1992 Annual Report
of the
Ombudsman

To the Legislative Assembly
of the
Province of British Columbia

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OMBUDSMAN
Legislative Assembly
Province of British Columbia

8 Bastion Square
Victoria, British Columbia
V8W 1H9
Telephone (604)387-5855
Long Distance
(Toll free) 800-567-3247

Suite 202, 1275 West Sixth Ave.
Vancouver, British Columbia
V6H 1A6
Telephone (604)660-1366
Long Distance
(Toll free) 800-661-3247

July 9, 1993

The Honourable Joan Sawicki
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Speaker,

It is my pleasure to present the 1992 Ombudsman Annual Report to the Legislative Assembly. This report is provided in accordance with section 30(1) of the *Ombudsman Act* and covers the period from January 1 to December 31, 1992. In addition, an audiotape of this report will be sent to all Members so that they can make it available to the public at their offices.

This is my first annual report as Ombudsman of the Province of British Columbia. I was appointed as the first woman Ombudsman in our province on August 4, 1992. For a period in 1992 preceding my appointment, Brent Parfitt was the Acting Ombudsman. I wish to acknowledge the contribution he made then and after my appointment, as Deputy Ombudsman. I also want to extend my sincere appreciation to everyone who works at the Office of the Ombudsman for their hard work and support since my appointment. It has been a very interesting period for the Office, full of excitement and change.

Changes within the Office are also the result of government plans to proclaim the remaining sections in the schedule to the *Ombudsman Act* which lists the authorities over which I have jurisdiction. In the period covered by this annual report, section 7 of the schedule was proclaimed bringing schools and school boards within the mandate of our Office.

Respectfully submitted,

Dulcie McCallum

Dulcie McCallum
Ombudsman of the Province of British Columbia

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"Everyone is entitled to be treated with dignity and respect. People are not prepared to let government dominate their lives and ignore their interests. The recent constitutional debate demonstrated the growing interest in participating in a real and meaningful way in government. People who have complaints about how they have been treated by a government agency are often angry, confused and isolated. Many people who complain to our Office find themselves in situations that marginalize and disenfranchise them because of poverty, institutionalization, incarceration or their youth."

Introduction

"Appropriate communication is an important consideration for everyone working within a public service. Appropriate communication respects the diversity of the population to be served. The form in which we provide information to the public determines whether or not they understand the services to which they are entitled and how they access those services. Effective communication will respect everyone's religion, race, culture, ethnic background, language, level of literacy and disability. Gender-inclusive language is one means to achieve the goal of appropriate communication."

How is the Ombudsman of British Columbia Selected?

This year marks the appointment of a new Ombudsman. An Ombudsman is appointed for a term of six years. The appointment can be extended for further six-year terms. British Columbia has had two previous Ombudsmans selected by the Legislative Assembly, each of whom served one six-year term.

It is important that everyone understand the role of the Ombudsman and how the appointment is made. The role of the Ombudsman is to promote fairness in public administration in British Columbia and to investigate and resolve complaints of administrative unfairness. In order to fulfil that role effectively, the Ombudsman must be considered non-partisan and at arm's length from government. The process by which the Ombudsman is appointed is very important. Section 2 of the *Ombudsman Act* provides that:

"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."

The Special Committee to Appoint an Ombudsman is made up of members representing all parties in the Legislature. This is one of the aspects of the appointment process that ensures the Ombudsman is non-partisan.

Excerpts from the report of the Special Committee, presented to the Legislature July 2, 1992, are reproduced in Appendix 1 at the end of this annual report.

Subsequent to the Special Committee making its unanimous recommendation, the Legislative Assembly makes a recommendation to the Lieutenant-Governor who appoints the Ombudsman as an Officer of the Legislature. I was appointed Ombudsman on August 4, 1992 by the Lieutenant-Governor, the Honourable David C. Lam. I have invited the Lieutenant-Governor, as the person responsible for the final stage in the appointment of the Ombudsman, to share his ideas about the position. His letter is reproduced on the next pages.

GOVERNMENT HOUSE
1401 ROCKLAND AVENUE
VICTORIA, BRITISH COLUMBIA
V8S 1V9

As the personal representative in British Columbia of Her Majesty The Queen of Canada, it gives me great pleasure to comment on the role of the Ombudsman in the Province and her position in relation to citizens and the Legislative Assembly.

We can be proud of the fair and responsible manner in which the people of this Province are treated by our Government and its agencies. It is the role of the Ombudsman to ensure that British Columbians are treated with the same high standards of fairness by all provincial agencies and their employees. I feel it is especially important that the Ombudsman assists all citizens to know and activate their right to fair treatment by the Province.

The Ombudsman is appointed by the Lieutenant-Governor on the recommendation of the Legislative Assembly. The appointment must be unanimously approved by a special committee of the Legislative Assembly. The Ombudsman is not appointed by one political party or by the Government alone; but rather by the agreement of all elected Members of the Legislative Assembly. Additionally, the Ombudsman is appointed for a term of six years (longer than the term of any one government) and the Ombudsman's salary is paid by the Province and cannot be altered by the Government-of-the-day. This ensures that the Ombudsman is independent and non-political.

The Ombudsman Act gives the Ombudsman power, in response to a complaint or on her own initiative, to investigate any provincial government agency or service which appears to be treating citizens unfairly. The Ombudsman also has power to access information held by any government agency. Following an investigation, the Ombudsman can either negotiate or mediate a resolution between the citizen(s) and the agency involved or can make recommendations to Cabinet and the Legislative Assembly.

/2 . . .

It is most gratifying to say that the vast majority of most complaints are resolved without needing to make such recommendations.

The first Ombudsman in British Columbia was appointed in 1979. Since that time, the British Columbia Office of the Ombudsman has gained renown in Canada and in the international community. The British Columbia Office of the Ombudsman is known for its effectiveness in ensuring fair treatment of citizens and for its proactivity in working with community and government representatives to increase standards of fairness and to prevent unfairness.

We must all commend the Legislative Assembly of British Columbia for its commitment to an independent Ombudsman, which ensures the highest standards of fairness in dealing with the citizens of our Province.

Our congratulations go to those who have held this most important office, and to those who worked with them, for their dedication to helping the people of British Columbia.

Sincerely,

David C. Lam
Lieutenant-Governor

Expanding the Jurisdiction or Scope of Review of the Ombudsman

On March 17, 1992 in the Throne Speech, the government announced plans to proclaim the remaining sections of the schedule to the *Ombudsman Act*:

"This government also recognizes the need for greater public scrutiny, and recourse for individuals, when they believe their government has let them down. Even the best efforts towards openness and equity can prove imperfect. . . . It is now time to expand the Ombudsman's jurisdiction. This government will broaden that mandate, to ensure the public has recourse from unfair arbitrary action by municipalities, regional districts, school boards, universities and hospitals."

Since becoming Ombudsman for British Columbia, I have focused a great deal of my attention on the internal effectiveness of the Office in anticipation of proclamation. Proclamation is occurring at planned intervals over three years to bring within our scope the remaining unproclaimed authorities listed in the schedule to the act. The impact of full proclamation is an unknown quantity but, given past levels of complaints and inquiries to our Office in relation to existing authorities, it was my opinion that considerable work had to be done to prepare for our expanded jurisdiction. Part of that work involved maximizing our complaint-handling capacity to manage the volume and diversity of complaints received more efficiently and effectively. We secured the assistance of a computer systems analyst on secondment. Outlined here is the nature of the changes within the Office in preparation for proclamation.

Systems Changes

The Ombudsman Office is making its operations more efficient using computer technology in a number of ways. For example:

- We are going to manage information we record on complaints in one database.

  In the past, we have tracked information about complaints in two databases. One is located in Vancouver, the other in Victoria. We are replacing these two databases with one. This means less staff time devoted to maintaining two systems. Ombudsman officers in Victoria

and Vancouver will have equally quick access to complete case information.

This also means we can easily gather statistical information on all complaints, to help us:

- pinpoint issues that keep occurring;
- highlight concerns that are being reported to our Office;
- demonstrate where complaints are being handled quickly; and
- focus on time delays within an authority.

- In the not-too-distant future, we will be able to connect to our computer system remotely, for example, from Dawson Creek, Kelowna or Prince Rupert. This will enable investigators to be anywhere in the province with complete and instant access to all current case information.
- Our new electronic mail system will enable us to ask questions and get responses faster, electronically. Many government ministries, hospitals, universities and other public agencies also use electronic mail systems.
- We are improving our office automation tools — word processing, electronic calendars and financial spreadsheets. They will help investigators be more efficient in managing complaints so less time is spent on administrative tasks and more on complaint investigations.

What this means to those who seek our assistance:

- No more calling one of our two toll-free 800 lines and being asked to contact the other office because it handles your type of complaint on the other database. All Ombudsman Officers will have complete access to a single database.
- Faster resolution of complaints. Administration tasks will consume less time and our electronic mail system will reduce the time wasted at 'telephone tag'.
- The public authorities we deal with have also been moving ahead with database technology. As a result, it is not uncommon for us to have direct access to the database of the authority we are investigating through co-operative and well-defined arrangements. Such direct electronic accessibility will enable Ombudsman officers to better serve everyone in the province of British Columbia.

Planning for proclamation of the new authorities has proven to be an exciting challenge for our Office. Our jurisdiction over public authorities is defined by the schedule to our legislation, once they are proclaimed. Until the

fall of 1992, only sections 1 and 2 of the schedule had been proclaimed. Schools and school boards in section 7 were designated by government as the next authorities for proclamation; they were proclaimed November 1, 1992. Historically, our Office has put considerable emphasis on issues affecting children and youth. We were pleased, therefore, to work with new authorities who were in the business of serving the educational needs of all children and youth. Beginning in September, considerable work was put into outreach with schools and school boards. Our Office arranged for a secondment from the Ministry of Education to assist us in our outreach efforts. The position proved to be a valuable resource and liaison for us with all the educational partners. An important part of our outreach included public speaking engagements by the Ombudsman and members of our Children and Youth Team. These are detailed in Appendix 2.

The public education involved in this outreach, though time-consuming, is very important. We found parents and children were unclear as to what the Ombudsman did and how they could use the services of the Office. There was also some skepticism and hesitation amongst educators about whether our having jurisdiction was a good or bad thing. Our objective in these visits was to establish good working relationships with schools and school boards based on principles of mutual respect and co-operation. In the end, our ability to effect change and growth within any public service is dependent on this mutuality.

A draft set of principles and guidelines was circulated by our Office to all of the school boards. The draft proved to be an invaluable tool that inspired considerable reaction and discussion. These conversations assisted us to understand better the work of our new authorities. We appreciate the time taken by school officials who gave us their feedback. We hope to develop teaching materials and a video in the coming year to assist teachers in educating students about the role of the Ombudsman.

It is expected that the remaining public authorities listed in the schedule, including hospitals, universities, colleges, regional districts, municipalities and self-regulating professional and occupational associations established by an act will be proclaimed in 1993 and 1994. The Attorney General has written a letter, reproduced on the opposite page, outlining the government's plans in this regard.

A Message from the Attorney General

The Ministry of Attorney General is responsible for British Columbia's legislation known as the Ombudsman Act and any amendments to that statute. The Act defines the role of the Ombudsman, who is an Officer of the Legislature appointed by all members of that body and who is responsible for the administration of the Act.

When the Act came into effect in 1979, the Ombudsman's jurisdiction extended only to government ministries and Crown corporations. However, the Act contained a schedule of other organizations to which the Ombudsman's jurisdiction should one day apply.

In the 1992 Throne Speech, the government committed itself to open and honest government. In consultation with the Ombudsman, it began a process of extending the Ombudsman's jurisdiction according to those organizations listed in the Act's schedule.

Schools and school boards were included in November 1992. In 1993 and 1994, jurisdiction will be extended to all of the remaining organizations listed in the schedule. The extension process is being conducted at a pace that allows organizations time to prepare for their being included in the Ombudsman's jurisdiction and also allows time for the office of the Ombudsman to make its own administrative changes to handle the new jurisdictions.

On behalf of government, I would like to thank Ombudsman Dulcie McCallum for giving me the opportunity to convey this important message regarding the Ombudsman legislation as part of her Annual Report for 1992.

Yours sincerely,

Colin Gabelmann
Attorney General

Province of British Columbia
Attorney General
Parliament Buildings
Victoria, British Columbia
V8V 1X4

In the past, the Ombudsman negotiated with some non-jurisdictional authorities to investigate complaints concerning their administration. It has been my impression that this has caused some confusion about our jurisdiction since we could investigate in some cases and in others, we could not. In anticipation of proclamation, this practice has been stopped to make the date of proclamation for these authorities clearer for the public who may have a complaint.

In 1991, there was an agreement to co-chair a committee formed by the College of Physicians and Surgeons to examine issues related to sexual misconduct by physicians with patients. In Appendix 3 to this report is a summary of this work. This has been included because we will have jurisdiction over the College of Physicians and Surgeons in 1993.

My Perspective on Ombudsmanship

Whenever there is a change in the person who holds an important position like Ombudsman, many people wonder what the change in leadership will mean. I want to give you a brief overview of how I approach the work of ombudsmanship.

Everyone is entitled to be treated with dignity and respect. People are not prepared to let government dominate their lives and ignore their interests. The recent constitutional debate demonstrated the growing interest in participating in a real and meaningful way in government. People who have complaints about how they have been treated by a government agency are often angry, confused and isolated. Many people who complain to our Office find themselves in situations that marginalize and disenfranchise them because of poverty, institutionalization, incarceration or their youth.

The central goal of our Office is to adopt a principled approach to our work. That means identifying our key principles and applying them to all aspects of our work. The principles are fairness, inclusion, equity and respect and they are applied throughout our operations — to our administrative, management and investigative work. By example, we provide a model that we can expect government authorities to emulate. The bottom line — respect for those providing the service as well as those receiving it.

The key element of our work is to ensure public authorities treat the public fairly. The same basic principles guiding our work with the public must also

permeate our relationships with government officials. Within our Office, we are not experts in every area that we investigate. By that, I mean we are not social workers, engineers, biologists, health care workers or educators. We are the experts in what constitutes fair administrative process. Good government is fair government. Several years ago, a fairness checklist was developed by this Office. It was produced in full in our 1990 annual report. One ministry within government took the initiative to reduce our checklist into an easy-to-use format. That checklist is reproduced at the end of this annual report in Appendix 4.

Beyond fairness by government, what does our Office promote? We want people to be empowered through our Office. As well as assisting the public through our investigative work, we try to educate callers about remedies that are available to them within government and elsewhere. Holding ourselves out as the agency to right all wrongs is an ineffective way to effect change and, in the end, most unhelpful to the person making the inquiry. We are but one of many sources available in our communities for individual and collective self-help. Helping people to understand what fair treatment by government looks like forms a large part of our role. Helping people to find meaningful solutions within and outside of government is a priority for our Office. Through education, people are becoming more aware of their rights and how to access information within government.

We continue to encourage all levels of government to make the public more aware of what they do and what remedies are available within government. Part of the education and encouragement is also making sure that the Ombudsman is visible and approachable. To that end, I have initiated annual 'walkabouts' by the Ombudsman of all institutional settings within my jurisdiction — psychiatric, extended and intermediate care, youth and adult corrections, and hospitals — not only to meet residents person to person but to reinforce good relations with staff and administration.

Many, many people contact our Office with a question about government. They are looking for information about where to turn. An effective mechanism to provide information has been established through the office of Enquiry B.C. We believe Enquiry B.C. has provided an excellent resource for all British Columbians and is a good example of a self-help remedy available through government. We consider it an important office to know about and I

have invited the director to write an overview of the service they provide. His letter follows.

TO: S. Dulcie McCallum
Ombudsman
Office of the Ombudsman

RE: Enquiry BC Program

Further to our conversation concerning the above, please find attached a brief program summary.

Enquiry BC started as a toll-free telephone referral service but now includes publication of the B.C. Guide, the B.C. Government Telephone Directory and the B.C. Telephone Company Blue Page Listings.

The toll-free telephone service remains the core service of Enquiry BC with the following objectives:

- To minimize the number of call transfers encountered by the public when attempting to access government.
- To provide toll-free equal access for all residents of B.C.
- To assist the public in differentiating between Federal, Provincial, and Municipal Government services.
- To provide an excellent service at what is often the first point of contact with the Provincial Government.

Thank you for the opportunity to include information about Enquiry BC in your annual report.

Byron E. Barnard
Director

Attachment

THE ENQUIRY BC PROGRAM

Enquiry BC was established in 1991 to provide toll-free telephone access to reliable, current information on Provincial Government programs and services for all British Columbians. The service began as part of the Provincial Government service/quality initiative.

The Enquiry Centre provides service from 7 a.m. to 7 p.m. Monday through Friday and from 9 a.m. to 5 p.m. Saturdays. The staff utilize a computerized database to answer enquiries and provide expert referral services. The quality of the database that has been developed has allowed each staff member to answer more than twice the daily volume of calls originally projected. The call volume has steadily risen from 15,000 calls in July, 1991 to over 40,000 calls for March, 1993. The call volume is expected to exceed 500,000 for the 1993/94 fiscal year.

The statistics gathered at the Enquiry Centre regarding specific program referrals assists Enquiry BC in identifying programs that citizens are having difficulty accessing. Enquiry BC shares this information with the ministries and program areas in order to improve access to essential programs. The Enquiry Centre undertakes special projects for government agencies on a cost recovery basis.

Enquiry BC is also responsible for production of the BC Guide to Programs and Services of the Provincial Government, the Government of British Columbia Telephone Directory and the Government of British Columbia Blue Pages in all BC Telephone directories. Each of these directories include plain language, and key word indexes. The use of key words allows people who do not have a knowledge of government structure to easily find the program or service they are seeking.

The Enquiry BC program is a key frontline resource in providing open, accessible government to all British Columbians.

The Enquiry BC phone number are:

Metro Vancouver	660-2421
Metro Victoria	387-6121
All other locations	1-800-663-7867

During this year, the process of establishing a privacy and freedom of information office has begun. It is intended that a Privacy Commissioner will be chosen next year. Unlike the Ombudsman who is empowered to make recommendations, the Privacy Commissioner will make decisions as to whether or not information will be made available to a member of the public. My opinion, therefore, is that the work of this Commissioner is quite distinct from that of the Ombudsman. The presence of an access-to-information mechanism, however, can result in a decrease in calls to our Office. Many inquiries and complaints that come to the Office of the Ombudsman arise because someone is denied information to which the person should have access. We look forward to this officer of the Legislative Assembly being in place.

I have committed myself to bringing wit, good humour, unassailable principles and endless energy to the position of Ombudsman. For those of you with whom I have worked during the first year of my mandate, I hope that I have demonstrated that commitment. It is my intention to continue in this direction with the strong support and professionalism of those working with me at the Ombudsman Office.

The Importance of Language

Since my appointment as the first woman Ombudsman in this province, there has been considerable discussion about whether the continued use of the name Ombudsman is appropriate. Concern has been voiced that the word is not gender inclusive. The Special Committee to Appoint an Ombudsman recommended a review of the continued use of the word, notwithstanding that the Committee understood and respected the roots of the word. The *Ombudsman Act* would require amendment to change the name. The Attorney General of British Columbia has the authority to propose amendments to the *Ombudsman Act.* The Ombudsman can only make recommendations to the Attorney General of possible changes to the legislation governing the Office.

Guidelines for government were circulated in July of this year in a document entitled "Communicating Without Bias." It states that in "language, this equality [between women and men] takes the form of parallel word choices for both men and women and the elimination of terms that exclude, stereotype or demean women." This Office is on record as

supporting gender-inclusive language. In considering any change to the designation of Ombudsman, several goals must be achieved. The use of gender inappropriate language must be eliminated while at the same time minimizing public confusion about the Office during any transition period.

Many Ombudsmans and others throughout the world oppose changing the name. One Ombudsman, Duncan Fowler of Alaska, has provided me with his opinion which I want to share with you.

"You're a WHAT?" "Could you pronounce that again?" "What does ombudsman mean?" "Gee that's a funny name for a government office!" "Hmmm, sounds like a sexist term to me!" "Just how do you spell ombudsman anyway?"

I sure have a lot of conversations that start off that way. And so do many of my counterparts in the United States and Canada. The term "ombudsman," pronounced "awm'budz man", or "awm'boods man" is a unique one.

Over the years, the Alaska Ombudsman Office has collected an amusing collection of pronunciations of the term ombudsman. Here are just a few:

Omnibusman — Hey, we'll drive most anywhere to resolve a complaint.
Omnibusinessman — No doubt about it, our business is investigating citizen problems with government.
Omdudman — Hmmm, must have been a dissatisfied complainant.
Offwoodsman — This complainant came from a logging camp.
Omletteman — Interesting, we got that one right after breakfast.
Ombushman — I think that complaint came from either rural Alaska, or maybe Australia.
Ohmbudsman — A complaint involving the state electrical board.
And, the one we like best is *Ombuddy.*

But just what does it really mean? The ombudsman concept started in Scandinavia in the early 1800s as a way to ensure that citizens were treated fairly by their government employees. Almost 200 years later, it still describes a rather special legislative governmental institution that helps ensure that citizens receive fair and equitable treatment from their governments.

The term ombudsman originated back in Old Norse as "umbodhsmadr." It meant the "administration's man" or the "king's representative." "See, I told you it was a sexist term," someone said to me after I had just finished with an explanation. "You should change the name so it is gender neutral. Something like Om or Ombud."

The thought of changing "ombudsman" to a simpler term is an admirable one. Maybe even more so when you consider that it is the name for a special Office that is charged with humanizing governments for all citizens regardless of their race, sex, or economic or political status. But the idea that the term "ombudsman" is a sexist term is based upon misconception. And there is a lot to be said for maintaining the historical roots of this unique institution. Certainly there is even more value in maintaining its international identity in our rapidly shrinking world.

Authoritative dictionaries like Webster's, Oxford, and Random House define ombudsman by the position or job that the Office holder is responsible for. They don't attribute the term to the gender of the Office holder. I find it interesting that the Swedish origins of the term are gender inclusive and means "one." The Nonsexist Word Finder: A Dictionary of Gender-Free Usage concurs with this view. It suggests, however, that we English-speaking folk tend to see the term "man" as gender specific and offers that woman Office holders may choose to use the title of "ombudswoman." That suggestion has not been adopted by the international community.

It is clear to me that the "man" in ombudsman relates back to our species of "hu-man," not the sex of the Office holder. But, while titles may change based upon the preferences of the Office holder, there is value in maintaining the historical name for the institution and the Office. It helps citizens around the world know what the Office does. If citizens can't recognize the name because of its altered title, they may not find the Office when they need the help.

You can find the name "ombudsman" identifying these special offices in the most unlikely places in our world. While most popular in Europe and Canada, you will find an ombudsman in Bophuthatswana, Fiji, Ghana, Iceland, Zimbabwe and even Papua New Guinea, just to name a few. Only four American states have ombudsman offices although most of our possessions and many of our cities do. Currently, the new European Economic Community is establishing an ombudsman Office. I was particularly interested to watch Poland establish an Ombudsman Office even before it broke from the Communist bloc. Their first ombudsman was a woman, Dr. Ewa Letowska. Recently retired, Dr. Letowska competently and aggressively served her role as Poland's civil rights protector.

Ombudsman offices throughout the world, no matter what you call them, have an obligation to help ensure that their citizens understand just what the Office does. Citizens need to know how and when the ombudsman can help them resolve problems with their governments. . . ."

Appropriate communication is an important consideration for everyone working within a public service. Appropriate communication respects the diversity of the population to be served. The form in which we provide information to the public determines whether or not they understand the services to which they are entitled and how they access those services. Effective communication will respect everyone's religion, race, culture, ethnic background, language, level of literacy and disability. Gender-inclusive language is one means to achieve the goal of appropriate communication.

What We Mean by 'Accessible' at the Office of the Ombudsman

One area our Office continues to develop is what we mean when we talk about the public service being accessible. In presentations to the public during 1992, I have shared some thoughts on what it means in our Office:

1. **Free telephone access through 1-800 numbers** for all of British Columbia — one connected to the Victoria Office, one to the Vancouver Office, and one toll-free number for callers whose hearing is impaired. Because the great majority of our callers contact us by telephone, this is important.

Victoria	1-800-567-3247
Vancouver	1-800-661-3247
TDD/TTY	1-800-667-1303

   Local phone access to the Victoria and Vancouver Offices in addition to TDD/TTY local telephone access.

Victoria	387-5855
Vancouver	660-1366
Victoria TDD/TTY	387-5446

   Our Office hours are 8:30 a.m. to 5 p.m. at both locations. If you are unable to contact us during those times, an answering machine is available to answer and record your off-hour calls from any of our phone numbers.
2. **Access by fax** to both Offices. People who do not have ready access to a fax machine can arrange for a fax to be sent to us from any one of the government agents offices located throughout the province.

Victoria	387-0198
Vancouver	660-1691

3. The *Ombudsman Act* requires that complaints to our Office be in writing. We assist people who telephone in, or people who require assistance for any reason, by **putting their complaint in writing.**

4. The Vancouver and Victoria Offices are **physically accessible** and usable by everyone. That means level entry access, elevators, wheelchair washrooms and designated parking.
5. Those working within the Office make every effort to ensure that all letters, correspondence, brochures and other forms of communication are in **plain and respectful language.**
6. Our Office considers it important to be **child and youth centred.** That means our public education and internal administrative systems are developed to ensure appropriate and youth-sensitive approaches are in place.
7. We are conscious of the fact that because of their unique needs, some people may require additional support in filing a complaint and participating in an investigation with our Office. We will make every effort, therefore, to **provide assistance to people who request it.** This may involve the support of a family member for a senior, a signer for a person who is deaf or an Elder adviser for an aboriginal person, to name a few.
8. There are many groups of people who have restricted access to our Office by virtue of their circumstances. For those who reside in institutions and may not have easy access to mail, fax or telephone, Ombudsman staff make **regular visits to institutions.** These include psychiatric facilities, extended and intermediate care, youth and adult corrections, and hospitals.
9. This and future annual reports, and special and public Ombudsman reports, will be available on request on **audiocassette.** All of the business cards of the Ombudsman are imprinted with **Braille.** Videotape productions produced through our Office, such as "Person to Person" are **close-captioned.**
10. Our letterhead indicates the **level of accessibility** for the two Office locations.

Supporting Children and Youth

The Ombudsman has played a strong role in advocating for the rights and interests of children and youth. Often our role in this regard is misunderstood. Advocating for fair practices within government is often misinterpreted as the Ombudsman doing individual advocacy for a particular child. A critical element of fairness is recognizing and respecting the right of a person to be heard. When a child or youth is not listened to by a public official, our Office may intervene to ensure that their opinions and perspectives are considered. We are advocates of the principles of administrative fairness and a process that recognizes the right of a child or youth to be heard.

As a follow-up to Public Report No. 22, *Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*, we agreed to participate in a community panel established by the Minister of Social Services to review child protection legislation. The Deputy Ombudsman co-chaired the panel which published a report, *Making Changes — A Place to Start*, in October 1992. The process and report of the community panel is summarized in Appendix 5.

