Ombudsreport 1993

Annual Report of the Ombudsman, Province of British Columbia

Highlights:

Guest Comments:

Public Reports Coming in 1994:

- *Listening*—the Review of Riverview Hospital.
- A follow-up report to *Public Report No. 22* on *Services to Children, Youth and their Families*, with special attention given to Advocacy for Children.
- A report on peer abuse in correctional facilities for youth.
- A report on the Ombudsman's experience with schools and school boards.

Message from the Ombudsman

Dulcie McCallum

It is with great pleasure that I introduce to you the new format for the 1993 Annual Report. Changing to a newspaper tabloid format is consistent with the efforts of my Office to make information available in a more accessible way, to reach a greater number of people and to produce materials for public dissemination in a cost-effective manner.

An important feature of this report is the centrespread that can be saved and reused as a poster. It outlines the steps people can take in dealing with complaints, and how and when to contact the Office of the Ombudsman. The back pages of the centrespread provide details of these processes, including the kinds of questions we will ask you when you contact our Office with a complaint, and a checklist of the elements of fairness.

1993 has been a particularly active year for our Office. The office space available for Victoria staff has been inadequate for some time. We devoted considerable time to planning and working towards a move in early 1994 to our new location at 931 Fort Street. We issued several public reports, including our report on the process leading to the Clayoquot Sound Land Use Decision *(Public Report No. 31)*, and on the investigation into allegations of abuse at the Jericho Hill School for Children who are Deaf and Hard of Hearing *(Public Report No 32)*. Both of these reports received considerable attention and are summarized in this Annual Report.

1993 marked the ongoing stages of proclamation of the new authorities. Since the first Ombudsman was appointed in 1979, the Office has had 280 agencies or authorities within its jurisdiction. During 1993, hospitals, colleges, universities and self-regulating professional and occupational organizations came within the jurisdiction of the Office. In early 1995 all forms of local government including municipalities, regional districts, and the Islands Trust will be proclaimed. This final stage of proclamation will increase the number of authorities to just over 2800.

Since our Office is not expected to grow in size in any substantial way, we have had to make many internal changes in order to deal with our caseload. One feature of this reorganization is a new way to report to those against whom we receive complaints. We are also working with government to educate staff on how to provide fairness at the front line. The Ministry of Social Services is taking the lead in reorganizing its internal reviews to assume responsibility within government, and to put our role into perspective for its employees and the public. We welcome any opportunities to work with government to train and educate its employees on fair administrative practices.

Ministries and Crown corporations have had the benefit of being investigated by the Ombudsman for over 13 years. During the beginning phases of proclamation it became apparent that many people in the new authorities have not had the experience of being held accountable for administrative fairness to an outside agency. Our work is very dependent on people bringing a matter of potential maladministration to our attention. Particularly when the individuals served by the public agency are in some way dependent, it is critical that people feel safe and confident to come forward with their enquiries and complaints.

In 1993, to assure this safety, we requested the Attorney General, the Minister of the Crown responsible for amendments to the *Ombudsman Act*, to amend the Act so that it provides protection against retribution. Details of that amendment, passed by the Legislative Assembly in the summer of 1993, are included in this Annual Report.

I have received a large number of speaking requests from the public, organizations and government. Portions of some of the addresses have been reproduced in this report. I want to thank you all for your kind invitations. Being available to consult and speak with people in communities and within government across the province is an important role for the Ombudsman.

1994 will mark the International Year of the Family. We will co-sponsor a conference with the University of Victoria, **Stronger Children—Stronger Families**, in June 1994. The conference is intended to breath life into the obligations to which Canada is signatory in the *UN Convention on the Rights of the Child* and to involve youth in an innovative and meaningful way.

I wish to thank those who have worked with and for the Office of the Ombudsman during 1993 for the contribution you have made in promoting fairness in the administration of public services.

