exists.

The commission agreed to consider the matter. In the meantime, the names of people with concerns about noise and other similar matters may be given out, while those reporting mistakes or misrepresentation of income will not be identified.

Nowhere to live

A woman living with her children in temporary housing called us in desperation. She had to move at the end of the month, the Housing Management Commission had not offered her housing, and she could not find anywhere to live where the rent was affordable.

Unfortunately, such calls to our office are common. The commission's supply cannot equal the demand, and though everyone waiting needs low-cost housing, the reality is that only the greatest need can be met. There is also the problem of the difference between what is available and the applicants' needs and preferences. Parents may be reluctant to move their children to different school districts; seniors may want to stay close to their doctor or to the area they know well; people with jobs may feel that a saving in rent does not balance an extra hour spent commuting. These are legitimate preferences, but they do affect the commission's ability to help.

The complainant had turned down an offer of low-cost housing earlier in the year because she did not like the area. She had some regrets about that choice, not being aware at the time how hard it would be later to find another place to live. The result was unfortunate, but in view of the severe constraints faced by the commission, we were unable to find any fault in its current inability to provide the complainant with housing.

B.C. Hydro and Power Authority

Resolved	15
Not resolved	0
Abandoned, withdrawn, investigation not authorized	15
Not substantiated	17
Declined, discontinued	125
Inquiries	5
Total number of cases closed	177
Number of cases open December 31, 1991	27

Power without SIN

In the 1988 Ombudsman's Annual Report, we expressed our concern about B.C. Hydro clients being required to provide their social insurance numbers in order to obtain service. B.C. Hydro later changed its policy to ensure that a person's refusal to provide the identification number would not be a bar to service. B.C. Hydro also assured us that the SIN number was only collected for internal use and was not to be used in any external fashion as a link to other data banks.

Since 1989 we have had few complaints about this subject; however, in 1991, a person complained that when he had applied for a B.C. Hydro account he had been told by a customer service representative that unless he provided his social insurance number he would not be allowed to open an account. The complainant had objected strenuously, to no avail. He then called our office.

When we contacted the local B.C. Hydro office supervisor, we were told that the mistake had already been recognized and remedied. We were again assured that revealing a social insurance number is not required for hydro service.

Deduct for two

Prior to the construction of two houses, B.C. Hydro installed two ducts (pipes that hold electrical lines) from a service box from across the street to the property line. The builder was to be responsible for the supply and installation of the continuation of the ducts to each of the homes from the property line.

Unfortunately the builder got mixed up in the installation. Our complainant, who was the owner of the first of the homes to be finished, told us that when the adjacent homeowner wanted to have the electrical service connected to his house it had been found that his service duct had already been used to wire the complainant's house.

What this meant was that the complainant had to pay for the rewiring of the hydro lines to his own home. B.C. Hydro had told the complainant that after wiring has been completed, the builder signs a form to attest that the wiring installation has been done correctly, and sends the form to B.C. Hydro, which accepts a builder's word. Since it had been acting on the word of the builder, Hydro rightly claimed it was not responsible for the problem.

We advised the complainant that we were not able to substantiate his complaint. The mistake in the service connection had been made by the builder, not by Hydro. We therefore advised the complainant that he would have to seek a remedy with the builder and suggested that he consult a lawyer if it became necessary to take some form of legal action. The complainant said that what had really annoyed him about the whole situation was that the hydro problem was just one of many problems he had experienced with the builder.

Unpaid Hydro bill just one more trouble

The introduction of the position of Regional Reviewer in all of the B.C. Hydro regions has helped expedite the handling of complaints against this authority. An example of this was provided after a woman called our office to say that her house had been destroyed by fire and that she had been living in a temporary residence until her home was rebuilt. Any extra living costs were supposed to be paid by her insurance com-

pany; however, for reasons beyond her control, her Hydro account had gone into arrears. Hydro, not understanding the circumstances that the woman had found herself in, had threatened her with a service disconnection unless her outstanding bill was paid. This action was in line with Hydro's policy.

When we realized the extent of the woman's problem, we spoke to the Regional Reviewer about the peculiar circumstances of this person's financial arrangements. We were later informed that a solution had been reached very quickly. The insurance company agreed to pay the Hydro bill, and further disconnection action was cancelled.

The price of a pole

Many years ago, a man paid B.C. Hydro $310 toward the installation cost of a hydro pole on his rural property. However, as he didn't need the service right away, a pole was not erected. Eight years later the property was sold, and the man went to Hydro and asked for his $310 back. B.C. Hydro said that as the event had happened so long ago, they had no records to confirm the debt and therefore were unable to pay the pole cost. The man then sought our assistance.

At our request, the complainant forwarded a number of documents which substantiated that he had in fact paid the $310. B.C. Hydro staff agreed to take a second look at the issue, and with the documents that the complainant provided to us were able to verify his claim. The result was that B.C. Hydro agreed to refund the $310.

Insurance Corporation of British Columbia

Resolved	19
Not resolved	0
Abandoned, withdrawn, investigation not authorized	30
Not substantiated	2
Declined, discontinued	538
Inquiries	16
Total number of cases closed	605
Number of cases open December 31, 1991	44

The volume of complaints against the Insurance Corporation of British Columbia remained about the same in 1991 (605 cases closed) as in 1990 (551 cases closed). However, during the same period, the complaint volume handled by the corporation's Public Enquiries Department continued to increase significantly: 1989 — 5,861; 1990 — 7,674; and 1991 — 9,221. Thus, progressively higher proportions of individuals with complaints have been relying on the corporation's internal "complaint department" rather than on outside resources.

Previous annual reports have stated that one of the goals of the Ombudsman's office was to encourage the corporation to continue improving its internal complaint-handling procedures to a level where our involvement could be limited to assisting those individuals who have exhausted all other reasonable avenues of redress. In late 1991, further steps were made toward the achievement of this goal.

Under the new arrangement, which actually began in January 1992, the corporation's Ombudsman Enquiries unit added a staff member to receive calls from complainants referred directly from our office. Unless it is clear that our office should conduct an investigation, complainants contacting our office by telephone are now asked to call the Ombudsman Enquiries special complaint number. This enables complainants to deal directly with corporation staff who have immediate access to the case files and other resources necessary to deal with their concerns. Copies of Ombudsman Enquiries' intake notes and progress and disposition reports are forwarded to our office for monitoring and further action if either the complainant or our office considers it necessary. In fact, the majority of complaints are handled without the need for further involvement from our office.

Ombudsman/ ICBC Administrative Fairness Audit

The 1990 annual report described a systematic administrative fairness review of ICBC to be conducted jointly by Ombudsman and corporation personnel during 1991. Questionnaire and interview data were to be gathered on a wide range of fairness issues using the Administrative Fairness Checklist as a guide. (The checklist, which is designed to be applicable to all branches of government, appears in the 1990 Annual Report at page 15.) Among the topics covered by the questionnaire were the quality of communication with the public (plain language); access to information; and the adequacy of complaint, appeal and review procedures.

During the year, six questionnaire studies were completed involving over 400 employees in Claim Centres, Head Office Claims, Rehabilitation, Collections, Customer Service and Public Enquiries. The co-operation and assistance received from personnel at all levels in the corporation for this phase of the project could not have been better.

We hoped to present the results in a public report by the end of 1991. Unfortunately, this office did not have sufficient resources to support the completion of the project within the initial time frame. With the efficiencies gained by the recent implementation of the revised complaint handling procedure noted above, work on the assem-

bly and analysis of the data was resumed early in 1992.

In the meantime, the corporation has continued with many internal initiatives which promise to have a positive effect on the quality and fairness of service to the public. Acknowledgement of those efforts will be made in conjunction with the public report later in 1992.

Getting it right the first time

In the fall of 1991 we took a second look at a complaint which we had first handled two and a half years earlier. The original complaint was summarized in our 1989 Annual Report as follows:

> **Deliberate damage double-billed**
>
> The complainant admitted to deliberately running her car into the side of her former common-law husband's truck and agreed to pay ICBC's estimate of $1,231.75 for the repairs. Her ex-husband ordered additional repairs at the same time which were billed at nearly $1,200. When the truck was ready for release, the complainant paid the body shop directly for the exact amount of the ICBC estimate, which she knew she would have to pay at some point because of her deliberate act. However, her ex-husband did not have enough money for the extra repairs, so the body shop processed the ICBC claim.
>
> Following ICBC's payment to the body shop, ICBC exercised its legal right to recover the amount of $1,231.75 from the complainant (since she had breached her policy by deliberately causing the damage). The complainant was unsuccessful in her efforts to convince ICBC that the body shop should have pursued her ex-husband for the balance of the account instead of processing the claim.
>
> Our investigation indicated that the body shop had received the complainant's payment with the knowledge that this represented the full extent of her liability for the repairs. It was also clear that the ICBC claim in the same amount had been processed to secure payment for the amount owed by the ex-husband.
>
> Claim centre staff were initially reluctant to assist in resolving the matter because of a conflicting version of events reported by the body shop representative.
>
> However, after we discussed the circumstances directly with the Claim Centre Manager, he agreed to meet with the body shop owner and the ex-husband, who had readily acknowledged his responsibility for the balance of the repair costs. It was subsequently decided that ICBC would debit the body shop for the amount of the claim payment, that the ex-husband would make payment arrangements with the shop on his own, and that the complainant would not be billed for the $1,231.75 she had already paid to the body shop. (CS89-226).

In 1991, the complainant to our office was the estranged husband, who was now being pursued by ICBC's Collections Department for the recovery of the amount ICBC had overpaid the body shop. The complainant objected to ICBC billing him for body work not related to his accident claim, but he was told by his collections representative that he would not be able to obtain insurance until he paid.

In resolving his ex-wife's complaint, we had thought, as we reported, that "ICBC would debit the body shop for the amount of the claim payment, [and] that the ex-husband would make payment arrangements with the shop on his own...." However, our current investigation revealed that the Claim Centre Manager had decided subsequently to recover the money from the complainant and had managed to get him to sign a promissory note instead of seeking the return of the "overpayment" from the shop. We argued that ICBC was, in effect, attempting to collect a bill for the body shop which should have been a private matter between the complainant and the body shop.

At our suggestion, the corporation obtained a legal opinion on the matter. The opinion recommended that recovery of the overpayment be sought from the body shop and that collection action against the complainant be discontinued. There did not

appear to be any grounds for holding the complainant responsible for repaying the corporation in the first place, and it was puzzling why he agreed to sign the promissory note. It appeared that the complainant had simply thought the manager knew what he was doing.

The final resolution of this matter has enabled the complainant to dispute the quality of work done by the repair shop and the amount of the bill, which he had been unable to do with ICBC acting as the shop's "collector".

The pitfalls of secrecy

Along with all other provincial agencies that will be affected, ICBC has been preparing for the proposed new legislation on freedom of information and privacy. Meanwhile, many claimants continue to view the existing law and corporate policy on access to information as an unfair obstacle when trying to question or dispute an adjuster's decision. Suspicion and mistrust of ICBC's decisions is understandable when information critical to the making of those decisions is withheld. Under the current rules, the only remedy for many individuals is to subpoena the desired documents in court.

One such complainant had questioned his adjuster's liability assessment and submitted a written request for a copy of the accident reconstruction report which had been prepared for the corporation by an independent engineering firm. The adjuster responded in part:

> We are only able to release to you the information that you have provided to the Corporation and thus will not be able to provide you with a copy of the other driver's statement, evidence provided by the police or the results of the engineering study conducted. We have enclosed a copy of your statement.
>
> Our investigation indicates that you left the safety of a stop sign when it was unsafe to do so and entered through a road in front of oncoming traffic. Since there are no independent witnesses or any information to indicate that the other driver did anything wrong, we are holding you 100 percent responsible for this motor vehicle accident.
>
> If you disagree with the reasons for our assessment, you may pursue this matter further in Small Claims Court....

The complainant did pursue the matter in court and was eventually able to obtain a copy of the engineering report, which read in part:

> ...The absolute velocities of either of the vehicles cannot be determined precisely without further data relating to the vehicles' pre- and post-impact trajectories. However, the lack of end shift on the [third party's vehicle] indicates the speed of the [complainant's vehicle] was small compared to the [third party's vehicle]. It follows that the speed of the [third party's vehicle] at impact was approximately 59 to 69 km/h.

Since the accident occurred in a 50 km/h zone, the complainant felt that his persistence had been worth while in casting doubt on the adjuster's assertion that there was no "information to indicate that the other driver did anything wrong...."

B.C. Lottery Corporation

The rules according to Don Cherry

A sports fan was watching television one night when a commercial featuring Don Cherry appeared. Cherry was promoting the new B.C. Sports Lottery Game. His pitch was that you only had to choose two teams and guess which would win, and that "it didn't matter by how much" the team won.

Enticed by the commercial, the man purchased a Sports Lottery ticket the next day. When the lottery results were released, he noted that his football team had won and went down to claim his prize. To his dismay, the Lottery Corporation agent drew his attention to some small print on the ticket which stated that in football a win meant that one team had beaten the other by a minimum of four points. His team had won by only three.

As this definition of "win" differed from Don Cherry's statement that it didn't matter "by how much" a team won, the punter considered he had been misled by the corporation and complained to our office. We discussed the issue with B.C. Lottery officials, who agreed that the advertisement was misleading and said they would pull it from the air.

With respect to the issue of whether the complainant should have his $10 purchase price refunded to him, we suggested that he discuss the matter with the Lottery Corporation. The Lottery Corporation agreed to refund the $10 to the complainant.

Bank closed, payment impossible

A storekeeper had a licence agreement to sell B.C. Lottery products at his store. In the autumn of 1990, after he experienced difficulties in making his payments to the Lottery Corporation on time, he was sent a warning letter.

On January 11, 1991, the storekeeper attempted to pay his B.C. Lottery account at his bank branch. B.C. Lottery refused to accept payment, stating that his payment was due January 9. He explained to them that on January 9 a blizzard had closed the bank, and the following day he had gone to the bank at 3:30 p.m. and found it closed. This, he said, was why he could not pay until January 11. When B.C. Lottery remained unconvinced by his explanation, he sought our assistance.

B.C. Lottery informed us that they had called the bank and had been told that the bank's hours were 9 to 5, Monday to Friday; it logically followed that the bank could not have been closed at 3:30 on January 10. We then telephoned the bank, which confirmed the complainant's story that the bank had been closed on January 9 due to a blizzard. We further discovered that on January 10, the bank had in fact closed at 3 o'clock to allow a staff training program to take place. We reported our findings to B.C. Lottery and they agreed to reinstate the complainant's licence.

B.C Marketing Board

Refusal to transfer quota angers producer

A producer complained that the Chicken Marketing Board had not granted a transfer of his secondary quota at the time of a 1977 farm sale, and that the B.C. Marketing Board had upheld that decision on an appeal. He learned that the 1973 regulation in effect at the time of the sale allowed a transfer under certain conditions, and he argued that a transfer should have been granted using these criteria.

The Chicken Marketing Board controls the supply of product by specifying what percentage of grower quota may be utilized and by determining the length and number of production cycles. Secondary quota is used in periods of peak demand.

We did not find sufficient evidence to indicate that the decision of the marketing board had been unreasonable. The secondary quota had been provided by the Chicken Marketing Board, which had discretion not to allow its transfer. The 1973 regulation in effect at the time of the sale merely set out pre-conditions; it did not require a granting of secondary transfer once those conditions had been satisfied. The Chicken Marketing Board provided reasons for its decision which appeared to be based on general industry needs. For these reasons, we were unable to substantiate the complaint.

However, we did find that certain procedural problems had led to some of the difficulties the complainant had experienced. The letter denying the quota transfer had been sent to the wrong address and stated that the matter had been considered at a particular meeting; however, the minutes of that meeting did not show a discussion of that matter. The complainant said that he had been unable to obtain information regarding the regulations concerning quota policy and that producers were generally unaware of appeal rights at that time. The lengthy period between the time of the decision and the producer's complaint made this statement difficult to verify. The marketing board maintained, even at the appeal hearing, that a 1973 regulation had been amended in 1976; however, the regulation was not amended until 1978.

The B.C. Marketing Board heard an appeal on the issue and found that since the producer had not appealed within the statutory time limit of 30 days and had presented no circumstances which would suggest that the limitation period did not apply, the board could not entertain an appeal. It did comment, however, that the marketing board's procedures for amending regulations and informing producers had been lax.

The producer complained to our office that he had not been properly informed about the scope of the appeal hearing and had believed it would address all the aspects of the case. However, the producer had been represented by a lawyer, and therefore had received professional advice about the appeal process.

We discussed the procedural and communication issues with the Marketing Board and Chicken Marketing Board representatives. We are satisfied that the B.C. Marketing Board is working to increase awareness among the marketing boards of procedural fairness issues.

Pacific National Exhibition

Trip to washroom one-way only

The complainant and her 12-year-old son went to a rock concert at the Pacific National Exhibition. Shortly after being seated, the boy left to go to the washroom. As he attempted to regain his seat he was apparently told by security staff that as he had "snuck in" to the PNE he would be ejected. He said he told the security guards that he had paid, that he was sitting with his mother, and that she had his ticket. He said he even pointed out where she was seated. He told us that the security guards did not believe him, refused to check, and ejected him.

Not knowing what to do, he wandered along Hastings Street in Vancouver, eventually arriving at a restaurant from which he telephoned his father at work. His father told him to return at once to the PNE and demand to be taken to his mother. This the boy did, with the consequence that he was reunited with his mother.

His mother was concerned about her young son walking around downtown Vancouver at night and complained to our office. The PNE conducted an investigation of the actions of its staff, but was unable to find any among them who admitted to recalling the incident.

The PNE, although unable to confirm or deny the son's tale, nevertheless agreed to implement a new policy. This written policy would direct its staff on procedures to follow where a juvenile was to be ejected. In all such cases, a search was to be made for the juvenile's parents prior to an ejection, with a full written incident report being filed with the director of security prior to the ending of the shift.

British Columbia Railway Company

Since the Ombudsman's office opened on October 1, 1979, there have been 62 complaints lodged against the British Columbia Railway Company. Of these, only 18 required investigation. Eight of these were resolved and 10 were found to be not substantiated.

When a complaint is received that appears to warrant an investigation, we initially contact a member of senior management, who reviews their file. While forthright and clear in stating its position, the company has shown a willingness to consider issues from various perspectives. As well, as the number of resolved complaints suggests, they are not hesitant to reconsider their position where appropriate.

Blackberry tea speeds consensus

A woman who leased land from B.C. Rail purchased one of the company's unused "bunkhouses" for $1 in 1986. She agreed to move it onto her lease site, which she leased from B.C. Rail. The move was accomplished to the satisfaction of local B.C. Rail representatives in the fall of 1987. A survey of the lease site was carried out by B.C. Rail in the summer of 1990. It revealed that the lease site was not where both parties thought it had been, with the result that the bunkhouse, although moved close to the lease site, was actually beside it.

B.C. Rail told the complainant to move the bunkhouse onto her lease site. The complainant objected, having already put in a foundation for the bunkhouse and having landscaped the surrounding area. Our office became involved after the parties were unable to reach an agreement.

The matter was initially referred to B.C. Rail's Vice-President for Real Estate and Administration. His view was that given the unique circumstances and the obvious hardship that moving the bunkhouse would cause the complainant, B.C. Rail should lease the neighbouring property on which the bunkhouse sat to the complainant for a nominal sum.

As the parties continued to negotiate the particulars of this new lease, the good will that had been engendered stood in peril of disappearing. Eventually, a member of B.C. Rail's staff and a member of the Ombudsman's office travelled by train to the complainant's town. There they were met by the complainant, accompanied by her two llamas. They visited the property of the complainant and settled down to a pot of fresh blackberry tea. The conversation that ensued allowed each side to gain an understanding and respect for the interests of the other. By the end of the afternoon, the pot of tea was finished and the terms of the lease had been agreed to.

Workers' Compensation Board/ Review Board

Resolved	202
Not resolved	1
Abandoned, withdrawn, investigation not authorized	44
Not substantiated	8
Declined, discontinued	467
Inquiries	59
Total number of cases closed	781
Number of cases open December 31, 1991	86

In 1987 we published Public Report No. 7, recommending wide and sweeping changes to the workers' compensation system. The report identified a need to examine the quality of initial decision-making and to find ways to reduce lengthy and sometimes unnecessary appeals. The expression of dissatisfaction and concern by a number of other sources also pointed to the need for change.

In June 1991, legislation came into effect which dramatically altered the decision-making structure of the Workers' Compensation Board. The policy-making, appellate and administrative roles, once combined in the duties of the previous Commissioners, have been separated. A Board of Governors comprising five employer representatives, five worker representatives, two public interest representatives and a chairman now determines policy. The legislation also established a new Appeal Division made up of a chief appeal Commissioner and a number of appeal Commissioners. A president and chief executive officer is responsible for the day-to-day administration.

We are pleased that the new chairman of the Board of Governors has publicly expressed his determination to consult with those within and outside the system, to make the system accountable, and to emphasize dedication to people and service as the goal of the organization. The new Board of Governors has indicated that all current policies, procedures and practices of the Board may come under review. Opportunities will be provided to communities of interest to make recommendations prior to further changes. The open and consultative approach taken to date by the new leadership is welcome.

The Governors have now responded publicly to the recommendations contained in our 1987 report, and have circulated their response for comment by interested parties prior to sending us their final response. Considering the time that has passed and the changes which have already occurred, some of our recommendations will no longer be applicable. However, many others involve relevant and significant issues.