Several recommendations, particularly those regarding advocacy for children in care of the state, are consistent with the earlier recommendations of our Office. We are optimistic that government will now move forward in a clear and committed way to promote and enhance the rights of children and youth. At the same time, this Office will continue to pursue systemic improvements on behalf of children and youth.

Our Office, in conjunction with the University of Victoria, is planning a conference for the summer of 1994 to coincide with the Commonwealth Games in Victoria. This conference will focus on the rights of all children as embodied in the *U.N. Convention on the Rights of the Child* to develop strategies that will benefit children and youth at both the Canadian and international level by giving meaning and life to the Convention.

International Ombudsman

Every four years, Ombudsmans from around the world meet for a conference hosted by the International Ombudsman Institute. In October 1992, the conference was held in Vienna, Austria. In four years time, Ombudsmans will meet in Buenos Aires. In Vienna, a new president of the institute was elected, the Ombudsman from New Zealand. At my request he has provided a letter for this annual report.

I am honoured to be able to provide a brief contribution to this publication. Each individual Canadian Ombudsman has played, and continues to play, an important role in the international Ombudsman community. Wise counsel and appropriate role models are always available from Canada whenever any country wishes to improve the professional standing of its Ombudsman or consider the creation of such an institution. Stephen Owen, the immediate past Ombudsman for British Columbia, made an extremely distinguished contribution to the International Ombudsman Institute during the four years he occupied the Office of the President. Your current British Columbia Ombudsman, Dulcie McCallum, made an outstanding contribution to the proceedings of the International Ombudsman Conference in Vienna in October 1992.

Much has been written about the role of the Ombudsman. The institution can mostly be recognized by some of the factors inherent in its creation. Some of these are the personal qualities of each Ombudsman, the method of appointment, independence in operation from executive government, set terms of Office, and annual reports to Parliament. However, the success or otherwise of the Ombudsman as an institution depends on how well it serves the unique social requirements of the people who use its services. In that unique environment, one of my colleagues once said there are always three essential elements to an Ombudsman's effectiveness, and they are the extent to which independence from the influence of executive government can be maintained, the flexibility which an Ombudsman shows in conducting investigations and recommending remedies, and

the credibility which is earned with the people's elected representatives, executive government and with the public.

It is these issues which the International Ombudsman Institute is trying to address around the world. Its objectives are to promote the Ombudsman concept, encourage research about the performance of the Ombudsman institutions, to develop and operate educational programs for an Ombudsman and staff, to promote exchanges of information between Ombudsman, to publish information and to arrange international forums for Ombudsman attendance.

Currently, the emphasis of the institute around the world is on promoting the Ombudsman concept and keeping up quality publications. Its main priorities currently are the development of the Ombudsman concept in Eastern Europe, Latin America and Africa. Much effort is going into that work with public information programs, seminars and consultations. New constitutions have been and are being drafted in Eastern Europe and much advice has been given by the Institute about how to provide for an Ombudsman in those documents. The Institute has also focused on Latin America, and is currently encouraging the appointment of a national Ombudsman in Argentina to go with some regional appointments in that country. To sharpen that focus, the Board of Directors of the institute will meet in Buenos Aires in 1994 and the four-yearly International Ombudsman Conference is scheduled to be held there in 1996. These activities, along with others, will be used as a springboard to encourage the appointment of new Ombudsman in other South American countries. In Central America, the process continues. A recent appointment in San Salvador has been followed in the last few weeks by an appointment of an Ombudsman in Costa Rica.

Similar work is taking place in Africa and encouragement is being given to the creation of a regional Ombudsman body from those already established to spearhead the advocacy among governments for more Ombudsman to be appointed. Meetings and seminars are being supported by the institute.

In all the work of encouraging the appointment of a new Ombudsman, the aim is not to increase the Ombudsman tally as an objective itself. We all have to remember that the appointment of

each new national, state or regional Ombudsman affords millions of people an opportunity to expand their democratic dignity by granting a right to establish a grievance about the actions of those in governmental authority and have that grievance dealt with justly and equitably and with a degree of promptness. That process is a major contribution to a healthy democracy.

Currently, as president, I am personally organizing a training workshop in Auckland at the end of April for the investigating officers of Pacific Ombudsman. Because of the small size of their operation, and the lack of resources, a Pacific Ombudsman has little opportunity to provide effective training for investigating officers and this workshop will meet an urgent need for training. One of the dividends from it will be a desk manual for operational use and for on the job training in the future.

It is impossible not to be encouraged and excited by the work being done by the International Institute, and by all the contributions of each individual Ombudsman. Citizens are well served by this enthusiasm for their interests.

The Ombudsman is to be congratulated for presenting this publication to the people. It will do much to demonstrate to the people of British Columbia her accountability for the effective role of the Office.

John F. Robertson
President
International Ombudsman Institute

The Fifth International Ombudsmans Conference

The Fifth International Ombudsmans Conference in Vienna was dedicated to the theme Ombudsman - Idea and Reality. Subtopics included Jurisdiction, Procedure, The Role of the Ombudsman and Ombudsman and Other Cultures. Workshops also dealt with issues concerning freedom of information, communications and computers, and local and regional Ombudsman-related matters.

The opening ceremony was addressed by the federal president of the Republic of Austria, Dr. Thomas Klestil, the president of the Austrian National Assembly, Dr. H. Fischer, and the President of the Swedish Imperial Diet, Ingegard Troedsson. Tributes were given to the outgoing president of the International Ombudsman Institute, Stephen Owen, the former Ombudsman for British Columbia.

Ombudsmans at local, provincial and national levels, 228 full participants in all, attended presentations hosted by the Austrian Ombudsmans Office in the Hofburg Palace. Highlights of the conference included a presentation by Ms. Roberta Jamieson, Ombudsman for Ontario who spoke on The Ombudsman: Learning from Other Cultures. Ms. Jamieson spoke about indigenous people encountering tragic problems,

> *"...even with those governments which the world Judges to have high standards of democracy. Even in prosperous nations, the indigenous people often live in circumstances which the United Nations define as abject poverty, the poorest of the poor. Worse, the victims of those officially sanctioned actions are often blamed for the conditions by citing it proof of some inherent inferiority that gives justification to the events of history. On every continent, you will find indigenous people dealing with severe problems arising from geographic and cultural isolation, problems of overt and unconscious racism and discrimination, problems of language and cultural misunderstanding, lack of awareness of rights and responsibilities in process, problems that have people just giving up trying to be heard and understood."*

Ms. Jamieson observed that parliamentary government and colonialism walked the path of history hand in hand. She also noted that the Ombudsman concept is generally the offspring of parliamentary government, the result being that Ombudsmans are generally found in countries which have "colonized indigenous populations." She cautioned the Ombudsmans that as purveyors of fairness and justice "we must make sure we are not associated with the abusive injustices of colonial thinking." She posed three basic questions:

- What has the Ombudsman concept to offer nations who are struggling to locate the just balance between people and government?
- What can indigenous cultures offer to strengthen the Ombudsman concept? and thirdly,

- What might help bridge the gap between institutions like the Ombudsman's Office and indigenous people or those of other cultures in the population?

She pointed out that many of the complex problems faced by society today are unresponsive to resolution by laws, courts or edicts which means that the Ombudsman is well-placed jurisdictionally and philosophically to give effective leadership in the resolution of such problems. The Ombudsman has the flexibility "to help governments move towards the future in practical directions, a trait not often found in courts whose adherence to precedence is more likely to keep them in the past."

Our survival individually and collectively, Ms. Jamieson said, depends on our ability to accommodate change and diversity and this means a willingness to do things differently and a willingness to explore new ways to reduce conflict and resolve disputes. The idea of resolving disputes between individuals and government through the use of conciliation and mediation, she suggested, has met with some degree of resistance from those who adhere to the classical view on an Ombudsman which emphasized investigation, determination of facts and the rendering of a decision.

Ms. Jamieson cited examples of how other cultures have dealt with justice and fairness issues. She pointed to the principles arising from the Treaty of Waitangi between New Zealand and the Maori people. The treaty contains a principle of redress in which government is expected to assume responsibility for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur. She challenged Ombudsmans with the following questions:

- How do we accommodate people from cultures where complaining is considered to be discourteous; or people whose protocol requires that complaints be expressed only through an elder or chief; or people whose experience tells them that complaining will only cause their people increased problems?
- How do we handle complaints about injustices that have been carried on continuously for a century or more?

The view of many indigenous cultures, Ms. Jamieson said, emphasizes preventive rather than remedial action. An Ombudsman must be conscious of the fear of retribution where a complaint is made against a powerful

government: complaints may take on a very different form and substance which an Ombudsman might not at first recognize.

This latter point was emphasized by the Guatemalan Ombudsman for Human Rights Ramiro de León Caprio. Mr. Caprio was faced with grave situations with his country being in a state of war. He spoke of the crucial problems of the indigenous population, traditionally discriminated against and without real participation in the life of the country. The problems include education, housing and health — infant mortality and rate of illiteracy among these people were the highest in Central America and life expectancy was one of the lowest. In his 1992 annual report, Mr. Caprio said special priority was given to the individual rights that, due to the political violence, have been notoriously violated. The causes of the violence, he added, still persist, worsened by a degradation of economic and social rights. Mr. Caprio went on to talk about the suffering and hope of those who are burdened with the lack of respect for their dignity and welfare and about the role of the human rights officer (Ombudsman) in addressing the outstanding problems of the majority of the country and in developing a better distribution of justice among the people. "The challenge is not to be utopia, it must be a hope to be accomplished by all Guatemalans." It was exciting to see developing countries such as Guatemala embracing the Ombudsman concept to help ensure that its citizens are receiving fair treatment. We celebrate and congratulate the recent appointment of Mr. Caprio as Guatemala's Head of State after an unsuccessful military coup.

Our continuing support of the International Ombudsman Institute is very important. Several new democracies are moving towards a model that includes a parliamentary Ombudsman. The Parliament of Thailand has established a human rights committee to consider the establishment of an Office of an Ombudsman. A delegation from Thailand is expected to visit our Office in 1993.

Public Reports Issued in 1992

The *Ombudsman Act* enables the Ombudsman to issue public and special reports where she considers it to be in the public interest or in the interest of a person or authority.

In 1992, the Office of the Ombudsman issued two public reports. In addition, an Interim Report on the Complaints Regarding Allegations of Abuse of Students at Jericho Hill Provincial School for the Deaf was issued in June 1992.

Public Report No. 29 - *A Complaint about Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus*

This matter was referred to the Ombudsman in March 1992 following a series of events which took place at Vancouver Community College between October 1991 and March 1992. The incident which formed the basis of the sexual harassment complaint was the publication of an 'unclassified' advertisement in an independent student newspaper distributed at Langara campus.

The scope of the Ombudsman's investigation was as follows:

- The Office did not investigate the merits of the specific complaint or the adequacy of the punishment which was imposed by the college. Because of this, the report did not make any recommendations which were specific to the case.
- The Office examined the adequacy of the procedures which were available to the college at the time of the complaint and the adequacy of the new procedures for dealing with sexual harassment complaints which were developed later. The report made recommendations for improvements to the new policy and procedures.
- In order to assess the procedures and put the investigation into context, the Office examined the process used by the college to investigate and deal with the complaint and whether the procedures in place at the time were followed. The Office also examined how the parties involved were affected by the manner in which the complaint was handled.

The report, released in July 1992, made the following conclusions:

- In general, the procedures which were in place during the time did not provide an effective way to resolve a sexual harassment complaint.
- The college administration did not follow its procedures in two significant ways which are described in detail in the report.
- Despite the general inadequacy of the procedures which were in place, had the college administration followed those procedures properly, it could have resolved this particular dispute in a fair manner.
- The new procedures which were put into place March 19, 1992 were a welcome improvement. While it was too soon to determine how effective they would be, they were based on sound principles.

It is hoped that this report will provide useful information to educational institutions which already have or are in the process of developing policies and procedures to deal with harassment and sexual harassment complaints.

Public Report No. 30 - *Court Reporting and Court Transcription Services in British Columbia*

This report was published in September 1992. The Ombudsman Office first received complaints in May 1991 from contract court reporters about what they believed was unfairness, government waste, conflict of interest and impropriety within the Court Services Branch of the Ministry of Attorney General regarding court reporting in British Columbia.

The ministry was made aware of the complaints and the Assistant Deputy Minister asked our Office to conduct an investigation. In June 1991, due to this request and the nature of the complaints, the investigation was changed to an Ombudsman's initiative. This part of the investigation was carried out in the summer and fall of 1991.

In December 1991 and January 1992, we received more complaints. There were further allegations of unfairness in scheduling the courts in Vancouver and of improper revenues to staff reporters and staff reporter managers for the supervision and preparation of Chambers Appeal Books. There were also a series of complaints which involved contract reporters. We investigated these complaints from January to April 1992.

Our investigation focused on systemic issues in the current court reporting system. We examined aspects of the system which touch on the interplay

between contract reporters, staff reporters, schedulers, support staff and administrators employed by the ministry.

At the time our report was released, at the request of the Deputy Attorney General, the Comptroller General began conducting an audit of the scheduling functions for court reporters at the Vancouver Law Courts.

In our report, we found:

- In the first period of review (January 1990 - June 1991), we could not make a clear determination of the number of days in court per month reported by Vancouver staff reporters, because the available records were incomplete or inconsistent.
- In the second period under review (September, 1991 - December 1991), we found that Vancouver staff reporters received considerably more short court assignments or being on standby for the court than assignments received by contract reporters. This allowed staff reporters to be more available to conduct examinations for discovery as private contractors in competition with contract reporters . Both contract and staff reporters wanted equal opportunity to pursue discoveries as the most lucrative private work available to both of them. Contract reporters were generally unable to regularly conduct their examination business. We concluded that the advantage for staff reporters was derived from their public service positions.
- Due to the manner of scheduling staff reporters for court between January 1990 and March 1991, it appeared that the ministry was using more contract reporters to cover the courts than was necessary. While staff reporters were available, the scheduler received the necessary information too late in the process to schedule them in the most efficient manner. This process improved after March 1991.
- Staff reporters received a higher per diem rate (with additional benefits) than contract reporters for reporting the courts, because their salaries increased over the years while contract rates did not.
- The system and fee structure for the preparation of Chambers Appeal Books needed to be reviewed.
- At a minimum, there was a public perception that the Vancouver staff reporter managers, and the staff reporters to a lesser extent, were in a conflict of interest, due to the inherent structure of the present system. They were continually placed in a position where their private business interests could be in conflict with their public responsibilities.

We recommended immediate restructuring within the ministry, primarily by establishing the position of Chief Court Reporter. This senior person, who would not be involved in any private business, would be responsible for the management of all reporters who report the courts.

We also recommended that the ministry take the necessary steps to equalize the benefits received by all reporters, taking into consideration issues of seniority, experience and service quality. In addition, the private business operated by staff reporters should be separate and distinct from the public service provided by the present complement of staff reporters in Vancouver.

It was also recommended that the ministry reconsider its policy of maintaining a two-tiered system of court reporting involving both staff and contract court reporters. There should be consultation with the Chief Justices of the Court of Appeal and Supreme Court of B.C. to determine the need to maintain a core of staff reporters in the Vancouver Law Courts. We recommended that the ministry consider several options in its review, including:

- separating the public and private business of reporting by hiring a sufficient number of staff reporters whose sole function would be to provide reporting services for the courts,
- privatizing the remaining staff reporters, or
- hiring all court reporters in the province and assigning them all the courts and examinations for discovery.

Shortly after this report was released, the Attorney General announced that the government was going to enter into negotiations to extend collective bargaining rights to all court reporters.

Public Reports Expected in 1993

1. No. 31 — *Abuse of Deaf Students at Jericho Hill School; The Final Report by the Office of the Ombudsman*
2. No. 32 — *Ombudsman Report Concerning the One Way Adventure Foundation Youth Program*
3. No. 33 — *Peer Abuse in Youth Custody Centres*
4. A Complaint Regarding the Ban on Potato Production on the Saanich Peninsula
5. Income Assistance Appeal Review Structure
6. Riverview Hospital: A systemic review of the largest psychiatric hospital in B.C.

7. The three-year follow-up report Public Report No. 22, *Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*
8. Possible review of public services to adult dependent persons as a continuation to Public Report No. 25

Up and Coming in the 1993 Ombudsman Annual Report

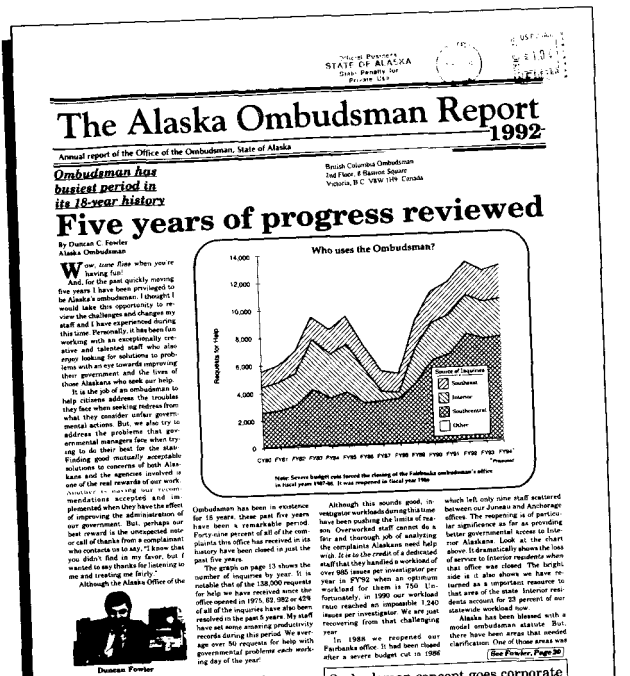
This will be the final report of the Ombudsman to the Legislative Assembly in this format. Next year, it will be a tabloid newspaper. The Alaska Ombudsman, Duncan Fowler, was the first to produce an annual report in tabloid form and it has been positively received. Here is his assessment of its success:

> "Historically, Ombudsman Offices have issued annual reports filled with research data and statistical information with long narratives that describe the past year's activities. This had been the practice of the Alaska Office for several years.
>
> It is said that necessity is the mother of invention. My Office had a significant budget cut one year. It was clear that we did not have the funds to publish the traditional thick annual report as had been our practice. We also knew that those reports, although well-written and informative, were not read by those who most needed to know about the Office. Our legislators were too busy to fully review a 200-page report and the format was too intimidating for most members of the general public.
>
> Our solution was to create an annual report using a newspaper tabloid-style format. It became an instant success. The format was familiar to the general public. Busy legislators and government officials could scan the report and pick up items of interest or concern. It allowed human interest issues to be clearly set out in an easily understood manner. Finally, that format made it cost effective to print thousands of copies of the report and make them available in quantity throughout Alaska for the general public. And, most importantly, it helped the public better understand what an ombudsman is and just what kind of issues an ombudsman could help them with."

My decision to convert the format for reporting is based on a number of factors. The tabloid is cost-effective, recyclable, and user-friendly. It is hoped that it will attract a wider readership and is, therefore, more useful and educational. We hope over time to include good quality inserts which can be converted to posters and bulletins thus serving a double purpose. While the

new report will continue to provide statistics on cases completed and highlight interesting investigations, a greater number of copies will be produced at less cost, resulting in greater circulation to the public while maintaining good feedback to the public authorities.

We have focused in this final report in the classical format on the overall work of each government authority and the progress it has made in improving its service to the public. Statistics are provided at the beginning of each section. In some cases, examples have been included where an authority has made achievements in improving the standard of administrative fairness provided to the public.



STATE OF ALASKA

The Alaska Ombudsman Report 1992

Annual report of the Office of the Ombudsman, State of Alaska

Ombudsman has busiest period in its 18-year history

British Columbia Ombudsman
2nd Floor, 8 Bastion Square
Victoria, B.C. V8W 1H9 Canada

Five years of progress reviewed

By Duncan C. Fowler
Alaska Ombudsman

Who uses the Ombudsman?

Duncan Fowler

Privatizing government services: Decision should be careful, cautious

By William P. Angrick
Citizens' Aide/Ombudsman
State of Iowa

Ombudsman concept goes corporate

By Larry D. Wood, Ombudsman
Alyeska Pipeline Service Company

Complaint and Investigation Activity During 1992

A Brief Overview of Ombudsman Activity for 1992

New Contacts with our Office during 1992

The Ombudsman Office received 16,496 new complaints or inquiries during 1992, up four percent from the previous year. Of those contacts with our Office:

- 6,030 or 37 percent involved agencies that are not within the Ombudsman's authority to investigate: for example, consumer complaints against private companies, complaints against the federal government or against private professionals;
- 568 or three percent involved authorities in the schedule to the *Ombudsman Act* that were not yet proclaimed into law;
- 857 or five percent involved agencies within the Ombudsman's investigative jurisdiction but were considered inquiries rather than complaints; and
- 9,041 or 55 percent were complaints against authorities where the Ombudsman had the authority to investigate.

Complaints/Inquiries Handled

At the beginning of the year, the Ombudsman Office was still working on 1,881 complaint investigations or inquiries that had been started prior to 1992. Taken together with the 9,898 (9,041 + 857 from above) new jurisdictional complaints and inquiries during 1992, a total of 11,779 complaints or inquiries were handled in the reporting period. In dealing with these, 9,440 files were closed during year, leaving 2,339 jurisdictional complaint or inquiry files open at December 31, 1992.

Files closed

Of the 9,440 files closed during 1992, 5,949 (63 percent) were closed because the complainant abandoned, discontinued or withdrew from the investigation, or because the Ombudsman declined to investigate for a number of possible reasons set out in the *Ombudsman Act.* For a detailed explanation, see the introductory pages to the Statistics section. Another 736 files (eight percent) were closed as inquiries rather than complaints of wrong-doing.

The remaining 2,755 files closed during 1992 (29 percent of the total) involved completed investigations. Almost two-thirds of these investigations (1,747 or 63 percent) resolved to the satisfaction of the complainant, while in 1,008 of the cases (37 percent) the complaint was found to be not substantiated by the facts revealed in the investigation.

These activities for 1992 are summarized in the table below. Complaint activity is detailed for each authority in the Statistics section on pages 147-151.

Major 1992 Activity

Complaints still being investigated from 1991		**1,881**
plus		
New complaints/inquiries received in 1992	**16,496**	
less - Not within jurisdiction	6,030	
- Unproclaimed authorities	568	
equals		
New jurisdictional complaints/inquiries	9,898	**9,898**
equals		
Total jurisdictional complaints/inquiries handled in 1992		**11,779**
less		
Complaint/inquiry files closed during 1992		**9,440**
equals		
Investigations unfinished at the end of 1992		**2,339**

A description of the activity relating to each authority follows. Each description contains a table summarizing complaint activity. The terms used to describe complaint dispositions are precise; they are defined in the introduction to the Statistics section of this report.

Ministry of Advanced Education, Training and Technology

The Ministry of Advanced Education, Training and Technology is responsible for student loans, universities, colleges and institutes, job training and apprenticeship programs, and science and technology. Most of the complaints we receive involve the Student Loan Program, universities and colleges, and the Apprenticeship Program.

Resolved	26
Abandoned, withdrawn, invest. not authorized	19
Not substantiated	7
Declined, discontinued	25
Inquiry	17
Total Files Closed	**94**
Files open Dec. 31, 1992	39

The Student Loan Program

The Student Services Branch administers the Student Loan Program, about which we receive several complaints each year. It has no statute outlining its authority, so there is no reference point against which program policies may be evaluated. As well, the program has sometimes made policy changes which have meant that students who borrow on one set of conditions must repay the loan on a different set of conditions.

Delays in processing loan applications are the most frequent source of complaints. Students are told to expect up to 10 weeks' processing time but it often takes longer. Students also complain about the lack of clear information about the program's requirements for forgiving a student loan. Although the program has established requirements for loan "remission", as it is called, the material available for students does not explain the requirements clearly.

The Minister of Advanced Education appointed a committee to review the student loan system and recommend changes. Its report is now under consideration by the ministry. Until a formal appeal system is introduced, students can appeal decisions by writing to the program.

Colleges and Universities

The Ombudsman now has the authority to investigate complaints against the province's four universities and all colleges and institutes which fall under the *College and Institute Act.* There are some private colleges and institutes in the province which are regulated under the *Private Post-Secondary Education Act.* The act establishes a commission which is responsible for consumer protection and educational standards. While we do not have the authority to investigate complaints about private colleges and institutes, we can investigate complaints against the commission.

We receive a wide range of complaints about colleges and universities. Most post-secondary institutions have a formal procedure for appealing an academic issue such as a mark or completion of course requirements. The appeal process varies from one institution to the next but it usually begins with a review within the department and ends with an appeal to the institution's governing body.

These formal processes take some time to complete and as a result we receive complaints about delays in the appeal system. Sometimes, the process takes so long that winning the appeal is of little benefit to the student.

Some institutions have established a mechanism to address complaints about non-academic issues such as administrative problems or access to day-care, housing, counselling or other services. Others do not have such a mechanism, and in a large institution it can be quite difficult for a student to resolve a problem of this kind.

During 1992, our investigation of an incident at Vancouver Community College led to the publication of a report entitled *A Complaint about the Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus,* which is discussed at length in the Introduction.

Apprenticeship Program

The Skills Development Division of the ministry is responsible for the Apprenticeship Program about which we receive a few complaints each year. The program sets standards for apprenticeships and certifies completion of the required steps. We receive complaints from apprentices about meeting

program requirements and about problems with employers where the apprentice feels the program has failed to take appropriate steps.

Decisions may be appealed to the Board of Examiners, which deals with qualifications and credentials issues, or to the Provincial Apprenticeship Board.

Ministry of Agriculture, Fisheries and Food

Resolved	8
Abandoned, withdrawn, invest. not authorized	3
Not substantiated	7
Declined, discontinued	4
Inquiry	3
Total Files Closed	**25**
Files open Dec. 31, 1992	19

The Ministry of Agriculture, Fisheries and Food promotes and protects the various industries responsible for food production in the province. Its programs include assistance for a wide range of activities, including producing honey, raising cattle, fish farming, and growing fruits, vegetables and grains. The ministry is also responsible for the Agricultural Land Commission and the B.C. Marketing Board. We receive very few complaints about the ministry's programs. Most of these relate to dissatisfaction with the ministry's crop insurance program.

In December 1988, we published a report called *Aquaculture and the Administration of Coastal Resources in British Columbia.* In it, we recommended that different ministries and levels of government work together on planning and resource management for the coast. The ministry is now co-ordinating an initiative involving a number of ministries of the provincial government to consider integrated planning for the coastal zone.

This is a significant step. It is an official recognition that land- and water-based activities should be managed together for appropriate and sustainable growth. At present, however, the initiative remains at a conceptual stage, pending clarification of government planning priorities.

Agricultural Land Commission

The Agricultural Land Commission's purpose is to preserve agricultural land in British Columbia for future generations. This land base is known as the Agricultural Land Reserve. When land is designated as agricultural and placed in the reserve, the commercial value of the land may decrease. As well, land in the reserve cannot be subdivided without the permission of the commission. These restrictions can be frustrating, particularly for elderly

people who can no longer farm. Many want to sell their land so they can give some financial help to their families.

Even with these restrictions, the policy of preserving agricultural land appears to have strong public support, as we receive few complaints about the commission.