Dulcie McCallum

Dulcie McCallum
Ombudsman for the
Province of British Columbia, Canada

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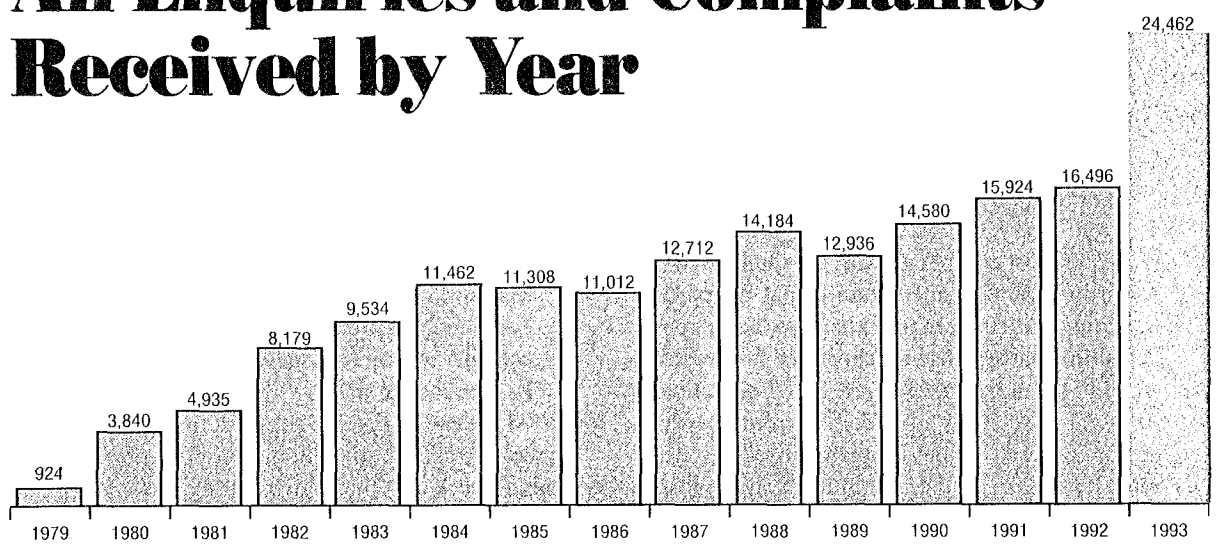
All Enquiries and Complaints Received by Year



Guest Comment

Portland at the Leading Edge: Police-Citizen Mediation Program

by Michael Mills
Ombudsman, Office of the Mayor, Portland, Oregon
at the invitation of the Ombudsman

Debate over how best to address concerns and complaints regarding the Portland Police Bureau has continued for many years, as it has in most large urban centers. Portland is a city of 460,000 people, the heart of a metropolitan area of 1.6 million. While the most common concern is usually the question of external versus internal oversight, Portland has looked at a number of different features ranging from how to measure performance of our "Community Policing" to restructuring the City's Police Internal Investigation Auditing Committee.

Until 1982 complaints from citizens against police were investigated almost exclusively by the Police Bureau's Internal Investigations Division. An ordinance in 1982 designated the City Council as the Police Internal Investigation Auditing Committee. This committee was granted responsibility to monitor and review the internal investigations systems utilized by the Bureau of Police. Citizens now had an opportunity to submit a "Request for Review," without a fee, for a review of alleged police officer misconduct.

Many people with complaints about police officers simply want an opportunity to be heard.

The City Council delegated its investigatory powers to Citizen Advisors, appointed by the Mayor and Council. The results of their hearings may be appealed to the City Council, and all results are presented to Council for their information.

Shortly after the creation of the Office of the Ombudsman in 1993, with the approval of the Mayor and the support of the Police Chief, a task force subcommittee was set up to explore dispute resolution by mediation. This process would provide an alternative for a citizen to seeking a review of an internal complaint investigation. The committee was made up of the Ombudsman, the Lieutenant in charge of the Internal Investigation Division, the heads of two police unions and the Neighborhood Mediation Center (a city funded mediation program).

Citizens considering mediation are advised that this option is an alternative to seeking a "pound of flesh" from an officer through internal discipline.

In planning how the process would work, a number of problems were anticipated and solutions sought. A key problem was how to proceed should the mediation fail. The committee made the following decisions:

- The mediation process is entirely voluntary and can be declined by the citizen or the officer; both will be fully informed of the consequences of accepting mediation.
- Should mediation fail, the citizen may not re-enter the complaint process and seek disciplinary action against a police officer through the Police Bureau investigation process. Although the citizen maintains the right to take the case to court, he or she cannot, by signed agreement, use information obtained through mediation.
- No disciplinary action will be taken against an officer as a result of mediation.
- If discipline of an officer is seen to be necessary because of the severity of the complaint or because of policy implications, the head of the Internal Investigations Division, acting on the authority of the Chief of Police, can decline mediation.
- No written agreements will result from the mediation. The most important written records to be maintained are the evaluations completed by the participants. These will be critical in the evaluation process to determine how the program should be refined or altered in the future.

Citizens considering mediation are advised that this option is an alternative to seeking a "pound of flesh" from an officer through internal discipline. It offers the opportunity to discuss their feelings and concerns with the officer face to face in the hope that both parties will gain a better understanding of each other's perspectives and interests. Many people with complaints about police officers simply want an opportunity to be heard.