In the past year, the Governors initiated a study of the Claims Division. The purpose of this study was to establish a profile of the Board at the beginning of the new administration so that its success or failure in achieving its stated goals can be measured in future. The report set out a series of "attention points". It noted that although administrative costs had been well managed, there had been a significant staff increase in 1989 and 1990. Among the areas highlighted in the inventory were excessive turnover in managerial ranks, an absence of long-term planning, and a need for further staff training and development to boost morale and reduce turnover. The report found that the job of the claims adjudicators was challenging and stressful, and commented that staff morale was low. The Board of Governors and the president will therefore have to address these points as they set out to improve the system. Similar studies are under way with respect to the Occupational Safety and Health, Assessment, and Medical Services Divisions. Moreover, the Governors have also initiated a detailed evaluation of the adjudication process. All of these reviews have involved consultation with outside interest groups

and organizations. We believe that it is essential that the focus be placed on addressing problems at the first level of decision-making.

The transition to the new system caused some problems related to the distribution of powers formerly held by the Commissioners. The most significant question which arose for our office in terms of procedure was which division of the Board had the power of reconsideration previously vested in the Commissioners. This question is central to the resolution of some of the long-standing cases under investigation by our office. Under the new legislation, the Appeal Division can only reconsider a decision when there is new evidence available. However, the Governors recently directed that the Appeal Division may also reconsider a decision if there is an error of law or a violation of the Charter of Rights and Freedoms. We have a number of cases which had been considered by the previous Commissioners, and our investigations remained open as we did not agree with their response. With the exception of a few cases involving policy issues currently under consideration by the Board of Governors, and one case coming under the president's jurisdiction, the majority have now been referred to the Appeal Division for reconsideration with respect to errors of law or violations of the Charter of Rights and Freedoms.

The Board of Governors' first task was to appoint the chief appeal Commissioner and the president, who sit as non-voting members on the Board of Governors. The Governors also set conflict-of-interest guidelines for themselves and outlined the policy issues which will have first priority in their review. These include the development of a corporate strategic plan, review of the occupational safety and health regulations, review of the schedule for pensions involving disabilities of the spine, development of appeal procedures with respect to health and safety orders, adoption of a new rehabilitation policy, a revision of the schedule of industrial diseases, and development of policy related to claims involving chronic pain.

The list of additional policy issues to be addressed by the governors is extensive and formidable. A practical dilemma arising is that since the Governors meet only on a part-time basis, it is going to take considerable time for decisions to be made on these issues. The issue of pensions for allergic sensitivity, the subject of investigation by our office and discussions with the Board over the last ten years, is one issue awaiting consideration by the Governors.

A significant number of our open and unresolved investigations involve the interpretation or implementation of Medical Review Panel certificates. The Board of Governors has appointed a physician to act as registrar for the Medical Review Panel appeals. His role is to recommend ways of improving the process. His initial report will be made public, and there will be an opportunity for review by outside parties prior to the adoption of final changes. The cases which we have investigated underline the need for Medical Review Panel decisions to be clear and consistent, and for the Board to refer certificates back to the panel for clarification when disputes arise about interpretation. As a result of legislative change, it is now possible for a worker to appeal a decision of a Review Board directly to a Medical Review Panel.

In June 1991 the newly established Appeal Division faced the task of eliminating the backlog of appeals to the former Commissioners as well as conducting appeals initiated after the new legislation came into effect. The chief appeal Commissioner hired a number of full-time and part-time appeal Commissioners specifically to deal with the volume. The legislation now orders that a decision of the Appeal Division should be rendered within 90 days where possible. The Appeal Division has met its goal of eliminating the backlog of appeals within the time it had set.

A significant decision of the Appeal Division concerned overpayments, or retroactive adjudication. Prior to considering the broad question and the specific cases under appeal, the Appeal Division held a hearing on the general question and invited submis-

sions. The question concerned the Board's legal authority to collect money paid out in error to claimants. We had received a number of complaints about overpayments and had initiated an investigation into that issue in the past, but the former Commissioners had not accepted our recommendations. The Appeal Division determined that the Board had the legal authority to collect money paid on the basis of an administrative or arithmetic error; however, it found that there was no legal authority to do so when the overpayment was declared on the basis of a new adjudicative decision when there had been no fraud or misrepresentation by the worker. This decision should settle this long-standing source of dispute and debate, and set guidelines for claims staff.

Key decisions of the governors, Review Board, Appeal Division and the courts are again being published. Public Report No. 7 had recommended that publication be continued, as it was instructive to future proceedings. Although such decisions had been published at one time, the former Commissioners had not continued the practice of regular publication over the last few years. Persons involved in the workers' compensation system find those publications useful, as they inform the public of new policies and key decisions, and also present the reasoning behind them. This communication supports the goal of accountability.

In our 1990 Annual Report we had expressed our concern about the quality of some of the employability assessments performed by rehabilitation consultants. Two of the cases reported in the following summaries illustrate the serious need to improve the employability assessment process. In these instances, accurate and thorough research into the jobs which the Board assessed that the workers' could perform would have prevented years of appeals by the workers and extensive investigations by our office. The Board of Governors has made rehabilitation one of its first policy priorities, and has appointed a new director of rehabilitation.

It was apparent at the time of our 1987 report and in the administrative study of the claims department that there had been little co-ordination between the Review Board and the Board. Information provided through appeal statistics could be useful to the Board, to our office and others in identifying trends and patterns. The Board is now co-ordinating the recording of data with the Review Board.

We continue to meet with liaison staff at the Board, and we find that contact useful in resolving complaints and discussing general patterns of complaints and concerns. In the past year, we referred 152 complaints involving problems of delay in decisions or difficulty in communication directly to the Board for a response from the appropriate manager. While we are receiving a great deal of co-operation from managers in resolving these complaints, problems persist. Managers have replied on a significant number of complaint referrals that service to the claimant could have been improved. The most common complaints from workers involve difficulties in contacting adjudicators directly, and a lack of co-ordination and communication on the more complex claims. It may be that the problems of morale and workload noted in the administrative inventory contribute to the delays and difficulties in communication. For the claimant, these problems are frustrating and can add stress to individuals already coping with the effects of an injury. Our case reports below also reflect a need for more careful attention to workers with psychological and head injury claims. The effects of delays are especially harmful in such cases.

We hope that the current study being undertaken by independent consultants at the initiation of the Governors will identify the causes of these problems and make recommendations which will prove to be of benefit both to workers and employers receiving the service, and to the claims staff providing it.

In summary, we can report this year that there is a drive on the part of the new leadership at the Board to improve service and to examine existing policies, practices and procedures in order to make the changes

necessary to improve them. The task is challenging, given the complexity of the system and the difficult policy decisions to be made. An impressive number of initiatives have been undertaken. We will continue to monitor their success through analysis of numbers and types of complaints made to our office.

* * *

Disabled electrician's pension restored

A complaint to our office from an electrician led to an investigation focusing on the quality of the employability assessment conducted by the Board and the criteria under which the former Commissioners overturned the decision of the Workers' Compensation Review Board. This case was one of those which we raised with the Board in discussions on the need for accuracy and completeness in the decision-making process.

In 1979, the worker fell from a ladder and injured his neck and lower back. He was 52 years old at the time of his injury. He was originally awarded a pension on a functional basis (2.5 per cent of a total disability), but following a successful appeal in 1982 directing a pension reassessment, he was awarded a higher pension in 1983 on the basis that his injury had affected his earning capacity. The Board of Review upheld the decision that the worker had suffered a loss of earnings higher than that reflected by his functional pension as a result of the injury. In 1986, the worker was re-examined and found to have increased disability in his neck, but the Board decided that he could work as a full-time maintenance electrician, citing a number of jobs, most of which were available in B.C. Hydro. The industrial assessment department of the Board had recognized that overhead work would be provocative to the worker's neck problem but determined that he could use a ladder to work at eye-level and could therefore avoid overhead work.

A Workers' Compensation Review Board allowed the worker's appeal in 1987 on the loss of earnings issue and found that he was only capable of earning two-thirds of the regular earnings of an electrician dispatched from the union hall. A majority of Commissioners overturned the Review Board decision, stating that the decision had not considered the evaluation done by the Industrial Assessment Department and that it had restricted its consideration to union-dispatched jobs. The Commissioners stated that all suitable work had to be considered; it appeared that they relied on the job of maintenance electrician as being suitable and available to the worker when they reached that conclusion. The Review Board had found that the work of a maintenance electrician was not suitable for the worker.

We made initial inquiries with respect to the nature of the duties of a maintenance electrician and learned that some of the jobs presented as a result of the industrial assessment required journeyman papers in a field in which the complainant had no qualifications. Furthermore, we were advised that a significant part of the work was at ceiling level, therefore requiring the overhead work which the Board's own assessors had said would be unsuitable.

Following our initial proposal, the Commissioners ordered a new employability assessment. That assessment found that the complainant could work as a maintenance electrician for a school board or for a hospital, or alternatively as a bus driver, courier driver, or a cleaner-sweeper operator for a city. The consultant had confirmed that the worker would not have been able to perform jobs with B.C. Hydro because of the physical requirements of those jobs. The Commissioners denied further reconsideration of the pension issue on the basis of this new assessment.

On further investigation, we noted that the job description for the maintenance electrician in the schools had the requirement of physical ability to perform all the job duties. We were advised that there was overhead work involved in a school setting, and that the school boards had to follow the requirements in the job description in all respects. Moreover, in the school district

mentioned by the rehabilitation consultant, electricians would first be hired on a casual basis to do work on capital works projects, which could consist of heavier work. We were advised that a great deal of electrical work in hospitals was performed in the ceilings because of safety codes in patient areas. We submitted evidence of the physical requirements for bus driving jobs and the need for an applicant to be physically eligible for a Class 2 licence. The standard which B.C. Transit has for applicants is that a person must have free and painless movement in the body in order to be considered. The job of cleaner sweeper operator could only be obtained by a general labourer already employed by the city. The wages for all the jobs mentioned in the employability assessment, with the exception of the bus driver position, were considerably less than the worker could earn as an electrician. We therefore made a tentative recommendation that the Commissioners reinstate the loss of earnings award on the basis that the relative factors of comparative earnings, suitability and availability of the jobs identified and the worker's age had not been fully addressed in the second employability assessment.

The Commissioners referred the matter to a rehabilitation manager for a review which found no gaps or inconsistencies in the employability assessment but attributed the problem in the case to differing judgements by the Board and our office. The Commissioners refused to reinstate the loss of earnings pension on the basis of the manager's review.

At the Commissioners' suggestion, a meeting was then held between Board representatives and some of our staff members. We told the Board that our concern was about the quality of the fact-finding and research in the employability assessment and that we did not consider this to be a matter of differing judgements based on the same fact pattern. The Board then carried out further review, and on the basis of that review a majority of Commissioners decided to allow the 1987 decision of the Review Board to stand. The worker's pension was reinstated to the date that the Commissioners had overturned the Review Board decision. The worker received a retroactive payment of $33,000 and will continue to receive his monthly pension.

Matter of judgement, or matter of fact?

A long-standing complaint by a carpenter about the pension he received in 1983 was resolved to his satisfaction in 1991.

Prior to coming to Canada, the carpenter had worked in New Zealand, where he sustained a back injury in 1967. After eight weeks off work, he resumed full-time employment until he again injured his back in B.C. in 1983. The Workers' Compensation Board accepted his claim only on a temporary basis as an aggravation of a previous disability. He appealed to a Review Board, which ruled that he was entitled to a pension. The former Commissioners of the Workers' Compensation Board refused to implement that decision. He then appealed to a Medical Review Panel, which found that the pre-existing degenerative process in his spine and the injury in B.C. contributed equally to his current disability. In 1986, the Medical Review Panel found that he would not be able to perform work which required climbing, lifting or bending because of his back problems.

The Workers' Compensation Board then awarded him a 5 per cent pension as of 1986 and concluded he could work as a carpenter-foreman and therefore would have no loss of earnings. A Review Board upheld the decision that the worker could be employed as a non-working carpenter-foreman but found that the pension should be backdated to the date of termination of wage loss benefits in 1983. On appeal, the Commissioners acknowledged that on a union site the collective agreement ordered that the position of carpenter-foreman depended on the size of the crew, so that if there were fewer than six workers, a person who had acted as foreman would sometimes have to put on the tools and work as a carpenter. The Commissioners upheld the Review Board decision, but said that the

man could work on a non-union site. The worker then complained to our office. In view of his disability, he considered the job of carpenter-foreman unsuitable. The worker had reached retirement age in 1988.

After we provided information to the Commissioners indicating that the job of carpenter-foreman involves climbing, bending and lifting, the Commissioners initiated their own investigation about the job requirements. The investigation report which was produced appeared to contain some glaring inaccuracies and inconsistencies. The report found that there were 12 non-union firms employing carpenter-foremen. That information came from a telephone survey by a clerk, and did not include a survey of the physical requirements of the jobs. When we contacted these same firms, we learned that the job of carpenter-foreman required climbing, bending and lifting, and that foremen were sometimes required to work along with the crew or needed supervisory and management skills that the complainant clearly lacked.

The rehabilitation consultant's report had said that if the worker could not obtain a job as a carpenter-foreman, he could work as a manager for a municipality. It stated that there were a number of positions for managers available during the period following the worker's injury. However, when we requested further information regarding those positions from the municipalities in question, we learned that the positions were for people with engineering, plumbing or electrical experience or wide municipal experience — none of which the carpenter had. The rehabilitation consultant also found that the worker could be a building inspector, despite the fact that such a job could involve climbing up on roofs or crawling in crawl spaces. The Board's own evaluation of the worker following an assessment at their clinic was that his balance was poor and that he perhaps could do sedentary work.

We commented on these problems in the investigation report, and recommended that a new employability assessment be conducted taking into account the worker's age, his ability to compete for identified jobs, the physical limitations described by both the Medical Review Panel and the Board's own physical evaluators, and the availability and entrance requirements for any identified jobs.

The Commissioners had our preliminary findings and recommendations reviewed by a rehabilitation manager, who found no fault with the rehabilitation consultant's research or conclusions. The Commissioners again characterized our concerns as differences of opinion on judgement matters and individual interpretation of evidence. We saw the problem not as a matter of judgement but rather as one of reliability and completeness of evidence.

We were greatly concerned about the quality of the original investigations done by the Board in this case.

Following a meeting with Board representatives and members of our staff, the Commissioners decided to accept our recommendation to conduct a further employability assessment. That assessment found that the worker would not be able to work as a carpenter-foreman, and suggested alternate light jobs, including that of an apartment manager, as the worker had shared that job following the injury. The appeal division considered the matter, as they had replaced the previous Commissioners before a final decision had been rendered following the new employability assessment. A panel decided that the worker should be awarded a loss-of-earnings pension based on the apartment manager job, and that his injury in B.C. was 90 per cent responsible for his current disability.

Poor students or poor exam?

A complaint from an instructor in the First Aid Program led to a review of the system of student and instructor appraisal and the consistency of standards.

The instructor had complained about an examination conducted by a first aid officer in one of his classes. The purpose of such examinations is to evaluate individuals who are applying for certification as first aid

attendants and those who are trying to upgrade their tickets. The instructor believed that the examiner had not been fair in his evaluation of the class. Because there were a high number of failures under the Board's evaluation method at that time, the statistic was entered into the instructor's record; the Board used the overall failure rate of each instructor as one of the factors in deciding whether or not to allow an instructor to continue to teach. Students who fail can pay a fee and request another examination.

We did not substantiate the instructor's complaint about the examiner. However, we did have concerns regarding the examination process and the method of evaluating instructors and students. We conducted an informal survey of training agencies and instructors throughout the province, and on the basis of that information described specific concerns to the Board.

The complaint was received just prior to the Board's introduction of a new course designed by specialists in emergency medicine. This came into effect in January 1991. We found that the improved guidelines for examiners and the format of the examination sheets for the new program would likely lead to more confidence in the consistency and objectivity of the evaluation.

The Board expected that there would be some problems and questions after the new course had been introduced, since it constituted a major change. The Board undertook to involve training agencies, students and instructors in an evaluation of the new course material and the overall program. The Board has established a committee to conduct a review of the instructor certification program; instructors were invited to offer suggestions. The review will examine the selection process, training programs and evaluation methods and is to be completed by July 1992.

The Board also sent out a formal questionnaire to students who took the course in 1991. Moreover, meetings have been held with training agencies in all regions, and a second meeting will take place following the completion of the review of instructor certification.

One of the complaints we received was that there were sometimes disputes about proper procedures and treatment methods. The Board has now arranged that an Advisory Committee of emergency physicians will review all questions and submissions regarding the new course and the Board will publish the most commonly asked questions.

The Board of Governors has requested that the Occupational Health and Safety Division make recommendations as to ways of improving its internal administrative review process. The Governors' committee on regulation review will consider the creation of a new appeal mechanism for decisions involving first aid.

Further investigation of the complaint about the consistency in the program was not required at this time, since the examination procedure has changed and the Board has provided an opportunity for those directly involved to comment on the program and the evaluation process.

Suicide intervention and crisis policy

In our 1990 annual report we referred to a policy that the Workers' Compensation Board had established for application in cases where there was a risk of suicide. We had been advised that under that policy such cases would be referred to the director and that there would be consultation with the claimant's attending physician. However, as a result of a complaint that we received after our annual report was written, we learned that this procedure was not being applied consistently.

In February 1991, a woman contacted us to say that her husband had attempted suicide three days earlier and that his psychiatrist had referred her to us. The worker had had a life-threatening injury in 1988 and had developed a post-traumatic stress disorder as a result. The Board had accepted the post-traumatic stress disorder as being related to the injury, but later terminated

all benefits, finding that the worker's ongoing problems were related to a pre-existing personality disorder.

The worker had appealed to a Workers' Compensation Review Board, which found in January 1991 that the worker's post-traumatic stress disorder and resulting psychosis were compensable. The Review Board also found that the worker should receive a pension, to be calculated on a loss-of-earnings basis, or else should receive sufficient rehabilitation to return him to the work force at his prior earnings level.

The rehabilitation consultant had attempted to meet with the worker and his union representative after the Review Board finding, but the worker was already very upset and later the same day attempted suicide.

The Workers' Compensation Board's area office referred the issue of whether or not the suicide attempt was related to the compensable injury to a psychiatric consultant in the Board's Richmond office in February. However, the consultant was unable to address the issue until early May. Senior management had been concerned about this delay, and in April had instructed the area office to pay wage loss benefits from the date of hospitalization on an interim basis.

The worker's psychiatrist wrote to the Board to say that the man's illness was related to the accident and its continuation was a result of the way his case had been handled. The psychiatrist said that the worker and his wife had lost their home, their savings and most of their self-esteem through the process. He said that definitive treatment for the worker's disorder had been impossible to arrange due to the worker's inability to settle his claim.

In April, prior to the Board psychiatrist's full review of the case, he requested that the worker come to Richmond for an examination. No consultation had taken place with the worker's psychiatrist about the man's ability to travel or to be examined at that time. We had asked if it was possible for the Board consultant to travel to the area office, but this was not seen as a possible alternative because of the consultant's busy schedule.

After deciding that it was not feasible for the worker to be examined in Richmond, the Board psychiatric consultant did an evaluation based on evidence on file. The Board psychiatrist agreed with the analysis of the worker's psychiatrist, and the Board has accepted the suicide attempt as related to the original injury. The issue of retroactive benefits for the period prior to the Review Board decision is still to be resolved.

We have been advised that the Board has again emphasized to staff that claims adjudicators should bring such cases to the attention of the manager and director, and that Board medical staff would liaise with the worker's physicians.

Pain in the neck gets worse

An electrician working in a mine was injured in 1979 when a plank fell 30 feet and hit him on the back of the head. His claim was initially accepted by the Workers' Compensation Board as a strain injury to the neck. In 1984, the Board refused to permit the claim to be re-opened, stating that the worker's ongoing headaches and neck complaints were not related to the accident at work. In 1985, he successfully appealed that decision to a Workers' Compensation Review Board, which found that he should be assessed for a pension. A Board doctor examined him and found no residual disability related to the injury. The worker again appealed to a Workers' Compensation Review Board, and his appeal was denied. The former Commissioners of the Board denied his appeal, and he then complained to our office.

We proposed that the Commissioners reconsider their decision, since the Board had accepted in 1979 that the worker's headaches and anxiety were related to the injury, and no new evidence had been provided to the Commissioners to refute the connection. We also provided the Commissioners with new medical evidence the worker had obtained. The Commissioners decided to refer the worker for further phys-

ical and psychological evaluations at the Board.

As a result of those evaluations, the Commissioners concluded that the worker had an ongoing physical disability in his neck related to the 1979 injury. The Board's neurological consultant also found that the worker had sustained a significant head injury. The Commissioners disagreed with that assessment but sent the worker's doctor the neurological report and recommendations for further medical testing. The Board neurologist found that the worker had an ulnar lesion unrelated to the injury, and the Commissioners concurred with that assessment. The Commissioners denied that the worker had psychogenic pain disorder or any psychological disability related to the injury.

The issues related to the psychological and physical disabilities other than the neck disability accepted by the Commissioners were appealable to a Medical Review Panel, and we advised the worker of his appeal rights in that regard. The Commissioners referred the worker's file to the claims department to decide on the benefits payable for the previously unrecognized neck problem.

Benefits approved but not received

The worker's wage loss benefits had been terminated. He had presented further medical evidence that showed there was a further period for which he was unable to work, but he had apparently received no benefits from the Workers' Compensation Board for this period. He complained to our office.