Ministry of the Attorney General

Resolved	578
Abandoned, withdrawn, invest. not authorized	169
Not substantiated	519
Declined, discontinued	954
Inquiry	87
Total Files Closed	**2,307**
Files open Dec. 31, 1992	345

The Ministry of the Attorney General recently merged with the Ministry of the Solicitor General, creating a very large ministry with significant responsibilities. Most of its programs involve the justice system, including criminal prosecutions, adult and youth corrections, court services, sheriff services, and the Family Maintenance Enforcement Program. The ministry gives legal advice to government and is also responsible for the Public Trustee, the Motor Vehicle Branch, and film classification. As the two ministries merged, many programs were reorganized and there have been a number of senior management changes.

Criminal Justice - Crown Counsel

The Criminal Justice Branch of the ministry is responsible for prosecuting criminal offenses. These prosecutions are carried out by Crown Counsel throughout the province who report to branch headquarters in Victoria.

The most frequent complaints are about Crown Counsel decisions that a case should not be prosecuted. If someone disagrees with such a decision, Crown Counsel will discuss the decision with the complainant and explain the reasoning behind it. Complaints can be further examined by Regional Crown Counsel and, if necessary, by the Assistant Deputy Attorney General.

We play a very limited role in responding to these complaints. We refer people with these complaints directly to the Crown for an explanation and we find that most complainants are satisfied with this internal process. Where our direct involvement has been required, the branch has been helpful and co-operative.

Some recent complaints include:

- A complaint that a prosecution for sexual abuse had been postponed five times, adding stress to an already stressful situation. The Crown had not

been the cause of all of the delays but Regional Crown Counsel made sure that the case went forward as soon as possible.

- A complaint that a man who had assaulted a female store-owner was sent a warning letter rather than being prosecuted. Regional Crown Counsel agreed that a warning letter was not an adequate response in view of the need to send a strong message to discourage violence against women. In February of 1993, the Attorney General published a new, proactive policy on offences which involve violence against women and children.
- A complaint that Crown Counsel questioned a witness for 15 minutes about her need for an interpreter. Regional Crown Counsel explained that the purpose of the cross-examination was to make sure the witness's need was genuine and not an attempt to gain more time to answer questions.

The Family Maintenance Enforcement Program

The Family Maintenance Enforcement Program monitors and enforces payments when a court order has been made requiring someone to pay maintenance for a separated spouse or children. The program is managed by a private firm under contract with the ministry. We refer complaints to the Director of Maintenance Enforcement. We advise complainants who are not satisfied with the director's response to contact us with their concerns.

We often receive complaints from debtors who have had maintenance orders filed against their property in the Land Title Office. Some debtors object that they are up-to-date in their payments. The director has the power to apply for registration against land either where there are arrears or where registration is requested by the creditor. A registration filed by the director cannot be discharged under the legislation without the consent of both the director and the creditor, or by court order.

A number of complaints, particularly from creditors, involve communication problems. Some of these complaints are about difficulty in reaching enforcement officers. Although there has been a recent reduction in caseloads, each enforcement officer, with the help of an assistant, is still responsible for between 900 and 1,000 files. A booklet sent to creditors at the time of enrolment states that enforcement officers will only return calls from creditors when the circumstances warrant it so that they can concentrate on

enforcement procedures. Telephone calls to the program are usually handled by enquiry clerks.

Court Services

The Court Services Branch of the ministry includes the court registries and sheriff services.

Complaints about court registry staff often involve administrative errors or disputes about traffic tickets. We also receive complaints that court registry staff will not give legal advice or, where advice has been given, that it is incorrect. Staff are not permitted to give legal advice and, while the reasons for this rule are sound, members of the public sometimes feel frustrated when the staff will not answer a "simple" question.

Most of the complaints we receive about sheriff services involve problems which arise when prisoners are being escorted from one location to another by deputy sheriffs. Some of these complaints are about the loss of personal possessions during a move; they are sometimes resolved by negotiating compensation for the loss.

Transporting prisoners can be a challenging task, particularly since deputy sheriffs must be highly conscious of security at all times. The fact that we receive relatively few complaints given the number of people being moved each day and each month during any year demonstrates the generally high standard of the deputy sheriffs' work.

Sheriff services must move large numbers of prisoners and ensure that each of them appears in court on the correct date. The sheriffs use a coding system known as "VISEN" to note problems which may arise in moving particular individuals. Each letter in VISEN stands for a different type of risk.

Some prisoners can behave in unpredictable ways. However, when sheriffs conduct themselves in a professional manner, they are usually able to avoid confrontation. When sheriffs are not able to maintain a professional attitude, incidents occur which might have been avoided. Public officials must be held to very high standards, even under circumstances which present difficult personal challenges.

The Office of the Public Trustee

The Office of the Public Trustee is an independent branch of the Ministry of the Attorney General. It administers three programs: Services to Adults, Services to Children, and Estate Administration. The Public Trustee's Services to Children program is described in the *Child & Youth* section of this report. The Services to Adults program assists vulnerable adults with the management of their financial, legal or personal affairs. Adult clients may need assistance as a result of mental illness, mental disabilities, brain injuries or diseases associated with the aging process. The Public Trustee also reviews the accounts of private individuals who have obtained the legal authority to act as the "committee" for a vulnerable adult.

The Estate Administration program administers the estates of people who have died without naming an executor to distribute their assets. The Public Trustee acts as Official Administrator of these estates. The program also monitors the services provided by Deputy Official Administrators located throughout the province.

The majority of complaints the Ombudsman receives involve the Services to Adults program. They come from the adult clients themselves from their families and friends. Clients often disagree with the financial decisions that are made on their behalf, particularly where they believe the Public Trustee does not allow them enough control over spending money. Family members, on the other hand, tend to complain that the Public Trustee is allowing the client to have too much spending money. A frequent complaint from clients and family members alike is that it is difficult to obtain regular and informative statements of their publicly managed accounts.

The Public Trustee's investigation of an adult's circumstances and her decision to intervene often create tensions within the family which are difficult to defuse. The background to many complaints is disagreement within a family about what is in the best interests of a vulnerable family member. Some members of the family may feel that the Public Trustee has sided with or acted only on information given by other members. It is important that Public Trustee staff obtain an accurate and informed picture of the family's views at the outset. Staff must consult with clients, their families and friends, and take their views into account when decisions are made.

Family disagreements also play a role when the Public Trustee reviews the accounts of the private individuals who have the authority to manage an adult's affairs. In one case which led to a complaint, family members had tried for a long time to have the Public Trustee review questionable decisions another family member had made on behalf of an elderly relative. When we requested that the review take place as soon as possible, the Public Trustee responded appropriately and obtained a court order to replace the family member as committee.

We received several complaints about delay in the Intake Services Department where very sensitive issues were involved. This department is responsible for the initial investigation of an adult's circumstances. On one occasion, the Public Trustee was concerned about a private individual's questionable use of a vulnerable adult's funds and obtained a court order to manage the adult's affairs. Several months later, the Public Trustee had not taken steps to take over management of the client's affairs. It turned out that the staff member in charge of the file had not been made aware that the court order had been finalized. As a result of our intervention, Public Trustee staff took steps to take over management of the client's affairs.

The tasks performed by Public Trustee staff are complex. The Office of the Public Trustee is in the middle of a reorganization, which should lead to improved service. Unfortunately, the reorganization has not moved forward as quickly as originally intended.

We receive some complaints about delay in the Estate Administration program. Beneficiaries and family members have also made complaints about lack of information on estate matters. Improved communication with beneficiaries would reduce some of the frustration which results from the technical nature of many of the issues arising in the administration of an estate.

Motor Vehicle Branch

The Motor Vehicle Branch responds in an understanding and constructive way to issues we bring to their attention. The branch has been particularly helpful in addressing the issues that arise for drivers who have disabilities.

The branch has made progress in dealing with complaints about two recurring problems: driver "impersonation" and requests for time to pay fines.

We have also received a number of complaints about the AirCare program, a motor vehicle testing program in the Lower Mainland.

Driver Impersonation

Driver impersonation occurs when a driver who has been stopped by the police gives a false name. The person whose name the driver has given ends up receiving convictions and fines for both the traffic violation and for the failure to produce a licence. Many of these impersonation cases are reported each year.

The unpleasant surprise comes when, perhaps years later, victims attempt to renew their licences, only to find that they are asked to deal with fines before they can renew. One victim faced fines of over $1,900 as a result of several incidents. The branch and the police have worked with us to develop a process which allows these innocent victims to remove the convictions from their records and deal with the outstanding fines.

Time to Pay

The Motor Vehicle Branch allows people with limited means to put off paying their traffic fines until they renew their drivers' licences. This policy cannot be extended to traffic fines acquired before November 1990. Only the courts have the authority to grant time to pay in these old cases.

The branch loses revenue when drivers cannot afford to pay the whole amount, and some drivers may not be able to renew their licences until the full amount is paid. Court Services has responded well to our recommendation that all branches of government adopt the same policy on time to pay money owing to the government. The Ministry of the Attorney General is now considering this recommendation to apply the time-to-pay policy consistently and we expect a decision in due course.

AirCare

AirCare testing was introduced for Greater Vancouver and the Lower Mainland in 1992. There have been serious problems with long lineups, the cost of repairs and return visits to the testing stations. The result has been a significant number of complaints to the Ombudsman, most of which involve questions about the accuracy of AirCare testing.

There are sometimes differences between the readings at certified AirCare repair centres and the AirCare testing stations, and occasionally the AirCare tests themselves differ from each other. However, we do not believe that the AirCare tests are inaccurate. Vehicles that are poorly adjusted produce amounts of pollutants that vary considerably. On the other hand, a well adjusted, properly equipped vehicle will usually test consistently. The AirCare standard is not unreasonably high so a well-adjusted vehicle should pass easily.

Although there has been some negative publicity about the centres and repair shops, we believe that they are well-managed and appropriately audited.

Motor Carrier Commission

The Motor Carrier Commission and its administrative arm, the Motor Carrier Branch, regulate the motor carrier industry. Motor carriers include taxis, trucks, buses and other vehicles that carry passengers or goods for payment. We receive very few complaints about either the commission or the branch. Those we do receive usually involve decisions of the commission to refuse to issue a licence.

The commission decides whether an applicant will receive motor carrier authority and gives overall direction to the branch which investigates complaints about the industry and carrier compliance with safety provisions.

In 1985, we recommended, and the commission agreed, that it should give reasons for its decisions at the request of the applicant. Subsequently, without informing us of the change in their position, the commissioners decided that they would stop giving reasons. In the commission's view, the extra work involved in providing reasons proved to be an administrative burden for the staff. Nevertheless, the commissioners have now acknowledged the importance of the issue and have again agreed to give reasons.

Adult Corrections

The Corrections Branch of the ministry administers adult correctional institutions throughout the province. These prisons detain adults who are awaiting trial and house those who have been convicted of criminal offenses and are serving sentences of up to two years. The branch also administers

custody centres which house young offenders. These are discussed in the *Children & Youth* section of this report.

The Probation Services division of the branch monitors the conduct of offenders living in the community. The branch also prepares pre-sentence reports which Judges consider in deciding what sentence offenders should receive. Whenever an offender may be eligible for early release from an institution, the branch prepares reports on the impact on the community of releasing the offender.

Complaint Trends

The volume of complaints to the Ombudsman has continued to increase over the last several years. This does not necessarily mean that there has been an increase in the number of unfair decisions by the branch. The increase is more likely to be related to the increased number of inmates entering correctional institutions. However, the numbers emphasize how important it is for correctional institutions to develop ways of resolving complaints within the system.

Some of these complaints would probably seem quite unimportant to a person at liberty in the community, but when a person is housed in an institution 24 hours a day, seven days a week, the complaints begin to assume a different character. The institution decides when inmates get up and when they go to sleep, what and when they eat and who may visit them. For security reasons, the branch sometimes reads their mail and listens to their telephone conversations. Inmates often find these significant but necessary intrusions into their lives hard to tolerate. The right to make complaints gives inmates a sense of control over their lives. As a result, it is not surprising that we continue to receive a high volume of complaints.

Typical complaints involve allegations about:

- unreasonable rules and unhelpful attitudes on the part of Corrections staff;
- the quality of the food served in institutions;
- measures taken to promote security that are unnecessarily rigid;
- unnecessary restrictions on visits;
- lack of access to information which affects the inmate, including medical information;
- pay scales for work performed by inmates in institutions;

- the loss of personal possessions during transfers from one institution to another; and
- the denial of temporary absences and parole.

Praise for Inmate Committees

In last year's annual report, we noted that the Corrections Branch had established inmate committees or other mechanisms to improve communications in all of its centres. This important step forward gives inmates a way to express their concerns about issues which affect them as a group. We commend the branch for its commitment to finding better ways to resolve problems within correctional institutions through the use of these committees.

We believe the results are generally positive. Although the committees are not yet working well in every institution, in some of them they have won the support of both inmates and Corrections staff. Some committees act as a self-policing mechanism for the inmate population, or they may be used to resolve misunderstandings between inmates and staff.

As a result, in some institutions staff are more open to the inmates' concerns and both sides are better able to reach a compromise. An example is the Vancouver Pre-Trial Services Centre where a committee of inmates and staff is working on complaints about the quality of food.

Resolving Complaints Within the System

Apart from the inmate committees, there are two other ways for inmates to make a complaint without contacting our Office.

The first is a grievance procedure which is available within each institution. The process is described in section 40 of the Correctional Centre Rules and Regulations. It requires an inmate to make a complaint in writing which may be addressed to an officer or to more senior staff. The rule gives a seven-day time limit in which Corrections must investigate the complaint and give the inmate a written response.

Unfortunately, inmates in some correctional institutions do not trust this system with the result that it is not used as often as it could be. We occasionally receive complaints that staff "lose" the grievance so that the issue never receives a response. We also hear inmates say that the responses

they receive are inflexible and unhelpful. These comments are not always justified but we believe that Corrections should demonstrate its respect for inmates' concerns by ensuring that grievances are consistently handled through an objective, professional and fair process.

One example of this problem was a case where an inmate added a polite note to his grievance saying that he would make a complaint to the Division of Inspection & Standards if his grievance was lost. The grievance was returned to him within two hours without a response. Instead, he received a note from a Senior Correctional Officer which said, "I do not respond to threats." We stepped in and ensured that the grievance received appropriate consideration.

The Correctional Centre Rules and Regulations also give inmates the right to make complaints to the Division of Inspection and Standards. Inspection and Standards has the responsibility of ensuring that correctional institutions are operated in accordance with the standards established for them. A team of inspectors visits institutions regularly to check.

We always refer inmates to the division when they want to appeal "disciplinary dispositions" - punishments imposed when inmates break rules. The division has the power to change the decision if it is unfair. Inspection and Standards is also helpful when an inmate wishes to complain about an institution's failure to comply with a standard or about an issue which affects all institutions.

In most cases, Inspection and Standards conducts a thorough and fair investigation of a complaint. However, inmates are required to make complaints in writing, which may make the division a less attractive alternative than a phone call to us. Most inmate complaints involve issues which must be resolved very quickly. As well, some inmates may not feel confident in expressing themselves in writing or may be functionally illiterate. We feel the opportunity to resolve complaints within the system would be more effective if inmates were permitted to make complaints to the division over the phone.

Issues We Are Monitoring

Some of the complaints we receive could have been resolved within the system. These complaints are made when Corrections staff insist on

unreasonable interpretations of rules, are reluctant to take extra steps to help an inmate solve a minor problem, or do not take the time to explain decisions. Issues which should take very little effort to resolve then become formal complaints to the Ombudsman. We are often able to resolve these complaints easily - sometimes with only one telephone call. At the same time, the fact that the complaint could be resolved so easily is an indication that it could have been resolved without our intervention.

Some Corrections staff are always objective and professional in their contacts with inmates. They react appropriately when inmates challenge their authority. They acknowledge an inmate's legitimate concerns and show respect for an inmate's dignity. The result is that inmates are less confrontational towards them. Others allow themselves to overreact to provocation from inmates. The result is that they escalate tension instead of defusing it.

Recently, an officer saw some of his colleagues beating an inmate. Courageously, he stood up for the inmate. It was a sad reflection on the attitudes of some Corrections staff to learn that the officer was shunned by his colleagues, had his car vandalized and received a dead rat, gift-wrapped. It is vital that the Corrections Branch continues to emphasize professionalism and objectivity in its staff selection, training and performance evaluation so that such disgraceful incidents do not recur.

Ministry of Energy, Mines and Petroleum Resources

Resolved	5
Abandoned, withdrawn, invest. not authorized	6
Not substantiated	2
Declined, discontinued	2
Inquiry	3
Total Files Closed	**18**
Files open Dec. 31, 1992	8

The Ministry of Energy, Mines and Petroleum Resources regulates the development and use of the province's metals, minerals, coal, petroleum, natural gas and other resources. Like the ministries of Environment and Forests, many of the challenges it faces relate to the balance between economic growth and environmental impact.

The complaints we receive about the ministry often raise fundamental questions about the nature of minerals and the right to mine. We are currently studying the many issues they raise.

Freedom of information is another issue many government agencies are beginning to address in advance of the new legislation. One complainant contacted us with an issue involving access to information in the Petroleum Titles Branch. She was concerned about the planning processes used by the ministry in connection with proposed natural gas exploration in the Fraser Valley. By the time the complaint reached us, the Commission of Inquiry into Fraser Valley Petroleum Exploration, headed by David Anderson, had already issued its report. Nevertheless, the complainant's concerns were not resolved by the report and she sought our assistance.

She felt that the names of all bidders for sub-surface tenures should be public information. These tenures might involve petroleum exploration or the right to use underground storage reservoirs in which large supplies of natural gas could be stored for the future. The ministry did not agree that the names should be public. In its view, the traditional practice, where only the name of the successful bidder is made known, was appropriate.

In addition, the ministry argued that the Crown had a financial interest which could be adversely affected by disclosure of the number or identity of

bidders. If the successful bidder discovered that it was the only bidder in a competition, the amount it would be willing to bid for other opportunities might be reduced, with a resulting loss to the provincial treasury.

We concluded that access to this information was a grey area in which there was, at least in this case, adequate justification for the current practice. As well, it might be unfair to the participants to change the disclosure policy after the fact. Nonetheless, we noted that it was open to the ministry to change its policy, provided it gave advance notice to the industry that names might be disclosed. The ministry must also take into account the provisions of the pending *Freedom of Information and Protection of Privacy Act.*

As far as the planning process was concerned, we noted that earlier and more thorough public consultation would have been helpful. The consultation process appeared to have been planned more in reaction to highly polarized public concern than in anticipation of the need for public involvement.

For many years, our role in resource issues has been to provide guidance and to consult with provincial agencies on fairness in land use planning. For the most part, this function has now been assumed by the Commission on Resources and Environment (CORE). It has a broad statutory mandate to establish a fair process for resource management in some parts of British Columbia. The Ombudsman has the authority to review complaints about CORE.

Ministry of Environment, Lands and Parks

Resolved	20
Abandoned, withdrawn, invest. not authorized	30
Not substantiated	27
Declined, discontinued	30
Inquiry	15
Total Files Closed	**122**
Files open Dec. 31, 1992	96

The Ministry of Environment, Lands, and Parks is a very large ministry with a broad mandate. The Environment division is responsible for environmental protection, promoting integrated resource management across provincial ministries and different levels of government, fish and wildlife management and protection, and water management throughout the province.

Lands is the division responsible for: the allocation of Crown land for economic development; sales, leasing, protection, registration, and cataloguing of Crown land; and the acquisition, management and communication of lands data and information.

The primary responsibilities of the Parks division are to make recommendations to Cabinet for the creation of new parks and to protect and manage the park system. The division also identifies and protects both representative and special examples of natural diversity, as well as cultural and recreational features of the province.

The relatively few complaints we receive about the ministry tend to be complex. Many of them relate to the process of awarding new contracts or the management of existing contracts. These contracts include park use permits, licences of occupation and simple service contracts.

Water management can be a highly contentious issue. Passions between neighbours can flare when one feels the other has abused, monopolized, or denied the use of water to the other. The *Water Act* is presently under revision. The new legislation may have some impact on the volume and nature of the complaints we receive about water problems.

Many people are not aware of the need to obtain a licence in order to use the surface area of water to carry out certain recreational activities. One

complainant had what he thought was a wonderful idea for a recreational enterprise to be located on a lake in the Kootenays. He planned to rent out boats, canoes, kayaks and other vehicles from a float anchored on the lake.

He had the encouragement of the local business community and he applied to the ministry for a licence of occupation of the water surface area. The ministry consulted with other users in the area who might be affected and received negative comments from other water front business operators, from residents, and from the Parks division of the ministry which administered the small waterfront park on the lake.

Having considered these comments, the ministry concluded that this operation would not be good for the lake and denied the license. By this time, the complainant had already made a substantial investment. He felt it grossly unfair that his investment should be jeopardized in this way.

Although it was easy to understand the complainant's feelings, we could not conclude that the ministry's decision was unfair. Indeed, if the ministry had granted the licence without consulting those affected, we would have had serious concerns about the fairness of the process. The result for the complainant was unfortunate but not unfair.

In another case, a waterfront property owner in the Kootenays was concerned about the sale of Crown land to private development concerns. He felt that the land had considerable recreational potential in an area where public access was limited. In his view, development of the land would not be of long-term benefit to the community which relied heavily on tourist income. As well, the land was flood-prone wetland which was valuable for fish spawning and waterfowl habitat. The complainant argued that the process by which the developers acquired the land was so flawed that it raised suspicions of fraud or collusion between government and the private development interests.

We visited the site and interviewed the complainant and representatives of the ministry. The complainant's concerns were understandable, but we concluded the facts did not establish that the ministry had acted inappropriately. A major element of the complaint was an allegation that the purchaser had failed to comply with the requirements of the ministry's Request for Proposals (RFP). We agreed that there had been a departure from the strict terms of the RFP. However, the Province has the right to deal with

any proposal which it deems to be attractive and consistent with the objectives of the request, provided that it clearly reserves that right in the wording of its RFP documents. It must also demonstrate that the successful proposal was selected in accordance with fair and reasonable criteria.

In this instance, although the request for proposals had been advertised nationally, only one local company had submitted a proposal that was of any interest to the ministry. The negotiations between the private entity and the ministry had been conducted in good faith. The developers had also demonstrated the capacity to deliver on the proposal which the ministry considered to be beneficial to the community. In addition, the developer executed a legally binding restrictive covenant which was filed against the property, requiring that any development on the property have the full approval of local government as expressed in an appropriate bylaw.

In this way, the interests of local government and concerned residents were preserved and the complainant would continue to have a voice in determining what sort of development would take place.

Ministry of Finance and Corporate Relations

Resolved	21
Abandoned, withdrawn, invest. not authorized	7
Not substantiated	30
Declined, discontinued	20
Inquiry	10
Total Files Closed	**88**
Files open Dec. 31, 1992	59

The primary responsibility of the Ministry of Finance and Corporate Relations is the Province's budget. It also collects tax revenue through a number of different branches and these are the most frequent source of complaints about this ministry. It is also responsible for the administration of the *Company Act*, the *Society Act*, and the *Co-operative Association Act*, among others. For the majority of this year, these acts have been administered temporarily by the Ministry of Government Services. Finally, the ministry regulates financial institutions and investment markets through the Securities Commission and the Financial Institutions Commission.

Registrar of Companies

Many of the complaints we receive about the Registrar of Companies involve a misunderstanding of his duties. The Registrar's responsibility is to ensure that companies comply with certain provisions of the *Company Act*. These provisions relate primarily to the selection of a name, the structure of the share capital and the filing of annual reports.

We find, however, that people feel the Registrar should become involved in disputes about the operation of a company. The shareholders and/or directors of companies frequently become involved in major disagreements about the company's operations. Those with the most shares are usually able to force the small shareholders into compliance. It is these small shareholders who may seek the help of the Registrar or the Ombudsman.

The Registrar does not have the authority to become involved in these issues except in very unusual circumstances. For the most part, the *Company Act* regards these as disputes between private parties, to be resolved through

any of the channels available to a private party. If the parties are not able to negotiate a solution, the courts are usually the only alternative.

The Registrar of Companies also administers the *Society Act*. We received an interesting and unusual complaint about the Registrar's role in regulating the activities of a society. A student at a university objected to the requirement by the students' society that he be a member and pay dues. He asked the Registrar to declare the society to be operating contrary to the public interest.

The Registrar declined and the student and another individual each filed separate appeals to the Commercial Appeals Commission. The commission held two appeal hearings. The commission dismissed the first appeal but in the second it ruled that the Registrar should conduct an investigation under the powers of the *Society Act*. The commission agreed that the mandatory membership provisions were a possible violation of the freedom of association provisions of the *Canadian Charter of Rights and Freedoms*. It also agreed that there was evidence the society's funds were not being used for the benefit of students.

Acting on legal advice, the Registrar decided to pursue the matter through the courts and the student contacted the Ombudsman. He felt that it was unfair for the Registrar to take advantage of the Province's greater financial resources to continue the proceedings. He felt that he would be at an unfair disadvantage.

The Registrar gave us permission to speak to his legal counsel who was very helpful in explaining the reasons for proceeding further. The procedure followed by the commission in hearing the second appeal and the decision itself had raised a number of very important legal questions which could not be ignored. As well, the student society had apparently been treated unfairly because it had not received notice that the commission intended to hear a second appeal to consider a number of issues which had not been raised in the first appeal. As a result, the society did not take part in the second appeal and had no opportunity to present its case.

In our view, the Registrar had made a reasonable decision to obtain legal advice and to follow it in proceeding through the courts. While we sympathized with the student's frustration, the most important consideration was that both the procedure and the decision be fair to everyone involved.

Revenue and Taxation Branches of the Ministry

We frequently receive complaints about social services (sales) tax and about the property purchase tax which most people pay when they buy land. We check the circumstances of each case but we find that the ministry's position is usually correct. Ministry staff have been co-operative in discussing these complaints.

A difficult problem sometimes arises for people with unusual occupations who suddenly discover that they are selling a taxable product. In one case, the ministry advised an artist who sold architectural renderings that he had to pay three years of back sales tax. The ministry's brochure does list which occupations must pay but it is difficult to ensure that everyone who may be affected is aware of this responsibility.

The ministry is willing to compromise in these situations and in appropriate cases will negotiate with the taxpayer over the amount to be paid and the payment schedule.

B.C. Securities Commission

The B.C. Securities Commission regulates the securities industry in this province. Its goals are to promote investment growth in the province and to protect investors. Part of that protection is ensuring that investors have timely and reliable information to help them make informed investment decisions.

In October of 1991, we issued a report called *The Sale of Promissory Notes in British Columbia by Principal Group Ltd.* (Public Report #28). This report was the result of complaints from British Columbia promissory note holders who lost approximately $15 million when Principal Group Ltd. collapsed in 1987.

We concluded that the Securities Commission did not have a responsibility to regulate the sale of these notes. Therefore, it was not responsible for the losses suffered by note holders. However, we made several recommendations aimed at better protection for investors in the future.