Obviously the public may question the independence of an executive-appointed Ombudsman working for the Mayor, who is the Commissioner of the Police Bureau. Our Office can, however, establish a reputation of being fair and impartial. The creation of this dispute resolution system is a key example of fairness in action.

The first case submitted to mediation was recently completed successfully, and others have been submitted for case development. We continue to maintain a high expectation of the program results and anticipate the permanent adoption of our Police-Citizen Mediation Program.

Speech

Ombudsman a Mediator?

extract from a speech to the Ombudsmans of Canada Conference,
Toronto, Ontario, November 1993

What is the role of the Ombudsman in 1993? Is the Ombudsman really able to be a mediator? However the role is defined, it should be based on principles, paramount being that everyone is entitled to be treated with dignity and respect. People have the right to participate, and this includes persons who have traditionally been marginalized or disenfranchised because of poverty, violence, institutionalization, incarceration, or because of their age, race or disability.

Many years ago, an Ombudsman may have instinctively relied on a mediative approach. Are we able to articulate what it is in our repertoire of conduct that is consistent with principles of mediation and those which are not? Given the legislative framework of the Ombudsman, can we rely on a mediative approach without distorting what we mean by mediation or what it means to be an Ombudsman?

Increasingly we are struggling to ensure that those on the fringe have sufficient status, power and privilege to participate in a meaningful way.

There are several reasons why a mediation model works and several why it does not.

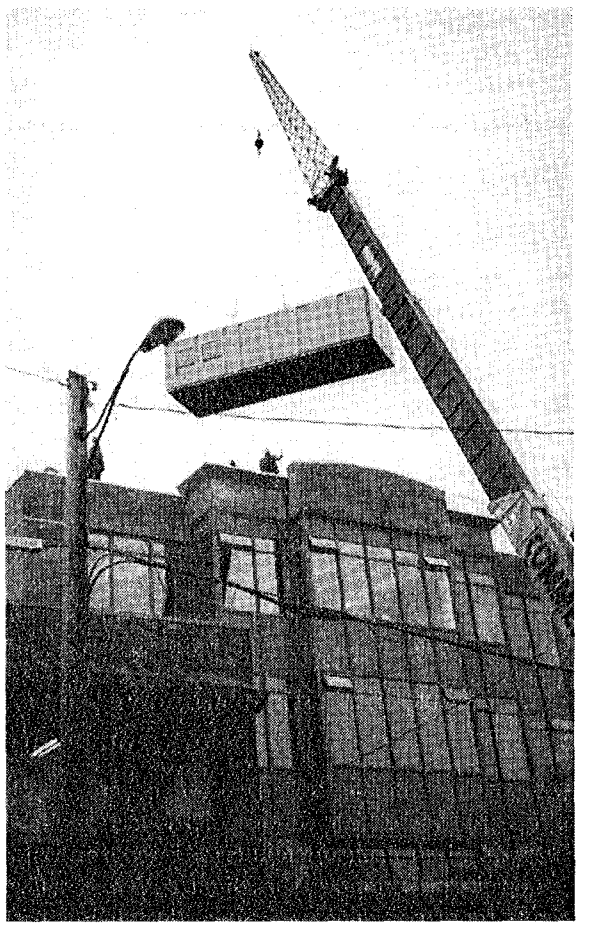
1. **There are very few exceptions to the rule that everyone must co-operate with the Ombudsman.** A starting point for mediation is that the parties need only participate to the extent they agree upon. Permitting parties this licence may be inconsistent with our statutory power to require co-operation.
2. **An Ombudsman is intended to monitor and explore ways in which government deals with those it serves in a fair and equitable way. Our first response is not to place blame but to mold solutions and press these resolutions upon the officials responsible for change.**
   Where administrative fairness requires it, rather than providing mediation, should our role not be to recommend that mediative services be available to the public?
3. **In the area of conflict resolution there are often power imbalances between parties. One function of the mediator is to "level the playing field."**
   Viewing the role of the Ombudsman as a mediator in this context makes some sense. Increasingly we are struggling to ensure that those on the fringe have sufficient status, power and privilege to participate in a meaningful way.
4. **Does assuming a mediation role compromise the independence of the Office of the Ombudsman?**
   The Ombudsman cannot be party to a mediated settlement that is inherently unfair even if the parties involved agree to it. In that respect the role of Ombudsman as mediator has certain limitations.