Our contact with the Board resulted in a review of the problem by a manager. The manager found that a decision had been made 10 months earlier to re-open the claim, but the worker had not been advised of this and no benefits had flowed from this decision. Considerable time had now passed, and the specific point at which the Board would have found the worker sufficiently recovered to return to work was difficult to pinpoint. Therefore the Board gave the worker the benefit of the doubt and reinstated medical aid and wage loss benefits for an additional nine months.

Worker gets interest on retroactive award

In 1952, a worker suffered a penetrating injury to his left eye. Efforts to remove the foreign body were unsuccessful. The worker, who was 31 years old at the time, lost the vision in his left eye as a result of the accident. However, he continued to work after the injury until his retirement at age 67.

Although he received assistance for medical treatment connected with his injury, the worker was not aware of his entitlement to a disability pension until about 1986, when a Workers' Compensation advocate advised him to make application. He was subsequently granted a retroactive disability pension dating back to 1955.

Although evidence of a loss of vision was available to the Board since at least 1955, no referral had been made to the Disability Awards Department for a pension until 1987. The award was based on an estimate that vision in the left eye had deteriorated gradually, from 20/40 in 1955 to 20/200 in 1960. (A person with visual acuity of only 20/200 with best correction is considered to be legally blind.)

The Board awarded a pension of 1 per cent of total disability, commencing July 1955. The percentage of total disability awarded by the Board increased in each successive year until July 1960, when it reached the highest pension awarded for partial vision in one eye, which is 16 per cent of total disability.

The worker disputed this decision and said that vision in his left eye had been marginal since the injury. Through his advocate, he also requested interest on the award on the basis of a Board policy that interest is payable when an entitlement has been overlooked.

The adjudicative difficulty in this case had been to determine what vision the worker had in his left eye over 30 years ago. The claims adjudicator assigned to the case had made considerable effort to obtain his-

torical evidence of the worker's vision. During our investigation, we obtained new evidence from the Motor Vehicle Branch that the corrected vision in the worker's poorest eye must have deteriorated to below 20/160 as early as 1956, because of the restrictions placed by the branch on the worker's driver's licence that year. Statements from a former employer and co-workers tended to corroborate the worker's account, and one co-worker recalled the worker saying in 1956 that he could see only shadows with his left eye.

Unfortunately, there were only two available measurements of the worker's visual acuity, made in July 1955 and September 1973. A report by an ophthalmologist stated that the worker's vision was 20/40-1 in 1953, and a 1973 optician's report said that the worker had only an island of vision (beyond legal blindness). The Board's estimate of the date the worker went blind was based on a 1987 opinion from its ophthalmological consultant that the worker became blind "probably approximately midway" between 1955 and 1973. (In 1991, we obtained clarification from the consultant that his estimate was based on the progression of glaucoma, which had probably caused the deterioration in vision.)

Based on the consultant's 1987 opinion, a disability awards officer chose 1960 as the date the worker's vision had deteriorated to 20/200. While the discrepancy in evidence on the date of blindness remained confusing, the Board could not be said to have acted unfairly in deciding on that date.

We nevertheless concluded that reconsideration should be given to the payment of interest. The guidelines for payment of interest on retroactive awards were set out in a 1984 decision which said that interest is payable where a worker's entitlement was overlooked. There was evidence on file that the worker had a compensable degree of disability in 1955 and that no referral was made to Disability Awards at that time. However, the former Commissioners had concluded that interest was not payable, as the Permanent Disability Evaluation Schedule prior to 1961 provided for awards for only blindness in one eye, enucleation (loss of an eye) and total blindness. After our proposal for reconsideration was denied by the Commissioners, we requested that historical research be carried out on pension awards for loss of vision made prior to 1961. This research established that the Board did pay awards for a partial loss of vision prior to that time.

We obtained this historical research several months before major legislative and structural changes took place at the Workers' Compensation Board. Under the new legislation, reconsideration of decisions of the former Commissioners could be made by the new Appeal Division on the basis of new evidence. We submitted the historical research on pensions for visual loss as new evidence to the chief appeal Commissioner. Upon reconsideration, she found that this information constituted new evidence and awarded interest to the worker, which was later calculated by the Disability Awards Department to be in the amount of $64,970.04.

The chief appeal Commissioner's decision had significance beyond this case, in that the decision contained an interpretation of the meaning of an important amendment to the *Workers' Compensation Act*. This amendment provides that the Appeal Division can reconsider its own decisions or decisions of the former Commissioners where there is substantial and material evidence which did not exist at the time of the hearing or did exist but was not discovered and could not through the exercise of due diligence have been discovered. The chief appeal Commissioner found that the test of "due diligence" applies to the person requesting reconsideration and that in this case it was not reasonable to have expected the worker to make inquiries with Board officers as to the past practices of the Board.

No apparent reason for termination of benefits

A worker complained that, despite several conversations with the adjudicator, he still did not understand why his benefits had

been terminated on June 16, 1991. The worker stated that he had never received a written decision but only a cheque with "final" written on the cheque stub. He said he had only seen two doctors, neither of whom, to his knowledge, had given the opinion that he was fit to return to work as of June 16, 1991. He was not aware of any contradictory opinion on this issue.

The adjudicator provided a letter to the worker dated June 27, 1991, as a response to the complaint. However, the reasons for the termination of wage loss on June 16, 1991, were still not clear. The letter said the worker's claim would not be "re-opened" but did not address the issue of wage loss termination. We questioned the basis of the original decision to terminate wage loss benefits, and asked that the adjudicator provide written reasons to the worker.

The manager arranged that the worker be examined by a Board doctor. The result of that examination was that the worker was found still to be temporarily disabled, and it was arranged that he attend the Board's rehabilitation clinic for therapy. The claim was therefore reopened for wage loss benefits retroactive to June 16, 1991.

Appeal panel's jurisdiction questioned

We investigated only one complaint about the new Appeal Division in 1991. The issue was whether an appeal panel had jurisdiction to hear an appeal which had been filed over two years earlier to the former Commissioners. The panel found that it lacked jurisdiction, and the worker subsequently complained to our office.

The worker had filed the appeal to the former Commissioners in February 1989 and had been advised by an appeal officer that his appeal had been accepted. In July 1991 he received a decision from an appeal panel of the new Appeal Division stating that his appeal could not be heard. The Appeal Division stated that the Review Board had not dealt with the issues the worker wished to appeal. He was advised to seek an extension of time to appeal a 1983 decision on the termination of wage loss and a 1984 pension decision to the Review Board.

We found, however, that there had been only one decision letter sent to the worker in 1983 regarding the termination of wage loss benefits, and that letter had been rescinded by a later letter advising the worker that his condition had not yet stabilized. When wage loss benefits were later terminated, he received equivalent rehabilitation funds. No decision letter was sent to the worker at that time advising him of the medical implications of the switch from wage loss to discretionary rehabilitation benefits.

We found that there had been procedural unfairness in not providing written decisions on some central issues in the claim, and in denying an appeal hearing. We found that the Review Board had dealt with the issue of wage-loss termination in its decision. The decision to deny the right to appeal was in conflict with the Appeal Division's own guidelines on the scope of appeals.

Practice Policy Decision No.1 of the new Appeal Division states:

> All matters raised in the decision letter which was appealed to the Review Board, and in the Review Board finding, may be considered issues in the appeal. The Appeal Division will ensure that the issues in an appeal are identified during the course of the appeal so that all parties may understand and have an opportunity to respond.

The chief appeal Commissioner reviewed the matters raised and concluded that there was ample basis for concluding that the issue of the termination of wage loss benefits was properly before the Appeal Division. She stated that since this matter was a preliminary determination, it was within her authority to refer the matter to an appeal panel for a hearing. The worker's appeal was therefore reinstated.

We also asked the Board to review the decision-making process in this case.

Head-injured worker commits suicide

The tragic case of a worker injured in a logging accident illustrates the need for careful decision-making with respect to head injury claims.

In 1978 the worker had been hit on the head by a log, and following brain surgery had been hospitalized for five weeks. In 1990 he complained to our office that the Workers' Compensation Board had unfairly denied further benefits for his head injury. He believed he still had physical and emotional problems as a result of the injury.

We recognize that in recent years there has been increased understanding of the residual effects of head injuries. However, we were concerned about the lack of thorough investigation prior to the Board's decision that the worker had no permanent partial disability as a result of his injury.

In 1985 the Board issued a "Policy and Procedures Directive" to staff regarding psychological disability. It emphasized that a thorough social and psychological profile of the worker prior to the injury and an assessment of the worker's employment history should be obtained. In 1988, the Board had reopened the claim when the worker underwent further medical tests; a Board doctor reviewed the information and suggested a referral to the UBC head injury unit for assessment and a specialized scan. A senior doctor at the Board decided not to refer the worker; no further investigation was done and no letter was sent to the worker in response to the medical reports submitted.

Following our initial review of this case, we wrote to our liaison representative at the Board questioning the basis on which benefits had been terminated and outlining the unanswered medical questions involved in the case. The Board then decided to conduct further medical examinations and investigation. However, prior to their completion, the worker committed suicide.

The Board later determined that the suicide was not related to the worker's compensable injury, and denied widow and dependant benefits. The widow was not interviewed prior to that decision, despite the policy directive that full information about the worker's level of functioning prior to the injury should be obtained. We discontinued our investigation, as there was a right of appeal available to the widow. The widow requested an appeal to a Medical Review Panel. The panel determined that the work-related injury had aggravated a state of emotional instability characterized by severe depression, which had resulted in two previous suicide attempts and finally in the worker's death. In its narrative report, the Medical Review Panel stated that it had based its decision in part on the information provided by the widow and others who reported changes in the worker after the head injury.

In implementing that Medical Review Panel decision, the Board decided to award benefits only from the date of the suicide. That decision is currently under review and may be appealed.

Recognizing the need for specialized services for head-injured claimants, the Board set up a specialized Head Injury Unit in 1991. However, at present it cannot provide full service to all head-injured claimants.

There is no way of knowing whether this suicide would have occurred if the Board had provided benefits to the worker. It may not have been preventable. However, with careful attention at the beginning of head injury claims, adequate support services and proper review and follow-up by experts, there could be confidence that all possible attention was provided.

Workers' Compensation Review Board

The majority of complaints we receive about the Review Board involve delay. There has been a steady rise in the number of appeals over the last three years — 5,636 in 1989, 6,749 in 1990, and 7,164 in 1991. These increases have affected the length of time it is taking for the appeal hearings to take place and for decisions to be provided following the hearings.

To examine the appeal process, criteria for single and three-person panels, and the respective roles of the Appeal Division and the Review Board, the Ministry of Labour established an external committee made up of labour and employer representatives, who may recommend administrative or legislative change.

The Review Board has made considerable efforts in the last few years to communicate with employer and worker advocates and organizations about its procedures and policies. Seminars held by the Review Board have had a wide range of participants. The Review Board also published a manual in which its policies and practices are clearly set out.

Criminal Injury Compensation

The criminal injury compensation system is administered by the Workers' Compensation Board on behalf of the Ministry of the Attorney General.

The majority of complaints we receive concern delay in the initial adjudication of the claim. Applicants are told when they contact the Criminal Injury Section that it may take up to one year to process their claims. An increase in the number of claims and a reduction in staff have led to these delays. Many of these individual complaints are resolved, but we are concerned about the general problem. Although there is a provision in the *Criminal Injury Compensation Act* to pay interim benefits, we found that those benefits were rarely paid. Additional staff are being hired in order to address these problems.

As one of their first initiatives, the Board of Governors began a review of the criminal injury compensation system prior to publication of a new policy manual. The study team was headed by one of the Governors representing the public interest. The Ministry of the Attorney General is also currently involved in the review of services to victims and policy issues in this area.

We wrote to the Board of Governors to outline the general types of complaints we receive and to identify policy and procedural issues which we believe should be addressed, and we look forward to the results of this review which we hope will be released in the near future, so that much-needed public consultation can take place.

Children and Youth Issues

Public Report No. 22, published by our office in 1990, identified necessary systemic improvements to be made in the way government plans, organizes and delivers services to children, youth and their families in British Columbia. The United Nations Convention on the Rights of the Child, ratified by Canada in 1991, establishes the "best interest" test in all matters concerning children and identifies the family as the fundamental unit of society and the natural environment for ensuring the best development and well-being of children. Most provincial government public services are designed to assist families in their responsibilities with their children and to support children and youths when their families are unable to fulfil this role.

Public Report No. 22 emphasized that these services, to be effective, must be timely, appropriate, integrated and made available in the least intrusive and most efficient way. Communities should be involved in identifying their needs for public services. Children, youth and families must have the opportunity to participate in the decisions about the services delivered to them.

During 1991, seven ministries continued to administer the key programs: Education; Advanced Education, Training and Technology; Health; Social Services and Housing; Attorney General; Solicitor General; and Labour and Consumer Services. In addition, the Criminal Injury Section of the Workers' Compensation Board administered a compensation program for victims of criminal acts.

The investigation of complaints regarding these public services is done by a special team in the Ombudsman's office, co-ordinated by the Deputy Ombudsman for Children and Youth. Instead of assigning investigators to particular ministries, the Child and Youth team have an integrated approach in order to respond to the complaints that reflect the complex nature of the delivery of these services. It is common for one family to have a complaint that may involve services or the lack of them from several ministries. In 1991 the team received more than 2,400 complaints and inquiries, 20 per cent of which were initiated by youth. This represents approximately one-quarter of the jurisdictional cases handled by the Ombudsman's office.

One team member regularly visits the young offender detention centres in the province, as well as The Maples, an adolescent mental health residential program on the lower mainland. As well, the Child and Youth team works closely with other Ombudsman investigators, whose daily work may include similar issues ranging from whether the Medical Services Plan can offer assistance for families to stay with children whose medical treatment is taking place away from home communities, to youths concerned about the impact of skateboarding tickets on their ability to get their driver's licences. Overall, an estimated one-third of the Ombudsman's office caseload has to do with the delivery of public services to children, youth and their families in British Columbia.

Cross-ministry responsibility for children and youth issues

Most government ministries provide, contract, fund or regulate direct services to children, youths and their families. The following is a brief summary of the mandates of these authorities.

Education

This ministry sets standards and overall direction for the education system, and deals with finance and facilities, program development and implementation, student access and achievement, and system evaluation. The *School Act* establishes the school as the only public agency required by law to deliver services to all children in a given age range. Students now have three principal means of education: public schools, independent schools, and home schooling.

Although the Ombudsman has jurisdiction to investigate complaints about the Ministry of Education, jurisdiction over the 75 locally elected school boards, which manage the public school system in each district, has not yet been proclaimed by cabinet.

Advanced Education, Training and Technology

Almost all the complaints involving this ministry are about loans to students attending vocational and academic colleges and universities in the province. This ministry also funds and receives the reports of the British Columbia Youth Council. The council has 17 members, aged 15 to 24, representing a variety of social and ethnic groups, career interests and urban and rural regions of the province. The council gives advice to government on issues affecting youth and provides grants to youth groups intended to promote youth participation and leadership. Members of the Child and Youth team have met with the B.C. Youth Council to discuss our work and to explore ways of ensuring that youth are aware of and have easy access to the services provided by the Ombudsman's office.

Health

The ministry funds or provides medical, hospital, public and mental health services. Programs administered by the Department of Community and Family Health include youth forensic, child and youth mental health, public health, speech, language and hearing, community health and services to the handicapped. It also administers the *Community Care Facility Act*, which sets standards of health, safety and care in child day-care programs and designated residential community care facilities like Sunny Hill and Queen Alexandra Hospitals for children who need rehabilitation and extended care services.

Social Services and Housing

This ministry funds adoption, family support and child protection services, including temporary and permanent care for children who cannot live at home. It provides income assistance on a discretionary basis to persons under 19 years of age and also provides services to the disabled.

Attorney General

This ministry provides legal representation for the Superintendent of Family and Child Service and her wards, legal aid, and the appointment of family advocates to represent children or youths whose families are disputing their custody or access. The Criminal Justice Branch prosecutes offences under the federal *Young Offenders Act* as well as provincial and municipal laws. It funds Victims Services and public legal education. The Public Trustee, which protects the legal and financial rights of minors, reports to the Attorney General.

Solicitor General

This ministry (recently absorbed into the Ministry of Attorney General) had primary responsibility for correctional services in 1991. The Corrections Branch deals with young offenders on remand or sentenced to open or secure custody. It provides youth court reports, probation supervision, diversion and community service programs designed to promote positive changes to youth in conflict with the law. Family court counsellor services are offered by the branch to provide a conciliatory approach to marital and family disputes. Family court counsellors also complete court-ordered investigations and reports about child custody, access and family maintenance payments.

Labour and Consumer Services

This ministry is responsible for a number of programs that affect children and their families. It administers the *Residential Tenancy Act*, which makes provision for arbitration of most landlord and tenant disputes. The ministry funds public education which reaches out to youths identified as having drug and alcohol problems and provides them with counselling — a responsibility recently transferred to the Ministry of Health. It also provides consumer information for the informed purchase of everything from video games to used cars.

The following reports and case summaries describe some of the typical work done by

the Ombudsman office's Children and Youth team while investigating complaints about the complex system of services outlined above.

Public Report Updates

No. 22 (November 1990):

Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration

Serious concerns about fragmentation and lack of accountability in public services to children, youth and their families were identified in Public Report No. 22. To a significant degree, these concerns still exist.

Complaints involving children and youth comprise approximately one-third of the total complaints handled by the Ombudsman office. There is no evidence of a decrease in the complaint load, and the seriousness of cases investigated by this office involving vulnerable children and youth has increased. The vexing problems of interministry and interdisciplinary fragmentation in this service sector remain a serious problem at all levels of the system.

During the past year, members of the Ombudsman's Child and Youth Team have consulted with many community service and advocacy groups and interministry Child and Youth Committees (CYCs) across the province. We have noted an increased willingness among ministries to communicate and co-operate with each other and with our office. Innovative inter-agency projects and initiatives continue as always, but too often they exist in a vacuum rather than as part of a provincially driven, locally delivered continuum of client-centred services. Integration of child-centred policy development, program planning and service delivery remains an elusive goal. Local communities and CYCs have repeatedly told this office that they have neither sufficient authority nor adequate resources to effectively address the many serious problems affecting children, youth and families. Many have pointed to a lack of vision or focus on children's needs at the provincial policy level.

While positive initiatives are apparent, this office concurs with those who believe that fundamental reform and structural change is required that goes beyond that accomplished to date by the Child and Youth Secretariat which was established by the government following release of Public Report No. 22. This office has not yet had access to reports or recommendations apparently prepared for cabinet by the secretariat; hence we are unable to comment on this aspect of their work.

Structural barriers continue to impede effective reform of existing and development of new child-centred provincial policies and programs. The following are some examples:

1. Impeded access to services for clients. All too often, their needs are fragmented by a service-delivery system accustomed to dividing itself into service functions for reasons of administrative expedience rather adopting a holistic approach based on client needs.
2. Undervalued and often undertrained front-line staff and care-givers. Those who are expected to respond to extremely troubled children and youth have neither easy nor efficient access to scarce, expensive and often poorly targeted "clinical" and support resources.
3. Corporate values, organizational climates and management styles that vary from ministry to ministry and are not consistently child, youth or family centred.
4. Lack of consistency among the geographic boundaries of regions in separate ministries serving overlapping client populations.
5. Incongruent planning and budgeting cycles in different ministries, which hampers integrated planning of child, youth and family programs.
6. Diverse approaches among ministries to the delegation of administrative authority, so that planning and spending authority rests at different levels in different agencies.

7. Gaps and inconsistencies in the way different ministries collect, analyze and disseminate information about child, youth and family services that is vital for integrated planning.
8. Uncertainty among professionals and agencies about how rules of confidentiality affect the sharing of different types of information.
9. Inconsistencies in contracting practices among ministries dealing with children, youth, families and contractors providing similar services.
10. Inconsistent or inadequate standards, monitoring and accountability mechanisms among related child, youth and family programs in different ministries.
11. Unclear mandates and professional and program role confusion, particularly in prevention, early intervention, residential, and mediation/counselling treatment services.
12. Inadequately defined and resourced child and youth mental health services, often not effectively linked to other child welfare programs.
13. Lack of clarity, consistency or comprehensiveness among related legislative mandates affecting children, youth and families, and lack of a common set of statute-based principles to guide service provision in all sectors.
14. Inadequate or inconsistent approaches in different ministries to dispute resolution, advocacy and administrative review.
15. Local and regional co-ordination and service delivery structures without a statutory mandate, clearly defined accountability, adequate resources or appropriate authority to plan and respond in a comprehensive, responsive, timely and innovative manner.

The reduction or elimination of these barriers to quality service will require a specialized focus and long-term commitment to reform by government in close consultation with communities. While recent royal commissions on health and education identified significant problems in the service delivery system for special-needs children and youth, this service sector was not the primary focus of their work. Specialized attention is urgently required.

Quick or simple solutions cannot reasonably be expected from communities or governments with limited resources. We believe that child advocates — parents and service providers — are committed to appropriate planned change that is visionary, comprehensive, child-centred, and sensitively implemented over a reasonable period of time. A delicate balance is required to ensure that local communities are appropriately empowered while ministerial accountability is maintained through provincial standards, adequate funding, and appropriate monitoring, advocacy and review mechanisms.