During the course of the investigation, we found that many of the investors took for granted that sales of these promissory notes were regulated by the commission and that their investments were protected. We therefore recommended that:

- the commission make available to the public information about the limits on the role played by the B.C. Securities Commission;
- restrictions be introduced on the investments available to unsophisticated investors; and
- the *Securities Act* be amended to extend "cooling-off" rights at the time of purchase to people who invest in unregulated promissory notes. This would allow investors to cancel the sale within two business days of purchase.

The Securities Commission took almost 12 months to respond formally to our recommendations. The Commission indicated it was still consulting with other provinces to ensure a common approach to certain issues raised by some of our recommendations. While we agree that consultation is desirable, we believe that the process has taken too long. Its response to our recommendations that it provide a toll-free information line and publish a plain language brochure about the Commission's limited role in regulating securities has not been satisfactory.

Although the Commission does not have a responsibility to regulate the sale of the notes, it could take some simple steps to prevent such a tragedy in the future. The Commission has not yet taken these steps.

Financial Institutions Commission

The Financial Institutions Commission (FICOM) regulates credit unions, trust companies and insurance companies within British Columbia. In conjunction with two self-regulatory bodies — the Insurance Council and the Real Estate Council — FICOM is also responsible for the regulation of insurance and real estate matters. The superintendent and his staff have demonstrated their willingness to co-operate with us and have been ready to address problems we have brought to their attention.

We recommended that FICOM produce pamphlets for the general public which would outline its authority and list sources of information. In the spring of 1992, they distributed three helpful, user-friendly and accessible pamphlets.

Government Personnel Services Division

The Ministry of Finance runs the Government Personnel Services Division (GPSD) which handles all labour relations issues in government.

GPSD represents government's interests as an employer, develops policy and provides information and advice to regional personnel offices in each ministry.

Personnel complaints cover a wide range of issues. Most government employees are represented by the B.C. Government Employees Union or another union, and their collective agreements cover many personnel issues. Employees who are excluded from the union, including managers, are not represented by a union and therefore do not have the protection of a collective agreement.

As a result, most of our complaints are made by excluded staff. Often, these complaints are made when managers are dismissed, either with no notice or with inadequate notice. Excluded staff who are dismissed are in the same position as private sector employees but may find that it is not always easy to negotiate with the government for compensation.

The Korbin Commission is currently examining this and many other issues which affect employees of the public service and we look forward to reviewing the commissioner's report and recommendations next year.

Ministry of Forests

Resolved	20
Abandoned, withdrawn, invest. not authorized	35
Not substantiated	28
Declined, discontinued	13
Inquiry	10
Total Files Closed	**106**
Files open Dec. 31, 1992	54

The Ministry of Forests manages the province's forests, with responsibility for timber management, range management and integrated resource management. We continue to receive a variety of complaints about the Ministry of Forests. These include "range" complaints ("Keep those cattle off my property") and many other individual problems. In a highly decentralized ministry such as Forests, we often find that "standard" procedures vary widely from one forest district to the next. The ministry maintains close contact with the Commission on Resources and Environment (CORE) through its co-leadership role on the multi-ministry Integrated Resource Planning Committee (IRPC). The IRPC has become the vehicle by which by provincial resource and land-use ministries co-ordinate their separate mandates and initiatives, and implement strategies and plans developed through the CORE process. CORE is an independent commission and is included in the 'Other Authorities' section of this report.

Awarding Contracts

The failure to follow standard procedure is particularly evident when districts award new contracts or manage existing contracts. This is a competitive process in which fairness is critical. The contracts involve work ranging from safety training to reforestation, to supply of data processing equipment. Because fair treatment is often a matter of fair process, our efforts are usually directed to reviewing the process involved in reaching a decision and, if necessary, recommending procedural changes. When the process is fair, people usually feel that the decision is fair even when they do not agree with the decision itself.

Government generally uses two different procedures for entering into contracts: the traditional tendering process and the Request For Proposals, which is usually known as the RFP. The tendering process requires the

government agency to state its requirements in detail and the competing applicants focus on meeting the requirements at the lowest possible price. Usually, but not always, the lowest bid is successful. In the RFP process, on the other hand, government may sometimes state only the broad objectives it hopes to achieve, leaving it to the applicants to decide on the best strategy and price to meet provincial objectives. The advantage of the RFP process is that it encourages new, creative proposals from the private sector which may be highly effective in meeting government's objectives. Excellent communication is required in order to maximize the potential of the RFP process.

Although the RFP process may sound overly flexible, the evaluation of proposals is generally conducted in accordance with fixed criteria, against which points are awarded in each of a number of specific categories. This allows the ministry to compare the relative merits of the proposals received. The ministry may give additional weight to factors such as total price, employment benefits or advanced technology. Management then makes a decision as to which proposal is most attractive. However, precisely because government is looking for new ways to solve problems, it may not always be able to specify in advance exactly what it is looking for in the selection of a proposal. As well, bidders sometimes feel that government has departed from its stated criteria in making its selection. Government usually reserves in writing the right to choose the proposal that it considers to be in the best interests of the Province, even if it is not the cheapest. In order to exercise that discretion, government does occasionally depart from its own stated criteria.

The Ministry of Forests is tending to use the RFP process more frequently. Although we continue to receive complaints about RFPs, the ministry is often not at fault. As long as the ministry has not altered the rules in a way which unfairly favours one applicant over another, and has acted in good faith, we believe that it is appropriate for the ministry to have some flexibility in selecting among these proposals.

Scientific and Value-Based Disputes

Scientific disputes ("Does clearcutting cause permanent damage?") or disputes involving conflicting values ("Does the preservation of wildlife

habitat outweigh the short-term economic benefits of logging?") sometimes result in complaints to the Ombudsman. Our mandate does not generally include making recommendations on the merits of scientific and philosophical disputes. However, we do review the process involved in making a decision to ensure that it was fair and was made in accordance with applicable laws, policies, procedures and relevant information.

The difficulty of balancing environmental concerns with other interests presents new challenges for the ministry every day. Sometimes, scientific research leads to a new perspective on a forestry practice. This has been the case with the Pacific yew tree. Unlike some other tree species, the Pacific yew doesn't grow in large stands. Instead, it appears in the form of isolated trees scattered throughout the forest.

When a forest company is clearcutting a stand of Douglas fir, for example, yew trees tend to be felled in the process. Until recently, such trees were wasted because they were regarded as having no value. The attitude toward yews changed when it was discovered that the bark of the yew contains a substance called taxol which appears to be effective in the treatment of cancer.

The sudden great demand for yew bark led to two notable responses: a flurry of activity from entrepreneurs anxious to harvest the bark and a loud protest from those who feared the extinction of the province's yew trees at the hands of bark-strippers. The issue was complicated as well by the fact that the taxol extracted from the bark had to be exported to the United States for processing, leading to concerns that the product was not even being used to save people with cancer in Canada.

Several months after the initial controversy died down, we received a complaint from a company with a different approach to yew-harvesting. The company based its development strategy on the premise that, in addition to the taxol found in the trunk bark, an even more significant amount was contained in the "limbstick" - the boughs of the tree, including twigs and needles. The company had arranged with a large forest company to collect the limbstick of the yews that had been felled during timber-harvesting operations.

The company had also made an agreement with an American firm that would process the limbstick and extract the taxol. The complainant contacted us after the company applied to the Ministry of Forests for a permit to export

the limbstick. Impatient with the delay in processing the application, the company sought our assistance.

A major obstacle to approval of the application was the fact that the company was proposing to send the limbstick to an American rather than a Canadian company. The complainant company explained that no Canadian company was capable of processing limbstick and it had letters to prove this. However, the matter was complicated for the ministry by the fact that approving the application might have implications under the Free Trade Agreement and the General Agreement on Tariffs and Trade. For example, once an agreement was made to export limbstick to the U.S., it might be difficult to stop the trade at a later date if it became desirable to do so.

Ultimately, the decision to approve the company's application had to be made by Cabinet. This was because section 135 of the *Forest Act* requires B.C. timber to be used or manufactured in the province unless an exception is approved by Cabinet. In due course, the complaint was resolved when Cabinet, having reviewed the ministry's recommendation, approved the company's application.

Need for Open Communication

In another recent complaint, we saw how the lack of open communication can lead to serious problems that could have been avoided. Understandably, government staff do not always feel able to communicate freely with members of the public about their internal deliberations on controversial matters. However, in the absence of full communication, the public may incorrectly draw a negative conclusion about the factors which led to a decision. This was the case in a complaint we handled from an environmentalist who was passionately concerned about the future of the Nahmint Valley.

He hoped to influence the ministry in its deliberations on the approval of five year development plans for the major tree farm licence holder in the Nahmint. The complainant felt that the best way to influence the approval process was to submit an alternative plan which he referred to as the "Citizen's Option." He then encouraged the ministry to exhibit the five year development plan so that members of the public could view it and make submissions to the ministry.

The complainant displayed his alternative plan at the same location. He felt the display was a major success as he gained more than 150 signatures in support of his alternative. He continued to present petitions to members of the ministry executive at a frantic pace, hoping to forestall the approval that others might have considered inevitable.

Ultimately, however, when the tree farm licensee's plan was approved, the complainant felt that all his hard work had been for nothing. He felt that the various assurances he had received from politicians and ministry staff that his proposal would be carefully considered were only a sham. He came to us seeking our assistance in finding out whether the ministry had in fact given proper consideration to his plan. He also wanted our support in blocking what he felt was the unfair and unjustified approval of the licensee's plan which would mean, in his view, the end of the Nahmint.

Our investigation focused on the extent to which the complainant's proposal received meaningful consideration in making the decision to approve the licensee's plan. We were not able to substantiate the complainant's concern. However, more open communication would have made him aware of the full extent of the ministry's actual consideration of his alternative plan.

Although nobody had told him, his plan had made a definite impact on the planning process and it had received genuine consideration. The file established that while the ministry had some problems with the complainant's alternative proposal, it had demanded that the licensee make various modifications and upgrade its plans to meet certain standards, especially in areas of potential ecological sensitivity.

Early and more extensive consultation with the complainant would have forestalled his suspicion that secrecy had been maintained in order to cover up collusion between government and industry. It would also have been important for him to know that his efforts had been worthwhile.

Ministry of Government Services

The Ministry of Government Services offers a number of programs which provide support to government and assist the public in obtaining access to services and information. It also runs the Superannuation Commission which provides a pension plan for public sector employees.

Resolved	2
Abandoned, withdrawn, invest. not authorized	0
Not substantiated	2
Declined, discontinued	3
Inquiry	0
Total Files Closed	**7**
Files open Dec. 31, 1992	4

The ministry is also responsible for Enquiry B.C., an excellent program which publishes a guide to government services and offers province-wide toll-free telephone service to any branch of government. The ministry is also responsible for the Information and Privacy Branch which has fielded all inquiries under the new freedom of information and privacy legislation. Once the act is proclaimed, the Branch will continue in a policy role. A Privacy and Information Commissioner is likely to be chosen sometime next year.

The Superannuation Commission

The Superannuation Commission administers the pension plan for workers in the public sector. The commission offers pre-retirement seminars and counselling and has information telephone lines.

Pension law and mathematics are complicated. Changing one's job, privatization of the employer or taking a year off can all have an effect on pension benefits. Unfortunately, workers do not always seek information about their pension rights until too late. Some typical complaints involved:

- a widow whose husband, a government employee, had died after 9 1/2 years' service. She called us when she received a letter from the commission informing her that she must pay $60,000 to obtain a fully vested pension. The amount had been miscalculated and after our review the price was reduced by over $40,000.
- a woman who quit her hospital job to work in the Bahamas. The week she quit, Hurricane Andrew flattened the office building of her new employer. The hospital hired her back on call but, because she was only

offered two or three shifts a month, she did not have enough money to live on and she tried to cash out her superannuation benefits. The commission would not permit her to cash out her superannuation because she was working in a pensionable job. However, she was not working enough hours in the job to allow her to contribute to the plan. This dilemma meant that she couldn't put her money in but she also couldn't get it out! In response to our inquiry, the commission refunded her pension contributions.

- a man worked for the Ministry of Highways for 30 years before his job was privatized. He called us when he discovered his years with the private company would not count towards his pension. The commission had given the privatized employee groups information on the steps required to retain their pensionable status. Unfortunately, the complainant's employee group had not chosen to take these steps so the employee was not eligible for pension benefits.

Ministry of Health

Resolved	137
Abandoned, withdrawn, invest. not authorized	46
Not substantiated	46
Declined, discontinued	56
Inquiry	68
Total Files Closed	**353**
Files open Dec. 31, 1992	188

The Ministry of Health administers many different programs which have the aim of improving and maintaining health and treating illness and disease. The ministry is responsible for the Medical Services Plan (MSP), all of the province's hospitals and the Continuing Care Program.

When we discuss complaints with the ministry, the staff demonstrate a clear commitment to resolving complaints. The ministry reviews complaints quickly and makes every effort to be flexible in responding to individual concerns.

Even when the ministry cannot help directly, it will try to find other alternatives. For example, in a case where a pregnant immigrant was not eligible for medical coverage, staff took the trouble to find her the cheapest possible hospital care for the delivery of her baby.

However, we find that the ministry resolves individual complaints much more quickly than questions of policy. This is partly because ministry employees do not always have the authority to deal with policy issues. The issues may affect other ministries or agencies; they may require the authority of central agencies like Treasury Board; or they may require the co-operation of municipalities or private health service agencies.

These are often difficult issues and may indeed take time to resolve. Sometimes, however, an individual complaint cannot be resolved until the underlying policy questions have been addressed. One of these issues is the disagreement between the Ministry of Health and the Ministry of Social Services about who will pay for health equipment needed by residents in Ministry of Health facilities who are sponsored by Social Services. At the moment, both of the ministries say they have neither the mandate nor the funding to pay for this equipment. The consequence for individuals who

cannot obtain the much-needed equipment is a significant compromise in their quality of life.

The MSP's toll-free telephone system is also a source of many complaints. In some cases, medical coverage has been affected because people cannot contact the plan over the phone. While we can resolve these problems on an individual basis, the underlying difficulty continues despite additional staff and increased automation. MSP is now trying to identify the purpose of these calls in order to see whether the needs of callers can be met in other ways.

Client Support Services

We receive various kinds of complaints about services available in the community. In many cases, these services are provided by agencies on contract to the ministry. The ministry selects these agencies and is responsible for monitoring the quality of the service they provide. Sometimes, however, the public is confused about the different responsibilities of the ministry and the agency contracting to provide services.

When government enters into a contract with a private agency, there are a number of parties involved. Apart from the client, the service provider and the government line worker, there may also be directors of the service provider's board, the government worker's supervisor and managers, other branches of government which also provide service, the government pay office, and so on.

When this many people are involved, there are endless possibilities for confusion and misunderstanding, and errors multiply. Clients who contact us may also be confused to find that the Ombudsman investigates complaints about government's monitoring of service contracts but does not investigate complaints about the contractors themselves.

One important area involves complaints about the conduct of care-givers, including allegations of abuse and concerns that the ministry has not responded adequately when such complaints are made. Some other recent complaints about contracted services involved:

- the employee of a contractor who complained that the ministry had sent his employer the results of an investigation into a claim that he had abused a client but had not given him a copy. When we intervened, the

ministry agreed that the contractor could provide the employee with a copy of the report.

- A parent who was concerned that a private agency running a residential facility would not agree to provide female staff on the graveyard shift. On that shift, staff were working alone with the complainant's daughter who has a mental disability. The daughter frequently removes her clothes. Her mother felt that it was unfair to both her daughter and the facility to have a man on duty alone. The ministry and the agency dealt with the problem successfully by approaching the workers' union together with a request to designate that shift for female staff only.

The Continuing Care Division of the ministry delivers a number of programs in the community for people who need some support in order to live in the community. The division also funds and monitors the operation of care facilities for people who are no longer able to live in the community even with the community supports that are available.

Some of the complaints we receive involve the ministry's policy of limiting service to 120 hours per month. If a person needs more hours of service, the ministry will usually suggest that they consider placement in a facility. However, the ministry's regional managers have the authority to waive the maximum number of hours and clients may forward appeals to them. As well, we receive complaints from people who feel that the ministry should provide funding for services that are not presently covered.

People who receive home support services have little or no choice of care-giver. Some of the agencies which contract with the ministry to supply care-givers will allow clients to select their own, but in most cases clients must accept the agency's choice.

There are some valid reasons for this policy: the ministry and the agencies set staff qualifications, train and monitor staff and run quality assurance programs. For those who receive service, however, the result may be that they receive intimate care from a host of strangers. A ministry committee which includes consumer representation is now conducting a pilot project aimed at increasing choice and self-determination for those being served. The few complaints we receive about care facilities generally involve delays in obtaining a placement in a facility. We maintain contact with the regional

managers and continuing care assessors who have been helpful in resolving these delays wherever possible.

Medical Health Units

A unique aspect of our system of community care is the medical health units which exist in each region of the province. Each unit is run by a medical health officer, who has considerable autonomy but also has an extremely wide range of responsibilities for the health of the community. The units handle all aspects of public health, including the licensing and inspection of restaurants, inspection of sewage disposal systems, the safety of drinking water, vaccinations, environmental health and many other issues.

Although we do not receive many complaints about the medical health units, the range is as wide as the services they provide. Often, these complaints involve delays in obtaining access to services or in carrying out the unit's responsibilities. Sometimes, the medical health officer's decision-making process or a decision itself may lead to a complaint. The units have been co-operative and helpful in resolving complaints.

Sometimes, the public may not be sure of the role played by these health units. In one case, we received a complaint from a parent who was concerned about the medical health unit's refusal to go to her child's school and inspect the children for lice. The health unit's response was that lice do not carry disease and are therefore not a public health hazard. As a result, the health unit did not have a responsibility to carry out such an inspection.

Hospitals

During 1992, we only had authority to investigate complaints about hospitals if the majority of the board members had been appointed by the provincial government. It is expected that after April 1, 1993, the Ombudsman will have the legal authority to investigate complaints about all of the province's hospitals. Our authority does not include complaints about a physician's medical treatment *per se*. These should be handled by the College of Physicians and Surgeons.

Some of the complaints we have received involved:

- a complainant whose relative had died in hospital. The Coroner had held an inquest and had made certain recommendations but the hospital would

not tell her whether it intended to put the recommendations into effect. Because we lacked the authority to investigate complaints about this hospital, we asked the Coroner to resolve the matter;

- a physician who complained that a hospital had changed its organizational structure with the result that some positions which were previously available to physicians had ceased to exist. We found that the hospital had treated the physicians fairly. It had given notice to them of the proposals and had asked for their advice before the change was made;
- a complainant who had been admitted to a hospital for psychiatric care and was distressed to find that the hospital had notified her elderly mother, with whom she had had no contact for years. *The Mental Health Act* requires hospitals to notify the next of kin when people are admitted involuntarily but no one had told the patient this would happen and she had not been asked who should be notified. The hospital agreed that in future patients would be advised of this requirement and be allowed to choose the next-of-kin to be notified.

Pharmacare

Pharmacare provides the public with some coverage of prescription drug and other medical costs. It functions very much like a private extended health benefits plan, with an initial deductible after which it pays a percentage of remaining costs up to a fixed maximum amount. The plan only covers certain kinds of prescription and equipment costs.

Almost all of the complaints we receive arrive during the period from January to May and are of two types. Complaints received from January to March tend to be about delays in processing claims. Complaints received in April and May usually relate to the plan's refusal to pay after its March 31 deadline for filing claims.

Pharmacare accepts claims up to the deadline for costs in the previous calendar year. As a result, the plan's busiest time is the period from January through March. The volume of claims leads to slower processing which in turn leads to complaints about delay. Complainants frequently report waits of six to eight weeks. Pharmacare advises us that the addition of new staff should reduce or eliminate the problem in 1993. We will report next year on the success of the plan's attempt to reduce delays.

The Pharmacare claim form includes notice of the claims deadline in large print at the top of the claim form. Pharmacare also distributes posters to all drug stores publicizing the deadline but each year we continue to receive complaints that Pharmacare will not accept claims submitted after the deadline.

Pharmacare will only pay late claims when there are circumstances which make it impossible to file on time, such as hospitalization. In our view, Pharmacare has taken adequate steps to make the public aware of the deadline, and we believe that its refusal to accept late claims is reasonable.

Forensic Psychiatric Services

Forensic Psychiatric Services (FPS) is a branch of the mental health system which assesses and treats individuals considered to be mentally disordered who are directed to it by the criminal courts. FPS operates the Forensic Psychiatric Institute (FPI), a 150-bed facility for offenders and accused who are mentally disordered and require in-patient treatment services.

In February of 1992, new provisions were added to the *Criminal Code of Canada* which altered almost every aspect of the law relating to people with mental disorders who have been accused or convicted of criminal offences. These amendments reduced the period for assessing an accused's fitness to stand trial to five days from the previous 30. The amendments also changed the rule that mentally disordered offenders could be held in custody for an indefinite period. Trial Judges now consider other alternatives which may be more appropriate.

Forensic Psychiatric Services now operates out-patient clinics in five B.C. communities — Vancouver, Victoria, Nanaimo, Prince George and Kamloops. The importance of out-patient services has grown as a result of the *Criminal Code of Canada* amendments which emphasize treatment of patients in the community whenever possible.

These and other changes had a major impact on day-to-day operations at FPI. We were pleased to note the willingness of management and staff to adapt to the spirit of the new legislation.

One area of concern to us, however, was the relationship between Forensic Services and the new B.C. Review Board. The board makes most of the

decisions concerning a patient's length of stay at FPI and holds hearings to determine whether an individual may be released into the community. Hearings of the new board were longer and somewhat more adversarial than those of its predecessor, the Order-in-Council Review Board.

FPI management seemed to be frustrated with the more active role taken by the board. There were disagreements between the institute and the board over the board's use of institute space for public hearings, the delivery of the board's written orders to the institute and responsibility for the cost of extra staff time.

This degree of friction is perhaps not surprising since the mandate of the new board has had an immediate impact on long-standing FPI operations. If the friction had continued, however, it might have affected staff morale and patient care. We were therefore pleased to learn, as the year drew to a close, that FPI and the Review Board had begun to discuss these problems in the hope of reaching agreements on several of the problem areas.

Many concerns of the patients are addressed by FPI's Patient Concerns Committee, a committee of senior staff. We continued to meet monthly with the committee to which we refer most individual patient complaints. Committee members showed a real commitment to objectivity and viewed complaints as an opportunity for positive change.

Our role for patients continues to be important. A recent complaint demonstrates how important it is for patients to feel that their right to make a complaint is respected. A patient of one of the community clinics made a complaint to the Ombudsman about the clinic's attempt to use a previous complaint to the Ombudsman as an issue in his therapy. He felt that his right to make a complaint was being used against him.

It turned out that the staff were concerned because he had either missed or been late for several group therapy sessions. They thought it would be helpful to ask him in front of the group if his complaint to the Ombudsman related to any problems he was having with the therapy which were making him reluctant to attend his sessions.

We expressed our concern with this way of addressing the patient's difficulties. Complainants must be confident that contacting the Ombudsman will not have negative consequences.

During the year, FPI worked with us to develop a new way to investigate complaints about staff which might result in disciplinary measures. At the request of head nurses, we have also begun a series of meetings with staff on the wards to explain internal complaint mechanisms and the different roles of the Ombudsman.

The major issue underlying many of the difficulties patients and staff experience at FPI is the inadequacy of the physical plant. The Royal Commission on Health Care and Costs said that the present facility is "unacceptable. . . for anyone or for any purpose." Planning appears to have moved ahead significantly in 1992 and there is the possibility of new arrangements being in place within the next two to three years.

Riverview Hospital

Riverview Hospital cares for patients who suffer from severe mental disorders. Some of these patients have been committed involuntarily because they are a danger to themselves or others; others are voluntary patients who seek treatment and consider themselves unable to function in the community.

In July of 1992, an incident occurred at Riverview which attracted widespread media attention. A patient who had been active in the Patient Concerns Committee was discharged from the hospital, apparently against his wishes. He alleged that the hospital had discharged him because of his strong voice on the committee.

In response to concerns expressed about this incident by individuals and groups in the community, the Ombudsman began an Ombudsman-initiated investigation. The purpose of the investigation is to identify the best ways for patients, their families, and advocates to be heard and listened to by the management of the facility. These mechanisms must be both fair and easy to use. Extensive interviews with present and former patients, staff, family members and other interested parties will take place through 1993, leading to a public report later in the year.

We continue to visit Riverview regularly to receive and investigate patient complaints. Because of the size and varied nature of Riverview's programs, this can be time-consuming, in part because Riverview has not yet developed an internal mechanism for resolving complaints. We do, however, appreciate

the co-operation of Riverview staff in responding to our enquiries about complaints.

By the year 2000, government plans to reduce the size of Riverview from the present 920 beds to a 300-bed facility. In the spring of 1991, Riverview began the first phase of the downsizing initiative which involves closing 100 beds on four wards by April of 1993. The first closures coincided with the closing of a Riverview acute care building, the Crease Unit, in the middle of 1992.

Meeting the goals of downsizing is a challenge for Riverview's management, staff, patients and the community. The hospital must work with the community and government to find appropriate settings and services for the patients returning to the community. At this stage, the role of the hospital in discharge planning and implementation is unclear. The hospital has not developed a vision of the services it will provide as a smaller, more specialized hospital.

Ministry of Labour and Consumer Services

Resolved	22
Abandoned, withdrawn, invest. not authorized	45
Not substantiated	28
Declined, discontinued	124
Inquiry	25
Total Files Closed	**244**
Files open Dec. 31, 1992	74

The Ministry of Labour and Consumer Services is responsible for a number of programs which relate to the workplace. Some of these, like the Labour Relations Board and the Employment Standards Branch, regulate labour relations and provide other related services. The ministry also supports worker health and is responsible for the Workers' Compensation Board and the Workers' and Employers' Advisers. WCB issues are discussed in the *Other Authority* section of this report.

Under its mandate to provide consumer services, the ministry is responsible for the Residential Tenancy Branch.

Employment Standards Branch

The Employment Standards Branch investigates complaints from employees about a variety of work-related issues regulated by the *Employment Standards Act.* The branch also conducts investigations under the *Labour Relations Code* on behalf of the Labour Relations Board and under the *Human Rights Act* on behalf of the Human Rights Council.

Most of the complaints we receive fall into two categories. Employees complain about the branch's lack of action on their complaints. Employers, on the other hand, complain about the nature of the action taken by the branch in response to a complaint filed by one of their present or former employees.

Both types of complaints result from the very complicated process involved when the branch attempts to obtain payment of wages owing to an employee. Once the branch has determined that wages are due to the employee, it will try to negotiate voluntary payment by the employer. If the employer refuses, the branch may issue an Order to Pay. At that point, the branch may also

issue a Demand Notice to the employer's bank or any party who owes the employer money. That party must then pay the money (up to the amount of the wages owing) to the director of the Employment Standards Branch instead of to the employer.

The employer may appeal by requesting a "director's review" of the investigator's findings. The director normally delegates this review to an investigator in another office who is almost always a peer of the investigator whose findings are under review.