In order to avoid the pitfalls of mediation, certain guidelines should be put in place:

- use skilled, trained staff
- develop principles that are consistent with administrative fairness, and share them with the parties in advance
- develop an office protocol on mediation governing what happens when mediation fails and what information from mediation can be used in any subsequent investigation
- consider whether mediation powers can or should be delegated to staff

At the end of the day, the most important factor is to recognize both the limitations of mediation in Ombudswork and the value of using mediation skills from time to time to resolve complaints.

New Home for the Victoria Office



The Victoria office of the Ombudsman will move from Bastion Square, its home since the Office was first established, to this new building at 931 Fort Street, in 1994. The staff are looking forward to having space in an accessible, energy-smart, efficiently planned building.

Attorney General

AG Plus Team Report

The Ombudsman, through the Attorney General Plus Team, is responsible for investigating complaints in many areas. Many of these relate to programs administered by the Ministry of the Attorney General; however, as the "plus" implies, the team is responsible for handling complaints about other related areas as well.

The team deals with complaints about programs linked to the justice system, such as sheriff services, court services, probation, parole, the Coroner and adult correctional services. Complaints about the Coroner in relation to the death of a child, and youth correctional services are investigated by the Ombudsman's Children and Youth Team. The AG Plus Team is also responsible for investigating complaints about a number of boards and commissions, the B.C. Council of Human Rights and the Family Maintenance Enforcement Program. Changes in jurisdiction this year added professional and occupational associations to the list of bodies whose actions the Ombudsman may investigate. The AG Plus Team is responsible for the Law Society of B.C. and the Society of Notaries, among others.

The team handles complaints and enquiries about approximately 20 authorities. Some generate few complaints; others many. Not surprisingly, agencies whose decisions and actions affect almost every household in the province, such as the Motor Vehicle Branch and ICBC, give rise to many complaints. Nor is it surprising that programs having an impact on the pocketbook as well as the emotions, such as the Family Maintenance Enforcement Program, are also the subjects of frequent complaint. In addition, the Ombudsman receives complaints from inmates of twenty adult correctional centres around the province.

Many complaints should be resolvable with relative ease between the complainant and the authority, but not everyone is skilled at the art of complaining, and not all authorities are skilled at dealing effectively with complaints. Sometimes complainants are reluctant to go back to the ministry or organization about whom they are complaining, especially if they feel that a previous problem was not addressed fairly. However, we believe all agencies must accept responsibility for attempting to resolve complaints about them. Therefore we refer a number of complainants to the agency concerned, perhaps with information on whom to contact. We tell them that if this step fails to resolve the complaint to their satisfaction, they may contact our Office again. In some cases, by agreement with the authority and with the knowledge of the complainant, we pass on details of the complaint and ask that the authority deal directly with the complainant and let our Office know of the outcome. This provides us with an excellent way of monitoring the types of complaints being made against a particular authority. If similar complaints are repeated, it might indicate that the authority needs to address the cause of the complaints rather than to keep correcting individual problems.

A high priority of the Ombudsman is for authorities to have fair and effective mechanisms for dealing with complaints. We monitor these processes and work with the programs and agencies to enhance their ability to deal with inquiries and problems. We encourage them to introduce the needed systemic changes.

Respect for the Individual

The Office of the Public Trustee administers three programs: Services to Adults, Services to Children, and Estate Administration.

Many of the complaints directed to our Office about the Public Trustee concern the Services to Adults program, which works in the area of adult guardianship. The Public Trustee provides assistance to vulnerable adults in managing their financial, legal or personal affairs. Vulnerable adults include persons who have a mental illness, a mental handicap, a brain injury or a disease associated with the ageing process. The Public Trustee also reviews the accounts of private individuals who have obtained the legal authority to act as the "committee" or guardian for a vulnerable adult.

Under the new legislation the Office of the Public Trustee, to be renamed the Office of the Public Guardian and Trustee, will no longer automatically become the committee of a person certified unable to manage independently.

Complaints about this program often result when two or more persons close to the individual under care disagree about what they believe is best for that individual. Although family or friends can seek a court order for committeeship, this process is expensive, and a court application for private committeeship is more easily challenged by others with different opinions. When complaints are directed to our Office our role is often simply to facilitate communication between the Public Trustee, the vulnerable adult, and, where appropriate, those persons concerned about the individual's situation.

These types of complaints could often be avoided if people had, and exercised, a right to pre-plan. This right should soon be available in British Columbia. Over the past four years the Public Trustee has worked with a coalition of community representatives to reform the legislative framework that governs adult guardianship. This work culminated in mid-1993 with the passing of four laws, not yet in force: the *Representation Agreement Act,* the *Health Care (Consent) and Care Facility (Admission) Act,* the *Adult Guardianship Act,* and the *Public Guardian and Trustee Act.* As the four acts are phased in over the next three years they will replace the outdated *Patient's Property Act.*

Under the new legislation the Office of the Public Trustee, to be renamed the Office of the Public Guardian and Trustee, will no longer automatically become the committee of a person certified unable to manage independently. The legislation provides a range of options, including the right to pre-plan, the assessment of need for assistance, the provision of adequate support so individuals can make their own decisions, and limited and full guardianship.