Subsequent to Ombudsman Public Report No. 22, a number of important initiatives concerning children and youth have taken place or are in progress. The following initiatives are examples of the rich resource material that can serve as a foundation for integrated planning and reform in this province:

1. The United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on November 20, 1989, and ratified by Canada on December 11, 1991.
2. The appointment of a federal Minister Responsible for Children and the establishment of a Children's Bureau following a World Summit on Children and national reports documenting serious concerns about the extent of child abuse in Canada.
3. The release by the Ontario government of a major report, *Children First: Report of the Advisory Committee on Children's Services*, defining children's entitlements and recommending establishment of locally elected children's authorities accountable to a Provincial Children's Authority with ministerial responsibility for services now lodged in Community and Social Services, Education, Corrections, Health and Recreation ministries.

4. Consolidation in other jurisdictions (such as Nova Scotia) of major pieces of legislation concerning children, youth and families.
5. A survey of adolescent health by the McCreary Centre Society for the purpose of providing concerned adults and policy makers with reports from youth about their behaviours and related risk factors.
6. Release of *The Health of Children and Youth in B.C.: Delphi Survey of Key Issues* by the Office of Health Promotion, B.C. Ministry of Health.
7. Release of, with many specific recommendations for systemic improvement.
8. Release of *Showing We Care: A Child Care Strategy for the 90's*, the report of the Task Force on Child Care prepared for the former Minister Responsible for Women's Programs.
9. Release of *Social Concerns and Social Changes in Non-Metropolitan British Columbia* by the Social Planning and Research Council of B.C., which found that child abuse was the most critical issue facing local communities.
10. *The Status of Children and Youth in B.C.* project of the University of Victoria, Faculty of Human and Social Development, compiling statistical information of importance to planners.
11. The continuing work of child advocacy organizations such as the Society for Children and Youth of B.C. and its national affiliate, Children Enfants Jeunesse Youth (CEJY).
12. Municipal government reports concerning children and youth — for example, those completed by Vancouver's Child Advocate, the Vancouver Board of Parks and Recreation and Victoria's Mayor's Task Force on Young Children;
13. Release of *Foundations for the Future*, the report of the Federal/Provincial/Territorial Advisory Committee on Mental Health.
14. Numerous innovative developments in local communities intended to improve child welfare, mental health and other related services that are worthy of study.

Although they are not all child-centred, a number of initiatives are currently under way in the provincial government that will directly impact children and youth. These include:

1. The Community Panel to review child, youth and family services with a mandate to report to the Minister of Social Services by October 1992 in preparation for legislative change in 1993. The process includes a distinct focus on aboriginal child welfare issues.
2. A review of B.C.'s *Mental Health Act*, a predominantly adult-focused piece of legislation that has significant impact on youth.
3. A review of the *Community Care Facility Act* and Child Care Regulations establishing standards in licensed day care and child and youth residential and day programs.
4. A provincial review of family services by the B.C. Council for the Family for the Minister of Women's Equality.
5. Year 2000 plans developed by the B.C. Ministry of Education in response to the Sullivan Royal Commission recommendations and the move towards full integration of special-needs students into the regular school system (with significant implications for social service agencies).

Heightened government and public concern about the well-being of children, youth and their families is evident in all these activities. But if this concern is to go beyond traditional tendencies to plan in ad hoc, project-focused ways, reformed child-centred planning and administrative structures at local, regional and provincial levels will be necessary.

In striving to ensure that administrative fairness is provided, this office will continue to act as advocates with both government and communities to promote the administration of quality public services to vulnerable children and youth. We will report publicly, early in 1993, on the progress that has been made.

No. 24 (February 1991):

Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act

In early 1991 the former Minister of Social Services and Housing announced that amendments would be made to B.C.'s child welfare legislation, the *Family and Child Service Act*. Recognizing that the Ombudsman's office has been involved in at least 1,500 cases annually where children are thought to be at risk, the minister asked our office to suggest amendments. We did so on the basis that the response from our office was to be public, and the result was Public Report No. 24.

This report reflects our experience with the Act and its administration. It points to a number of issues that we believe should be addressed by both government and the community at large if child welfare legislation is to fulfil its intended purpose. The following are some highlights of Public Report No. 24:

1. *Best Interest of the Child*

   It has been recognized in the *Family Relations Act*, under the UN Convention on the Rights of the Child, and in other legislation (for example, the province of Nova Scotia) that the best interest test should be the guide when decisions are made concerning custody, access and guardianship of infants. Under the existing *Family and Child Service Act* of British Columbia, the court must base its decisions solely on whether or not the child is "in need of protection". The interpretation of "in need of protection" does not specifically include emotional abuse. If the best interest test is adopted it broadens the scope of the court to consider the long-term effects of the province's intervention in the life of the child. The best interest test would provide an option to give services intended to support the integrity of the family in situations where the child may not be directly at risk but may be seriously affected by the environment in which the child is living. If the best interest test was to be used it should include the rights of the child to have a voice in the decision-making process and if the child is too young to express his or her opinion or requires assistance, then an advocate on behalf of the child could be provided. The best interest test will place a greater onus on the Ministry of Social Services and Housing to establish that apprehension would be better for the child than care provided by his or her parents or any other alternative means of family support.

2. *Prevention and Family Support*

   The *Family and Child Service Act* does not provide for an adequate range of family support alternatives to apprehension. While there is a provision for voluntary care agreements under the legislation, we believe that the range of alternatives is too limited. Our sense is that some children's interests are not well served in the foster care system, and even where abuse has occurred, a child may wish to return to his or her natural parents. This may be assessed to be the preferred alternative provided that the home could be adequately supervised (for example, in the case of an older child who is resistant to all of the services offered by the Ministry of Social Services and Housing). If there were specific statutory provisions and available services to allow alternatives (for example, family support within the home environment, placement with an appropriate relative or family friend, or an agreement or restraining order forbidding the alleged abuser from entering the family home), the necessity of apprehending the child might decrease considerably. The onus would be on the ministry to show that other less intrusive methods have been tried unsuccessfully or seriously considered prior to seeking an order for temporary or permanent custody. No doubt the community and ministry staff will have some excellent proposals for family support services when consulted.

   It has long been recognized, at least informally, that parenting is a highly demanding task requiring extraordinary

skill and ability. Parenting skills and abilities are not always naturally inherited. Parents, like other professionals, learn and develop their skills through experience and, increasingly, through educational opportunities offered through public health, education, and community agencies. To blame parents for inadequate parenting skills may be akin to "blaming the victim", for we are all products of our own upbringing. In the long run, it may be harmful to the best interests of many children to approach family problems in an adversarial or blaming manner. In turn, parents must acknowledge the reality that their children are not their "personal property" but persons in their own right. The healthy development of children is a shared responsibility of parents, children and the community at large. This shared responsibility was well recognized by the B.C. Royal Commission on Education, which found that parents were increasingly asking for school-based support to ensure the well-being of their children.

Researchers have noted the cyclical nature of social problems including family dysfunction, poverty, child abuse and neglect. The public and private interests coincide in their desire to ensure that the best interests of children are of paramount concern and this will most likely be achieved within a stable, loving family. An increase in the diversity of flexible approaches to family support and child welfare issues — preventative services, parent education services, counselling, mediation and fair process, among others — will increase the potential for consensus and reduce the likelihood of conflict in individual cases and reduce or eliminate unhelpful and adversarial debates about "parent vs. child rights".

3. *Role of the Superintendent of Family and Child Services*

   There is a legislative ambiguity with regard to the role of the Superintendent. The Ministry of Social Services and Housing recently acted to redefine the Superintendent's role as an arm's length standard setter and monitor of services. Currently, the Superintendent appears to have statutory responsibility for the administration of the current Act without the administrative authority to direct the staff who are operating with her delegated powers. The Superintendent's role has also been described as one of an advocate. The roles of standard setter, service monitor, inspector/auditor, guardian and advocate have all been ascribed to this position with little statutory guidance. This should be clarified in legislation.

4. *Mediation and the Court Process*

   The Ministry of Social Services and Housing should consider how best to separate the investigative/apprehension and family and child support functions. In addition, legislation should specifically allow for mediation. The legislation should seek to offer mediation opportunities at every stage of proceedings.

   Effective mediation could often provide an alternative to the court process following an apprehension or could be used as a means of resolving disputes between the ministry and custodial parents as an alternative to apprehension. In cases where an apprehension has taken place and mediation has failed to resolve the protection concerns, the matter would continue through the courts for decision. If mediation were successful, a mediation agreement could be registered with the court in order to formalize the outcome and monitor the result. Mediation in child protection cases would require qualified mediators knowledgeable about child protection and child development issues. Well articulated standards would be necessary to ensure consistency and service quality. Mediation, by definition, also requires the voluntary participation of all parties to the process. The provinces of Saskatchewan and Nova Scotia have recently introduced child welfare legislation supporting the use of mediation. Mediation is currently available to families in *Family Relations Act*

matters through family court counsellors. Again, with respect to the child's right to be heard, it may be necessary to involve a family advocate on behalf of the child or consider a guardian ad litem program such as exists in England or in many states (for example, in the State of Washington).

5. *Due Process*

Delay A major concern raised by many of the cases we have investigated involves the delay in the process. There are various causes of delay ranging from length of trial, adjournments by counsel and, in some instances, changed circumstances. However, if we are to consider the best interest of the child as the test for apprehensions and are to appreciate the child's sense of time, inappropriate delay should be removed wherever possible. The passage of time after apprehension may significantly weaken the ties between the parent and child and is not in the child's or the family's best interest. Reducing delay could be accomplished by specific legislative provisions that bind the courts and all parties to strict time frames, or by negotiation with the judiciary to give priority to apprehension cases.

6. *Costs*

A number of complainants to our office have raised the issue of their legal costs in "defending" against an apprehension by the ministry. The Ontario Court of Appeal has said in cases involving custody, where the paramount consideration is the best interests of the children, the participation of the adversaries is not like that in ordinary litigation so that, except in very exceptional cases, costs should not necessarily go to the party that proves its case.

Where costs have been awarded at the Provincial Court level in Ontario, if the judge decides that there has been bad faith or negligence by either the ministry or the parents, then the opposite party should be awarded costs. Again, the decision as to the failure of a party to act appropriately would lie with the judge, along with a determination of the amount to be paid, and these matters would be subject to the normal taxation and appeal processes. This right should be clearly set out in legislation.

8. *Integration*

(a) *Consolidation of Child, Youth and Family Legislation*

There are at least two jurisdictions in Canada which have recently amalgamated legislation regarding children, youth and families into one Act. We have recommended in Ombudsman Public Report No. 22 that existing legislation, regulations and policies establishing the rights of special needs children, youth and their families be consolidated into a Provincial Statement of Principles for children, youth and their families that is consistent with the provisions of the Canadian Charter of Rights and Freedoms and the UN Convention on the Rights of the Child. There are other areas in which legislation can be consolidated to ensure an effective integration of services and a better understanding by the public of the law as it relates to children, youth and their families. There can be confusion in matters relating to children's legislation where a *Family and Child Service Act* application and a *Family Relations Act* matter are to be heard at the same time.

Matters currently under review which cross ministry and legislative jurisdictions include (a) the Child Abuser Registry, (b) secure treatment facilities for children who are not treatable under the *Mental Health Act* or the Young Offenders Act, (c) child abuse allegations in *Family Relations Act* applications, (d) responsibility for health, safety and care standards in licensed programs, (e) children's treatment needs and (f) *Adoption Act* matters. It may be feasible to consolidate various pieces of children's legislation under one Act and to add enabling authority so that some of these issues can be dealt with more specifically through regulations. It may be possible for separate ministries to administer var-

ious sections under a consolidated statute. We believe there may be some real advantages to consolidating different statutes which have the same focus. Special emphasis should be given to mental health and alcohol and drug services for youth, children and their families that are not specifically covered in the current legislation. The new Child and Youth Secretariat's mandate to undertake a comprehensive review of public services to children, youth and their families will be integrally linked to the current review of the *Family and Child Service Act*, the *Mental Health Act* and the *Community Care Facility Licensing Act*.

(b) *The Rights of Children*

The government of British Columbia has supported ratification of the UN Convention on the Rights of the Child. We believe that the province is, for the most part, in compliance with the Convention, both from a legislative and administrative point of view. Ombudsman Public Report #22 addresses the UN Convention and suggests that the Province adopt principles in keeping with the Convention to guide it in the delivery of all children, youth and family services. While we can appreciate the sensitivity in attempting to define the rights of children in relation to their families, we believe that the province could lead by example by entrenching the rights of children in government operated, funded or regulated programs. There are already a number of initiatives in various ministries that are clearly in keeping with the provisions under the UN Convention. (For example, the Standards Committee established by the Superintendent of Family and Child Services and the appeal mechanisms for children recently established under the *Mental Health Act*).

10. *Public Participation*

We strongly recommended that the ministry consider either a White Paper or an invitation for submissions from the public before any new legislation is drafted. We have been impressed by the number of informed organizations in the community which are genuinely concerned with and have a legitimate interest in child welfare legislation. We are sure they would provide thoughtful responses to a call for participation. It may be that the recently formed Child and Youth Secretariat could invite and co-ordinate responses of the various community groups through the local and regional Child and Youth Committees.

We think the result would justify the extra time and energy to undertake such a process. This process would be built on the belief that the review of interdependent child, youth and family legislation requires an integrated approach among the various ministries, community groups and organizations as well as the direct care-givers.

11. *Appeal and Administrative Review*

While the majority of apprehension cases under the *Family and Child Services Act* will end up before the courts, it may be worthwhile for the ministry to consider internal review and external appeal mechanisms on other issues (for example, the availability of support services). Under the *Guaranteed Available Income for Need Act and Regulations*, income assistance issues are appealable. However, the section on appeal mechanisms for "social services" has not yet been proclaimed. If the ministry social workers were required to offer the least intrusive services to families before they consider apprehension, it would seem reasonable to allow families who are refused those services the ability to have an internal administrative review and an external appeal system available similar to income assistance appeals. We also believe that social services to children, youth and their families which are currently in the *GAIN Act* would be better housed and described in an amended *Family and Child Service Act*, together with these review and appeal mechanisms.

12. *Transitional Support*

We know that a number of children on reaching the age of majority (19 years) are not prepared to take on adult responsibilities. The Ministry of Social Services and Housing has contracted with some private agencies to provide services in some of these instances. There is no specific legislative authority to do so, although there appears to be a real need in the community. Age 19 is arbitrary at best and, in cases of children with developmental disabilities, often irrelevant. This is a concern that affects not only the ministry but also others providing social services. If consolidated legislation is to be considered, it would be advisable to review the age requirements, restrictions and limitations governing the delivery of services to and acceptance of responsibility by young people making the transition from youth to adulthood. The legislation should allow for discretion to be exercised in individual situations to take into account the unique personal circumstances, and in particular any disabilities of the youth involved.

Report update

In November 1991, the Minister of Social Services and Housing responded to the recommendation in Report No. 24 for public participation in reviewing the child protection legislation. The Ombudsman and a representative from End Legislated Poverty were asked to co-chair a diverse community panel to hold meetings throughout British Columbia beginning in January 1992. This panel will report in the fall of 1992.

In addition, the Minister of Social Services also implemented another of the recommendations of Report No. 24 as a pilot project. The use of mediation as a means of resolving disputes between the ministry and custodial parents as an alternative to apprehension will begin in 1992 on a limited basis. The Ombudsman's office will be watching this applied research project with great interest and will be reporting on its effectiveness next year.

UN Convention on the Rights of the Child

In the 1990 Annual Report, at page 29, we discussed the significance for British Columbia of the unanimous adoption by the United Nations General Assembly of the Convention on the Rights of the Child. Through this action, the international community took a major step in affirming the rights of children throughout the world to survival, to protection, to development, and to participation.

Canada ratified the Convention in December 1991, signifying that it agrees to be bound by this international treaty. Before doing so, the federal government consulted with British Columbia to ensure that provincial laws could meet the standards set in the Convention, that those laws were enforceable, and that services contemplated in the Convention could be established. Canada has also agreed to be accountable to the United Nations for its compliance with the Convention by making mandatory regular reports through an elected committee which gives this information to the Secretary-General of the United Nations.

The Convention will likely be used as a guide to interpreting law in Canada. It will be used for teaching children about their own rights and about the rights of children in other lands. We hope to use it as a tool in assessing fair administrative practices in delivering public services to children, youth and their families in British Columbia.

The Convention on the Rights of the Child holds public service providers responsible for ensuring that their programs are truly supportive of children, effective in attaining their goals, and encouraging meaningful participation by the people they serve. The coming year will provide all of us with challenging opportunities to see how the Convention can be applied in a manner consistent with its purpose.

Cross-ministry issues

Wait list holds up counselling

There are many gateways to counselling services in the family and child service system in B.C. We frequently receive concerns from families experiencing difficulty obtaining these services.

One man signed a care agreement with the Ministry of Social Services and Housing for his teenaged daughter to be placed in a foster home and to receive counselling. After numerous incidents involving his daughter while in the ministry's care, the man called us to say he was upset that there had been a lengthy delay in obtaining counselling for her. He felt that the delay had contributed to a deterioration in his daughter's behaviour.

We confirmed with the ministry that the special care agreement had specified that counselling services would be provided by the ministry. However, the first three-month agreement had ended without counselling being provided. Ministry officials explained that this was the result of a lengthy waiting list for counselling at the Mental Health Centre and at the contracted agency to which the complainant's family had been referred. We were told by ministry officials that it was normal practice to specify in the care agreement contract that counselling would be provided "as available". This provision had not been included in the contract in question.

By the time the complainant's family had reached the top of the counselling agency's waiting list, the relationship between the youth and her parents had deteriorated significantly, and a child abuse allegation was under investigation. The youth was apprehended, and the complainant said that he was no longer prepared to have his daughter live at home.

We have no way of knowing whether earlier access to counselling services would have helped prevent the breakdown in family relationships which occurred. While we discontinued our involvement in this case, we noted its relevance to future systemic efforts to improve access to necessary counselling services when families are experiencing problems.

A mother's struggle for supervised access

An increasing number of complaints received by this office involve child protection concerns as part of custody and access disputes between parents. While families may perceive these matters as being dealt with by one system, whether judicial or administrative, in fact these issues span two pieces of legislation (the *Family and Child Service Act* and the *Family Relations Act*) and at least two ministries (Social Services and Housing, and Attorney General).

A woman called us to say that the Ministry of Social Services and Housing, after earlier supporting her and her child, had refused to provide further assistance because the issues of concern were before the court under the *Family Relations Act*. She believed her child had been sexually abused by her former spouse. Under the *Family Relations Act*, her ex-spouse had been awarded supervised access. The complainant wanted the ministry to provide supervision for the access visits, but ministry officials had refused, saying that it was not their mandate and that it was the complainant's responsibility to come to an agreement with her former spouse about supervisory arrangements. The complainant said that the tension in her relationship with her former spouse made such an agreement out of the question.

Ministry officials told us that they too suspected that the complainant's child had been abused. However, since they were satisfied that the complainant was protecting the child, they did not consider the child to be in need of protection and hence had no further role to play. The ministry's area manager acknowledged that grey areas existed in cases like this that overlapped child welfare and family relations systems.

The complainant said that she felt she had initially been supported by ministry

social workers when she blocked access to the child by her former spouse, but that this support had been abruptly withdrawn because it was no longer within the ministry's mandate. Her reasons for wanting the ministry's continued involvement were that she believed it would ensure the child's safety and that supervision would be neutral. Her child, she said, was suffering from increased tension. A court date had been set for the custody and access hearing, but it was still some months away.

Attempts to seek a resolution were further complicated by the fact that access was to take place alternately in the complainant's and the ex-spouse's community, each in a different region of the ministry. The ministry's area manager in the ex-spouse's community did not consider the supervision of *Family Relations Act* access to be the ministry's responsibility. Following extensive discussions with various ministry officials, the district supervisor in the complainant's community came up with a creative partial resolution. He agreed to contract a child and youth care worker to support the complainant's family through this stressful time. Part of this support would involve supervision of access visits.

The matter was finally resolved for the complainant when her former spouse withdrew his application for access.

Mental Health Services

Cross-ministry integration

We continue to receive complaints about a shortage of mental health services and delays in providing those that exist. These concerns are usually expressed in the form of complaints about the Ministry of Social Services and Housing instead of the Ministry of Health, a fact that reflects confusion among both clients and the helping professions about ministerial responsibilities in this field. Frequent complaints are also received about the need for — or delays in — discharge planning from mental health facilities such as the Maples Adolescent Treatment Centre (Burnaby) and Jack Ledger House (Victoria). To date, efforts made to co-ordinate services through Child and Youth Committees and the Child and Youth Secretariat have not provided the level of integration recommended in Public Report No. 22. Further comments about interministry issues are contained in the update to Report No. 22, on page 199.

Child and youth mental health services may be delivered through the Ministry of Health or the Ministry of Social Services and Housing. Services funded or managed by the Mental Health Services Division include institutions in urban centres, The Maples Adolescent Treatment Centre and Youth Forensic Services and Jack Ledger House, and community services delivered by Mental Health staff at the local Mental Health Units or provided through a variety of contracts with individuals and agencies. The Ministry of Social Services and Housing funds programs which provide individual and family counselling services. The Workers' Compensation Board, through its Criminal Injuries Compensation program, funds counsellors and therapists for victims of abuse who meet the program's eligibility criteria.

Mental health legislation

For children, youth and families requiring services, distinctions between the Mental Health Services Division and the Ministry of Social Services and Housing are mostly irrelevant. The legislative authority for mental health services (broadly defined) to children, youth and families currently spans a number of government agencies. British Columbia's *Mental Health Act* is oriented towards adults rather than children, and the current review of the *Mental Health Act* has largely focused on adult issues. This office has taken the position that mental health services to children and youth should be dealt with separately from those offered to adults.