After the director's review, an employer may appeal to the Supreme Court for a "trial de novo" - a new hearing of the issues, this time conducted by a Judge. If this avenue is pursued and the employer's appeal is ultimately denied, the director may request a Writ of Seizure and Sale to obtain the funds owed to employee. All the steps may have to be duplicated should it become necessary to obtain payment from the directors of a company. Each director also has all of these rights of appeal. During the entire period, any money collected on behalf of the employee continues to be held in trust until the appeal has been decided. An employee, on the other hand, may only appeal a decision by filing an application for judicial review under the *Judicial Review Procedure Act*.

Not surprisingly, employees often complain about delay. Some of the delay is the result of the complaint volume and staffing levels. On average, there is a four- to six-week delay before the branch begins its investigation. When the branch negotiates for voluntary payment from the employer, the employee may interpret the negotiating time as more delay. If the employer appeals, most employees are not aware that the branch must hold the money it has collected in trust.

Employers, on the other hand, are often caught off guard by the strength of the branch's powers to collect wages. They also raise concerns about the possibility of bias in the director's review if the power of review is delegated to an investigator's peer. Employers are skeptical about the legitimacy of this review. We have suggested a separate level of staff be created to conduct director's reviews to help eliminate the perception of inherent bias. The *Employment Standards Act* is scheduled for amendments in the near future which may lead to changes in the nature of these appeal processes.

Labour Relations Board

The purpose of the Labour Relations Board (LRB), formerly called the Industrial Relations Council (IRC), is to promote harmonious relationships between employers and employees. It encourages constructive settlements and monitors labour disputes.

Most of the complaints we receive involve disputes about section 12 of the *Labour Relations Code* (formerly section 7 of the *Industrial Relations Act*): the union's duty to represent members fairly in disputes with their employers. If members believe they are not receiving fair representation, they may apply to the LRB which has the power to order unions to provide representation for their members.

In October of 1992, the LRB handed down an important decision on a section 12 case involving a union member's right to be represented by legal counsel independent of the union. The applicant, who had also made a complaint to the Ombudsman, had been laid off some years ago and had sought assistance from his union. He felt that his union had not provided him with fair representation, so he applied to the IRC, as it was at that time.

The IRC agreed with the complainant that the union had not given him fair representation. He had asked that the union be ordered to retain independent counsel on the basis that the union was biased against him. Instead, the IRC ordered the union to proceed with an arbitration of the grievance. To provide compensation for the union's delay in pursuing the issue, the IRC also stated that if the union succeeded in the arbitration, it was to pay the employee approximately $50,000 in lost salary.

The union lost both the arbitration and an appeal. The complainant then contacted the Ombudsman, arguing that the IRC should have recommended he have independent legal representation at the union's expense. He argued that the effect of the IRC's order was to place the union in a conflict of interest in representing him at the arbitration because if he won, the union would lose $50,000. We agreed with the complainant and recommended that the IRC order a new grievance hearing and require the union to pay for the complainant's counsel.

Initially the IRC refused but when new LRB members were appointed, they reconsidered the decision and adopted our recommendations. The LRB noted

that formerly the onus was on the union member to establish the need for independent representation. The board decided that in future, when a union has been found to have breached its duty of fair representation, the member is entitled to independent counsel at the union's expense. The union must show that independent representation is unnecessary.

Residential Tenancy Branch

The Residential Tenancy Branch arranges arbitration of disputes between landlords and tenants. When a landlord and tenant cannot resolve a disagreement, either may apply to the branch to have their dispute settled by an arbitrator. The branch handles approximately 12,000 arbitrations a year. It also provides toll-free telephone information services to landlords and tenants.

In October of 1991, we released a report on *The Administration of the Residential Tenancy Act* (Public Report #27). This report was prompted by the growing number of complaints we were receiving. The report identified some problems in the quality and consistency of information provided by the Residential Tenancy Branch. We also noted some serious problems with the arbitration system.

Since the report was issued, we have continued to discuss these problems with the Residential Tenancy Branch and the Ministry of Labour. As we noted in last year's annual report, there has been some improvement in the quality of information provided to landlords and tenants. The branch has taken the important step of installing province-wide, toll-free telephone lines. As well, it has prepared multi-language brochures and a standard tenancy agreement in plain language. While the branch has also taken a number of steps to improve the efficiency of its operation, a more flexible approach to service quality may be required to meet the needs of landlords and tenants.

At the time of our report, many people had complaints about the arbitration process for a variety of reasons. Some were concerned because they disagreed with the decision the arbitrator had made and could not appeal. Others were concerned about various administrative problems which affected the quality of the arbitration process, including the difficulty of reaching arbitrators by phone to arrange conference calls or to communicate important information.

We recommended that there be amendments to the legislation to give the branch the authority to provide mediation services which would reduce the number of arbitrations. More importantly, we recommended that the legislation be amended to provide for an appeal or review mechanism so that there would be a remedy for individuals who disagreed with an arbitrator's decision.

At the moment, the only remedy available is an application to the B.C. Supreme Court for judicial review. This is a highly technical remedy which almost always requires the help of a lawyer and is therefore most often expensive. Many of the people who use the system cannot afford to pursue this remedy even if it would be successful.

The Ombudsman cannot recommend that arbitrators hold a new hearing or alter a decision because the arbitrators do not have the legal authority to do so. As a result, a complaint to the Ombudsman is of very little assistance to most of the people who contact us. We regard this situation as a high priority for the Ministry of Labour.

Ministry of Social Services

Resolved	536
Abandoned, withdrawn, invest. not authorized	182
Not substantiated	211
Declined, discontinued	2,332
Inquiry	264
Total Files Closed	**3,525**
Files open Dec. 31, 1992	778

The ministry's three major program areas are the Income Assistance Division, which administers the *Guaranteed Available Income for Need Act (GAIN)*, Services to People with Mental Handicaps and Family and Child Services. Family and Child Services complaints are discussed in the *Child and Youth* section of this report.

Income Assistance

The Income Assistance program is intended to relieve poverty, suffering, and neglect. The *GAIN* legislation authorizes short-term assistance to people who are employable. For those who have medical conditions which may make them unemployable or who have permanent disabilities, additional assistance is available. The program also offers rehabilitation and employment services and other kinds of support programs.

The Income Assistance program has a formal appeal mechanism which involves an appeal to a tribunal. The first step is a manager's "administrative review", which sometimes results in a change to the decision. On an informal basis, we frequently refer people who contact us to the ministry's district supervisors if they have not already attempted to resolve their concerns within the system.

In last year's report, we discussed our involvement in a study of the ministry's response to complaints within one particular region. The study was conducted by an independent consultant. The report offered some helpful insights into the way clients and ministry staff view the quality of the services being offered by the ministry and the problems that, at times, tend to undermine the effectiveness of the ministry's services.

Several recommendations resulted from this study. One of them dealt with the form clients must complete in order to file an appeal. The consultant

noted that the form was too complex for some clients and suggested that it be simplified. We had also voiced concerns about this issue.

In response, the ministry developed a new plain language appeal kit which was released in October of 1992. Two changes in particular have been substantial improvements. The first of these has to do with the completion of the form. Previously, the client could not file an appeal until the worker had completed a section of the form describing the decision being appealed. After the worker had completed this section, an appointment was scheduled to discuss the completed form with the client. This frequently led to delays. Now, the client can file the appeal without an appointment with the worker and the associated delay problems should have been eliminated.

The other important change is the bold, clear wording which states that while tribunal orders are binding on the ministry, "recommendations" are not. Ministry clients have often complained that the ministry would not give effect to a tribunal "decision" in the client's favour. However, when we investigated, we would find that the decision was only a recommendation, not an order. While we believe that the ministry should respect these recommendations wherever possible, this clarification of the status of recommendations will be helpful.

Another of the study's recommendations involved the *Freedom of Information and Protection of Privacy Act*, which government plans to bring into force in the fall of 1993. The study suggested that the ministry should encourage staff to allow clients to review their files, as long as disclosure of the information in the file would not conflict with any of the existing confidentiality provisions of the *GAIN Act*.

In 1992, the ministry introduced a policy allowing staff to release as much information as possible to clients with the goal of creating a climate of openness between the ministry and the public. We are encouraged to see the ministry making changes aimed at improving the quality of its service to clients.

We hope that our practice of referring complainants to district supervisors has helped to encourage the ministry to develop better ways of resolving complaints within the system. We had hoped that if the ministry developed better internal complaint systems, fewer clients would feel the need to make a complaint to the Ombudsman. However, we have found that the number of

complaints has risen steadily over the last two years. No doubt, the increase can be related to changes in the federal Unemployment Insurance program and to the economic climate that has led to increases in the number of people on assistance. However, the ministry must find appropriate ways of responding to the complaints of these clients. Quality service is more than just making a decision which complies with policy. It also means allowing clients an opportunity to voice their concerns and to receive an answer, even when the ministry feels the complaint is not justified.

We believe that another reason for the increased volume of complaints to the Ombudsman is that clients are not always aware of the ministry's existing internal review and formal appeal mechanisms. As well, clients may feel that the existing appeal system is too slow to respond adequately when they feel they have an urgent need.

These calls often involve issues which must be resolved within a few days to be of any benefit. As this report goes to press, we are in the process of reviewing our study with the ministry of its appeal mechanisms to see whether they offer an effective, quick and easy-to-use mechanism for resolving complaints within the ministry.

Some complaints, however, will always benefit from a review by an independent body. In one case we dealt with last year, ministry staff were too close to the issue to spot a major conflict of interest. The ministry had advertised for people to provide community support services on contract with the ministry. The complainant was one of several people who had bid on the contract.

She was surprised when she found out that the successful bidder was a ministry staff member who was a supervisor of some existing community support workers. Apparently, the supervisor planned to resign if successful in bidding for the contract. This was such a clear conflict of interest that we suggested the complainant make a complaint in writing to the regional director with a copy to the deputy minister. The ministry's response to the complaint was swift and dramatic. The ministry immediately acknowledged the conflict, cancelled the pending contract and started the process all over again. The complainant was satisfied with the ministry's quick and clear response.

In another case, a young woman complained that she was not receiving enough income assistance to feed herself properly. She told us that she was 30 pounds underweight and her doctor had told her she was suffering from malnutrition. She had used up her cheque for that month and requested an emergency food voucher from her worker. At first, the worker refused to give her a food voucher because she had gone through her cheque so quickly, and instead suggested she go to a food bank.

We contacted the worker's supervisor who agreed to provide the client with a $30 voucher. She also changed her status so that the client would receive a slightly higher cheque from then on. The client was also eligible for a diet allowance which the ministry agreed to grant.

Community Support Services to People with Disabilities

In our report on *Public Services for Adult Dependent Persons* (Report #25) we reviewed a number of problems with services to individuals with disabilities. We continue to hear concerns about service quality and about the role of the Ministry of Social Services where service is delivered by individuals and organizations on contract with the ministry. In 1993, we intend to follow-up on the recommendations we made in our report to see whether any steps have been taken to give effect to them.

The ministry has appointed an Advocate for Service Quality to deal with service issues raised by adults with disabilities. We frequently refer complainants to her if they have not already contacted her.

The Office of the Advocate for Service Quality can be reached:

- by writing Suite 103, 1675 West 10th Avenue, Vancouver, V6J 2A3;
- by phoning 775-1238. For those outside Vancouver, the Office encourages people to call Enquiry BC to access her office; or
- by faxing 660-1505.

Ministry of Transportation and Highways

The Ministry of Transportation and Highways is responsible for all transportation links in the province. We receive relatively few complaints about the ministry, given the size of its operations, but the complaints cover a wide variety of issues.

Resolved	35
Abandoned, withdrawn, invest. not authorized	12
Not substantiated	7
Declined, discontinued	9
Inquiry	10
Total Files Closed	**73**
Files open Dec. 31, 1992	78

The ministry's district highways managers are responsible for investigating and responding to complaints from the public. We find that they are often able to resolve complaints without our direct involvement and we frequently suggest that people contact them before making a formal complaint to the Ombudsman.

Subdivision Approvals

We receive a steady stream of complaints about the subdivision approval process. The ministry acts as the co-ordinating authority for approvals which have to be obtained from a number of other local and provincial authorities. As a result, complaints are made about the ministry which may actually be attributable to the other authorities involved. The ministry's direct responsibility is to ensure that each lot in the subdivision has adequate access to a public highway.

In one case, a complainant owned two adjacent lots. His property was surrounded on three sides by land on which a religious order planned to build a monastery. The complainant acquired an easement across the property owned by the religious order for his access road. To reduce costs, he constructed a one lane road which was sufficient for his purposes.

After he built his road, the religious order wanted to buy some portions of the complainant's property. The complainant hired a surveyor to redraw the

internal boundary between his two lots to create two new parcels, one for his home and one which he could sell to his neighbours. Unfortunately for the complainant, the creation of two or more new lots is a subdivision within the meaning of the *Land Title Act*, so the ministry had to approve his survey plan before it could be registered in the Land Title Office.

The ministry advised the complainant that, as a condition of approving the subdivision, he would have to upgrade his access road to ministry standards in order to ensure that subsequent purchasers of the newly created lots would have proper access to their properties. Upgrading the road would have been prohibitively expensive for the complainant. He made a complaint to the Ombudsman that the ministry's requirements were onerous and unreasonable, and that in any event, his proposal was not a subdivision. As he saw it, he already owned the two lots and his plan merely altered the boundary between them; if the law said that this was a subdivision, then the law should be changed.

This was a challenge. The law was unlikely to be changed and the policy behind the ministry's requirement was well-established. We canvassed a number of options and the ministry came up with a solution. By including the land of the religious order which the complainant's road crossed in the subdivision plans, the lots could be redrawn so that they had direct access onto a public road. The complainant's road could then revert to what he wanted in the first place - a private driveway to his home.

Water Drainage

Problems with water drainage onto private property are also a major source of complaints. Many people are surprised to learn that in "unorganized" territory outside of municipalities, there is no government authority with the responsibility to manage problems about drainage onto private land. The ministry does what it can to help out but its only legal responsibility is to ensure that its roads do not interfere with natural drainage patterns.

When we review drainage complaints, we sometimes find that a regional district has approved a subdivision plan without giving enough thought to the impact on drainage. Development and deforestation which increases runoff have also been major contributing factors in the increasing number of problems with drainage onto private property.

The ministry is now taking a more active role in prevention by using its authority to approve subdivisions of land in unorganized areas as an avenue to insist on appropriate drainage. The ministry is imposing higher standards on developers in order to prevent this serious problem for landowners.

Public and Private Roads

Another frequent concern is the uncertain status of roads - are they public or private? Many of these problems originated because Crown grants of land many years ago excluded existing roads that ran through the land but did not identify them in the grant to the landowner. In these large parcels of land, with roads that might be little more than a wagon trail, it could be very difficult to know whether the road was public or private. As well, the issue might never arise unless the land was sold or the owner attempted to subdivide.

An example of this problem was a feud between two neighbours in the Columbia Valley over road access across one neighbour's ranch to the other's property. Neighbour #1 discovered a 1909 B.C. Gazette Notice which described a public right of way across Neighbour #2's property. Until the 1970s, there was no requirement that the description of a public road established in this manner be registered against the titles of the private properties it crossed. Neighbour #1 applied to the ministry for a permit to construct a road across Neighbour #2's property along the route described in the Gazette.

Neighbour #2 protested that the Gazette route had never been registered against the title to his land and that he was unaware of it when he laid out his fields, fences and irrigation lines. A road along that route would have a significant impact on his farming operations. Neighbour #1 and the ministry responded that he should have been aware of the route because there was clear physical evidence of the old road except where it had been obliterated by ploughing. Neighbour #2 countered that there were many private roads on his land and in the area and there was nothing to indicate to him that this road was public.

The ministry met repeatedly with the neighbours to try to resolve the dispute, without success. Finally, both neighbours made a complaint to the Ombudsman. Neighbour #1 complained of the delay in issuing his

construction permit. Neighbour #2 complained that the ministry was not giving fair consideration to his concerns about the impact of the Gazette route.

We travelled to the site to view the problem and met there with the neighbours and the ministry. In the end, the neighbours agreed on an alternate access route which Neighbour #1 would construct. The ministry would assist them by supplying culverts and cattle guards.

The ministry also agreed to recommend that the Gazette route be permanently closed if Neighbour #2 would agree to dedicate the new road across his property for public use. This would preserve a legal, public right of way to Neighbour #1's property. Once closed, the old route would become part of Neighbour #2's property, removing the threat to his fields. The complaints were resolved.

Children and Youth

Children and Youth

"Creating an environment which accepts the merits of questioning . . . [the] decisions of those in authority is part of teaching children one of the . . . fundamental rights in a democratic society."

Ombudsman News Release
September 16, 1992

Integration of Services

In November of 1990, we released a report called *Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration* (Public Report #22). In the report, we recommended major reform of the services government provides to young people. The most pressing problem was the fragmentation of services and the many different policies across government. The lack of "one-stop shopping" and of a government vision for its role in serving children and youth were paramount concerns.

A family might have to contact many different government offices in different locations in order to obtain the help it needed. Community service providers had to comply with the policies of several different ministries, each of which had been created in isolation. This fragmented system was both seriously inadequate, inappropriate and wasteful.

In response to the report, the government established the Child and Youth Secretariat, a committee of assistant deputy ministers and staff from those ministries that provide the majority of services for children, youth, and their families. Its purpose was to review government services to children, youth, and families.

Two years after the report was issued, services for these children and youth continue to be fragmented. Although there has been greater co-operation and communication among government agencies, the major reforms necessary to achieve integrated services have not yet been initiated. Government continues to consider our recommendation for the need to develop a system which successfully integrates services to children and youth.

The current administrative divisions of authority can cause confusion for clients and harmful delays in planning, particularly when children require

placement outside of their homes. Administrative divisions also make it more difficult for professionals to resolve their differences of opinion about the services needed by a young person. A particular cause for concern is the fragmentation of mental health services for children. These services are currently funded or provided by more than six different programs.

On a more optimistic note, the government is continuing to review the programs that affect children and youth. Currently, more than 20 major reviews have either been completed or are underway, some of which have been initiated by government and some by the community.

If the major reforms recommended by these reviews are to result in improved services, effective planning and integration mechanisms will be necessary at both local and provincial levels. Some studies have recommended that resources and authority be under community control and closer to home. This is a sound objective but integrated planning and careful monitoring will also be needed at the provincial level to ensure that children and youth across the province, especially those with unique or exceptional needs, have equal access to quality services without regional disparities.

Two years ago, we made a commitment to issue a further public report to follow up on government's response to our recommendations. We expect the report to be issued in 1993.

Child Advocacy

No matter what reforms government introduces as a result of the reviews completed or underway, it is essential to ensure that children and youth are treated fairly when they deal with public services. The Ombudsman's Child and Youth team frequently acts as a support for the natural advocacy efforts of young people, families, care providers and others concerned about children and youth. In most cases, we are able to help the parties reach a solution which meets the needs of the child or youth with a positive outcome for everyone.

Our experience in investigating complaints involving many different programs for young people allows us to see how well the whole system works. Fragmented program delivery makes it difficult for government to acquire this broad perspective. For that reason, we believe that the

constructive feedback of advocates and the Ombudsman's Office provides vital information to government.

Access to advocacy must be strengthened at all levels of the system to ensure that the rights of young people are protected. These rights include those defined in the *United Nations Convention on the Rights of the Child*, ratified by Canada in December of 1991. Article 12 of the Convention states:

> *"Parties shall assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."*

The Convention is an important tool for children, youth and their advocates. It is a balanced and fair statement about the rights and responsibilities of children, their families and public authorities. Of particular importance is the Convention's recognition of the child's right to be heard. This is the fundamental principle governing the work of child advocates and Ombudsman offices throughout the world.

One way for government to encourage fair treatment for children is to provide recognition of and support for advocacy. Such support need not be expensive and is a concrete recognition of the child's right to be heard. We have recommended that government establish an independent, cross-ministry, administrative advocacy mechanism. If government does create such a mechanism, we believe it should have the following characteristics:

- A clear legislative mandate to ensure that agencies of the Province comply with the *United Nations Convention on the Rights of the Child*;
- Complete independence from government;
- A mandate that includes all private as well as public agencies providing services to children and youth;
- Access to information and automatic notification of critical incidents involving children;
- The power not only to investigate individual complaints but also to initiate reviews of system-wide problems; and
- A mandate to report publicly about the impact of public policy, legislation and administrative practices on young people and families.

The services of the advocacy office should be free, easy to use, and available in local communities. It should have adequate resources, including

a multi-disciplinary staff who have experience in working with young people and families within different communities. The office must approach problems with the goal of reaching a consensus of all the parties involved but still have the ability to conduct formal hearings and make decisions or recommendations where appropriate.

An advocacy office must be viewed as a source of support for natural advocates such as children, youth, parents, guardians and people working with them in their efforts to obtain fair treatment. The legislation must allow the office to make system-wide recommendations and ensure that young people have a direct voice in policy and services designed for their benefit.

Adults must remember that young people do not always appreciate the efforts of adults to help them. The Canadian Mental Health Association has demonstrated the need to involve young people in the development of policies and programs designed for them. The association obtained "astonishing" results in recent consultations with young people who were in the care of social welfare agencies:

> *"The results of the meetings came as a shock to the adults. They found that the services and social supports that society had traditionally provided did not mesh with young people's values and priorities. For example, the teenagers felt emotional and mental well-being were more important than physical comfort. . . . Young people said they would rather live on the street than in a group home where they were not respected and did not feel valued."*

Self-advocacy, which is acting or speaking on one's own behalf, is the most powerful form of advocacy but children and youth do not always have the resources, supports or experience to be effective self-advocates in dealing with government programs and services. We are encouraged to see that young people are developing their own advocacy organization, a "Youth-in-Care Network." The national Youth-in-Care network has been effective in giving young people a voice.

Before reforms which are adult-driven rather than child-centred become part of the system, we hope that children, youth and their advocacy organizations will receive enough support from adults and the system to establish themselves as partners in the reform process.

Residential Services for Children

Article 25 of the *United Nations Convention on the Rights of the Child* recognizes :

> *". . . the right of a child . . . to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."*

Each year, many thousands of young people are placed in foster homes, group homes, correctional facilities, mental health treatment centres, alcohol and drug rehabilitation programs and residential schools. Current regulatory safeguards for vulnerable young people in these programs are inadequate. Safeguards are unevenly regulated and inconsistently enforced.

Some standards have been established for child residential resources that fall under the *Community Care Facility Act.* However, most residential care facilities are not regulated under this act. Resources in which there are only one or two children are excluded from the licensing requirement and the act exempts foster homes, youth correctional institutions and approved homes under the *Mental Health Act.*

More than two years ago, we made public our recommendations about the safeguards needed for young people in these programs. To date, government has failed to respond to the questions we raised about the absence of regulation of foster homes, group homes and residential services, despite well-publicized reports of abuse in some of these resources.

Appropriate standards for health, safety and quality of care should be established and consistently applied for all child and youth resources. High-quality care requires appropriately skilled care-givers who receive the support they need from the government agencies who fund them. Complaint and appeal mechanisms must be available to all those involved in residential care programs.

Jericho Hill School for the Deaf

A particularly tragic example of the lack of standards and regulation of residential schools is the experience of young people at Jericho Hill School. Former students complained to the Ombudsman about the government's

response to their reports of abuse. The abuse had occurred while they were students at the school some years ago.

In response to the Ombudsman's report of these complaints to the government of the day, the Inter-Ministerial Jericho Hill Intervention Team was established. The members of the Intervention Team included a consultant who is deaf, interpreters and the Vancouver City Police Department.

In July of 1992, we issued an interim report on our investigation. One of our conclusions was that deaf people in B.C. do not have equal access to public services. For example, we noted that few services are available in American Sign Language. We therefore recommended that government create an independent action council made up of members of the deaf community with a mandate to ensure fair access for the deaf to all public services.

In 1993, we will issue a final public report on government's response to the original complaints of abuse and to our interim report.

Custody Centres for Young People

Young people who have been convicted of an offense under the *Young Offenders Act* or are awaiting trial are housed in custody centres around the province. Many of the complaints we receive from these young people are similar to those we receive from adults in correctional institutions.

Some complaints, however, demonstrate the need for specialized care and services for young offenders. If these youth are to have any real opportunity for success in the future, custody centres must emphasize rehabilitation and education. Section 3(1)(c) of the *Young Offenders Act* expressly recognizes the need for guidance and assistance for these young people.

A particularly difficult problem for these institutions has been peer abuse. Incidents of residents abusing other residents range from a casual punch as the resident walks by, to organized serious beatings which may cause permanent injuries. The Ombudsman's Office consulted with a task force as part of its review of peer abuse and will be issuing its report in 1993. The report identifies four rights which institutions should recognize:

- The right to a safe physical and emotional environment;
- The right to a trained and properly motivated staff;

- The right to adequate programs to help young people meet the challenge of returning to the community; and
- The right to respect as an individual member of society, including youth.

Family and Child Services

The Family and Child Services division of the Ministry of Social Services investigates reports that a child may be in need of protection. It also provides support to children and their families who are having difficulties.

Family and Child Services does not have a formalized internal process for resolving complaints from young people and their families. Many of the complaints that are made to the Ombudsman could have been resolved if a quick and fair complaints process was available within the ministry.

We receive a large number of complaints about Family and Child Services. Most of them come from young people, their parents, and other natural advocates about difficulties in obtaining appropriate services. Young people frequently call us to complain that social workers refuse to help them apply for services and simply tell them to go home. (Although the *Guaranteed Available Income for Need Act* provides for appeals of social services decisions, the provisions have never been proclaimed into force.) It is important that government staff listen to young people and acknowledge their needs. When young people are in care, we receive complaints about the quality of the foster home program. We also receive complaints from families who feel that a social worker has intervened in the family without good reason.

We hear from individuals concerned about the ministry's records. Parents may want to know what happens to their files after the ministry has concluded that an allegation of abuse is unfounded. We have raised our concerns about these issues with the ministry. Some of them may be resolved with the introduction of the access to information and privacy legislation.

We also receive complaints about the workload and high turnover rate of social workers. Young people tell us that they cannot build a relationship when the social worker assigned to them is constantly changing.

In December of 1992, the minister announced that new child welfare legislation would be introduced in the spring 1993 session of the Legislature. We hope that the legislation will be child-centred and will respect the

principles embodied in the *United Nations Convention on the Rights of the Child* and the *Canadian Charter of Rights and Freedoms.*

Income Assistance for Young People

Income assistance is available for people who have not yet reached the age of 19 and are therefore not considered to be adults. However, it is often difficult for a teenager to establish a right to this assistance and, as a result, we receive many complaints about the program.

The Income Assistance Division of the ministry offers both a formal appeal process and a less formal "administrative review." (These processes are described in more detail in the summary for the Ministry of Social Services, elsewhere in this report.) Unfortunately, we find that the ministry does not always advise young people of their right to appeal internally or of the services of the Ombudsman.

We first highlighted our general concerns about income assistance for people under the age of 19 in our 1988 annual report. We were receiving an increasing number of calls from young people who felt that they had been unfairly denied assistance. We have identified a number of issues for the ministry to address.

In 1989, the ministry decided it should be more willing to offer short-term assistance for young people when "living away from home is the best plan and the parents are unable to supply financial support . . . ." Applicants who are aged 16 or under are now assessed by a social worker who makes a recommendation for assistance to a financial assistance worker. No assessment is required if the applicant is over 16.