Once the legislation is in place, full guardianship, with the Public Trustee or a private individual making all decisions on behalf of another, may often be avoided. A court-imposed guardian is provided for only as a last resort. The new system gives the individual and supportive family and friends a greater role in the decision-making process. Further, the legislation will require any person supporting and/or making decisions for another, whether by court order or not, to act according to the wishes, values and beliefs of that individual, rather than what the substitute considers to be her or his best interests.

Complaints about the Services to Children program, for persons under 19, are handled by the Ombudsman's Children and Youth Team. The Estate Administration program administers the estates of people who have died without appointing an executor in a valid will. The Public Trustee acts as Official Administrator of these estates and monitors the services provided by Deputy Official Administrators located throughout the province.

It's Safe to Say...

The Attorney General of B.C. is responsible for all legislative changes to the *Ombudsman Act.* A new section was added to our Act in 1993. The amendment provides protection against retribution. The effect is to make it an offence to contravene Section 15.1, thus highlighting the importance of protection for people who bring complaints to, or assist the Ombudsman.

15.1 No person shall discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Corrections Branch

The branch is responsible for the operation of twenty adult correctional centres, ranging from secure facilities to camps and community correctional centres. A large number of complaints are made by incarcerated people, whose lives are controlled by others to an extent not matched in society generally. A formal internal grievance procedure is available to all inmates, and we routinely recommend that complainants use it. We have found that some centres address grievances seriously and promptly, but others sometimes do not give them adequate care or attention. We have found instances when a response was not given in a timely fashion, or was not given at all. The Ombudsman continues to remind the Corrections Branch of our concern that an effective grievance process be in place to address the problems of inmates.

"Clothes" Encounter

Sometimes it is necessary to forcibly remove an inmate from his cell if, for instance, he has lost control and is hurting himself or damaging his surroundings. If this happens, the inmate is normally taken to a segregation unit. The Ombudsman found that it had been the practice at a Regional Correctional Centre in every such instance to cut off the man's clothing while he remained in handcuffs, and to leave him totally unclothed in the segregation cell for a period of time. The rationale given by senior staff was that this treatment tended to subdue the inmate.

There might be extreme circumstances that would occasionally necessitate this treatment. However, merely to quiet a person down, it was not acceptable deliberately to demean and discomfort him in this way, particularly if he no longer posed a threat to himself or others. At the Ombudsman's request, this practice was reviewed. New local policy now specifies that clothing is to be removed with shears only if the inmate refuses to co-operate in a strip search by a same sex guard. Unless it represents a clear danger, clothing must be provided the inmate immediately following the search.

Attorney General

Guest Comment

Policing in British Columbia: Commission of Inquiry

by Mr. Justice Wallace T. Oppal
Commissioner
at the invitation of the Ombudsman

The Ombudsman originally had jurisdiction to investigate complaints about the fairness of inquiries into police conduct. During the tenure of the first Ombudsman, a statutory amendment to the Police Act removed police from the jurisdiction of the Ombudsman. Since that time, we have continued to receive public input about the need for an impartial review of police.

The Commission of Inquiry into Policing was established by order in council in June 1992. The Commission is empowered to inquire into and report on issues related to policing, including:

- the role of the Attorney General
- the role and responsibility of Chief Constables
- the procedure for the investigation of public complaints
- the use of force
- the selection, training and promotion of police officers and the police response to gender, aboriginal, multicultural, visible minority and ethnic issues
- community based policing

Before embarking on a research plan, the Commission gathered public opinion through 57 days of public hearings. In addition, the Commission has received more than 1,000 written submissions.

The main issues of concern are public complaints, the use of force, recruitment and promotion methods, and community based policing.

Both the public and many police officers expressed concerns about the **public complaints** process and its accountability. The complaint procedure is governed by the *Police Act.* Under the Act a complaint against a municipal police officer may be lodged with the officer's department or with the Complaint Commissioner of the B.C. Police Commission. Although the Commission was created as a body independent of police, few members of the public are aware of that fact.

The public has four main objections to the complaint system.