Public Reports 22 and 24 proposed that all legislation affecting children, youth and their families be consolidated into a comprehensive legislative package to include

mental health legislation specifically designed for children and youth.

Care or Treatment in Locked Facilities

Concern has been raised about the number of special needs youths incarcerated in the youth justice system due to the absence of more appropriate alternatives. In British Columbia, youths may be placed in locked facilities only if they are charged with or convicted of an offence under the *Young Offenders Act* or committed by two physicians pursuant to the *Mental Health Act*. However, youth under the age of 16 may be placed in a locked treatment facility as voluntary patients under section 19 of the *Mental Health Act*. This section permits the parent or guardian (the Superintendent for children in care) and a physician ("...who is of the opinion that the person is a mentally disordered person") to have the child or youth detained in a provincial mental health facility.

The *Mental Health Act* provides that any person detained in a provincial mental health facility has the right to a hearing by a review panel to determine whether or not the person should continue to be detained. This legislation was recently amended to ensure that children and youth placed in designated mental health treatment facilities have the same right as an adult to have access to the review panel process. The Maples Adolescent Treatment Centre has fully implemented this change. More recently, Jack Ledger House in Victoria implemented the *Mental Health Act* change on its Special Care Unit and is seeking clarification from the Ministry of Health about whether or not other programs should be considered as a hospital, a designated mental health facility, or both.

Many questions surround the practice of administering treatment to children and youth by placing them in locked facilities. Some children and youth have serious emotional, behavioural and/or psychological problems but are not committable under the *Mental Health Act*. Most children and youth served in mental health facilities are not, in the classical sense, psychiatrically ill. Forced participation in programs deemed to be in the child or youth's best interest is a practice that has generated considerable controversy. Some professionals hold that it is occasionally necessary to deprive children and youth of their liberty for their own good, but many question the effectiveness of such intrusive interventions. Others, concerned about the dangers of coercive treatment, believe that lockup should not be permitted except for the community's protection under the *Young Offenders Act*. In their view, the only effective way of delivering treatment services is through the willing participation of the child or youth and his or her care-givers. There appears to be agreement that if a young person is to be deprived of his or her liberty, it must only be done as an absolute last resort, for very brief periods, and with strict safeguards to ensure that abuses of the process do not occur.

This office is monitoring the follow-up to recommendation #15 of Public Report No. 22, which recommends that "the Ministry of Attorney General, in collaboration with the Child and Youth Secretariat, review current practices and provincial legislation regulating the use of secure special care and treatment facilities for youths ..., with a view to recommending provincial approaches that are consistent with the provisions of the Canadian Charter of Rights and Freedoms, the United Nations Convention on the Rights of the child, and principles of administrative fairness." To date we have received no information from the Child and Youth Secretariat about their recommendations to government on this issue.

Disagreement hampers youth placement decision

We are periodically contacted by mental health professionals with concerns about delays in providing a suitable community care plan and residential placement for children being discharged from in-patient treatment programs.

A child psychiatrist called us with concerns about "inadequate discharge planning" by Ministry of Social Services and

Housing staff responsible for finding an appropriate community placement for a disturbed 11-year-old boy. The child, a temporary ward of the ministry, was described to us as a victim of neglect and suspected abuse who required a high level of special services in a community setting.

Following a series of extensive discussions with mental health and social workers, it was apparent that disagreements had arisen, not yet resolved, about the best placement for the child. Three possible resources had been discussed — two in the youth's local community and one (preferred by the youth's psychiatrist) in another community. Ministry officials were reluctant to place the child outside his home community, where he had an ongoing (though not always positive) relationship with his mother and where the ministry had easier access to resources.

Evidence of disagreements between parents and among professionals is not uncommon in complaint investigations by the Ombudsman's Child and Youth team. Given the range and complexity of problems faced in this sector, disagreements must be expected; but this office becomes concerned when, sometimes by default, it finds itself playing the role of case manager. This is not our job. In Public Report No. 22 we recommended to government that interministry case management practices be strengthened to ensure the existence of clear and consensual resolution mechanisms when disagreements arise concerning what is in a child's best interests.

In this case, we spoke to the ministry's district supervisor, who acknowledged disagreements and said that she would ensure that a meeting was held with ministry and mental health officials to resolve the planning delays quickly. It was agreed that it was not in the child's best interests to stay in the psychiatric ward of a hospital. Concerns were also evident about the child's previous placement in six different foster or group homes during the past year.

When dealing with older children and youth, it is essential to ask them about their opinions during the service planning process. We were told by ministry and mental health officials that this child wanted to return to his home community to live with his mother. Clinical and child welfare concerns existed about this because of the mother's previous problems with alcohol and drugs which had affected her ability to parent. However, a plan was developed by the ministry so that 24-hour in-home supervision would be provided with the agreement of the child and his mother. While this was being set up, the child was discharged to a specialized residential program in his home community. This plan met with the guarded approval of the child's psychiatrist, who was not optimistic that a return home was in his long-term best interests. But the psychiatrist recognized that, as long as the boy's safety and well-being were not endangered, the boy's wishes should be respected and his consent would be necessary for successful placement in an out-of-home special care resource.

Youth a "ticking time bomb"

The mother of a 13-year-old developmentally disabled youth called us to express concern about long delays in finding a suitable treatment resource for her son. She said that her son, who had been sexually abused by her ex-husband, had recently entered a neighbour's home and fondled their young daughter. In the mother's words, her son was "a ticking time bomb" who had "fallen between society's cracks". She feared for the safety of his sister, aged 11.

According to the woman, treatment programs in B.C. had refused to place her son because he had not been charged with an offence. She wondered what would have to happen before he would get the treatment he needed. She had been advised by ministry officials to provide 24-hour supervision of her son, which she considered an impossibility, while waiting for treatment for him.

We confirmed with a psychiatrist who had worked with the youth and his family that he had received an in-patient assessment at a local hospital in 1984. This assessment

recommended that the youth be placed in a residential treatment centre. According to the psychiatrist, the youth had unfortunately never received this treatment. Subsequently, he stated in a letter to the ministry that the youth's condition had deteriorated considerably. He wrote:

> It seems to me that the system for providing care for this boy is frozen into inaction. It is tragic that services are not provided. [The youth's mother] told me that, fully one month ago, you informed [the youth] to pack his bag because he would be moved out of the house. Nothing has happened to date.... I am again asking that we secure a Residential Treatment Resource, either in the province or out of the province, for this boy immediately. It will be a terrible tragedy if we must sit around and wait for a serious sexual offence to occur before something is done.

When we spoke to ministry officials, they agreed that this youth "fell between the cracks" in the system. An earlier referral to a provincial mental health facility had been denied because his "conduct disorder" was not severe enough and because his IQ was too low. The ministry was attempting to recruit a special care home but had so far been unsuccessful. We were told that several more cases like this were known to local officials and that resource development across relevant ministries was "piecemeal at this point".

This type of complaint is one of the more frustrating ones for ministries as well as our office to deal with. While professionals from the involved ministries agreed on the needs of the youth for treatment and an out-of-home residential placement, there was little apparent clarity or consensus about what type of program would be most appropriate and whether or not this would be provided through the Ministry of Health or the Ministry of Social Services and Housing. The issue of a lack of clarity between the mental health and child welfare parts of the system was raised by numerous professionals during discussions about this as well as other complaint investigations by this office.

About four months after the original complaint, a foster home was found for the youth by the Ministry of Social Services and Housing. The Ministry of Health's Forensic Youth Services agreed to do an assessment of the youth, even though there was no court order. Based on our concerns about the lack of an appropriate treatment resource, as well as apparent confusion or disagreement about the precise nature of the special care and treatment required, we suggested that the local Child and Youth Committee review the case in order to learn more about potential problems or gaps in the system.

Institution only option for violent youth

A mother told us that her 17-year-old son was in need of placement in a community residential treatment program but that "the system" was not responding to this need. She said that she had taken her son to visit one resource but had been told that it was not available to youth in her community, and Ministry of Social Services and Housing officials had said there was no appropriate resource in her area for her son, described as mentally ill and violent.

We spoke to ministry social workers, who said that the youth's problems were too challenging for their resources and that he had destroyed one of their best foster homes. The district supervisor and social worker acknowledged that this youth fell through the cracks in the system and that discussions were under way with mental health professionals about the best plan for his care.

We then spoke to a psychologist with the local mental health centre, who said that the youth had been "bounced back and forth" in the community and had "burned out" local resources. Placement at a provincial mental health institution appeared to be the best hope. As the youth was over 16 years of age and was not committable under the *Mental Health Act*, he would have to consent to placement in this facility.

Initially, the youth's mother was reluctant to support the placement of her son in an institution. She said that the youth and his family would prefer a community-based facility closer to home. However, faced with the reality of limited options, the youth was placed in the mental health institution.

When we last spoke to the complainant, she expressed great frustration with what she described as the "runaround" to different ministries in order to get appropriate services for her son. She said that she was treated well by the individual professionals but could not understand why they were not working together "in one office".

In fact, in her community, plans to integrate child welfare and child and youth mental health services were being discussed by local officials. The notion was to develop a "one stop shop" for troubled children, youth and their families. We believe that this complainant would applaud this initiative.

Income Assistance under the Age of 19

While Ministry of Social Services and Housing policy regarding the right of minors to apply for income assistance has been improved, this office remains concerned about unclear policy directives and inconsistent practices affecting young people who find themselves in need of income assistance benefits.

The ministry's policy now clarifies and reinforces the right of youth to apply for income assistance benefits. The policy reaffirms the right of young people to appeal if their request for benefits is denied. However, we still receive complaints from young people who do not believe that they were fairly treated in ministry income assistance offices. In many cases they believe that they were treated unfairly because of their age.

We know that providing income assistance to a young person may not necessarily be the most appropriate response to the youth's needs. We encourage the ministry to explore all options with young people in their deliberation of a decision to grant or deny income assistance benefits. When it is in the youth's best interests to complete school or training programs and/or to live independently, income assistance may be the best option. Age alone should not preclude the eligibility of an adolescent to seek financial assistance. Moreover, for any application to receive a thorough and fair consideration, the views of the young person and her/his parents or advocates must be considered. A comprehensive social assessment can often act as a useful first review in cases where there are different opinions about what is best for the young applicant.

We believe that throughout the process, the applicant must be treated with dignity and respect.

Eight months pregnant and no money

A young woman who was days away from her 19th birthday told us she was due to deliver her first child within three weeks. As she was not able to continue working because of her pregnancy, she had been laid off by her employer. She filed for unemployment insurance maternity benefits and was told that because of upcoming holidays and usual processes, it would be several weeks before her application would be processed.

The complainant was without any family support, and the father of her child was unaware of and uninvolved in her circumstances. She lived in a small apartment and had been independent for some time. Having paid her rent and her hydro bill, she had only a few dollars from her small salary. Her landlord lent her $25 to buy food. She was temporarily subletting a room in her apartment to a former boyfriend who had lost his job and did not have a place to live. The complainant said the friend paid her what he could towards her rent. They were no longer involved in a relationship, and he was not the father of her child.

As she did not have sufficient money to pay for food and bus transportation to her medical appointments, she applied for tem-

porary benefits from the ministry. She thought that the temporary benefits would assist her until her maternity benefits through unemployment insurance arrived.

The income assistance staff person with whom she spoke informed the complainant that she was not eligible for benefits because she was not yet 19 years of age and because she would be receiving unemployment benefits. There was no offer of temporary assistance, a food voucher, or any other information from which the complainant might benefit. The complainant was not provided with information about her right to appeal.

After talking to our office, the complainant made another appointment with income assistance officials to explain the desperation of her situation. She provided details of her expenses and her living situation. She informed the staff person of the arrangement with the former boyfriend. This time the complainant was told that she was not eligible for assistance because she was living in a common-law relationship and that she and her common-law partner would have to apply as a couple.

We suggested to the ministry that there was no apparent reason to believe that the complainant was in a common-law relationship. We suggested that any young woman who was almost nine months pregnant and without enough money for food or transportation was in need of assistance. We encouraged the complainant to file an appeal. The ministry provided a food voucher while awaiting the outcome of the appeal.

Fifteen days after the complainant's initial application for assistance, the ministry agreed to provide one month's temporary assistance until the complainant's unemployment benefits were processed.

Path to independence cleared for young mother

A 17-year-old youth complained that the ministry had denied income assistance to her and her four-month-old child because they were living with her father.

Ministry staff told us that a social worker's assessment of the complainant's circumstances had revealed no child protection concerns but had indicated that the father was emotionally and financially unstable and was unwilling to have his daughter and grandchild live with him. The Family and Children's Services (F&CS) district supervisor referred the complainant and her child to the ministry's Programs For Independence (PFI) office and recommended that income assistance be provided. The financial assistance worker at the PFI office had a copy of the social worker's assessment, an "intent to rent" form, and public health nursing information supporting the complainant's parenting ability.

The PFI district supervisor disagreed with the F&CS district supervisor, stating that the complainant presented only a financial reason for wanting to move out on her own but refused to co-operate with the ministry's attempts to have her father provide financial support. Subsequently, the F&CS district supervisor contacted the PFI district supervisor to reiterate support for the provision of income assistance and to confirm that there were not only financial concerns. The F&CS district supervisor referred the complainant to family/ parenting support groups and offered to provide additional supports such as homemaker services, if necessary.

When the complainant's father learned that income assistance had been denied, he went to the F&CS office, broke down, and said that he had no alternative but to force his daughter and grandchild to leave that evening, as he could no longer cope with the situation.

The PFI district supervisor asked for a meeting to be arranged among the complainant, the social worker and the financial assistance worker in order to gain a clearer perspective of the woman's living arrangements. We encouraged the complainant to see if her father would allow her and her child to stay another couple of days until the meeting had taken place and the PFI district supervisor had reconsidered the matter. We also advised the com-

plainant that if her father forced her and her child to leave that evening, she could contact emergency services and ask to stay at a transition house.

The proposed meeting was held the following day. Income assistance was approved, and the woman and her child moved into their own apartment the same day.

The F&CS district supervisor told us she would meet with the PFI district supervisor to improve the quality of services to individuals under 19 years of age, as the delay in the provision of services in this case was unnecessary and similar situations should be prevented.

She'd rather live with her aunt

A woman complained that the ministry was not supporting her 16-year-old niece, in care by agreement, who wanted to live with her aunt. The youth's infant child was a temporary ward of the ministry and had been placed in a foster home. The complainant said that the youth had not done well in previous ministry resources where staff "kept a daily journal of her moods and behaviours". The youth had been living with her aunt for some time and was doing well in the local school.

We spoke to the youth, who confirmed that she wanted to live with her aunt. She said that she had been physically abused and that her mother did not want her back home. Her goals were to live with her aunt, get her baby back and complete high school. She said that she had been "on the streets" in her former community and had hung around with the wrong people. She said that it was difficult to maintain close contact with her child, who was in another community, although the ministry was paying travel expenses for her weekly access visits.

Both the aunt and her niece said that the local social worker was being very supportive. They wanted her file transferred to the community in which she was now living. The social worker in the aunt's community told us that the youth was doing well in the aunt's home. He said that case decisions were, however, still being made in the district office where the youth used to live.

When we spoke to the district supervisor in the youth's former community, he said that he was not pleased with the way the youth had moved among communities in an unplanned way. We pointed to the fact that the youth was reported to be doing well with her aunt. He confirmed that it was not possible for the youth to return to her mother's home. He agreed to discuss the matter with the youth's mother and consider the request to transfer the file. He agreed to formalize a request for the other office to do an assessment of the aunt's home as a special care resource.

The aunt's home was approved as a special care resource for the youth. The file was transferred to the ministry office in the community where the youth was now living. The plan also called for the transfer of the youth's child to her new community after current medical conditions had stabilized. This resolved the concerns of the youth and her aunt.

Child Protection

Mother needs support for move

The trend in child welfare policy is to offer support to families rather than removing children from their parents, recognizing the benefits to the child from such a broader approach. This trend requires a significant attitudinal shift and a recognition that parents often seek support, especially in periods of crisis, which requires ministry staff to assume temporary responsibility for tasks normally undertaken by the parent.

A distraught woman called us to say that her child had been abused by a local school board employee and that she had decided it would be in her child's best interests for the family to move to another community where they had a network of family and friends. She said that the ministry was not responding fast enough to her request for financial support to make this move. She

said that "red tape" was holding up the move.

When we spoke to the ministry's district supervisor, he agreed that the move might well be in the family's best interests. The ministry had asked the complainant to write down her reasons for wanting to move and to obtain a letter of support from her doctor. We explained that the complainant appeared to be going through a period of crisis and suggested that perhaps she could best be helped by the ministry soliciting, with the complainant's consent, the information necessary to approve financial support for the move quickly. The district supervisor agreed to follow this suggestion, and speedy approval for the move was obtained from the area manager.

Sexually abused youth concerned for safety of sisters

When ministry social workers are concerned for the safety and well-being of a child, their powers and the limits on their actions are spelled out by the *Family and Child Service Act*. The professional judgement of social workers may be contested by the opposing views of parents. Currently, children have no statutory right under this legislation to be heard — a fact about which we expressed concern in Public Reports No. 22 and No. 24. In some cases, social workers believe that "the system" has failed to protect a child adequately.

A young woman complained that the ministry was not acting to protect her sisters, aged 8 and 9, from their step-father. She alleged that she had been sexually abused by the step-father and said that criminal charges were proceeding. However, her mother did not believe her allegation, was supporting the step-father, and hence was unable or unwilling to protect the caller's younger sisters from the type of abuse she said she had experienced.

When we spoke to the ministry's district supervisor and social worker, they were sympathetic to the complainant's concerns. We were told that the children had been apprehended but that the court had ordered them returned to their mother, with access by the step-father to be supervised by the ministry. The step-father was supposedly no longer living with them, though the complainant said she doubted this. The supervisor and social worker had been informed by senior ministry officials that, pursuant to the *Family and Child Service Act*, they would not be authorized to apprehend the young children unless current abuse or neglect was alleged and found to exist.

Efforts had been made by the ministry to establish agreements with the complainant's mother about the court-ordered supervised visits by the step-father. However, a high level of distrust existed among the parties and, under current child protection legislation, there was little that either the ministry or this office could do to resolve the complainant's concerns.

We later learned that the complainant's step-father had been convicted of abusing her, under a Criminal Code offence, and had been imprisoned. We referred the complainant to the appropriate federal correctional officials when she asked to be kept informed about her step-father's movements in the corrections system. Such information is, by policy, held in confidence by the federal corrections system, although an official with whom we spoke expressed his understanding of the reasons for the complainant's request and suggested that she call him. We passed this information to the complainant and discontinued our involvement.

Wheels move slowly for non-relative care-giver

The caller was a man who had been caring for a 13-year-old youth for the past month. He said that the youth had alcohol, drug and other behavioural problems and had been sent by his mother, with the social worker's support, to stay with his older brother in the small community where the caller lived. When that arrangement had not worked out, the youth was taken in by the caller. He said that the youth was doing well, was not taking drugs and was attending school; the problem was that the man

could no longer afford the youth's upkeep. Ministry officials had told him that, as he was not a blood relative of the youth, there could be problems and delays in reviewing his request for assistance.

The ministry's district supervisor told us that the complainant had requested assistance more than a month earlier, but the social worker had found no evidence of protection concerns, as a result of which no support was provided. The ministry's area manager had recommended that the youth be sent back to his mother's home in a distant community. All parties agreed that the youth wanted to stay put.

We then spoke to the district supervisor in the mother's community. He informed us that he wanted to support the youth in his current placement and that he was negotiating with his counterpart in that community. He told us that the youth had been seriously neglected at home, as his mother was profoundly depressed and could not afford to financially support her son. Recognizing her own inability to cope, she had sent him to live with his brother, who unfortunately had been unable to cope either — hence the involvement of the complainant. The district supervisor agreed to pass the issue to the area manager level. As the youth was in need of clothing, he also agreed to ensure that a clothing voucher would immediately be provided.

The respective ministry offices eventually agreed that a restricted foster home study would be done on the complainant's home. This study found that the home complied with ministry standards. This paved the way for funding support to be provided when the youth's mother signed a short-term care agreement with the ministry.

Following a further complaint to our office by the man, the ministry agreed to make foster payments retroactive to the time when the complainant had first applied for assistance some three months previously.

Tough love goes too far

We received a call from an irate parent of a 15-year-old girl who had recently been apprehended by ministry social workers. The caller said that she and her daughter had had problems in their relationship ever since the youth's father had died three years earlier. In fact, the daughter's behaviour had become so bad that a contract had been drawn up by the complainant and her fiance. Her daughter, she said, had refused to sign the contract and hence was not allowed home. The youth's older sister had also been in the ministry's care for a short period because of problems in the home.

Attempts by the ministry to resolve the family's conflict had not been successful. Ministry officials explained to the mother that they would consider her daughter at risk if she was not allowed back home. The complainant said that the ministry was letting a 15-year-old dictate terms to her parent and that she believed that the government was improperly interfering with her family. However, the ministry explained to us that they were not prepared to see a 15-year-old youth without a place to live, and that was why they had apprehended her. Counselling to the family had apparently been refused by the complainant.

We explained to the complainant that the court would decide whether or not her daughter was in need of protection pursuant to the *Family and Child Service Act*, and that this office was not authorized to review matters before the court.

We were later told by ministry officials that a temporary order had been granted by the court placing the youth in the ministry's custody for six months. The court had apparently stated that the contract between the complainant and her daughter was not a legal document and had no force of law. The contract had stated that if the youth did not abide by the contract, she would have chosen not to live at home and would not hold the parent responsible for her. The judge apparently commented that a 15-year-old could not sign away the responsibility of a parent.