However, we see continuing inconsistencies in the way young people are assessed for assistance. We often hear that young people have been turned away from ministry offices by the receptionist without even being allowed to discuss the problem with a worker.

This issue continues to be a serious problem. Many young people say that ministry staff are not prepared to acknowledge their serious problems at home. They feel that staff rely solely on the parents' opinion in deciding whether the young person should receive assistance. Some people said that

without assistance they would have to quit school and find a job because it was impossible to remain at home.

The personal values of some ministry staff seem to affect their decisions in this area. Some officials have said that if young people receive assistance they will have no reason to remain at home where they are, or should be, supported by their parents. They believe that assistance should only be available if the young person is in physical danger at home and has nowhere else to live.

We believe this view denies the young person the right to be heard before a decision is made. It ignores the young person's healthy need to move toward independence from what is sometimes a harmful family situation. Older adolescents with family problems are particularly vulnerable because the ministry is reluctant to take teenagers into care. The result is to force young people to remain in circumstances where they receive no financial or emotional support. Young people deserve a more effective integration of financial and social support services.

Public Trustee - Services to Children

The Public Trustee acts as the guardian of a minor's financial and legal affairs if both parents have died without naming a guardian or if the child becomes a permanent ward of the Superintendent of Family and Child Service. Often, the Public Trustee holds money for minors which is turned over to them when they become adults at the age of 19. The amount held for the minor is sometimes substantial.

The Ombudsman's Child and Youth Team has been discussing a number of issues with the Public Trustee, including:

- the practice of using funds held by the Public Trustee to pay the Ministry of Social Services for the cost of a minor's maintenance without input from the minor;
- the need to establish an appropriate minimum amount the Public Trustee will hold in trust until the child becomes an adult. In Saskatchewan, for example, the amount is $35,000 but in B.C. the amount is only $10,000;
- involvement of minors in financial planning so that they are better able to manage the funds they will eventually inherit;

- the need for a policy manual for the Public Trustee's Services to Children; and
- development of an active liaison with the Ministry of Social Services.

Family Court Counsellors

The Family Court Counsellor Program of the Ministry of the Attorney General helps individuals involved in custody, access and maintenance disputes. Family court counsellors provide counselling and mediation services and report to the courts on the best interests of children who are involved in custody and access disputes.

We continue to receive complaints about the program, including difficulty in obtaining access to mediation services, the lack of mental health professionals to advise parents and the courts, significant delays in completing custody and access reports, and the lack of appropriate training and education for family court counsellors.

In 1992, the Attorney General appointed a committee to review services to families involved with the justice system. The need for mediation services was one of the most consistent comments made to the committee by clients and others.

The *Family Relations Act* gives the ministry a mandate to provide mediation services through family court counsellors. However, when families are involved in custody and access disputes, issues may arise which affect more than one government agency. Mediation services should not be limited to disputes which involve the *Family Relations Act.* By the same token, family court counsellors need the opportunity to work more closely with staff in other ministries which deal with these issues.

Public Schools and School Boards

The public school system in British Columbia is made up of 75 local school districts, each run by an elected board of school trustees. Approximately 500,000 students are taught in 1,600 public schools in the province.

As of November 1, 1992, the Ombudsman was given the authority to investigate complaints about schools and school boards, including the actions of teachers, administrators and trustees. This addition to our jurisdiction adds

another dimension to our review of government services that affect young people.

The number of complaints about public schools has increased as students and others become aware of the assistance we can provide. To date, most complaints have been about the nature, adequacy, and availability of support services for students. By far the greatest proportion of these complaints has involved services to students with exceptional needs.

A second group of complaints relates to disagreements between the child and his parents or other care-givers on the one hand and teachers or other staff on the other. Other complaints have been about education programs, professional judgment, student placement, and disciplinary measures.

Section 11 of the *School Act* permits students and their parents to appeal to the school board when an employee of the board makes a decision that significantly affects the education, health or safety of the student. School boards invited us to make suggestions to enable them to develop a fair appeal procedure. We developed guidelines which were circulated for discussion with all of the groups involved in the educational system, including administrators, teachers, parents, and students.

Any effective appeal process must be based on principles of fairness. These principles include:

- the right to be heard;
- the right to participate in decisions that affect you;
- the right to an impartial decision based on relevant information;
- the right to receive clear, complete and appropriate reasons for a decision;
- the right to an impartial review of a decision you believe to be unreasonable or unfair;
- the right to an appeal procedure which is accessible, flexible, timely and easy to use;
- the right to obtain all relevant information that has led to the decision being appealed;
- the right to an appeal procedure which begins at the local level, with those most affected involved in the decision-making process;
- the right to an appeal procedure which includes the option to seek alternative dispute resolution processes, including mediation, and which aims to reach consensus and resolution at all stages; and

- the right to an appeal procedure which has a built-in mechanism to protect against retribution.

Often, disputes can be resolved without an appeal if avenues to resolve complaints less formally are available. Sometimes a complaint can be resolved simply by providing an opportunity to discuss the reasons for a decision. Mediation and informal discussion within the school may be preferable to the formal route of an appeal. It may be fair to permit those affected to choose the avenue they feel is most appropriate to their concerns.

School and school boards should also advise students and parents of their right to make a complaint to the Ombudsman.

Other Matters of Special Concern for Young People

Adoptions

We continue to receive complaints about the fees to obtain adoption information through Greater Vancouver Family Services. The ministry is currently reviewing post-adoption services.

In 1992, the ministry implemented policy changes which affect non-ministry international adoption applications. In the past, when applicants adopted a child from outside Canada, the superintendent of Family and Child Service was asked to issue a letter stating that the adopted child is recognized as a child of the family for immigration purposes.

After consultation with adoptive parents and others, the ministry changed this procedure. As of July 1992, the superintendent issues the letter only upon completion of a study of the home conducted in accordance with ministry standards. This change ensures that all children, regardless of their country of origin, receive the benefit of a review of the adoptive family.

The Impact on Children of Prenatal Substance Abuse

Fetal Alcohol Syndrome (FAS) is recognized as a primary cause of mental and physical disabilities. Physicians are now identifying another syndrome, Fetal Alcohol Effect (FAE), which can also have a major impact on a child's development. FAE may result in a less severe disability but it occurs much more frequently than FAS.

Neonatal Abstinence Syndrome (NAS), where a child is born with a drug dependency caused by the mother's use of drugs during pregnancy, is less common. Babies born with it may be at risk because they have low birth weights and are more challenging to care for.

We sometimes receive complaints that a NAS baby has been removed by the Ministry of Social Services before the mother has had an opportunity to care for her child. As well, natural and adoptive parents of FAS or FAE children complain of difficulties in obtaining support services in the schools.

The Alcohol and Drug Programs branch of the Ministry of Health has organized an Inter-Ministerial Forum on FAS. We are participating in the forum and will continue to monitor government efforts to provide services in this area.

Historical Abuse

"Historical abuse" is the term we use to describe abuse suffered by a child in a publicly funded facility who is now being dealt with as an adult. Adults who want to pursue their remedies in connection with historical abuse face many special problems.

We have had a number of discussions with government about the needs of young people and adults who have suffered physical, sexual or emotional abuse while in care. The government has taken some steps to respond to our concerns. A particular problem was the time limit on taking legal action against an abuser. Many abused persons found that they were not ready or able to take legal action within the time limit. The Legislature has now amended the *Limitations Act* to correct this problem for those who have been sexually abused.

The government has also introduced the Residential Historical Abuse Program (RHAP) for adults who were sexually abused in a publicly-funded resource. These adults can receive up to six months of free counselling through the program with no prerequisite that they take any form of legal action proving the abuse occurred. An unfortunate aspect of this otherwise helpful program is the requirement that adults disclose the nature of the sexual abuse on the application form. It is difficult for many adults to discuss the abuse under any circumstances and to require such a statement on the application prior to counselling is insensitive to their distress.

At the moment, government assistance focuses for the most part on those who have suffered sexual abuse in a government resource. Other victims of abuse may also need assistance and government has established the inter-ministerial Historical Abuse Committee to review the needs of this broader group. These needs include compensation, access to counselling, and education. When a person has been abused, even a simple apology can be an important acknowledgment and part of the healing process.

Other Authorities

B.C. Assessment Authority & Appeal Board

Resolved	1
Abandoned, withdrawn, invest. not authorized	3
Not substantiated	4
Declined, discontinued	4
Inquiry	3
Total Files Closed	**15**
Files open Dec. 31, 1992	9

The Assessment Authority carries out an annual assessment of the market value of each privately owned property in the province. The value is used by taxation authorities to determine an owner's property taxes. The Court of Revision and the Assessment Appeal Board hear taxpayer appeals of the Authority's valuations.

Most of the complaints we receive involve disputes about the market value determined by the Authority. In general, the Authority uses an "area-based" system of valuation which does not involve an inspection of each individual property. The area-based system uses an extensive database of information about location, size, shape, topography, condition and other factors which is constantly updated with information from municipalities, government departments, regional districts and other organizations. For example, details are recorded of all property sales and include every building permit that is issued.

Occasionally, there may be unusual circumstances which justify a "site-specific" evaluation, which the Authority will conduct on request. Complainants may also appeal the valuation through the Courts of Revision and the Assessment Appeal Board.

B.C. Council of Human Rights

Resolved	4
Abandoned, withdrawn, invest. not authorized	1
Not substantiated	5
Declined, discontinued	15
Inquiry	1
Total Files Closed	**26**
Files open Dec. 31, 1992	12

The B.C. Council of Human Rights is an independent branch operating under the umbrella of the Ministry of Education and Ministry Responsible for Multiculturalism and Human Rights. The Council investigates complaints about discrimination under the *Human Rights Act* and can take various steps to provide a remedy to someone who has been the victim of discrimination. Industrial Relations Officers, employees of the Ministry of Labour who are located throughout the province, conduct the on-site investigation of complaints for the council.

As in previous years, most of the 1992 complaints we received about the Human Rights Council involved delay. In 1991, we reported that the council had made an effort to speed up its system of processing complaints. In 1992, a number of investigators from the Ministry of Labour were assigned to deal solely with human rights complaints in order to improve the quality and efficiency of the investigations. The council also continued its efforts to mediate disputes as soon as possible after receiving the complaint.

It is sometimes difficult for complainants to understand why it can take so long for a decision to be reached once a complaint has been lodged with the council. In one case, a person approached the Ombudsman about the council's delay in investigating her discrimination complaint.

We reviewed the council's file. While we agreed that the process was taking a long time, we found that one of the major reasons for the delay was the length of time spent in an early attempt to mediate a settlement. When the negotiations broke down, the council had to begin an investigation. The investigation was completed within a reasonable time but the time spent in mediation made the whole process seem that much longer.

In another case, a person was advised that it would be three to four months before the council could begin an investigation. His complaint to the council

involved allegations that his employer had discriminated against him on the basis of his race. He was also involved in a dispute with his employer about some other matters which had led to a suspension. He complained to the Ombudsman that the council was treating him unfairly by not commencing an investigation immediately.

This was a case where another remedy was open to him which might have been just as effective in addressing the root cause of his difficulties with his employer. As a member of a union, the collective agreement gave him the right to file a grievance of the suspension. His union might also be able to help him address the discrimination complaint. We therefore suggested that while he waited for the council's investigation to begin, it might be helpful to contact the union. We also advised the complainant that three or four months was the standard waiting period and that the council was not treating him differently from anyone else.

A revised provision in the Ninth Master BCGEU Collective Agreement [30.08.92] reads:

> *Where an employee has filed a complaint with the Human Rights Council, the Ombudsman or the Employment Standards Branch, the grievance shall be deemed to be abandoned unless the complaint is withdrawn, in writing, within forty-five (45) days of it being filed.*

This provision requires an employee to pursue one remedy at a time and may have an impact on delay in a human rights complaint.

The Ombudsman met with key officials at the Human Rights Council to discuss their concerted efforts to evaluate and improve the time in which a complaint is processed and investigated.

B.C. Housing Management Commission

The B.C. Housing Management Commission provides affordable housing for people with low-incomes and others with unique housing needs.

Resolved	9
Abandoned, withdrawn, invest. not authorized	5
Not substantiated	17
Declined, discontinued	10
Inquiry	8
Total Files Closed	**49**
Files open Dec. 31, 1992	12

Most of the complaints we received about the B.C. Housing Management Commission fell into two categories. The first involved complaints about the commission's decision to evict a tenant. We refer these complainants to the Residential Tenancy Branch for arbitration of the dispute.

The second category, by far the largest, involves complaints from individuals waiting for housing. Most complainants assume that units are assigned on a first-come, first-served basis. After a year or more on the commission's waiting list, they begin to feel that the commission is ignoring them and they contact our Office to make a complaint.

In fact, the commission assigns housing in accordance with need. Each application is screened and assigned a point score as soon as it is received. The score reflects a number of variables, including whether the family unit is under-housed, whether the rent currently paid is reasonable or whether there is a need for wheelchair access. When a unit of the appropriate size or type becomes available, the commission offers it to the person on the waiting list with the highest score.

The commission advises people on the waiting list to keep them informed of any changes in their situation. Unfortunately, many fail to do so to their own detriment. A rental increase, the addition of a family member or a change in medical needs can all result in an increased point score and therefore an increased chance of an offer of accommodation.

As a result, our primary function in dealing with this second category of complaints has been to explain the scoring process and to encourage complainants to keep the commission up to date.

B.C. Hydro and Power Authority

B.C. Hydro and Power Authority is a Crown corporation which produces electricity for most of the province. Its board of directors is appointed by Cabinet and its activities are regulated by the B.C. Utilities Commission, members of which are also appointed by Cabinet.

Resolved	8
Abandoned, withdrawn, invest. not authorized	7
Not substantiated	1
Declined, discontinued	136
Inquiry	5
Total Files Closed	**157**
Files open Dec. 31, 1992	50

Most of the complaints we receive involve overdue Hydro accounts, disconnections and demands for payment on arrears. We receive a steady stream of these complaints and, as they involve debts which Hydro is usually entitled to collect, we refer complainants to Hydro staff for an initial review to see whether the complaint can be resolved without our involvement. The Hydro reviewer will try to make an arrangement for repayment of the debt that is appropriate in the complainant's circumstances. We ask complainants who are not satisfied with Hydro's review to let us know but we receive very few requests for further assistance.

Many disconnection and arrears complaints arise from misunderstandings about repayment deadlines or from the complainant's inability to pay. Clients on income assistance may make special payment arrangements with Hydro which appear to work fairly well.

We frequently receive complaints when an individual is asked to pay arrears on someone else's account. The *Electric Tariff*, which governs Hydro, does allow it to charge an individual for an account in another name if the individual was living with the named account holder at the time the debt arose. Hydro attempts to bill the account holder first but when that person cannot be found, the bill is directed to the other resident. Many people feel that this is unfair. They say they had never agreed to pay these charges and were never made aware that they could be held responsible.

As the person living with the account holder has benefitted from the Hydro service, we believe it is reasonable to hold that person responsible for the

cost of service. Any private cost-sharing agreement between the account holder and the other resident should not prevent Hydro from receiving payment for a service it provided in good faith for the benefit of all residents. However, we believe Hydro could do more to notify the public of this responsibility. If the rule was more widely known, the number of unpleasant surprises might be reduced and people might be better able to plan with this possibility in mind.

Adequate notice is an issue which arises on all billing complaints but is particularly important where service may be disconnected for non-payment. If a person is making payment on account after a notice of disconnection, further notice should be given if Hydro still intends to disconnect. Otherwise, an account holder who has been making payments will assume, quite reasonably, that the prior notice of disconnection is no longer in effect. Individuals on the equal payment plan should also be warned that making payments on current billings will not prevent disconnection if there are unpaid arrears.

We also receive complaints about a section of the *Electric Tariff* which permits Hydro to insist that landlords have all service in their own names. This provision of the *Tariff* was intended to reduce Hydro's risk of significant losses from tenants who move without paying their Hydro bills. Since landlords can screen tenants and can add utilities costs to the rent, the theory was that landlords are in a better position than Hydro to manage this risk.

Hydro does not often require landlords to do this but we have had two major complaints about the issue. One complainant contacted us after Hydro had rejected his application for service. He was a tenant with a good Hydro credit history but he had the misfortune to rent a suite in a house with a terrible history of unpaid bills. Service was about to be disconnected.

Hydro demanded that the landlord put all of the accounts for his suites in his own name. The landlord refused. Consequently, through no fault of his own, the tenant was faced with having no electrical service. Although Hydro agreed to provide temporary service while the discussion continued, the tenant was put to a great deal of trouble before the landlord finally agreed.

The complaint demonstrates that when Hydro uses this provision of the *Tariff*, there may be an unfair impact on an individual. While Hydro does not

intend to be unfair, the impact may nonetheless be serious enough to suggest that Hydro should reconsider how to modify the provision.

A landlord also complained about the section. She owned several buildings which were known for their high rate of disconnection for non-payment. Hydro demanded that she put the accounts in her name and she objected very strongly. She pointed out that her tenants were low-income transient individuals who frequently failed to pay their rent. Adding utilities costs to the rent would only reduce her risk if the tenants paid the rent. She also felt that the tenants could not afford to pay more rent. Finally, she complained that Hydro would not agree, as an alternative, to warn her if her tenants were failing to pay their accounts so that she could take appropriate action. We were unable to find a satisfactory resolution for the complainant.

In our view, there are some unresolved public policy questions which we may wish to reconsider if complaints about this issue continue. If the *Tariff* provision makes it less attractive for landlords to provide low-income housing, it may have the unintended effect of making it more difficult for low-income tenants to find housing.

B.C. Lottery Corporation

Resolved	1
Abandoned, withdrawn, invest. not authorized	3
Not substantiated	0
Declined, discontinued	1
Inquiry	0
Total Files Closed	**5**
Files open Dec. 31, 1992	9

The Lottery Corporation manages government sponsored lotteries in the province. We sometimes receive complaints from people who feel that they should have won a lottery. They argue that it is the Lottery Corporation's mismanagement that has caused them to lose. We have not substantiated any of these complaints to date.

We also receive complaints from retailers about difficulty in obtaining ticket machines. The corporation licenses retailers to sell different kinds of tickets. What licence a retailer is given may depend on the ticket sale history and the location of the store. The corporation does not want to give expensive equipment to retailers it feels will not have a high volume of ticket sales. Naturally, the machines that sell computerized lottery tickets for the 6/49 are in the highest demand.

We received a complaint from a man who had recently taken over operation of a store from his tenant who had been allocated one of the computerized machines and had maintained very profitable sales. The store was in a good location, and few of the neighbouring retailers had machines. The complainant's application was rejected on the basis that he was unlikely to have sufficient sales. However, at the same time, one of his neighbours in a less favourable location received a machine. In answer to his enquiries, the corporation told him that the neighbour had been given a ticket machine before the complainant had even applied.

Our investigation revealed that the complainant had applied long before the corporation gave a machine to the neighbour. The reasons for the corporation's decision to give the neighbouring retailer a machine were unclear. In contrast to the complainant, the neighbour's history of ticket sales did not meet normal requirements. However, after we had reviewed the matter, the corporation agreed to issue a machine to the complainant and the problem was resolved.

British Columbia Railway Company

Resolved	0
Abandoned, withdrawn, invest. not authorized	2
Not substantiated	1
Declined, discontinued	0
Inquiry	0
Total Files Closed	**3**
Files open Dec. 31, 1992	3

British Columbia Railway Company is a holding company for B.C. Rail Ltd. - the operating company - and B.C.R. Properties Ltd. which owns and manages the non-operating real estate assets. B.C. Rail's main functions are to transport natural resources and to provide some passenger services.

While we have a good working relationship with B.C.Rail, we do not receive many complaints about it. Some recent complaints involve:

- a woman who told us that B.C. Rail had threatened to demolish her squatters' cabin, located on B.C. Rail land. She had lived in the cabin for several years and felt that B.C. Rail should lease the land to her. B.C. Rail had tried to evict her on several previous occasions but on each occasion she had evaded them. They were not interested in a lease and had given her two weeks to remove her small cabin. As the complainant had no legal right to be on the land, we concluded that B.C. Rail's position was reasonable. At our request, however, B.C. Rail agreed to extend the moving period by two weeks.
- two landowners who complained that B.C. Rail had removed a public road providing access over a railway line to their land. Both the Ministry of Transportation and B.C. Rail agreed that if the road had ever been a public road, it had ceased to be one in 1958. However, they disagreed about whether the road, if public, had been built before the railway line. If the road was there first, it was B.C. Rail's responsibility to provide a crossing. If the railway came first, on the other hand, it was the ministry's responsibility to provide the crossing. Our research revealed that there had been a public road since at least 1913 and that the railway was built across the road in 1914. As well, we were able to show that while the ministry and B.C. Rail had agreed to abandon the public road in 1958, the ministry had failed to follow the required legal steps. As a result, the road was legally still a public road. In the end, the ministry and B.C. Rail were able to agree that the ministry would provide the road and would split the cost of the crossing with B.C. Rail.

B.C. Transit Authority

The B.C. Transit Authority is responsible for all public transit systems in the province. We do not usually receive many complaints about its services and, when we do, they do not reveal consistent themes.

Resolved	3
Abandoned, withdrawn, invest. not authorized	3
Not substantiated	0
Declined, discontinued	10
Inquiry	4
Total Files Closed	**20**
Files open Dec. 31, 1992	10

We are receiving fewer complaints about the Skytrain system than we did in the early years of its operation. This year, we received complaints about the community consultation process for determining the location of future Skytrain structures. As there will be further opportunities for public input, we felt that an investigation would be premature.

We received several complaints about access to HandyDart service. The demand for HandyDart is high and its capacity appears to be overloaded. Some of these complaints were from parents of preschool children with disabilities who felt that access to the service was irregular and unreliable. In regions outside of Vancouver, there was also some dissatisfaction with HandyDart's refusal to transport preschool children unless accompanied by an adult. B.C. Transit insists on an adult's presence for reasons of safety. We note, however, that in Vancouver the service does not insist on this requirement. Perhaps services in the regions might consider eliminating the restriction or at least have a consistent rule for the services throughout the province.

We receive some complaints about the reduction in service and increases in fares in some areas. Senior citizens, in particular, find it difficult to accommodate these changes. Most of the other complaints we received reflected various individual concerns. A visually impaired complainant said that she found it very difficult to read the names on the buses at night. She requested that consideration be given to better illumination or larger letters. This complaint was useful feedback for B.C. Transit.

B.C. Transit has continued to give prompt and thorough attention to the complaints we bring to it.

Commission on Resources and Environment

The Commission on Resources and Environment was set up to deal with many of the environmental and land-use issues which previously resulted in complaints to the Ombudsman. CORE's mandate, outlined by statute, is to develop and implement a resource and environment management strategy for some regions of the province through a process that involves consultation with communities and with every sector affected by land-use and environmental issues.

It is establishing permanent community consultation mechanisms that can be used to resolve land-use disputes as they arise. The regions to receive CORE's immediate attention are the areas which have generated the greatest controversy: the Cariboo/Chilcotin, Vancouver Island, the Kootenay Boundary regions, and the Tatshenshini/Alsek area. Our Office can investigate complaints regarding CORE.

Insurance Corporation of British Columbia

Resolved	7
Abandoned, withdrawn, invest. not authorized	9
Not substantiated	1
Declined, discontinued	619
Inquiry	47
Total Files Closed	**683**
Files open Dec. 31, 1992	48

We continue to receive many complaints about the Insurance Corporation of B.C. (ICBC). These fall into several different categories. One category involves complaints about ICBC's assessment of liability for an accident. Many of these decisions involve the adjuster's personal judgment of the physical evidence and credibility of the witnesses. If drivers disagree with ICBC's finding of liability, their only remedy is to take the other party or ICBC to court. This is a very time-consuming and expensive remedy which creates almost as much frustration as the liability assessment itself. We have suggested that ICBC introduce an inexpensive, easy-to-use remedy to review and challenge liability findings.

We also receive complaints about the refusal to provide "Part VII benefits", which are intended to provide no-fault compensation for medical expenses, rehabilitation and wage loss when a person is injured in an accident. We receive similar complaints about ICBC's refusal to give an advance on the amount that will be recovered when a claim for personal injuries goes to trial or is settled. Again, we find that complainants are just as upset with the lack of a simple remedy to address the refusal as they are with the refusal itself.

In theory, ICBC is willing to offer an advance when it is certain that the injured person will receive some award at trial or on settlement, and only the amount is uncertain. In practice, however, we find that adjusters are reluctant to offer advances. While claimants have a right to receive Part VII benefits, they do not have a right to receive an advance. Giving an advance is within the discretion of the adjuster. Many complainants feel that ICBC lawyers advise adjusters to withhold advances in order to pressure them into settling for less than they feel they are entitled to receive. We believe that ICBC

should introduce policy guidelines to assist adjusters in exercising their discretion in this area.

The driver penalty point system also gives rise to a significant number of complaints. Drivers who receive points under the *Motor Vehicle Act* usually are not advised of the fact that they will also have to pay a premium penalty to ICBC. The problem is compounded by the fact that ICBC bills for the premium long after some of the original points were incurred - in some cases, it can be as much as two years later that the bill arrives. ICBC also uses an extremely complicated method of determining when the penalty is billed which can result in some drivers having to pay more than others when their circumstances appear the same. The complaints we receive usually reflect a high degree of frustration with this system.

ICBC says that a person who has a bad driving record is more likely to have accidents which ICBC will be required to cover. Therefore, it makes sense that people who have bad driving records should be asked to pay more for their insurance. This is a reasonable position for ICBC to take but we believe that it has not done enough to inform drivers about this system. We also believe that ICBC could find a much simpler way to calculate and bill for the premium surcharge.

Sometimes ICBC seems to use its superior bargaining power to force customers to pay for "debts" that may not be justly due to it. In one recent case, there had been an accident some years ago in which passengers in a car were injured. ICBC paid compensation for their injuries and paid to repair the car.

ICBC then made a determination that the owner of the car had been driving it at the time of the accident, that he was responsible for the accident and that he had breached a condition of the insurance contract, which made the coverage invalid. Under these circumstances, ICBC is entitled to recover the monies it has paid out from the driver who caused the accident. ICBC refused to allow the owner to continue to receive insurance coverage unless he made payments on this debt. The amount was substantial.

The owner, however, denied that he had been the driver and, in a criminal prosecution arising from the accident, a Judge found that the Crown had failed to prove that he was the driver. Nonetheless, ICBC continued to hold him responsible for its costs. Although he made payments from time to time,

he continued to deny that he had been the driver and he made various attempts to clear his name. Finally, he made a complaint to the Ombudsman.

When we began our investigation, we learned that ICBC had destroyed its file on the accident some years before as part of its standard file destruction policy. This meant that ICBC no longer had any evidence to show how it had decided that the complainant was the driver. The result was that ICBC was putting the complainant in the position of having to prove that he was not the driver. ICBC appeared to be taking advantage of its corporate position to overcome the lack of evidence and its weak argument. After a further review, ICBC agreed to cancel the debt and refund the money the complainant had paid.