1. The process is perceived to be biased in favour of the police.
2. The system is seen to be lengthy and overly legalistic, thereby discouraging to the public. There is no independent advocate such as an Ombudsman who assists a citizen.
3. The process is by definition limited in scope.
4. The RCMP, which polices a large part of the province, has its own public complaint procedure governed by federal statute.

In examining the public complaint procedure, two questions must be addressed: who ought to investigate the complaint? and who ought to adjudicate it?

It will be the task of the Commission to recommend a system that has the trust of the public and the confidence of the police, while maintaining rules of procedural fairness.

Many citizens feel that police on occasion use **excessive and unwarranted force.** Both the public and the police have told the Commission that more training is needed in the use of force. The Commission will make recommendations to government relating to this issue.

The Commission is concerned about processes for **selection, training and promotion** of police officers. Multicultural groups, visible minorities, women's organizations, gay and lesbian groups and aboriginal groups have complained about the selection criteria and the composition of police departments. They are concerned about both inadequate representation on police forces and police treatment.

The changing makeup of the province's population has made the selection methods of police officers a matter of some concern. Many citizens feel that our police forces no longer reflect the makeup of our communities.

Both visible minorities and women are under-represented on the police force in relation to their numbers in the general population.

The under-represented groups have not asked for special considerations. They have simply asked for an equal opportunity to participate in policing. The Commission intends to address this issue in a vigorous but fair manner in its recommendations to government.

The Commission has received many complaints about the insensitive way police treat victims of wife assault, sexual assault and child abuse. Many multicultural, women's, gay and lesbian and native groups have strongly suggested that initial and ongoing training of police should include sensitivity training and interpersonal skills. The Commission is including such recommendations in its report.

Both the public and the police believe that the crime rate is increasing. They feel that **community based policing** would address this problem by shifting the role of the police officer from incident-driven law enforcer to problem solver and facilitator. They would like to see police officers interact with the members of a community and listen to their concerns.

The Commission's final report to government on these important issues relating to policing is scheduled to be completed on May 31, 1994. The Commission's mandate is to make recommendations to government. Government, along with the policing community, will have the ultimate responsibility of implementing the recommendations.

The Ombudsman Goes that "EXTRA" Mile

The B.C. Lottery Corporation is responsible for government sponsored lotteries in the province. The Ombudsman receives a wide range of complaints—from would-be vendors, vendors, would-be buyers and buyers. But mostly they come from buyers. Unhappy buyers. And while we have often received complaints pointing to areas that need remedying, we have also received some that highlight the ingenuity of human beings.

A favourite topic is the "Extra." In this game the printed ticket has two sets of numbers: those for the main lottery and a second set for an extra draw.

A complainant did not want to buy the regular ticket – only the Extra. He was told that he had to buy both to get the Extra; if he wanted only one set of numbers then he could buy the main ticket. When he contacted the Ombudsman, we told him that if he was able to buy only the Extra and not the main ticket, then the Extra would no longer, by definition, be extra. The complainant thanked us for making the issue clear.

Returning Responsibility to the B.C. Council of Human Rights

We continue to receive about two complaints a month against the B.C. Council of Human Rights. All Ombudsman investigations of individual complaints are initiated through the council's Manager of Investigations with whom we have a good working relationship. Where he has the power to act, the Manager follows up quickly on our requests for copies of case files, consultation on individual complaints and specific action to deal with complainants' concerns.

As we reported in 1991 and 1992, complaints against the council usually concern unreasonable delays or other inadequacies in the council's investigations. Efforts to improve the quality and efficiency of investigations were reported in our 1992 Annual Report. While some progress has been made over the past year, it has been slow. The council continues to bear the brunt of criticism even though it may not be entirely in control of the solution. The main problem seems to be that the council's investigations are done by Industrial Relations Officers in the Ministry of Labour. Since the council does not have its own investigative staff, it cannot exert all of the quality controls over personnel selection, training, standards of accountability and supervision that would seem appropriate given the sensitivity and importance of its role.

If the council had full control over its own investigative staff, this might reduce the delays.

This change could result in the elimination of over half the complaints we receive against the council and would improve administrative efficiency.

Complainants who object to a decision of the council, such as not to investigate or hold a hearing, or a finding that a complaint is not substantiated, are advised that they may seek an order from the Supreme Court of B.C. under the *Judicial Review Procedure Act* to have the council's decision cancelled and the matter returned for reconsideration. Complainants may apply to the Legal Services Society for legal aid. In deciding whether or not to give assistance, the society will review whether an applicant has a reasonable chance of success. Currently, the council appears to be taking the position that it does not have the authority under its statute to re-investigate, review or reconsider its own decisions even if there are clear defects or errors on the face of the decision that would likely succeed on judicial review but may involve undue costs.