We told the complainant that we could find no evidence that ministry social work-

ers had acted unfairly. In fact, we believed that the social workers had been acting in good faith and in what they considered to be the best interests of the youth.

Fostering arrangement threatened by contract dispute

The natural mother of two sisters, aged 11 and 14 and permanent wards of the ministry, was upset that the ministry was planning to move her children from an excellent foster home where they had done very well for the past two years. The foster parents had moved to another community where, according to the complainant, local ministry staff were not prepared to provide the level of financial support that the ministry staff had made available in their former community. As a result, the foster parents were questioning their willingness to continue caring for the children.

When we spoke to ministry resource supervisors in the two regions, they acknowledged that inter-regional negotiations had taken place and that disagreements existed about the level of financial support that should be provided to the foster parents by the ministry. Traditionally, the ministry has provided extra financial support to foster homes when a child is assessed to have a range of special needs. In this case, we heard differing points of view about the problems being exhibited by the children. It appeared to us that both ministry officials and the foster parents were uncomfortable with the nature of these discussions.

For the foster parents to maintain a level of financial support that accurately reflected the challenges of fostering the children, they needed to convince ministry staff that the children still had emotional and behavioural difficulties warranting special rates. On the other hand, ministry staff in the foster parents' new community were administering limited budgets. They maintained that the children's behaviour was "normal and age appropriate", so that a significant reduction in the rates was justified. If consensus was not achieved, we were told, the children would have to be moved back to another foster home in their former community.

Ministry staff in the children's former community told us that the children had come into care with definite special needs. They said that the current foster home had worked very effectively with the children and that significant improvements had been noted. The foster parents felt that their "reward" for helping the children to overcome the problems they had when they came into care was to have their funding level reduced — a disincentive for them to continue fostering these children. All parties agreed that it would be in the best interests of the children to remain in their current home.

Almost nine months from the time of the original complaint and following lengthy discussions with all parties, we were informed by the resource district supervisor in the foster family's former community that he had agreed on a rate of financial support with the foster parents. That office had agreed to maintain the payments for a specified period of time before transferring the file to the ministry office in the family's new community. At that time a reassessment would be done and negotiations would begin again. The result was that the children were able to continue living with the foster family that they and their mother considered preferable.

Currently, the ministry is reviewing its procedures for setting standards, establishing levels of care and contracting. Preliminary indications are that the ministry will provide specified levels of funding to foster homes based on the skills and abilities of the foster parents rather than on the "negotiated" level of disability of the child.

Placement of children by the ministry must be based on the individually assessed needs of the child. The purpose of the assessment is to determine the most appropriate residential and support services. The interests of the child are not well served when care-givers and social workers are expected to argue about how "disturbed" a child is in order to establish a fair rate of

pay to the care-giver. We are hopeful that current reforms by government will result in the establishment of a responsive network of appropriate alternative care-givers for children and youth in care who are fairly compensated for their skills.

A little respect goes a long way

A teenager told us that youths were being treated unfairly by staff in a ministry-contracted group home. She said that staff showed little respect for the residents and threatened to quit when confronted by them. She said that of the 15 counsellors working in the program, there were only four the residents could talk to. She was afraid that unless the atmosphere in the home changed soon, the situation could "blow up". She and other residents had discussed their concerns with the program director and a ministry social worker. The program director had listened to them and had tried to encourage staff to make necessary changes, but nothing had happened.

We spoke to the ministry's district supervisor, who said that he had been made aware of the problems and believed that the youth residents were dealing with their concerns in an appropriate way. He acknowledged that problems in finding suitably skilled and qualified child and youth care staff was a real problem in this group home and many others in small communities. He agreed to set up a meeting with the complainant and other residents to discuss the continuing concerns.

Following the meeting, the district supervisor informed us that he was impressed with the presentation of concerns by the residents. He said that most of their concerns were legitimate and promised to take them to the administrative supervisors of the contract agency.

When we again spoke to the complainant, she said that she felt that she and other residents had been heard by the district supervisor. The atmosphere in the group home had already improved, and she was hopeful that more positive changes would follow.

Adoptions

Adoptions files in British Columbia are sealed documents. This means that the identities of parents who place a child for adoption are not made available to adoptees or their adoptive families. Nor are the identities of the adoptive family available to the biological parents.

Adopted children frequently reach a point in their lives when, for various reasons, they consider it important to know where they came from. They may want to know whether a particular characteristic was shared by the biological mother or father, or their interest may be in their ethnic and cultural heritage. Some adoptees want to know their medical histories. General non-identifying information has been provided by Post Adoption Services of the Ministry of Social Services and Housing upon request.

As more and more adopted "baby boomers" reached the age of majority, the ministry's Post Adoption Services received an increasing number of requests for non-identifying information. As the numbers increased, the ministry became less able to handle requests quickly. The Ombudsman's office received a number of calls from adoptees who said they had been told it would be months or years before their requests for information could be processed.

When we followed up these concerns with ministry staff, we found that Post Adoption Services was making every effort to minimize the delay and to provide sensitively and accurately written profiles for adoptees and adoptive parents.

In the fall of 1991, the responsibility for providing information to adoptees and birth parents was transferred by the ministry from Post Adoption Services to a private organization, Greater Vancouver Family Services. Under contract with the ministry, Greater Vancouver Family Services was to provide non-identifying information and administer both the Passive Adoption Reunion Registry, formerly with the Vital Statistics Branch of the Ministry of Health, and the Active Adoption Reunion Registry.

The Passive Adoption Reunion Registry requires both parties seeking contact to register. There is no effort to contact a birth parent, for example, when an adoptee registers with the Passive Registry. The Active Adoption Reunion Registry only requires one person to register, for example the adoptee. The staff at Greater Vancouver Family Services will then search for the adoptee's biological parent in order to facilitate contact or reunion.

For the first time in British Columbia, birth parents, relatives and adoptees have a tool to search actively for one another and to provide contact when that search is successful and both parties are interested in meeting. There is provision for those who do not want contact to register a veto against such a reunion.

When the ministry provided post adoption services, no fees were incurred. There are fees for all services provided by Greater Vancouver Family Services. These fees currently range from $25 to register and receive verification that there is a record in Victoria of the applicant's adoption to an initial fee of $250 for an active search for a birth parent or adoptee. In addition to the $25 registration, an adoptee will have to pay an additional $35 to receive non-identifying information. Greater Vancouver Family Services can waive the fee requirement for those who qualify due to limited income.

Some adoptees have expressed their disappointment and disapproval of having a fee for service. Most frequently, adoptees have indicated to our office that they do not believe it is fair to be charged a fee to obtain non-identifying information about their own histories. Adoptees have told us that the non-identifying information about their ethnic and cultural background, about their origins, is their own personal history and should be available to them without charge.

The Ombudsman's office is involved in discussions with ministry staff about the post adoptions issues raised by complainants. We look forward to continued dialogue during 1992.

Mother concerned about information given daughter

Although as a society we view adoption as a permanent state, many adult adoptees and birth parents pursue a quest to make connections with each other. Sometimes a birth parent is unwilling to reconnect, having put the decision to place a child for adoption firmly to rest. Occasionally adoptees are not ready to reconnect with a family they do not know. Frequently, however, this office receives requests from both adoptees and birth families asking for information about how to facilitate the reunion they are seeking.

We received a call from a birth mother who had been located by her child, placed for adoption more than 20 years ago. The complainant was concerned about the process by which one party was able to connect with another.

The child's adopting family had provided her with all the information they had about her birth history. When the young woman reached the age of majority, she initiated a search for her birth family, with the support of her adoptive parents.

The complainant was concerned that the young woman knew the surname of her birth mother. The complainant said she understood such records were sealed and that only non-identifying information could be provided to adoptees. The complainant was also concerned about some of the non-identifying information that had been provided to the adult adoptee, as she did not believe the information accurately reflected the situation at the time of the adoption.

We agreed to review both concerns with ministry staff. We discovered that prior to 1968, the name given the child at the registration of birth was noted on the court documents, which would include the adoption order. It was possible for these documents to be provided to the adoptive family during the court process to finalize the adoption order. Changes introduced in 1968 replaced the surname on these documents with the birth registration number. That number cannot be used to trace a surname given at

birth. Once an adoption order is approved, the birth certificate of the adopted child is changed to that of his or her adoptive family's surname.

We also reviewed the complainant's concerns about the content of the non-identifying information that had been provided to the adult adoptee. This information is taken from the records on file. The complainant's memory of the sequence of events differed from those recorded on file documents. However, it was not administratively possible to contact individuals from 20 or 30 years ago to verify the contents or to clarify what was meant by particular notes.

We were not able to determine whether the ministry's record was accurate or whether it was the complainant's recollection which most accurately reflected the realities of more than 20 years past. We found that ministry staff had responded to the adult adoptee's legitimate request for non-identifying information with the utmost sensitivity and regard for both the birth family and the recipient of the information. As the reunion between the adopted woman and her birth mother was a positive event, the issues of the past would best be dealt with between them.

Public Trustee

When a child is orphaned and parents have not left wills appointing a guardian, two government agencies become involved. The Superintendent of Family and Child Service becomes the guardian of the child and, through the Ministry of Social Services and Housing, may provide care for the child up to the age of 19. The Public Trustee becomes guardian of the child's estate and handles any money or property left to the child, claims survivor's benefits for the child, and represents the child's legal interests.

This division of responsibilities requires good communication between the agencies of the separate ministries and should include an integrated approach to serving their client, the child.

The Deputy Ombudsman for Children and Youth and several team members began discussions this year with the Public Trustee's staff. A recurring complaint is made to us by young people who have been permanent wards of the Superintendent of Family and Child Service. As they approach the age of 19, these youth may be advised that the Public Trustee is holding money in trust for them. They are surprised to discover that the Public Trustee has been paying for the monthly cost of their foster care from their trust funds. Their complaint is even more bitter if the foster care experience has been a negative or abusive one.

Current guidelines at the Public Trustee office allow trust monies to be paid out for the maintenance of a child until $5,000 is left in the trust account, as a minimum balance to be saved for the child. We noted that in the province of Saskatchewan, the first $25,000 from a dependent child's trust is to be preserved for education and training opportunities. This seems a more realistic start towards preparing for goals for independence as an adult. We suggested a policy of notification to be made to a youth or the youth's direct care-giver in order to provide confirmation that care was being paid for and to encourage some advance financial planning before the youth turns 19 and is discharged from care. We also looked at the documents that a youth is asked to sign in order to obtain release of the trust funds, and commented that plain language initiatives could be usefully applied to them.

Public Trustee expenses questioned by ward

A young man contacted us a few weeks before his nineteenth birthday. The Superintendent of Family and Child Service had become his guardian after his mother was murdered by his father. He had inherited a share of his mother's property and had received orphan's benefits under some pension plans. He was aware that the Public Trustee had been holding money in trust but had told his social worker that he was shocked to find out that his foster care had

been paid for from his trust funds. He asked the Ombudsman's office to determine if the Public Trustee had properly paid monies out, and what, if any, other charges had been made against the funds in trust. He was concerned that, in order to receive his trust monies, he had been asked to sign a document which he didn't understand due to its complex language. He thought his signature on the document would discharge the Public Trustee from any wrongdoing in dealing with his funds. He was also in a hurry to get this information, as he wished to use his funds for international travel.

We reviewed the Public Trustee's file, a computer printout calculating all his benefits and payments from his trust funds, and the court documents which established some of the youth's benefits. We explained that two of the pension benefits that he received were intended to pay for the loss of the support of his parent. Such benefits are meant to be used to pay for the maintenance of dependent children. We were satisfied that the Public Trustee had used it appropriately. No maintenance had been paid out by the Public Trustee until the lump sum of $5,000 had been saved for the young man. Other charges that had been paid from his estate included the cost of an audit and a 5 per cent Public Trustee commission which is charged on all trust accounts. The Public Trustee's office agreed that advance notification to the youth or his direct care-giver could have better prepared the youth to understand how his trust monies were being used. The Public Trustee agreed to accept a letter from the youth stating that he was satisfied with the accounts and expenditures of the Public Trustee rather than having him sign the release documents before his funds were transferred to him.

The youth was also informed by our office that orphans' benefits under the Canada Pension Plan can be extended from age 18 to age 25 if a youth wishes to attend school, and that Criminal Injuries Compensation benefits could similarly be extended from age 18 to age 21. In addition, the youth was advised of the Public Trustee Educational Assistance Fund, which provides bursaries of up to $2,500 each for former permanent wards of the Superintendent of Family and Child Service who wish to enrol in a post-secondary institution in B.C.

Public Schools

The few complaints received involving the Ministry of Education often focus on funding, disposition of school district properties, and policies and protocols. The Ministry of Education is not directly involved in the provision of services to students.

Most complaints about educational issues are directed at school boards. These remain outside our jurisdiction at present, being listed in an unproclaimed section of the Schedule to the *Ombudsman Act*. The relationship between this office and school district staff has been generally co-operative and beneficial, and we have seen many excellent resolutions to difficult issues.

When we receive a complaint involving a school district decision, we attempt to make contact with the person who can address the issue. Many of the complaints we receive about school-delivered services come from parents and advocates for children with special needs.

"Time-out" room unsafe for child

We received a call from a distraught mother of two. She was a single parent, and one of her children had special needs. In addition to experiencing developmental disabilities and extremely limited communication skills, her oldest son was a fragile diabetic, attending school with the help of an aide. The complainant had established a strong support network in her community. The Ministry of Social Services and Housing was helping her by providing respite care for her son. The respite care-givers had become an integral part of the complainant's support system.

Because of his disabilities, the complainant's child exhibited behaviour that was sometimes difficult to understand. He would become disruptive to the other chil-

dren in the classroom. Although the complainant expressed her opposition to the idea, the school had developed the use of a "time-out" room, where her son was to be placed when he became disruptive.

The time-out room had formerly been used as a storage closet. It was now a carpeted area with one window which was so high you could not see in or out. There was no handle on the inside of the door, so once inside a child could not open the door to leave the room.

On one occasion when the youngster was placed in the time-out room, he became very frightened. Somehow he managed to injure himself, causing his nose to bleed. When he saw blood, he became even more distraught and began to scream. As no one could see him, no one came to his rescue. When his yells subsided and school personnel opened the door, they found the child shaken and bloodied.

We shared the complainant's concern about the use of such a room where children cannot be seen or see and cannot open the door themselves. We offered to raise this matter with school personnel, but the complainant was concerned that a call from our office might jeopardize her efforts to keep her child in school.

We contacted the district Family and Child Services office, as we viewed the matter as a child protection concern. They agreed that locking a child in such a room placed the child in an unsafe position. The social worker with whom we spoke informed us that the superintendent of the school district had agreed to modify the room so that children could be viewed and could see out and so that children could open the door from inside.

Unfortunately the complainant decided that her son was not benefiting from the tensions arising from his behaviour, and she removed him from school. The complainant wanted to reassess her son's needs before returning to the school system for support. While there remained outstanding issues for her child's education, the complainant was satisfied that the time-out room would be modified and not used as it had been in the past.

Classroom integration of a learning-disabled child

The complainant's child had been diagnosed as having severe learning disabilities. All professional assessments of the child were in agreement. It was recommended that the youngster attend school part-time with an aide in the classroom. The goal was to integrate the child gradually to full-time attendance in a regular classroom.

The child was provided with a teacher's aide, but after a review, one of the school staff suggested that he was developing a dependency on the aide and that he was not progressing as all had hoped. The school suggested withdrawing the aide midway through the year and relying on the learning assistance teacher to help the child during the latter half of the year.

The complainant was not in agreement with the plan. She asked for our advice about how to resolve the matter. We encouraged her to continue to advocate for her child's needs and to meet with those involved at the school to try and come to a consensus on a plan that was in the best interests of the child.

We subsequently received a call from the district Director of Services for Special Education. He wanted to inform us that a meeting had been held at which it was agreed to continue with a part-time aide to the end of the school year with daily learning assistance. In addition to developing an individualized educational plan for the child, the school had acquired a laptop computer to assist the child to communicate more easily. The person who called said that the child's mother was an excellent advocate for her child and that she was able to focus on the child's interests in a constructive and positive manner.

We appreciated being informed of the outcome of the meeting and acknowledged that the resolution came about from the willingness of school staff and the parent to

resolve the matter for the benefit of the child.

Consensus leads to solution for special-needs child

Sometimes parents become frustrated with a system, and the stress of trying to ensure their child is well served makes it difficult to be patient or willing to work with all parties involved. Such was the case when we received a call from the mother of a special-needs child. She said her daughter had been diagnosed at preschool as having a range of medical and psychological conditions which precluded her from participating in a regular education program. Her daughter, now 15, was eager to complete her education, but the complainant said the child often became so frustrated and so unhappy that she started to refuse to attend school.

The complainant had been involved in developing appropriate educational programs for her daughter since kindergarten. When we asked who she had contacted, the complainant listed a number of professionals who had been or were currently involved in her daughter's education. She said it was not that school staff were unwilling to be helpful, it was just that every year she felt she had to fight to get the services her daughter needed. She was tired, she said, and her daughter was having more and more difficulty attending school. We asked if there was one person in particular who had been helpful and agreed to contact that person.

We spoke to the child's school counsellor, who said he understood the frustration expressed by the complainant. He said that the complainant's daughter was very difficult to plan for because her needs fluctuated and were, at times, quite extraordinary. He agreed to contact the complainant with a proposal for the next year's plan. He also agreed to be the contact person for the complainant so that she would not have to make repeated phone calls to several different individuals. The counsellor would be the case manager.

Shortly afterwards, we received a call from the complainant to say that the counsellor's plan had been well thought through and included an appropriate amount of responsibility for her daughter. The counsellor met with the complainant and her daughter to discuss the plan, and when the three had reached an agreement, the counsellor arranged a meeting with all involved. The complainant wanted us to know that the educational plan was implemented smoothly and that her daughter was looking forward to completing the school year and making plans for her future.

Criminal Injury Compensation

The Criminal Injury Section is administered by the Workers' Compensation Board and provides compensation for victims of crime in the province. It has the right to decide whether a person is entitled to compensation and to determine the form and amount of the award. Last year, more than 1,300 of the victims were under 19. Approximately 72 per cent of the crimes were related to sexual offences, including the sexual assault and abuse of children.

Counselling for an abused youth

A male youth's mother contacted our office. In the past, her daughter had been sexually abused by the complainant's husband, and a claim for criminal injuries compensation had been accepted. At the time, therapy had been offered to her adolescent son as part of dealing with the trauma to the whole family. He had not been willing to accept the therapy when it was offered. Recently her son had come into conflict with the law and had indicated to his probation officer that he now had some insight into his own behaviour and thought counselling would be useful for him.

Initially the Criminal Injury Section had refused services to him on the basis that the youth was now an offender and that services are paid for victims, not offenders.

We contacted the youth's probation officer and a therapist who was familiar with his home situation and who the youth had said he was willing to work with. Together they clarified that the youth was seeking counselling to help him deal with the impact of his father's abusive behaviour. The Criminal Injury Section accepted that he was a secondary victim of his father's conduct and agreed to approve six months of therapy for him.

Youth in correctional facilities

A member of the Children and Youth team visits all youth centres where young offenders are classified as being in either open or secure custody. Since the introduction of the no-smoking policy in correctional institutions, smoking has become the main concern of youths in detention centres. The issue has not gone away. Smoking has continued to present a challenge for residents and staff alike — residents looking for better ways to smuggle tobacco into the centres, and staff trying to control them.

At this time, there do not appear to be any continuous courses available to help youth stop smoking. These are needed to cope with the constant turnover of youths serving short sentences or being transferred to other youth centres. Nor is there any ongoing program available to provide support for youths who stop smoking while in detention and may need continued assistance to keep from starting again after being released.

We received several complaints in 1991 from residents and ex-residents of youth detention centres regarding loss of personal effects. When youths are admitted to an institution, all their personal belongings should be recorded on a personal effects form. The items should be described in such a manner as to allow easy identification. When the youths are transferred to another institution or released, all property belonging to the residents should be returned to, and signed for, by the youths. Sometimes, due to workload or other reasons, items are not listed individually; instead they are lumped under one item as "bag of personals". At the time of transfer or release, a youth may find that one or more items has gone missing. With no description of the specific items contained in the bag, no recourse exists to reclaim the missing articles.

Peer abuse

Last year we reported the establishment of a task force to address the issue of peer victimization in youth centres. The task force has representatives from the Ombudsman's office, other youth-serving ministries (such as Attorney General, Health, and Social Services), private facilities, the academic community, and youths who have had actual experience within the system. The work of the task force will be concluded in 1992.

The task force designed a questionnaire to gather staff viewpoints, and this was distributed to roughly 500 youth workers throughout the province. We received approximately a 27 per cent response. As well, 80 youths who were or had been in young offender or youth health centres or group homes were individually interviewed to obtain their perceptions on the issue. Anonymous results from the questionnaires and interviews as they pertained to individual youth centres were then discussed with senior staff at those centres.

As a related undertaking, the Corrections Branch commissioned a survey of youth centres and group homes in other provinces and U.S. states. As a follow-up to this, we examined the operation of two youth containment centres in the State of Washington that seemed to have had some measure of success in coping with problems of youth peer victimization.

We anticipate that the report based on the task force's work will be available by summer of 1992.