Pacific National Exhibition

The Pacific National Exhibition (PNE) is responsible for the annual fair and administers the buildings and grounds upon which the fair is held. During the year, these buildings are leased for various other events.

We rarely receive complaints about the PNE. Although our contacts with PNE staff and management have therefore been limited, we find them helpful in responding to our enquiries.

Some recent complaints involve:

- a woman who complained that her 14-year-old son had been thrown out of the Coliseum as he returned from the washroom because security guards thought he was trying to sneak in without paying. He was eventually able to convince another guard to admit him, but in the meantime he had wandered the streets of Vancouver for over an hour. The PNE's policy did not require security to make a report to the Director of Investigation when someone was ejected from a PNE building. As a result of our investigation the PNE has now instituted such a policy.
- a photographer who complained that in allocating stalls, the PNE had given preference to an American company over his own Canadian company. For several years, the PNE had set a limit of two stalls for photo parlours. The photographer noted that the PNE has a "Canadians first" policy which he felt made it all the more unfair for them to give space to an American company. Our investigation revealed that although the PNE had indeed advertised a "Canadians first" policy, management was not familiar with it. Upon reviewing the policy, they agreed that the complainant's Canadian company should have preference over the American company and accepted the Canadian company's application.

Workers' Compensation Board

The Workers' Compensation Board (WCB) is accountable to the Minister of Labour. It provides compensation to workers who have been injured on the job or suffer from industrial diseases. The Board also offers rehabilitation services.

Resolved	166
Abandoned, withdrawn, invest. not authorized	23
Not substantiated	1
Declined, discontinued	455
Inquiry	68
Total Files Closed	**713**
Files open Dec. 31, 1992	68

The Board handles thousands of claims each year. Many are minor. However, serious injury claims require certain decisions to be made at the outset and may later involve further decisions on retraining and pensions for permanent disabilities. With its new organizational structure, the Board is working towards improving the quality of its compensation and other services.

Appealing a Claims Decision

Workers and employers have several opportunities to appeal unsatisfactory decisions. The Workers' Compensation Review Board, which is independent from the Workers' Compensation Board, hears appeals of compensation decisions. Review Board decisions may be further appealed to the Appeal Division.

At any stage of a WCB claim, workers and employers may appeal medical issues to a Medical Review Panel. Medical Review Panels are composed of a chair and two specialists. The worker and the employer each choose one specialist, and the Board appoints the chair who is always a general practitioner. They are chosen from a list of physicians prepared by an independent medical committee. The decisions of these panels cannot be appealed.

Problems sometimes arise when WCB staff are required to put appeal decisions into effect. Disagreements about the interpretation of appeal decisions may lead to delays and further hearings which can cause

considerable frustration for workers. The Ombudsman may not review the merits of a decision until a complainant has exhausted all available appeals of the decision.

Changes at the Board

1992 has been a year of transition at the WCB. The Board has made considerable progress in some areas and initiatives are underway which may bring about major policy and administrative changes. Consideration of these proposals takes time and resources. It is a formidable task to move such a large organization in a new direction.

As major changes begin to occur, however, we continue to see delays at the initial stages of a claim. There are delays in reviewing new claims, in deciding on the amount of pensions and in giving effect to appeal decisions. There are also considerable delays at the Workers' Compensation Review Board. The combined effect of these delays may sometimes cause a worker's health to deteriorate further.

In our 1987 report, we recommended that there be more emphasis on the quality of the initial decision and a more effective internal review system that would minimize the need for appeals. Lengthy delays create personal hardship and make it more difficult to obtain reliable evidence. We first reported on these system-wide problems in 1987 but they continue to create significant difficulties for workers who may be without benefits they should be receiving during this period.

Service Quality - Compensation Services Division

One-third of the complaints we receive about the Board involve delay or lack of communication in claims, rehabilitation and pension decisions. Over the past twelve months, these complaints have increased by 43 percent. Complaints about delay and communication problems are caused by a number of factors, some of which may be unavoidable. Complaints to the Ombudsman arise when:

- claimants have to obtain evidence of earnings from Revenue Canada and former employers. If the claimant has been employed by many different employers over a long working life, this can be a very time-consuming process;

- adjudicators request medical opinions from the Board's staff physicians, who typically have large backlogs;
- adjudicators do not actively seek out all relevant information;
- the issues involved are complex and there is considerable disagreement about the evidence;
- adjudicators do not return phone calls promptly;
- adjudicators refuse to take phone calls from claimants if the file is not in front of them;
- there is a high turnover of adjudicators;
- claimants get conflicting information from different staff;
- claimants are understandably confused about the complex claims and appeal process and cannot get an adequate explanation from the Board.

Problems with communication are particularly evident in the difficulty callers have in reaching staff by telephone, the primary means of communication between the Board and its clients. The Board may wish to review the effectiveness of its telephone service.

Another major subject of delay and communication complaints is the pension assessment process which involves reviews by at least three different staff members. The Board does not appoint a case manager and the staff are sometimes not in the same office which makes an integrated approach to the assessment more difficult. On average, it takes 12 months to complete a pension assessment involving loss-of-earnings projections.

Although the Board has the power to provide benefits or rehabilitation assistance before a final pension decision is made, heavy workloads may make it difficult for staff to find time to consider such assistance. In some cases, the Board does not offer these interim benefits to the worker until the worker complains to an external agency. The result is that some workers feel ignored during the months before the final pension decisions are made.

The WCB's Board of Governors has introduced new rehabilitation policies which emphasize the need to help workers obtain appropriate employment as early as possible. The governors recognize that quality rehabilitation requires timely intervention, clear goals and individualized planning. They have now created an Advisory Council of community representatives to assist them in achieving better service. This shift to earlier rehabilitation services should help to bridge the gap for the worker until a final decision is made.

Structural problems may also create delay and communication problems. There is a high turnover of adjudicators, resulting in a shortage of experienced staff in some units. Fundamental changes may be required to solve the persistent underlying problems in the system.

Plans are underway to restructure the claims units following the recommendations in a study of the claims adjudication process. The Board has designed a pilot project to examine the effectiveness of the proposed new structure. Quality, speed, cost-effectiveness and customer satisfaction are the measures of success set by the governors. Their plan will take some time to produce results.

Justice Delayed is Justice Denied

Sometimes, the lack of rehabilitation services has meant that the worker's condition has deteriorated to the point of total disability. In one case, a worker suffered a severe back injury in 1984. He made a claim and received wage loss benefits until 1986. His injury had stabilized by that point so the Board was able to assess his right to a permanent disability pension. The Board concluded that he did not have a permanent disability, was therefore not eligible for a pension and should be able to return to work.

The worker then saw a specialist who determined that he had suffered a permanent injury to his spine. In spite of this evidence, the Board continued to say that he was not entitled to a pension and should be able to return to his previous employment. Eventually, the worker was able to obtain some $16,000 for retraining and in 1988 he began an accounting course.

Meanwhile, he continued his appeal of the assessment denying him a permanent pension. In January of 1988, the Review Board decided he had a permanent but not total disability and awarded him a small pension. However, they also decided that his original earning capacity had not been affected by the injury and denied him further rehabilitation services. The worker had to drop out of his retraining program which he had been completing successfully.

He appealed the decision to a Medical Review Panel and in 1990 the panel decided that he was totally disabled. The panel noted that his back was so painful that in order to continue with his accounting course, the worker had to go home between classes for a hot bath. Indeed, he had done most of his

studying in the bath. The panel acknowledged that the stress of fighting with the Board had made his condition worse and recommended that he receive treatment for his chronic pain and an intensive rehabilitation program, including financial support, while he finished his accounting program.

Despite these clear findings, the former commissioners of the Board refused the worker a full pension. Among other things, the commissioners felt that the panel did not have the legal authority to decide that the worker was totally disabled and therefore unemployable.

Throughout the claim, the worker's employer had tried to help him obtain rehabilitation services. In his submission to the commissioners, the employer said that the Board had been irresponsible in its various refusals to help the worker and that, ". . . the case history demonstrated a shocking disregard by the Workers' Compensation Board of the significance of an individual's self-worth. . . ."

When the new appeal commissioners were appointed, we recommended that they reconsider the former commissioners' decision and give effect to the panel's decision. They agreed and, in 1992, this worker's eight-year struggle for fair compensation was finally resolved in his favour.

Resolving Complaints Within the System

Although the Workers' Compensation Board has a comprehensive appeal system, these formal channels are not always necessary. The Board tries to resolve problems in other ways.

A group of managers in the Policy and Review Division, Compensation Services, responds to complaints about claims decisions. When a claims decision is made, Board staff advise the parties of the right to request a review. The Board of Governors has now strengthened the powers of these reviewers, giving them greater authority to overturn the original decision.

In this way, the governors hope to increase the credibility and effectiveness of these reviews so that they will be seen as a useful alternative to a formal appeal. However, if the manager's review does not resolve the concern, the worker or employer still has the right to appeal.

The Workers' Compensation Board has also become involved in reviewing complaints to the Ombudsman which involve delay and communication

problems. We refer these complaints to managers who review them and take appropriate action. This system has worked effectively for many delay complaints. The system has not been as effective in addressing the communication problems which often trigger complaints. However, we believe that the quality of the reviews has improved as managers become more aware of service quality issues. We appreciate the co-operation we have received from the managers who deal with these complaints and in particular the two managers who liaise with us.

Claims Decisions

We continue to be concerned about the quality of some of the initial decisions we review. The long wait for an appeal to be heard makes it that much more important for adjudicators to provide thorough decisions. The worker and the employer must be able to understand what evidence was considered and the reasons for the decision so that they can decide whether to appeal.

Letters to claimants which do not provide clear explanations of claims decisions can cause confusion, frustration and unnecessary appeals. The Board's policy manual states that decision letters should describe the investigation and explain how the evidence was interpreted. We often see decision letters which do not meet these requirements. Sometimes, letters dealing with technical issues are not written in plain language and can be extremely difficult to understand.

Response to Our 1987 Public Report

The Board accepted many of the recommendations in our *Public Report #7: Workers' Compensation System Study* which related to the structure of the Board. There is disagreement with some of our recommendations:

- that irrelevant and prejudicial information be removed from material disclosed to employers;
- that the Review Board have the authority to award legal costs; and
- regarding the interpretation of section 99 of the *Workers' Compensation Act* which deals with some technical problems in weighing evidence.

Decisions on these issues will ultimately rest with the Board of Governors. We anticipate that the new *Freedom of Information and Protection of Privacy*

Act will help to clarify the Board's position regarding disclosure of private claimant information to employers.

Medical Review Panels

In our report, we also identified a number of issues involving the appeals conducted by Medical Review Panels. The Board has published a consultant's report recommending changes in a number of key areas. The consultant recommended, as we did in Report #7, that the Board extend the time to appeal in appropriate cases and provide copies of the panels' narrative reports to workers. The Board of Governors will be considering those recommendations as well as responses to the report from the community.

Resolved	5
Abandoned, withdrawn, invest. not authorized	2
Not substantiated	0
Declined, discontinued	13
Inquiry	0
Total Files Closed	**20**
Files open Dec. 31, 1992	13

Appeal Division

We received relatively few complaints about the Appeal Division in 1992. The Appeal Division is hearing appeals and making decisions within an appropriate period of time.

The legislation now provides that decisions of the Appeal Division are final and may be reconsidered only if new evidence becomes available that the worker could not previously have obtained. This change means that there are limited grounds on which we may recommend that the Appeal Division reconsider a decision.

However, the Board of Governors gave the Appeal Division the authority to reconsider decisions of the former commissioners where there was an error of law or a violation of the *Canadian Charter of Rights and Freedoms*. We requested reconsideration of a number of complex cases which met these criteria. We are pleased to see that 71 percent of the cases we requested be reconsidered have now been resolved.

Workers' Compensation Review Board

Resolved	8
Abandoned, withdrawn, invest. not authorized	0
Not substantiated	0
Declined, discontinued	32
Inquiry	4
Total Files Closed	**44**
Files open Dec. 31, 1992	1

The Review Board has taken a number of steps in the past year to improve communication and clarify its procedures. The major unresolved problem is delay. One of the factors which prompted our public report in 1987 was that appeals to the Review Board were taking 24 months to complete. In 1992, decisions still took up to 16 months in some, albeit fewer, cases.

The Review Board has set up an Inquiry Pilot Project which was to start in early 1993. Its purpose is to fast-track decisions on some appeals and to ensure that other appeals are ready when they go to a full hearing. Improving the turnaround time will be a challenge. It will be important to assess whether the delays arise only from the volume of appeals, from administrative problems, or both.

The Review Board has introduced simplified appeal forms in plain language. The forms give the time limits for filing documents and submitting information to be considered in the appeal.

Criminal Injury Compensation

Resolved	12
Abandoned, withdrawn, invest. not authorized	1
Not substantiated	0
Declined, discontinued	24
Inquiry	5
Total Files Closed	**42**
Files open Dec. 31, 1992	4

The Criminal Injury Section of the Workers' Compensation Board provides compensation for victims of crimes. Although the section is administered by the WCB, it is accountable to the Attorney General while the WCB itself is accountable to the Minister of Labour.

Many of our complaints about the section involve outdated policies and delays in making claims decisions. The Attorney General is conducting a review of the program.

There has been a steady increase in the volume of claims over the last few years which has made it more difficult for the section to give decisions promptly. Decisions still take an average of 12 months from the date of the initial claim. Although most complaints to us were made by the applicant for benefits, we have also received complaints from psychologists about the effect of these delays on applicants' health. More staff have been hired in order to deal with the volume of claims and the section has made a commitment to reduce the backlog.

The section does not always give interim or temporary payments to assist the applicant until a final decision is made, although the *Criminal Injury Compensation Act* does allow for this kind of payment. In 1992, we received complaints from individuals who had not been advised that they could apply for interim payments. We understand that section staff have now been instructed to inform claimants of the possibility of interim payments. We will continue to monitor this issue.

The Attorney General has acknowledged the need for improvements in service delivery. He notes that the program was originally designed to make one-time only cash awards but is now trying to meet a wider range of the needs of victims of crimes. He also recognizes that the section has tried to adapt to these changes and has continued to introduce improvements. The Ministry of the Attorney General has indicated changes may come from his review.

Workers' and Employers' Advisers

Government has established independent offices to advise workers and employers on compensation issues. Staff at these offices assist with appeals and advise on general WCB policies and procedure, and on specific claims issues. We receive very few complaints about either of these offices. The services of the advisers fall under the Ministry of Labour and Consumer Services. The respective offices for workers and employers operate separately.

Statistics

Definitions

The choices of outcomes are outlined in the *Ombudsman Act.* Some of the words may have different meanings in different contexts. For that reason I have listed each outcome used by our office and given a brief description of what we mean by it:

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.

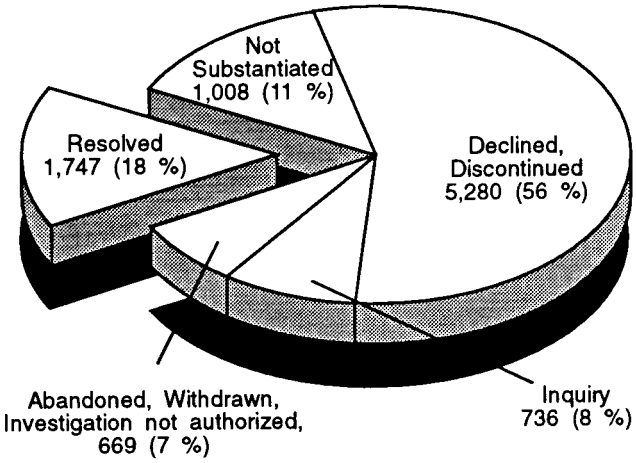
DISCONTINUED: An investigation was begun and then discontinued because of one of the reasons set out in section 13 of the *Ombudsman Act*.

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.

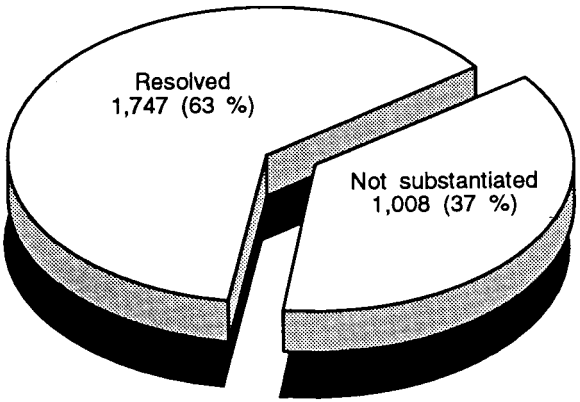
The entire text of the *Ombudsman Act* is printed in the final pages of this report.

Disposition of Jurisdictional Complaints

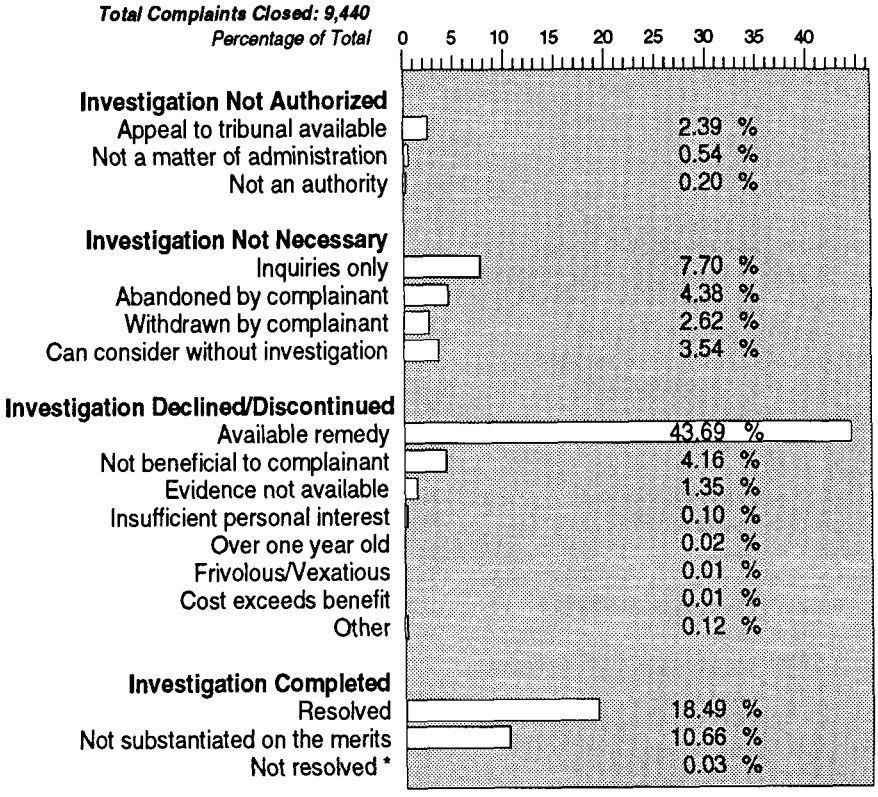
Complaints Closed in 1992: 9,440



Investigations Completed in 1992: 2,755



Detailed Reasons For Closing Complaints



Level of Impact of Resolved Complaints **

Change in practice recommended	117
Change in procedure recommended	19
Change in regulation recommended	3
Statutory amendment recommended	1
Individual only	1,607
Total resolved complaints	**1,747**

* The Office was unable to facilitate a resolution of complaints – one each involving the Motor Vehicle Branch of the Ministry of Attorney General, the Timber Management Branch of the Ministry of Forests and the Ministry of Agriculture, Fisheries and Food. These three complaints are grouped under the heading of "Declined/discontinued" elsewhere in this report.

** These figures do not reflect any changes in practices, procedures, regulations or statutes that may have been recommended as a result of an Ombudsman-initiated investigation.

Jurisdictional Complaints Handled in 1992

Authorities with the Highest Complaint Volume

(Complaints handled = the number of complaints closed plus the number open on December 31, 1992)

	Files Closed	*Files open Dec. 31, 1992*	*Total files handled*	*% of total files handled*
Social Services	3,525	778	4,303	36.48%
Attorney General	2,307	345	2,652	22.55%
Workers' Compensation Board	713	68	781	6.62%
Insurance Corporation of B.C.	683	48	731	6.20%
Health	353	188	541	4.59%
Labour & Consumer Services	244	74	318	2.70%
Family Maintenance Enforcement Prog.	267	11	278	2.36%
Environment, Lands & Parks	122	96	218	1.85%
B.C. Hydro & Power Authority	157	50	207	1.84%
Forensic Psychiatric Institute	88	76	164	1.39%
Forests	106	54	160	1.36%
Transportation & Highways	73	78	151	1.28%
Finance & Corporate Relations	88	59	147	1.25%
Advanced Educ. Train. & Tech.	94	39	133	1.13%
Education	25	77	102	0.86%
Municipal Affairs, Rec. & Housing	39	23	62	0.53%
Riverview	25	37	62	0.53%
B.C. Housing Management Commission	49	12	61	0.52%
Colleges	24	29	53	0.45%
WCB - Criminal Injuries Compensation	42	4	46	0.39%
Workers Comp. Review Board	44	1	45	0.38%
Agriculture, Fisheries & Food	25	19	44	0.37%
B.C. Council of Human Rights	26	12	38	0.32%
Universities — (SFU, UBC & UVIC)	26	9	35	0.30%
B.C. Ferry Corporation	22	12	34	0.29%
WCB Medical Review Panels	20	13	33	0.28%
Superannuation Commission	25	7	32	0.27%
B.C. Transit Authority	20	10	30	0.25%
Energy, Mines & Petr. Resources	18	8	26	0.22%
Hospital Boards Apntd by Exec. Coun.	22	3	25	0.21%
B.C. Assessment Authority	15	9	24	0.20%
Board of Parole	19	2	21	0.18%
Industrial Relations Council	14	4	18	0.15%
Agricultural Land Commission	12	5	17	0.14%
Other Authorities	108	79	187	1.59%
Total All Authorities	**9,440**	**2,339**	**11,779**	**100.00%**

Disposition Of Jurisdictional Complaints — 1992

	Resolved	Abandoned, Withdrawn, Invest. not Authorized	Not substan-tiated	Declined Discont'd	Inquiry	Total files closed	Files open Dec. 31, 1992
A. Ministries							
Aboriginal Affairs	**1**	**0**	**0**	**0**	**0**	**1**	**4**
Advanced Educ. Train. & Tech.	**26**	**19**	**7**	**25**	**17**	**94**	**39**
Students Assistance Programs	18	10	0	17	11	56	18
Job Training Branch	4	4	6	3	1	18	7
Other	4	5	1	5	5	20	14
Agriculture, Fisheries & Food	**8**	**3**	**7**	**4**	**3**	**25**	**19**
Attorney General	**578**	**169**	**519**	**954**	**87**	**2,307**	**345**
Coroners Service	0	0	2	2	1	5	7
Court/Sheriff Services	22	13	7	27	4	73	22
Criminal Justice/Crown Counsel	9	10	1	61	4	85	13
Land Titles Office	2	4	1	4	2	13	7
Legal Services to Government	0	0	0	1	2	3	1
Liquor Control & Licensing	1	2	3	4	0	10	6
Liquor Distribution Branch	0	1	0	1	0	2	2
Motor Vehicle Branch	47	7	93	17	15	179	34
Provincial Emergency Program	1	0	1	0	1	3	2
Public Trustee (Adult)	28	13	8	22	4	75	34
Public Trustee (Youth)	0	1	0	0	1	2	6
Correctional Services							
Inspection and Standards	0	0	4	4	0	8	0
Probation (Adult)	3	6	7	11	1	28	1
Probation (Youth)	4	3	3	2	1	13	14

Disposition of Jurisdictional Complaints, 1992, *continued*	*Resolved*	*Abandoned, Withdrawn, Invest. not Authorized*	*Not substan-tiated*	*Declined Discont'd*	*Inquiry*	*Total files closed*	*Files open Dec. 31, 1992*
Family Court Counsellors	8	5	1	15	11	40	18
Adult Institutions	378	96	324	683	32	1,513	119
Youth Institutions	68	6	62	90	2	228	17
Other							
Elections Branch	0	0	1	1	0	2	1
Film Classification	1	0	1	0	0	2	1
Firearms	0	0	0	0	0	0	1
General/Other	5	1	0	8	6	20	36
Police Services	0	0	0	0	0	0	1
Priv. Invest. & Secur. Agencies	0	0	0	1	0	1	1
Public Gaming Branch	1	1	0	0	0	2	1
Economic Dev., Small Bus.	**2**	**2**	**0**	**0**	**4**	**8**	**7**
Education	**1**	**3**	**0**	**11**	**10**	**25**	**77**
Energy, Mines & Petr. Resources	**5**	**6**	**2**	**2**	**3**	**18**	**8**
Environment, Lands & Parks	**20**	**30**	**27**	**30**	**15**	**122**	**96**
Crown Land Policy & Management	5	7	8	3	0	23	25
Waste Management	2	2	3	2	2	11	7
Water Management	6	5	4	6	5	26	17
Wildlife Management	4	6	4	5	0	19	7
Other	3	10	8	14	8	43	40
Finance & Corporate Relations	**21**	**7**	**30**	**20**	**10**	**88**	**59**
Consumer Taxation	4	0	8	1	3	16	4
Real Property Taxation	7	2	6	7	1	23	18
Registrar of Companies	1	0	3	2	0	6	8
Other	9	5	13	10	6	43	29

Forests	**20**	**35**	**28**	**13**	**10**	**106**	**54**
Service Contracts	5	7	4	0	1	17	7
Timber Management	3	19	8	4	6	40	19
Other	12	9	16	9	3	49	28
Government Services	**2**	**0**	**2**	**3**	**0**	**7**	**4**
Health	**137**	**46**	**46**	**56**	**68**	**353**	**188**
Alcohol & Drug Programs	1	6	3	1	1	12	7
Commun. and Fam. Health (Adult)	7	7	3	3	7	27	8
Commun. and Fam. Health (Sewage)	5	2	3	1	0	11	15
Continuing Care (Comm.Care Serv.)	4	3	2	1	3	13	13
Forensic Psychiatric Services	2	1	2	8	1	14	7
Long Term & Ext. Care Facilities	1	1	1	11	2	16	13
Medical Services Plan	69	11	23	6	24	133	35
Mental Health Division (Adult)	7	2	3	3	5	20	8
Mental Health Division (Youth)	9	1	0	2	1	13	2
Pharmacare	5	3	2	14	2	26	9
Other	27	9	4	6	22	68	71
Labour & Consumer Services	**22**	**45**	**28**	**124**	**25**	**244**	**74**
Compensation Advisory Services	1	1	0	6	1	9	0
Employment Standards	13	23	23	27	12	98	13
Residential Tenancy Branch	7	15	3	87	9	121	49
Other	1	6	2	4	3	16	12
Municipal Affairs, Rec. & Housing	**5**	**8**	**9**	**11**	**6**	**39**	**23**
Home Ownership Assistance	1	0	4	2	0	7	8
Inspector of Municipalities	0	0	0	4	0	4	7
Safety Engineering Services	0	0	2	3	2	7	1
Other	4	8	3	2	4	21	7