We think there ought to be enough flexibility under the *Human Rights Act* to allow for an accessible, speedy administrative review of decisions that have been flawed by significant procedural defects or errors.

These changes in procedure will be brought to the attention of Professor Bill Black of UBC, who will undertake a review of the *Human Rights Act* and its administration, in 1994.

Implementation of the above two changes would significantly reduce the number of complaints we receive against the council.

Attorney General

A Commitment to Fairness at ICBC?

ICBC is a common subject of complaint in general conversation among B.C. drivers. No one denies that maintaining affordable auto insurance requires effective cost controls, especially the control of claim payments. However, an excessive preoccupation with cost controls can shift the delicate balance between the responsibility to pay legitimate claims and the duty to resist paying fraudulent or exaggerated claims. Many claimants have complained that they were treated with undue suspicion and were presumed guilty until proven innocent. Many corporation staff privately acknowledge that claimants are not always paid what they should be since staff are under pressure to reduce claim payments whenever possible. This is despite the fact that ICBC is the Crown Corporation established to provide no-fault automobile insurance for the province.

Many claimants have complained that they were treated with undue suspicion and were presumed guilty until proven innocent.

Some of the more troublesome complaints received by the Ombudsman's Office concern the corporation's apparent failure to properly evaluate and pay Accident Benefits (no-fault benefits) as required by law. We regularly receive complaints that benefits are either not paid or are discontinued with limited, if any, justification. Even when a claimant has been rendered unemployable by an accident, advances on legitimate tort claims are frequently denied. Staff who are overzealous to achieve short-term financial restraint can actually undermine the corporation's stated goal of helping people recover as quickly as possible. Such denials have long-term cost implications, both in terms of health care funding and public acceptance of the corporation. In our view, the corporation must actively demonstrate respect, and concern for the health and rehabilitation of the injured party.

The corporation's resistance to paying claims is not based exclusively on the current wave of financial control measures. It is rooted in the corporation's legal obligation to defend its insureds against claims. This obligation puts it in an adversarial relationship with claimants who are also insured by ICBC. Here the corporation "wears two hats": *provider of benefits* to the claimant as an insured person and *adversary* of the claimant in defence of the other party.

ICBC...has chosen the slogan "Restore customer confidence"...

ICBC's last Annual Report lacks statistics on complaints received by the corporation's Public Enquiries Department. At one point the report asserts: "Affordability has always been the main cause of public dissatisfaction with vehicle insurance and ICBC ...," a statement consistent with the report's focus on financial matters. However, the affordability of insurance is rarely raised in complaints to the Ombudsman. The attitude of the public is affected much more by the quality and fairness of ICBC's services. The corporation is aware of customer dissatisfaction with its product and service. It is studying the situation and has chosen the slogan "Restore customer confidence" as an indication of how seriously it is taking the problem. As ICBC realizes, customer confidence cannot be restored simply through service enhancements, through returning phone calls more promptly, important though that is to customers. A claim that has been adjusted unfairly will not restore customer confidence no matter how politely it is handled. What has been missing at ICBC is a clear commitment, throughout the organization, to fair and effective claims handling, and an internal complaint process for the public. Our office is beginning work, likely to be concentrated in 1994, that will engage key management representatives in discussions on how to be more responsive and fair to the public.

The Right to Know

The Ombudsman assumed responsibility for the investigation of complaints about the Motor Vehicle Branch on September 1, 1993.

We have had several meetings with senior management at the branch, and have noted their efforts to respond quickly and with sensitivity to the issues we have raised. As a result of one such discussion, the branch has agreed to assign a staff member to resolve long-standing problems resulting from driver impersonation. A summary of this issue appears below.

Another continuing problem is the fairness of the procedures the branch uses when a driver's licence is suspended or prohibited. The vast majority of the complaints we receive are from people who drive for a living. Many of these people lack other job skills, and are effectively rendered unemployable when they are forbidden to drive. Clearly, the branch must take every possible step to ensure that all those who drive do so without risk to themselves or to other users of the road. However, since the consequences for those affected by these decisions are so serious, the branch must be scrupulously fair in the procedures they use, prior to withdrawing driving privileges.

Concerns about the medical fitness of the individual to drive are the basis for many of these suspensions and prohibitions. Naturally, the branch must rely heavily on information they obtain from the medical community. However, this information is not always disclosed to the individual concerned, even when a decision is wholly based on that information. Disclosure of the information on which a decision of this kind is based is a fundamental tenet of procedural fairness. Without knowing the information relied on in making a decision, an individual cannot provide an effective response to the branch. This issue, and others related to the procedure involved in decisions to suspend or prohibit a licence, are currently under discussion with the branch.