Misery the gift of a bully

A youth's fear of being physically or verbally victimized by bullies can be so paralysing that it can interfere in day-to-day living in a major way. One resident of a youth detention centre complained that another resident was bullying him and others in his unit. The youth was being harassed by the bully to the point that he was afraid to walk in the hallways in case he was attacked. Another resident had stopped attending school altogether, just to avoid the bully.

We brought the situation to the attention of the director of the centre, who indicated that movement of residents was supervised as closely as possible. He agreed, however, to alert his staff to the situation. Much to the relief of the victims, the bully was released soon after we received the complaint. Unfortunately, as youth workers well know, it was almost certain that another youth would fill the "gap" and take on the role of victimizer in the centre.

Tee shirts too revealing

The female residents of a youth detention centre complained that the pink tee shirts issued by the centre were see-through. The residents, all young teenagers, felt uncomfortable wearing such immodest apparel. They found themselves forced to wear sweat shirts, but these were too heavy on warm days. They complained that they were not allowed to wear their own clothes, which they would have preferred over the institutional issue.

We discussed the concern with the director of the centre. He would not consent to the residents wearing their own clothing, but agreed that something needed to be done. On a subsequent visit, we observed that the female residents were wearing blue opaque tee shirts.

Choice of group home questioned

During a routine visit to a youth detention centre, one of the residents expressed concern about the plan to place him in a particular group home upon his release. He feared that, if placed there, he would "get in trouble" again and would likely end up back in the detention centre.

Social workers and probation officers are frequently frustrated by the lack of available resources to place their wards. However, if the youths are to be given a fair chance at rehabilitation, they must be placed in homes where their needs are going to be met.

We contacted the youth's social worker and advised her of the boy's concerns. She concurred that the proposed placement was not the best situation for the complainant, and agreed to secure a bed for him in a different home where better supervision could be provided.

Family Court Counsellor Program

The Family Court Counsellor Program helps spouses who are considering separation and divorce to find solutions to disputes involving the custody, access and maintenance of dependent children. Family court counsellors provide counselling and mediation services and also provide assistance to individuals who are pursuing matters through the court. Where a mediated resolution is not possible, a judge may direct a family court counsellor to prepare a report, with recommendations, for the court. It is expected that family court counsellors will strive to ensure that the needs and rights of children are carefully considered and that recommendations for custody and access arrangements will be in the best interests of the children.

Concerns raised in cases brought to our office involving the Family Court Counsellor Program represent many of the systems issues that this office identified in our efforts to assist government to provide better service in cases involving vulnerable children. In 1988 the Ministry of Solicitor General began the process of privatizing family court counsellor services. The 1988 Ombudsman Annual Report highlighted a number of issues coming to our attention

during the investigation of complaints involving the Family Court Counsellor Program. These issues were communicated to the ministry's Family Service Privatization Implementation Team in 1988. Later, the decision was made not to privatize the program. Concerns raised in recent case reviews suggest the need for us to revisit with the Ministry of Attorney General, which has taken over responsibility for the program, the systems issues raised about the Family Court Counsellor Program.

Much has yet to be learned about how best to assist children and families when serious disputes exist between parents. Easy access to mediation, adequately qualified clinical professionals to advise parents and the courts, and independent representation of children in court in certain cases are important features of a responsive system. When counselling mediation or referral services are not successful or are not viable options, the quality and thoroughness of a family court counsellor's custody and access report will help the court make decisions that are in the best interests of children.

With respect to custody and access reports, a common area of concern is an increasing backlog of report requests, resulting in significant delays in completion of the reports and, in some cases, adjournment of scheduled court hearing dates. During these delays, children remain in temporary custody and access arrangements that, because of the uncertainty, can be very stressful for children.

Another common area of concern is the quality of professional intervention and the family court counsellor's willingness to be involved in the provision of counselling and mediation services and the preparation of custody and access reports. When judgement and discretion are required in assessing the best interests of children, fairness is most effectively ensured through professional integrity and objectivity of the family court counsellor. High professional standards are required as well as a thorough understanding of child development, family dynamics and family law if family court counsellors are to perform their role effectively.

Case reviews indicate that some of the persons providing family court counsellor services consider themselves skilled probation officers but are reluctant to become involved with family counselling, mediation and custody and access reports. This raises the question of whether or not probation officers should be responsible for providing family court counsellor services and whether there is a more appropriate method of delivering these services. As a pilot project, the ministry initiated the Fraser Region Custody and Access Report Team. The team's first-year evaluation suggests that, when compared to field offices, the specialized focus of this team has resulted in higher quality reports, increased compliance with ministry standards, and shorter report completion times.

Concerns that are identified during the process of helping families resolve problems, through counselling and mediation or through the court, are very often interministry issues. A family court counsellor, for example, may be providing services to a family experiencing parent-teen conflicts when another ministry program is already involved. We believe that co-operative and integrated cross-ministry planning and policy development are essential if service quality is to be improved and the interests of children properly safeguarded.

We look forward to a continuing dialogue with the ministry in efforts to further improve service quality and ensure fairness in cases involving vulnerable children.

Mother wins custody after questioning report

In July 1990 a woman contacted our office about a custody and access report prepared by a family court counsellor. She said the report's recommendation — that custody of the four children be given to their father — was wrong for a number of reasons. First, the father had a history of assaultive and violent behaviour which was not included in the custody and access report. Second, the

woman felt that the family court counsellor had twisted information received from those interviewed, had had very short conversations with the people the mother named as references, and had failed to contact school teachers, a doctor, and a children's centre. The woman had already launched an appeal of the court's decision to award custody to the father.

Our office reviewed the custody and access report and the Corrections Branch file, and met with the family court counsellor and the local director of probation and family court services. Our investigation found that information supplied to the file for the custody and access report was clarified by witnesses who testified during the hearing, and that the judge had heard the correct information. The counsellor's interviews had been of a reasonable length. School teachers had been interviewed; however, the doctor and the children's centre had not been contacted.

During our review a number of other concerns came to light which were raised with the Corrections Branch. The Corrections Branch, at our request, provided the woman with a letter which stated that the issue of the father's alleged abusive behaviour toward the children should have been reported in more detail in the custody and access report. This letter was provided to the appeal court.

The appeal was successful and the children were returned to their mother. The appeal judge found that the custody and access report was "neither complete or accurate" and that the report "completely disregarded Mr. _____'s aggressive behaviour towards the children". As the children were returned to her, the complainant considered her concerns resolved.

During our investigation, the complainant expressed an interest in having her experiences used, if possible, to help encourage systems improvement. The Ministry of the Solicitor General conducted an internal investigation of the custody and access report, and the ministry's confidential report was supplied to our office. The report made a number of recommendations which we are continuing to monitor. We were satisfied that the ministry had thoroughly reviewed the concerns in this case and that, using its province-wide experience in custody and access matters, the ministry was seeking ways to strengthen the Family Court Counsellor Program.

No access to report on abuse risk

In *Family Relations Act* matters, the courts appear to be awarding joint custody of children to both parents more frequently than used to be the case. This development poses challenges to public servants who must be sensitive to the need to inform both parents about services provided to their children.

The mother of a young child complained that a Ministry of Social Services and Housing district supervisor had refused to inform her about the outcome of an investigation of her allegation that her son might be at risk with the baby sitter hired by her ex-spouse. The parents had been unable to communicate effectively about her concerns, and the complainant wanted to be reassured that her son was safe in his primary residence with his father.

The district supervisor told us that she did not have discretion under current policy to share information with the complainant about the ministry's investigation. She said that she interpreted policy to mean that the custodial parent was the parent with whom the child lived most of the time. We confirmed that there were no protection reasons underlying her decision not to share information with the complainant.

We then spoke to an official in the Family and Child Service Division. He agreed to review the policy question with the district supervisor. He said this was a complex question and that the policy was under review. We emphasized the need to reinforce in policy the principles implied by *Family Relations Act* joint custody orders, including equal access by each parent to information concerning their children.

Following discussions between the district supervisor and the Family and Child Service Division, the complainant was provided

with the information that she was seeking. She told us that she was pleased with the resolution but hoped that the ministry's policy review would take into account the increasing numbers of separated parents who share responsibility for their children's development.

Historical Abuse

In the 1990 Ombudsman's Annual Report we noted a growing number of complaints from adults who alleged that they were abused as children while in the care of the state. At that time we initiated discussions with officials in the Ministry of Social Services and Housing and the Office of the Public Trustee to develop a fair protocol which would respond to complaints of historical abuse while in state care. We indicated in 1991 that the results of these discussions would be presented in a public report.

Since that time, the number of people who want to deal with their past abuse in state care has increased still further. Those who are still waiting for a response are becoming increasingly less patient with the delays from this office and from government authorities. We are now involved in discussions with officials from the Ministry of Social Services and Housing, the Ministry of Health, and the Ministry of Attorney General.

Complainants alleging historical abuse have requested various types of compensation which they believe would be fair. Some individuals want monetary compensation. Some have asked for help in obtaining the education they believe they were prevented from getting as children. Some have asked for support to be better parents. All have asked for an apology from government.

The issues are complex, and the consequences of a less than comprehensive response from government cannot be underestimated. Many individuals believe that their lives have been adversely and permanently affected by the abuse they received from care-givers. They are looking to the government of the day to respond in a respectful, responsible manner to their current needs.

In some cases evidence is simply not available, and criminal charges are not likely to succeed. In other cases there is clear evidence, but the statute of limitations has precluded civil action on the part of complainants.

Some of the historical abuse complainants who have come to this office were not able to remember or deal with their abuse until some event which happened to them as adults triggered a memory or allowed them to feel safe enough to remember and tell. They were not able to recognize the impact that abuse had on their lives until they were adults. For many complainants, remembering their pasts has caused significant trauma. They would very much like to resolve their histories and move ahead.

This office continues to accept complaints from individuals alleging abuse while in state care. We continue to seek a fair and satisfactory response for survivors of historical abuse and hope that the 1992 annual report will summarize the conclusion of our involvement in this issue.

Non-Jurisdictional Complaints

Approximately 4 out of every 10 complaints brought to the Ombudsman office in 1991 were outside of our investigative jurisdiction (see table 10). Of these 6,133 non-jurisdictional complaints, 373 were against unproclaimed authorities mentioned in the Schedule to the *Ombudsman Act* (table 4), and most of the remainder had to do with either landlord-tenant disputes or consumer disputes.

We maintain and update a comprehensive computerized list of referral agencies, enabling us to direct callers to agencies that have the authority to investigate matters in which we lack jurisdiction. The following are examples of the most common areas of complaint and some of the referrals we provide in each instance.

	Issue	Referral
1.	Landlord-tenant disputes	Residential Tenancy Branch. Provides information about the rights of ten ants and landlords, and, for a small fee, provides arbitrators for the settlement of disputes.
2.	Consumer disputes	Investigation Services Branch, Ministry of Labour and Consumer Services. Provides information about consumer rights and can initiate prosecution for breaches of provincial consumer legislation. Other agencies: federal Department of Consumer and Corporate Affairs; Better Business Bureau; Consumers Association of Canada; and specialized associations such as the MotorDealers Association.
3	Federal government	Member of Parliament for complainant's riding. As there is still no federal Ombudsman office, MPs can often provide the most expeditious means of resolving complaints. Service in this regard varies considerably from riding to riding, depending on the MP's influence, effectiveness, and inclination.
4.	Provincial governments	Provincial Ombudsman offices
5.	Municipal governments	Inspector of Municipalities, Ministry of Municipal Affairs
6.	Police	RCMP: Complainants are advised to deal initially with the local detachment, the immediate commissioned officer and commanding officer or, failing resolution through these steps, the RCMP Public Complaints Commission. Municipal police: Complainants are referred to the unit head, the chief constable, and, ultimately, the B.C. Police Commission.
7.	Actions by professionals	Licensing bodies, which generally also have investigative and disciplinary functions – e.g., Law Society, College of Physicians and Surgeons, Association of B.C. Professional Foresters, B.C. Association of Social Workers, B.C. Teachers' Federation.

The following are examples of some of the non-jurisdictional complaints we dealt with during 1991.

The truck was a lemon

The truck was brand new, but the purchaser had major problems with the engine almost from the day she bought it. The brand name was that of a major automobile manufacturer in eastern Canada. At first, the manufacturer responded to the purchaser's complaints by providing replacement parts for what was admitted to be a defective engine. When that didn't help, the manufacturer replaced the engine. There continued to be something drastically wrong with the truck, but by now the warranty had expired and the manufacturer told her she was on her own.

The purchaser called the Consumers Association of Canada, a private organization that acts as an advocate of consumer rights. The Consumers Association told her that the manufacturer had a reputation for being hard-nosed, and that there was little point going after the company.

Nevertheless, she persisted. She told her story to the Better Business Bureau, which agreed to intervene. The manufacturer agreed to have the matter settled by arbitration before the Bureau. After hearing evidence from both parties, the Bureau ruled that the defects in the vehicle were so major that the manufacturer should provide the purchaser with a new truck. The manufacturer refused to comply with the award. It told the purchaser and the Bureau that it would be seeking "other avenues", without saying why.

After hearing nothing from the manufacturer for several months, the purchaser called our office to ask if we had any suggestions for next steps to take. We referred her to the Investigations Branch of the Ministry of Consumer and Corporate Affairs, which investigates allegations of breaches of provincial consumer legislation and has the authority to lay charges where an offence has been committed. The option of initiating an action without a lawyer through small claims court was not satisfactory to the caller, as her claim was for much more than the court's maximum award of $10,000. We also gave her the number of the Lawyer Referral Service, through which she could obtain names of lawyers specializing in consumer law in her city.

One of the strongest hopes held by the caller was the interest that had been shown in her cause by a major daily newspaper, which she intended to turn to as a last resort. The practical reality of citizen action in consumer matters of this nature is that legal proceedings may be so expensive as to make the ultimate reward not worth the effort. However, a company faced with public embarrassment by the press is a company likely to be willing to negotiate.

Sorry, that job is gone

A GAIN recipient in a small town heard that a service station needed a gas jockey. He called the company to inquire about the job. After a brief conversation with the owner, the man was told he could have the job. However, when the applicant gave his name, the owner rapidly changed his tune. He said his wife had just told him that the job had just been filled.

The applicant's disappointment turned to anger when he remembered that the owner had been heard to say on past occasions that he would never hire anyone who was receiving social assistance benefits. Aware that the owner knew he was a GAIN recipient, the applicant assumed he had been turned down because of this fact. He also said he suspected that the owner's action might be motivated by racism. He complained to us.

We suggested that the complainant call the Employment Standards Branch in the Ministry of Labour and Consumer Services to obtain information about his rights in the matter. We also advised him that, should he wish to pursue the issue of racial discrimination, he could register a complaint with the Human Rights Council.

Fair play at election time

During the 1991 provincial election campaign, one of the political parties mailed to hundreds of thousands of voters a document that had a superficial resemblance to a notice of property tax assessment. Its purpose was to illustrate in a dramatic manner the alleged cost to the taxpayer if a rival party were to form the government and implement all the commitments it had made.

A number of people called us to complain that the tactic was fraudulent or in some other way unethical. We explained why we had no jurisdiction to investigate the matter and suggested to the callers that they direct their complaints to the party in question.

Cash deals only

A tremendous amount of business is done by small companies on a cash only basis. Generally, the motive is to avoid any record of a transaction that might find its way into the hands of Revenue Canada. The result? The government (and other taxpayers) have been cheated, but usually the consumer has not been harmed. However, any consumer lured into a paperless cash deal (usually the bait is a "discount") may risk substantial loss. This fact was illustrated by a call to our office from a woman in Vancouver who had recently moved between two B.C. cities.

The woman had called a major moving company whose name she found in the Yellow Pages. The company's agent told her he would do the move for her at a discount on a cash basis, with no papers to be signed. He assured her the move would be insured, and left her his business card with the company's name on it.

The move was a disaster. Instead of arriving at 6 p.m. as promised, the movers arrived at midnight. The agent delayed delivery of the woman's possessions two weeks past the time she required them. Worst of all, many items were damaged. When she called the agent about the damage, he told her there was no insurance, as he had been doing the move under a second company under his own name.

The Vancouver office of the moving company the woman had called denied responsibility. Nothing was signed in its name, it said, and as far as it was concerned, its agent had been operating on his own behalf. After receiving a similar response from the head office in Toronto, the woman called our office. She told us that when she had first complained, money was the main issue. However, in the process of complaining, her concern had altered. The primary issue for her now was the fact that the legitimacy of her frustration had not even been acknowledged by the company or its agent; time and time again she had been met with the wall of words that said "don't bother us, no responsibility". All she could think of doing was asking Revenue Canada to investigate the agent for failing to report income. She asked us if we knew of any other courses she might follow.

We suggested several options for her consideration. She could call the investigations branch of the Ministry of Consumer and Corporate Affairs, who could ascertain whether there had been any breach of consumer legislation. She could obtain a consultation with a lawyer through the Lawyer Referral Service to discuss her chances of success in court; or she could initiate an action herself, without a lawyer, through small claims court, as a tactic designed to encourage the company to settle. We also suggested she contact the RCMP fraud squad.

"L" is for Consumer

A man who bought an item on sale slightly overestimated the amount of funds in his bank account. The result was an NSF cheque. He discovered this when he got a terse note from his bank telling him that the service fee for processing the cheque was $18, and a call from the store asking him to come in and settle the matter — and pay a further $20 service charge.

Dutifully, the man went down to the store to make things right. On the way there, he found himself worrying about the service

charges. He felt so embarrassed by his mistake that he hadn't thought about not paying these charges, but he was struck by the fact that, because of a little oversight, he was being asked to pay almost $40 — an amount that far exceeded the amount he had saved on his initial purchase. He wondered if the charges were reasonable. He figured there was little point trying to fight a bank over a service charge, no matter how excessive it seemed, but he couldn't understand why the store should tack on its own service charge.

He reminded himself to try demanding a service charge of his own the next time a big company made a mistake that inconvenienced him. Imagining this scenario gave him a certain pleasure until he imagined the likelihood of his success.

On the way to the store, the man passed a pay phone without a telephone book attached to it. He decided it would be wise to inquire about the legality of the store's service charge. In his pocket he had one quarter. He called the operator and asked for the number of the B.C. government consumer affairs ministry. The operator gave him the number and he wrote it down. He called the number and was greeted by a message saying, "This is Consumer and Corporate Affairs Canada. We are unavailable at the moment. Please leave a message." It was almost funny, but not quite. Not only had the operator given the man the wrong government, but the government was away from its desk.

The man went to a news-stand and bought a paper so he could get another quarter in change. He borrowed the newsagent's phone-book to check the blue pages under "Government of British Columbia" so he could find the consumer affairs ministry. No such luck. He found nothing under either "consumer" or "corporate". Thoroughly confused, he called our office for assistance. Not surprisingly, it had not occurred to the man — or to the telephone operator — to look for the consumer ministry under "labour". We transferred his call to the Ministry of Labour and Consumer Services.

The Consumer Operations section of the ministry could not advise the man whether the store could legally enforce its demand for payment of the service charge, although banks customarily include in their contracts with customers a provision regarding such charges. In the end, the man asked the store to justify its $20 charge. The store told him that this was the amount the store had to pay its own bank for the charge of processing his NSF cheque at the other end of its journey. The man decided that, in fairness, he should cover any cost arising from his error, and agreed to pay the service charge requested by the store.

Part III
Statistics

Statistics included in the following tables refer to files closed in 1991 unless otherwise indicated.

Definitions of terms used to describe the disposition of complaints are provided in the introduction to Part II of this report on page 35.

TABLE 1
Disposition of Jurisdictional Complaints

A. MINISTRIES	*Resolved*	*Not Resolved*	*Abandoned Invest. not authorized Withdrawn*	*Substantiated*	*Declined Discont.*	*Inquiries*	*Total*
Premier's Office	0	0	0	1	4	0	5
Advanced Education	32	0	14	7	21	15	89
Agriculture and Fisheries	4	0	4	10	2	1	21
Attorney General	55	0	17	29	70	7	178
Crown Lands	12	0	3	22	5	6	48
Education	6	0	7	4	5	3	25
Energy, Mines & Pet. Res.	4	0	3	7	4	2	20
Environment	20	0	12	19	24	8	83
Finance & Corporate Relations	15	0	8	84	31	15	153
Forests	23	0	15	28	17	9	92
Government Mgmt. Serv.	0	0	0	1	3	0	4
Health	185	0	26	93	152	68	524
Labour & Consumer Services	35	0	30	30	89	19	203
Munic. Affairs, Rec. & Culture	7	0	7	16	24	5	59
Native Affairs	0	0	0	0	2	2	4
Parks	1	0	2	5	3	0	11
Provincial Secretary	3	0	1	8	5	4	21
Regional Development	4	0	1	5	4	2	16
Social Services & Housing	680	0	204	280	1,873	179	3,216
Solicitor General	633	0	116	566	802	94	2,211
Tourism	1	0	0	2	0	0	3
Transportation & Highways	56	0	20	23	25	6	130
SUBTOTAL A	1,776	0	490	1,240	3,165	445	7,116
Percent of total	25	-	7	17	45	6	100
B. OTHER AUTHORITIES							
Agricultural Land Commission	1	0	0	0	2	1	4
B.C. Assessment Authority	4	0	2	2	9	8	25
B.C. Buildings Corporation	0	0	0	5	4	0	9
B.C. Council of Human Rights	0	0	0	5	5	5	15
B.C. Ferry Corporation	4	0	2	7	7	0	20
B.C. Gaming Commission	1	0	2	0	3	0	6
B.C. Housing Mgmt. Comm.	28	0	10	12	4	7	61
B.C. Hydro	15	0	15	17	125	5	177
B.C. Systems	0	0	1	0	1	1	3
B.C. Railway	1	0	0	3	0	0	4
B.C. Steamships	0	0	0	0	0	1	1
B.C. Transit	5	0	1	4	9	1	20
Colleges*	12	0	5	3	13	4	37
Criminal Injury Section, WCB	25	0	2	0	16	9	52
Environmental Appeal Board	1	0	0	0	0	0	1
Family Maint. Enforcement	18	0	3	0	156	12	189
Hospital Boards*	9	0	2	2	5	12	30
Industrial Relations Board	2	0	3	10	6	2	23
Insurance Corporation of B.C.	19	0	30	2	538	16	605
Superannuation Commission	7	0	1	13	4	2	27
Workers' Compensation Board	194	1	44	7	424	55	725
WCB Review Board	8	0	0	1	43	4	56
Others	22	0	30	33	40	30	155
SUBTOTAL B	376	1	153	126	1,414	175	2,245
Percent of total	17	-	7	6	63	7	100
TOTALS A & B	2,152	1	643	1,366	4,579	620	9,361
Percent of total	24	-	7	14	49	6	100

* Colleges and hospital boards that fulfil the criteria set out in section 2 of the Schedule to the *Ombudsman Act*.