Disposition of Jurisdictional Complaints, 1992, *continued*	*Resolved*	*Abandoned, Withdrawn, Invest. not Authorized*	*Not substan-tiated*	*Declined Discont'd*	*Inquiry*	*Total files closed*	*Files open Dec. 31, 1992*
Social Services	**536**	**182**	**211**	**2,332**	**264**	**3,525**	**778**
Family & Child Services	228	75	65	51	96	515	409
Income Assistance Division	265	97	139	2,268	132	2,901	260
Other	43	10	7	13	36	109	109
Tourism	**0**	**2**	**0**	**0**	**1**	**3**	**2**
Transportation & Highways	**35**	**12**	**7**	**9**	**10**	**73**	**78**
Highway Constr. & Maintenance	19	7	3	3	2	34	36
Highway Engineering & Design	5	0	2	2	2	11	10
Service Contracts	2	2	2	2	1	9	7
Other	9	3	0	2	5	19	25
Subtotal Ministries	**1,419**	**569**	**923**	**3,594**	**533**	**7,038**	**1,855**
Percentage of files closed	20%	8%	13%	51%	8%	100%	
B. Other Authorities							
Agricultural Land Commission	2	3	1	2	4	12	5
B.C. Assessment Authority	1	3	4	4	3	15	9
B.C. Building Corporation	1	2	1	1	1	6	6
B.C. Council of Human Rights	4	1	5	15	1	26	12
B.C. Ferry Corporation	2	5	3	7	5	22	12
B.C. Gaming Commission	1	0	1	2	0	4	2
B.C. Housing Management Commission	9	5	17	10	8	49	12
B.C. Hydro & Power Authority	8	7	1	136	5	157	50
B.C. Lottery Corporation	1	3	0	1	0	5	9
B.C. Racing Commission	0	0	1	2	0	3	2
B.C. Railway Company	0	2	1	0	0	3	3
B.C. Securities Commission	0	1	1	2	0	4	1
B.C. Transit Authority	3	3	0	10	4	20	10

Board of Parole	2	0	7	9	1	19	2
Colleges	3	5	2	9	5	24	29
Dental Technicians Board	0	0	2	0	0	2	2
Emergency Health Services Commission	3	2	0	2	2	9	4
Family Maintenance Enforcement Prog.	24	2	0	234	7	267	11
Forensic Psychiatric Fac. - Maples	3	0	1	4	0	8	2
Forensic Psychiatric Institute	27	4	13	44	0	88	76
Forensic Psychiatric Services Comm.	1	0	2	0	0	3	1
Hospital Boards Apntd By Exec. Coun.	6	3	2	4	7	22	3
Industrial Relations Council	1	1	7	4	1	14	4
Insurance Corporation of B.C.	7	9	1	619	47	683	48
Motor Carrier Commission	2	2	0	5	1	10	5
Public Service Commission	0	0	0	2	2	4	0
Purchasing Commission	1	1	1	1	0	4	2
Riverview	5	2	3	14	1	25	37
Superannuation Commission	12	1	6	2	4	25	7
Universities — (SFU, UBC & UVic)	4	5	0	7	10	26	9
WCB - Criminal Injuries Compensation	12	1	0	24	5	42	4
WCB Medical Review Panels	5	2	0	13	0	20	13
Workers Comp. Review Board	8	0	0	32	4	44	1
Workers' Compensation Board	166	23	1	455	68	713	68
Other Boards, Tribunals, etc.	4	2	1	10	7	24	23
Provincial Adult Care Facilities Lic.	0	0	0	0	0	0	1
Subtotal Other Authorities	**328**	**100**	**85**	**1,686**	**203**	**2,402**	**484**
Percentage of files closed	14%	4%	4%	70%	8%	100%	
Subtotal Ministries	**1,419**	**569**	**923**	**3,594**	**533**	**7,038**	**1,855**
Percentage of files closed	20%	8%	13%	51%	8%	100%	
Total All Authorities	**1,747**	**669**	**1,008**	**5,280**	**736**	**9,440**	**2,339**
Percentage of files closed	18%	7%	11%	56%	8%	100%	

Complaints Against Unproclaimed Authorities

Colleges and Provincial Institutes	8
Hospitals and Hospital Boards	65
Government Corporations	1
Islands Trust	9
Law Society of British Columbia	19
Municipalities	154
Professional and Occupational Associations	37
Public Schools *	114
Regional Districts	66
Universities	2
Total Closed **	475

* Schools and school boards were proclaimed "jurisdictional" November 1, 1992. All complaints continued to be recorded under the unproclaimed category up to December 31, 1992.

** Note: 568 complaints were received against unproclaimed authorities in 1992. Some of these complaints remained open into 1993 for an informal review in cooperation with the unproclaimed authority or for a formal investigation with respect to a school and school board complaint following proclamation in November 1992.

Non-jurisdictional Complaints/Inquiries Closed

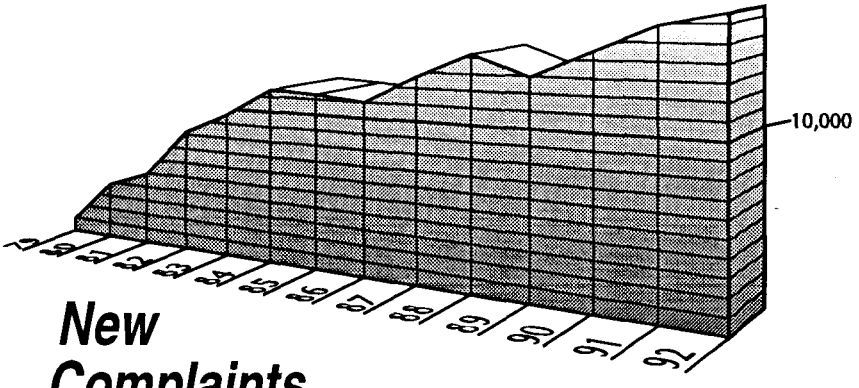
Federal Government	879
Other Governments Outside B.C.	65
Landlord - Tenant/Accommodation	1,672
Consumer or Business Transactions	1,375
Professional's Actions	203
Employment or Trade Union Matters	305
Police	230
Miscellaneous Non-jurisdictional Bodies	489
General Information	867
Total Closed *	6,085

* The number of non-jurisdictional complaints/inquiries closed may differ from the intake figure because complaints may be re-coded upon closing.)

Complaints/inquiries Received and Closed

From 1979 to 1992

Year	Complaints Received	% Change From Previous Year	Complaints Closed	% Change From Previous Year
1979	924		256	
1980	3,840		3,941	
1981	4,935	29	4,765	21
1982	8,179	66	7,979	67
1983	9,534	17	9,762	22
1984	11,462	20	11,343	16
1985	11,308	-1	12,018	6
1986	11,012	-3	11,185	-7
1987	12,712	15	12,406	11
1988	14,184	12	13,704	10
1989	12,936	-9	12,815	-6
1990	14,580	13	14,451	13
1991	15,924	9	15,494	7
1992	16,496	4	16,019	3



New Complaints Received, 1979-1992

Disposition of Jurisdictional Complaints / Inquiries

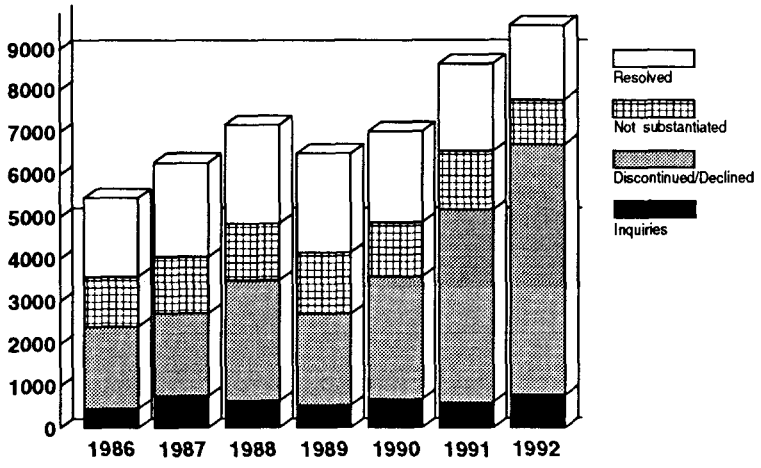
From 1983 to 1992

	1983	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*	*1991*	*1992*
Resolved *	1,556	2,053	2,267	1,833	2,231	2,324	2,319	2,156	2,152	1,747
	34%	36%	39%	34%	36%	33%	36%	31%	25%	18%
Not Substantiated	1,123	1,264	1,245	1,178	1,332	1,337	1,462	1,284	1,366	1,008
	24%	22%	21%	22%	21%	19%	23%	18%	16%	11%
Declined/ Discontinued	1,927	2,390	2,322	1,961	1,962	2,842	2,166	2,900	4,598	5,949
	42%	42%	40%	36%	31%	40%	33%	41%	53%	63%
Inquiry				467	754	640	539	697	620	736
				9%	12%	9%	8%	10%	7%	8%
Total	**4,606**	**5,707**	**5,834**	**5,439**	**6,279**	**7,143**	**6,486**	**7,037**	**8,736**	**9,440**
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

* The decline in the percentage of complaints "Resolved" — and the corresponding increase in the percentage of complaints "Declined/discontinued" — in 1991/92 reflects changes in complaint handling arrangements with certain authorities, particularly with respect to Income Assistance complaints against the Ministry of Social Services. Most complainants in this area were referred back to a District Supervisor who has the discretion to deal immediately with most concerns.

Note: Complaints previously detailed as "Not resolved" on this table are now included under "Declined/discontinued."

Disposition of Jurisdictional Complaints / Inquiries



Jurisdictional and Non-jurisdictional Complaints/Inquiries Closed

From 1979/80 to 1992

	Total Complaints Closed	*Jurisdictional*		*Non-Jurisdictional*	
		Number	*%*	*Number*	*%*
1979/80	4,197	1,888	45	2,309	55
1981	4,765	2,757	58	2,008	42
1982	7,979	4,128	52	3,851	48
1983	9,762	4,606	47	5,156	53
1984	11,343	5,707	50	5,636	50
1985	12,018	5,834	49	6,184	51
1986	11,185	5,439	49	5,746	51
1987	12,406	6,279	51	6,127	49
1988	13,704	7,143	52	6,561	48
1989	12,815	7,318	57	5,497	43
1990	14,451	7,862	54	6,589	46
1991	15,494	9,361	60	6,133	40
1992	16,019	9,459	59	6,560	41

Appendices

Appendix 1

Excerpts from the Report of the Special Committee to Appoint an Ombudsman

July 2, 1992
To the Honourable,
The Legislative Assembly of
British Columbia,
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Members:

We have the honour to present herewith, the Report of the Special Committee to Appoint an Ombudsman. This all-party Committee was established on March 17, 1992 to provide the Legislative Assembly with an unanimous recommendation pursuant to the *Ombudsman Act.*

Respectfully submitted on behalf of the Committee,

Jan Pullinger, MLA	Doug Symons, MLA
(Cowichan-Ladysmith)	(Richmond Centre)
Chairperson	Deputy Chairperson

Composition of the Committee

Members

Ms. Jan Pullinger, MLA	Cowichan-Ladysmith (Chairperson)
Mr. Doug Symons, MLA	Richmond Centre (Deputy Chairperson)
Mr. Michael Farnworth, MLA	Port Coquitlam
Mr. Dale Lovick, MLA	Nanaimo
Ms. Shannon O'Neill, MLA	Shuswap
Ms. Jackie Pement, MLA	Bulkley Valley-Stikine
Mr. Paul Ramsey, MLA	Prince George North
Mr. Dennis Streiffel, MLA	Mission-Kent
Mr. Art Cowie, MLA	Vancouver-Quilchena
Mr. David Mitchell, MLA	West Vancouver-Garibaldi
Mr. Lyall Hanson, MLA	Okanagan-Vernon
Clerk to the Committee	Ms. Joan L. Molsberry,

Acknowledgements

The Committee was pleased with the intense interest in the position of Ombudsman for British Columbia and it would like to thank the 421 women and men who applied for this position. The Committee received applications from people from a wide variety of cultural and professional backgrounds and it notes the excellent credentials of those who applied.

The Committee would also like to express its appreciation to Ms. Joan L. Molsberry, Committee Clerk, for her very able assistance to the Committee in fulfilling its mandate.

Process

The Committee was created on March 17, 1992 with the following terms of reference:

> That a Special Committee be appointed to select and unanimously recommend the appointment of an Ombudsman, pursuant to Section 2(2) of the Ombudsman Act, and that the Special Committee so appointed shall have the powers of a Select Standing Committee and is also empowered:
> (a) to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
> (b) to sit (i) during any period in which the House is adjourned and during any sitting of the House, and
> (ii) to adjourn from place to place as may be convenient;
> and shall report to the House on the matter referred to it during this Session, or following any adjournment of the House, or at the next following Session, as the case may be . . .

The Committee at its initial meeting, elected to carry out the process of selecting a new Ombudsman itself rather employing a consultant. As a result, the proposed budget was set at $22,200.00. Final costs are expected to be $21,000.00.

A number of documents were prepared internally for the Committee's use and were subsequently approved by the Committee to facilitate the process of selecting an Ombudsman.

1. Candidate Profile

This document described the minimum qualifications and experience prospective candidates should possess. Categories included personal qualifications, technical and managerial knowledge, experience, skills related to decision making, administrative, leadership and mediation. Academic preparation was also a factor. Effective leadership, flexibility, interpersonal sensitivity, tolerance to stress, public orientation, planning and organizing, and assertiveness were key elements the Committee determined were essential.

2. Position Profile

Established in 1977, the Office of the Ombudsman has been filled by two individuals. The Ombudsman Act confers upon the Ombudsman the authority to investigate any complaint relating to a matter of administration involving any department or agency of the British Columbia government. The Ombudsman has also investigated administrative actions of bodies whose members are, either all or in part, appointed by legislation or by order of the Lieutenant-Governor-in-Council, a Minister of the Crown or by any combination of these.

The position profile was created by the Committee to reflect the activities of the Ombudsman as well as the provisions of the Ombudsman Act.

3. Advertisement

Approved by the Committee and included in Appendix A of this Report, an advertisement was prepared to evoke the widest possible response among British Columbians to become the Ombudsman for their Province. Readership within British Columbia, according to the Committee's communication strategy, was meant to reflect the cultural, ethnic and linguistic diversity permeating every corner of the Province. Advertising consumed 90 per cent of the Committee's total budget.

The newspaper advertisement, which was placed in all daily newspapers in British Columbia on two separate dates and with one placement in two national newspapers, solicited 421 applications from across Canada as follows:

- 212 applications from within British Columbia

- 209 applications from outside British Columbia
- 68 applications from women
- 353 applications from men

4. Preliminary Applicant Screening Matrix

In order to determine who should proceed to an interview with the Committee, the preliminary applicant screening matrix was prepared to enable a methodical, systematic and fair way of screening all applications. Scoring was based upon three main categories: knowledge, skills, and recognition.

5. Final Applicant Screening Matrix

This document contained a variety of attributes and essential qualifications surrounding the judicial system in British Columbia; knowledge of the Province and its people, an understanding and appreciation for parliamentary democracy, administrative practice, investigative procedures, public relations, knowledge of the government of British Columbia, communication, decision-making, administrative, leadership, academic, time management, mediation skills, and the recognition of the candidate at the community, provincial, national and international levels. Each attribute was further delineated according to personal, professional, technical, and managerial qualifications. The Committee found this method a most productive, sensitive, and efficient way of handling the vast number of applications with equity.

6. List of Questions

The Committee compiled 17 questions to be asked orally by Members at the interview and revolved around the following issues: the role, functions and duties of the Office of the Ombudsman including knowledge of the Ombudsman Act; vision, parliamentary democracy, mediation, and recognition among their peers, as well as demonstrated skills required to satisfy these issues. Candidates were asked the same initial questions followed by spontaneous questions from all Members of the Committee. This process allowed all Members to participate during the interviews by focussing and expanding upon responses by the candidate.

7. Case Study

The Committee considered it essential to develop a case study for applicants to be interviewed. Certain facts and nuances relating to a hypothetical complaint brought to the attention of the Ombudsman was circulated to selected candidates. The intention of this case study was to elicit a written response, supplementing oral questions during the proposed interview that would assist the Committee in determining a unanimous recommendation to the House. Once advised of the Committee's intention to invite selected individuals for an interview, the case study was sent to them for an immediate written response; and placed in the hands of the Members prior to the interview. The Committee concludes that this component of the selection process is of considerable importance and value, and a deciding factor at arriving at its recommendation. The case study was based partly in fiction and partly in fact, and as a result can not be included in this Report for your consideration due to issues of confidentiality.

8. Selection Process

Of the 421 applications submitted, 71 met the initial screening criteria. Six candidates were chosen from this initial screening to be interviewed by the Committee.

Interviews were conducted over a period of a week utilizing a standardized list of questions to be directed by the Committee to the candidate, a case study to which a written response was to be prepared by the candidate and available for Members of the Committee prior to the respective interview, and an applicant screening matrix to provide fair and objective evaluation of each candidate interviewed. Two candidates were interviewed a second time.

9. Press Releases (2)

The Committee distributed two press releases in an effort to keep the public informed as to the progress of the Committee's work. Both documents, in total, reached over 1,800 destinations in the Province.

Observations

The Committee and all candidates interviewed, were uncomfortable with the use of the term "Ombudsman." Alternatives suggested by Members of the Committee and applicants were: Ombudsperson, Ombud, Parliamentary

Commissioner, Advocate General, Public Counsel, Public Defender, among others. The Committee recognizes the origin of the term but nevertheless supports a review of it.

Enabling Members of the Legislative Assembly to participate in the selection of the Ombudsman, now an integral thread in the fabric of British Columbia society, serves both the public and the Legislature well. Other jurisdictions throughout the country offer the same approach which has resulted in the appointment of a non-partisan, neutral, determined, and sensitive individual to the position. Canvassing other Ombudsman offices across Canada has resulted in an appreciation for the necessity of an Ombudsman, given the complexity of governments at all levels today, and the need for the availability of recourse.

Recommendation

The Committee unanimously recommends that Ms. S. Dulcie McCallum be appointed Ombudsman for the Province of British Columbia, pursuant to Section 2(1) of the Ombudsman Act.

Appendix 2

Proclamation Outreach: Speaking Engagements

Including Consultations With Schools, School Boards And Other Education Partners

SEPTEMBER

September 10	Meeting with Executive of the B.C. Association of Principals and Vice-Principals
September 14	School Superintendents' Retreat Lunch Guest Speaker
September 25	B.C. Association of Principals and Vice-Principals Association Board of Directors Meeting
September 25	B.C.Confederation of Parent Advisory Councils Board Meeting

OCTOBER

October 13-14	Education Advisory Council Meeting
October 16-17	Chapter Council Meeting of the Principals and Vice-Principals Association
October 20	Meeting with B.C. Teachers Federation
October 21	B.C. Principals and Vice-Principals Association representatives Gordon Moffat and Frank Roemer with Children and Youth Team
October 22-25	Kelowna Provincial Leadership Conference hosted by the Confederation of Parent Advisory Councils
October 23	Nanaimo Island Chapter of Superintendents
	Associations including Superintendents most Island School districts and Powell River
October 23-24	South Coast Branch Meeting B.C. School Trustees Association, Gibsons for School Districts #46, 47, 48
October 24	Mainline-Cariboo Branch Meeting of B.C. School Trustees Association, Lillooet

October 23-25	Vancouver Island Branch Meeting of B.C. School Trustees Association, Campbell River for School Districts #61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 84, 85
October 28	Victoria Assoc. for Community Living....Linda
October 28	West Kootenay Branch Meeting of B.C. School Trustees Association, Castlegar for School Districts #7, 9, 10, 12
October 28	Metropolitan Branch Meeting of B.C. School Trustees Association, Vancouver for School Districts #36, 37, 38, 39, 40, 41, 42, 43, 44

NOVEMBER

November 2	Association des parents francophone de la Colombie Britannique, Executive Meeting
November 3	Victoria School District Senior Administrators Meeting
November 5	Secretary Treasurers' Zone Meeting, Victoria
November 6	Ministry of Education with Children and Youth Team
November 6	Joint Okanagan Labour Relations and Okanagan Branch, Regional Meeting of the Trustees Association for School Districts # 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 77, 89 cancelled due to travel problems
November 9	B.C. Council of Administrators of Special Education, Vancouver
November 10	Langley School District Administrative staff
November 12	B.C. Peer Counselling Project meeting with Children and Youth Team
November 17	Richmond District Parents Advisory Council
November 21	Assoc. des parents francophone de la Colombie-Britannique, Regional Representatives Meeting
November 23	Special Education Teachers, Surrey School Board
November 25	Metropolitan Superintendents' Association
November 28	B.C. Youth Council

DECEMBER

December 3	Saanich School District meeting with Administrators
December 7	B.C. Teachers' Federation
December 8	Child and Youth Council, Kitimat
December 9	CUPE Executive

Appendix 3

Summary of Participation on Committee of the College of Physicians and Surgeons

In August 1991, a representative of the Office of the Ombudsman 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 published a comprehensive report, *Crossing the Boundaries*, in November 1992. This report made 97 recommendations to the college on issues relating to the definition of sexual misconduct, education of physicians, the college and the public, the process used by the college to investigate, resolve and adjudicate complaints and the principles to be applied when the college disciplines its members.

One of the principal issues in the report was the way in which the college treats complainants. The committee concluded that the college had placed more responsibility than is appropriate on the shoulders of complainants. Instead of making it easy for legitimate complaints to be brought forward, the college often placed hurdles in the way. The report states:

> *"There is a very good reason why the college must pay attention to the needs of these people at this critical stage: the college cannot police itself without their help. This concept cannot be overemphasized. These are in many cases very vulnerable people facing an extremely difficult process and yet unless they are willing to undertake that process and follow it through to the end, the College of Physicians and Surgeons will be hamstrung in its efforts to do its job of protecting the public from unethical practitioners. Without a complainant, the college cannot act. This has to be a major concern for all of the vast majority of physicians in this province who have the best interests of their patients and their profession at heart."*

The report emphasizes the importance of providing both complainants and physicians with substantial and timely information, and allowing complainants to participate in the process. There are many recommendations aimed at improving the college's procedures at all stages of the disciplinary process. Some recommendations will require legislative change.

This Office will continue to be interested in the college's efforts to implement the recommendations contained in the report.

Appendix 4

Administrative Fairness Checklist

Information/Communication

1. Public Information: Is it available and understandable? Yes ___ No ___
2. Access to Information: Do public requests for information receive a prompt response? Yes ___ No ___
3. Initial Contact Information: During the initial contact, do individuals receive an adequate explanation of the role of the agency, the worker, other staff, procedures, entitlements, benefits, eligibility criteria and other options? Yes ___ No ___
4. Forms: Is the purpose of each form clear? Are individuals provided immediately with copies of all forms and statements they've signed? Yes ___ No ___
5. Letters: Is all correspondence clear and written in plain language? Yes ___ No ___
6. Courtesy: Are all individuals treated with courtesy and respect? Yes ___ No ___

Physical Facilities/Accessibility of Services

7. Telephone Access: Are numbers of calls and message-returns monitored? Are ringing telephones answered promptly? Yes ___ No ___
8. Personal Access: Is the population being served able to access our premises? Yes ___ No ___
9. Physical Facilities: Do they adequately incorporate acceptable standards for accessibility by persons with disabilities, for the health and safety of staff and visitors, for privacy of communication? Yes ___ No ___

Decision Procedures

10. Confidentiality: Is policy in this area adhered to? Are informed consents obtained when confidential information must be shared? Yes ___ No ___

11. Opportunity to be Heard/to Respond: Are parties affected by a decision given an adequate opportunity to present evidence in support of their positions? Yes ___ No ___
12. Timelines: Are decisions and actions made promptly? Yes ___ No ___
13. Reasons: Are affected parties provided with adequate reasons for decisions and actions? Yes ___ No ___

Appeal, Review and Complaint Procedures

14. Appeal Information: At the time decisions are made or actions taken, are individuals informed of all available internal and external avenues of appeal, review and complaint? Yes ___ No ___
15. Complaint Procedures: Are there clearly defined complaint procedures at all levels? Are there procedures for actively inviting public suggestions for improvements in service? Yes ___ No ___

Organizational/Management Issues

16. Labels for Roles/Procedures: Do labels clearly and simply describe the function performed? Yes ___ No ___
17. Definition of roles/Procedures: Is there any way to combine, separate or re-organize what we do to achieve a higher quality of service delivery? Yes ___ No ___
18. Inter-Agency/Professional Coordination: Would policy or procedural adjustments in our relationship with other community or government agencies improve service quality and fairness to the public? Yes ___ No ___

Program Review and Planning

19. Outside Involvement in Program Planning: Are affected individuals and groups invited to participate in the planning of program initiatives and modifications? Yes ___ No ___
20. Appeal/Complaint Data Use in Planning: Are appeal, review and complaint data incorporated in the planning and review of our programs and policies? Yes ___ No ___

Appendix 5

Report on Participation in Community Panel to Review Child Protection Legislation

From January to October of 1992, the Deputy Ombudsman co-chaired the Community Panel that was set up to review child protection legislation in British Columbia. His involvement came as a result of the emphasis the Office of the Ombudsman has placed on issues affecting children and youth. Panel members travelled throughout the province meeting publicly and in private with citizens to gather their ideas and opinions on the current child welfare laws and programs that support children and their families. The panel submitted its report *Making Changes — A Place to Start* to the Minister of Social Services in October and it was released to the public in December. The panel set down the following principles which guided its work and should form the basis for change:

- **Dignity and Respect**: All people are entitled to be treated with dignity and respect.
- **Inclusiveness**: We are a pluralist society and there must be equality for all people. Equality can only be achieved by the removal of historic barriers within the system.
- **Involvement**: Individuals must be involved in all decisions that affect their lives. Communities must be allowed and assisted to play their vital and supportive role in the lives of families and children.
- **Continuity and Stability**: The bond between birth parents and their children is never extinguished. Each individual has a right to continuity of relationships and to their religious and cultural heritage.
- **Equity**: The goal of government programs must be to ensure equity for individuals, families and communities.
- **Close to Home**: Services must be community-based, co-ordinated and integrated.

The panel then went on to make recommendations regarding poverty, community development, access to information, advocacy, support services, youth services, service delivery structure, guardianship, dispute resolution, child protection, alternative care, staff and legislative change. Many of the

recommendations are in keeping with the *U.N. Convention on the Rights of the Child* and Ombudsman Public Reports #22 and #24.

The aboriginal members of the community panel conducted a parallel process that was viewed as equal but separate and consistent with their traditions and future aspirations. Their report, *Liberating Our Children, Liberating Our Nation,* followed a similar consultation process with aboriginal people. Their mission statement was as follows: "We must harmonize man-made laws, legislations, policies and regulations with the Laws of Nature to meet our obligations to our children, our families and our communities."

A committee has been established by the Ministry of Social Services and legislation is expected to implement a number of the recommendations made by the panel. The panel made no claim to providing the recipe for fixing all that ails the child welfare system. What it attempted to do, however, was to listen to the people and communities of the province and provide a voice for people and communities to speak to government.

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.

* Section 7 of the schedule was proclaimed effective November 1, 1992

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