ERRATUM

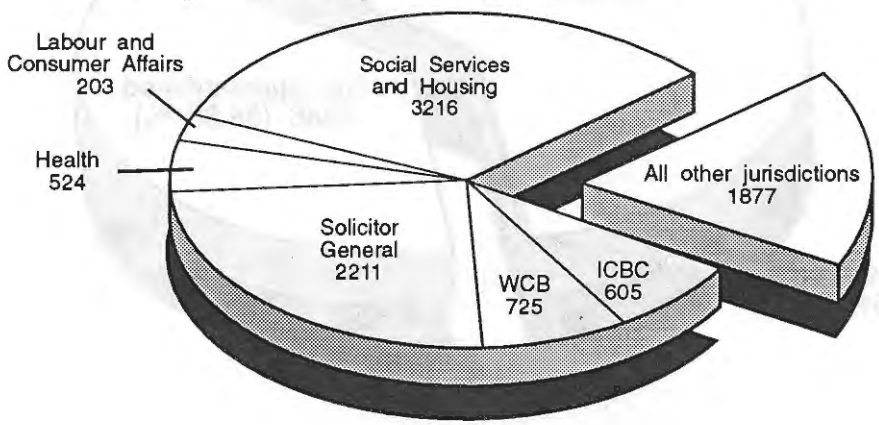
1991 Ombudsman Annual Report

Page 234, Table 1, Column 4:

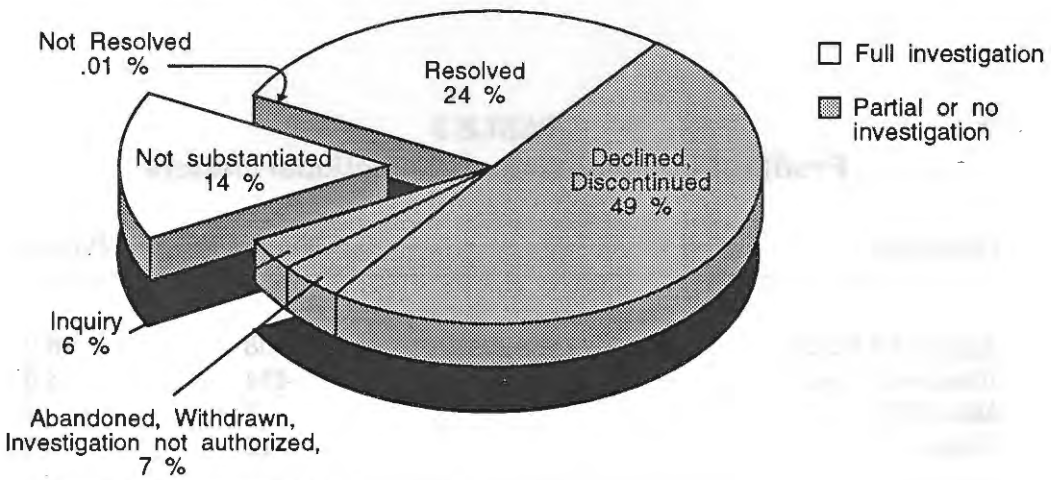
The word "substantiated" at the head of the column should read "not substantiated".

Disposition of Jurisdictional Complaints, 1991
Total: 9,361 Complaints

1. Totals by authority



2. Manner of Disposition



3. Manner of Disposition, Full Investigations (3,519)

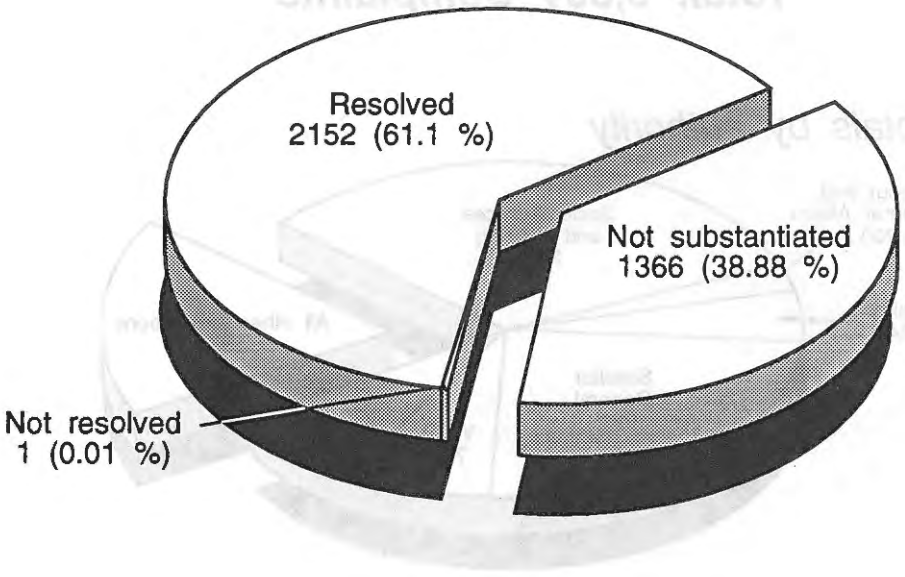


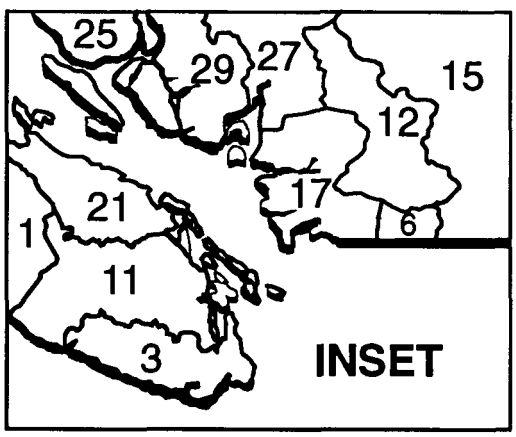
TABLE 2
Profile of Complainants, Jurisdictional Matters

Originator	*Number*	*Percent*
Aggrieved Party	8,908	95.2
Relative/Friend	434	4.6
MLA/MP	7	.1
Other	12	.1
TOTAL	9,361	100

TABLE 3
Geographical Origin of Complaints

Regional District	*Percentage of population 1991* (estimated)	*Percentage of complaints 1991*
1. Alberni-Clayoquot	0.9	0.6
2. Bulkley-Nechako	1.2	1.2
3. Capital	9.3	10.7
4. Cariboo	1.8	2.5
5. Central Coast	0.1	0.1
6. Central Fraser Valley	2.6	3.5
7. Central Kootenay	1.6	1.8
8. Central Okanagan	3.4	2.4
9. Columbia-Shuswap	1.3	1.4
10. Comox-Strathcona	2.5	1.8
11. Cowichan Valley	1.8	1.2
12. Dewdney-Alouette	2.8	6.2
13. East Kootenay	1.5	1.4
14. Fort Nelson-Liard	0.2	0.0
15. Fraser-Cheam	2.1	2.3
16. Fraser-Fort George	2.7	5.6
17. Greater Vancouver	47.2	37.0
18. Kitimat-Stikine	1.2	1.4
19. Kootenay Boundary	1.0	1.0
20. Mount Waddington	0.4	0.3
21. Nanaimo	3.0	2.8
22. North Okanagan	1.9	2.6
23. Okanagan-Similkameen	2.1	1.5
24. Peace River	1.6	2.7
25. Powell River	0.6	0.5
26. Skeena-Queen Charlotte	0.7	0.8
27. Squamish-Lillooet	0.7	0.9
28. Stikine[1]	0.1	0.0
29. Sunshine Coast	0.6	0.5
30. Thompson-Nicola	3.1	4.0
Out of province complaints		1.2
TOTAL	100.0	100.0

[1] Unorganized area under provincial administration.



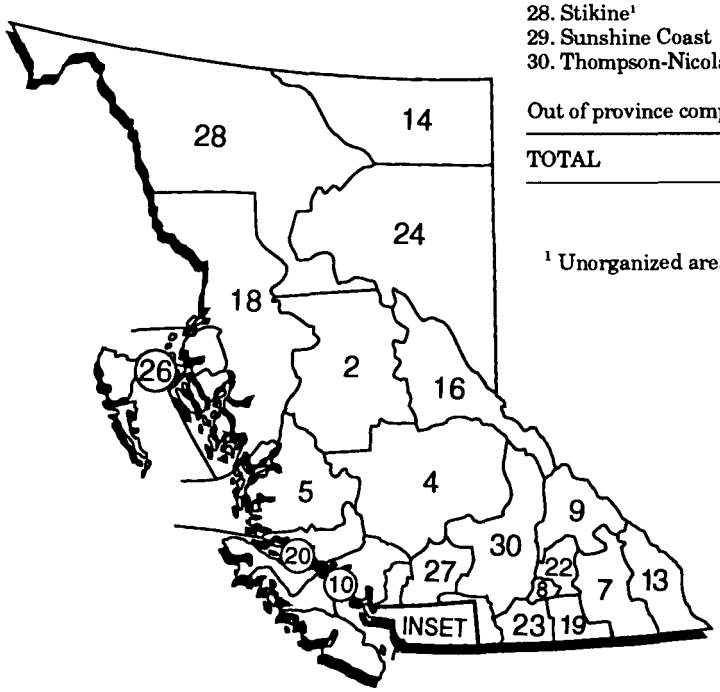


TABLE 4
Complaints against Unproclaimed Authorities (Sections 3-11, Schedule of Ombudsman Act)

Government corporations	0
Municipalities	145
Regional districts	46
Public schools	109
Universities	3
Colleges and provincial institutes	1
Hospital boards	53
Professional/occupational associations	11
Islands Trust	5
TOTAL	373

TABLE 5
Non-Jurisdictional Complaints Received in 1991

	1991	*1990*
Federal government	480	747
Other governments outside B.C.	311	68
Landlord/tenant issues	1,480	1,903
Consumer disputes	1,516	1,309
Professional actions	205	118
Legal and court matters	337	622
Police matters	250	237
Miscellaneous	1,181	1,193
TOTAL	5,760	6,197

TABLE 6
Reasons for Declining or Discontinuing Investigations

	Number	*Percent*
Investigation not authorized		
Inquiries	620	11.0
Abandoned by complainant	425	7.0
Withdrawn by complainant	205	3.0
Not an authority	14	.6
Not a matter of administration	56	1.0
Does not aggrieve a person	1	-
Appeal to tribunal	280	5.0
Solicitor for an authority	0	-
Investigation discretionary (s. 13)		
Over one year old	6	.2
Insufficient personal interest	6	.2
Available remedy	3,292	56.0
Frivolous/vexatious	1	-
Can consider without investigation	407	7.0
Not beneficial to complainant	437	7.0
Cost exceeds benefit	2	-
Evidence not available	90	2.0
Not resolved	1	-
TOTAL	5,843	100.0

TABLE 7
Resolved Complaints: Level of Impact

Individual only	1,973
Change in practice recommended	123
Change in procedure recommended	50
Change in regulation recommended	4
Statutory amendment recommended	2
TOTAL	2,152

TABLE 8
Ombudsman Reports on Investigations, 1981-91

Year	*Reports to Cabinet (s. 24)*	*Special Reports to the Legislature (s. 24(1))*	*Public Reports (s. 30(2))*
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
1987	2	0	5
1988	0	0	6
1989	0	0	5
1990	0	0	2
1991	0	0	6
TOTAL	30	22	28

TABLE 9
Complaints/Inquiries Closed, 1983-91: Selected Authorities

	1983	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*	*1991*
SSH	984	1,369	1,820	1,603	1,809	2,113	2,204	2,406	3,216
ICBC	810	499	424	405	515	552	610	551	605
WCB[1]	482	641	737	773	929	917	806	824	781
Attorney General[2]	428	988	831	997	1,345	1,394	167	245	178
Transp./Hwys.	263	285	249	163	245	84	120	127	130
Health	209	301	569	451	280	475	368	482	524
Hydro	159	212	365	321	237	316	162	125	177

1. Includes Workers' Compensation Review Board.
2. Decrease in 1989 reflects transfer of Corrections Branch to Solicitor General ministry.

TABLE 10
Jurisdictional and Non-Jurisdictional Complaints, 1979-91

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
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6
1987	12,406	6,127	6,279	50.6
1988	13,704	6,561	7,143	52.1
1989	12,815	5,497	7,318	57.1
1990	14,451	6,589	7,862	54.6
1991	15,494	6,133	9,361	60.4

TABLE 11
Disposition of Jurisdictional Complaints by Number, 1983-91

	1983	1984	1985	1986	1987	1988	1989	1990	1991
Not resolved	20	51	29	25	8	3	12	6	1
Resolved	1,556	2,053	2,267	1,833	2,231	2,324	2,319	2,156	2,152
NS	1,123	1,264	1,245	1,178	1,332	1,337	1,462	1,284	1,366
Incomplete or declined invest.	1,907	2,339	2,293	1,936	1,954	2,839	2,154	2,894	4,579
Investigation not authorized							832	825	643
Inquiries				467	754	640	539	697	620
TOTAL	4,606	5,707	5,834	5,439	6,279	7,143	7,318	7,862	9,361

Disposition of Jurisdictional Complaints, 1985-91

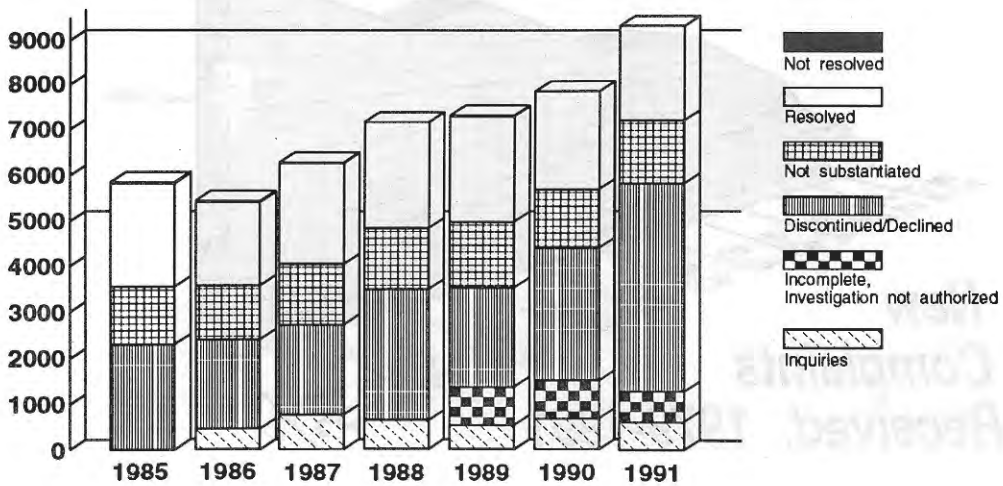
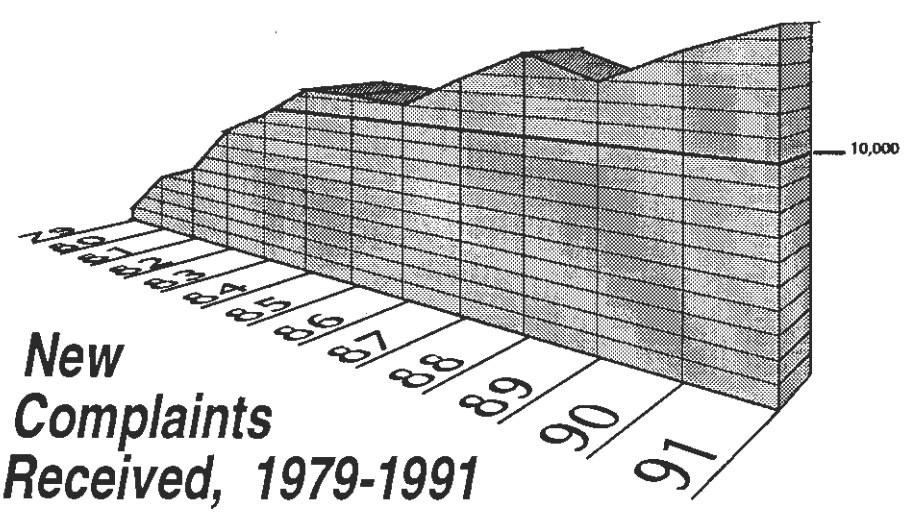


TABLE 12
Disposition of Jurisdictional Complaints by Percentage, 1983-91

	1983	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*	*1991*
Not resolv.	1	1	1	.4	.1	.1	.2	.1	0
Resolved	34	36	39	33.6	35.6	32.5	31.7	27.4	22.9
NS	24	22	21	22.0	21.2	18.7	20.0	16.3	14.6
Incomplete or declined investigation	41	41	39	36.0	31.1	39.7	29.4	36.8	48.0
Investigation not authorized							11.4	10.5	6.9
Inquiries				8.0	12.0	9.0	7.3	8.9	6.6

TABLE 13
Complaints/Inquiries Received and Closed, 1979-91

Year	*Complaints Received*	*% Change from Previous Year*	*Complaints Closed*	*% Change from 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
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
1987	12,712	15.4	12,406	10.9
1988	14,184	8.9	13,704	9.0
1989	12,936	-8.8	12,815	-6.5
1990	14,580	12.7	14,451	12.7
1991	15,924	9.2	15,494	7.2
TOTAL	131,530		130,119	



New Complaints Received, 1979-1991

Staff as at December 31, 1991*

Amren, Bergen
Anderson, Patricia
Archibald, Susan
Berry, Susan
Beyer, Eleonore
Brown, Cleta
Carlson, Linda
Carver, Peter
Clarke, Bruce
Clarke, Gladys
Cline, Bruce
Davis, David
Dennison, Sid
Diersch, Eileen
Desilets, Hélène
Fisher, Barbara
Forth, Angela
Gardiner, Thomas (Scotty)
Greer, David
Hayward, Dorothy
Henders, Keith
Heyman, Susan
Illington, Joy
Jones, Eric
Kemeny, Carol
Morris, Christine
Nadeau, Errol
Owen, Stephen
Parfitt, Brent
Phillips, Del
Ronayne, Bruce
Ross, Michael
Sepulveda, Marisol
Skeldon, Dorothy
Skinner, Michael
Smalley, Leora
Staples, David
Summersgill, Bill
Thomas, Johanna
Tweddle, Rita
Watty, Maureen
Williams, Holly

* Excluding staff absent on secondment, leave of absence, or long-term sick leave

Ombudsman Act

OMBUDSMAN ACT

CHAPTER 306

[Consolidated November 3, 1989]

[See status sheet following this Act.]

Interpretation

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

1977-58-1.

Appointment of Ombudsman

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

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

1977-58-2(1,2).

Term of office

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

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

1977-58-2(3,4).

Remuneration

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

(1.1) The Ombudsman holding office when this subsection comes into force shall, during the remainder of his current term of office, be paid the greater of

(a) the salary he is actually receiving on December 1, 1987, or

(b) the salary prescribed in subsection (1).

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

1977-58-2(5,6); 1987-60-20.

Pension

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

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

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

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

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

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

(b) [Repealed 1988-52-2.]

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act*.

1977-58-2(7 to 11); 1985-14-4; 1988-52-2.

Resignation, removal or suspension

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

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

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

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

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

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

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

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

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

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

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

whichever occurs first.

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

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

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

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

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

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

the Lieutenant Governor in Council may appoint an acting Ombudsman.

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

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

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

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

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

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

whichever occurs first.

1977-58-4.

Staff

8. (1) The Ombudsman may, in accordance with the *Public Sevice Act*, appoint employees necessary to enable him to perform his duties.

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

(3) [Repealed 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).]

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

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

(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).

Confidentiality

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

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

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

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

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

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

(a) further an investigation;

(b) prosecute an offence under this Act; or

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

1977-58-6.

Powers and duties of Ombudsman in matters of administration

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

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

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

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

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

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

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

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

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

1977-58-7.

Jurisdiction of Ombudsman

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

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

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

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

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

1977-58-8.

Complaint to Ombudsman

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

(2) A complaint shall be in writing.

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

1977-58-9.

Refusal to investigate

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

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

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

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

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

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

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

1977-58-10.

Ombudsman to notify authority

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

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

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

1977-58-11.

Power to obtain information

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

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

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

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

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

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

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

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

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest,

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

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

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

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

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Schools and boards as defined in the *School Act*.

8. Universities as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83); 1987-48-14; 1989-61-214.

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