The Offending Driver Claims to Be You

Traffic offenders, when pulled over by the police, sometimes try to avoid penalties by claiming to be someone else. That "someone else" then receives an unexpected bill from the Motor Vehicle Branch. Until recently, the innocent victims of such impersonation were required to lodge a separate formal impersonation complaint with each police detachment that issued a violation ticket. This was a particularly complicated and frustrating process when several police departments were involved. Eventually, when they received the completed investigation reports of the various police detachments, the branch would correct the person's offence record.

Individuals who brought their impersonation complaints to the Ombudsman over the past year may have had an easier time. As an interim measure, our Office developed procedures to make it easier for complainants to communicate with police. We also made an arrangement with the Motor Vehicle Branch to suspend collection action and renew a driver's licence pending the completion of police investigations, in cases where the complainant's dispute would likely be supported. After much discussion, the Motor Vehicle Branch acknowledged that it was unfair to require the innocent victims of driver impersonation to do so much of the footwork necessary to resolve their disputes. They also agreed that the Ombudsman's Office should not be performing this type of service on an ongoing basis. The branch recognized that it was in the best position to co-ordinate the resolution of impersonation complaints. As a result, the branch developed its own procedures under the direction of its Manager of Investigations. Individuals with impersonation complaints will now receive from their local Motor Licensing Offices an information package with clear instructions, including follow-up procedures at the Motor Vehicle Branch Head Office. This development should significantly reduce the time-consuming procedures for those affected, as well as the contacts with our Office.

Residential Tenancy Act Amended

The Residential Tenancy Branch arranges arbitrations for residential landlord and tenant disputes.

In 1993, the *Residential Tenancy Amendment Act* was introduced. One very important amendment is the establishment of an arbitration review panel. Users of the system who are dissatisfied with the decision of an arbitrator can appeal to this panel. It will have various powers to remedy legitimate concerns. Currently, the branch is establishing the administrative machinery for the review panel, and they plan to have it operational by June 1, 1994. Many of the complaints we receive will be resolved through this new mechanism.

The branch administers a large number of arbitrations each year, and responds to many thousands of requests for information. The new legislation will likely increase significantly the demands on the resources of the branch. We trust that the needs of the consumers will be paramount in the design or redesign of the branch's services.

In 1994, we hope to see an improvement in the quality of our communication with the branch and the arbitrators. We have found it difficult to obtain both information and meaningful responses to service quality and other issues we have raised with them. For the first time in our history of investigating complaints about the branch, we have also been hampered by the refusal of some arbitrators to provide us with responses to complaints despite our clear authority under the *Ombudsman Act.* Discussions are ongoing on this important issue.

How the Ombudsman is Appointed

British Columbia appointed its first Ombudsman in 1979. The Ombudsman is selected by an all-party special Legislative Committee and appointed by the Legislative Assembly. The appointment is for a term of six years, renewable for additional terms. The Ombudsman is an Officer of the Legislature and as such is impartial, non-partisan and independent of government.

Attorney General

Crown Counsel's Role

Crown Counsel are the lawyers employed by the Criminal Justice Branch of the Ministry of the Attorney General to prosecute individuals who have been accused of criminal offences. Most of the complaints we receive have to do with Crown decisions that an individual should, or should not, be charged with a particular offence. The discretion of the Attorney General, through Crown Counsel, in deciding whether or not to charge is generally not subject to review by external agencies.

However, the Crown has introduced a public complaints process internally to deal with such issues. An individual may make a complaint to the Regional Crown, the senior lawyer responsible for all prosecutions within a particular region. Regional Crown will then investigate the complaint and provide a response to the complainant.

In some particularly serious cases the Ombudsman has intervened, with the consent of the Crown, to arrange meetings between the complainants and the lawyers involved. This has been very helpful in giving members of the public an opportunity to air their concerns, to be heard, and to undersand why certain actions were or were not taken. Often this helps people to put the past behind them. We have been impressed with the accountability and openness shown by senior members of the Criminal Justice Branch, and we appreciate their co-operation.

Ombuds*goal* 1

To put in place mechanisms that ensure our own practices are administratively fair.

Why Were Charges Dropped?

A teacher was accused by some of his female students of sexual assault. The RCMP were contacted, but it took some time before the Crown felt there was sufficient evidence to charge the man. Even after charges were finally laid, there were several changes in the counsel assigned to the case, resulting in further delays. Eventually, the Court of Appeal concluded that the charges should not proceed because the accused's rights to a speedy trial had been so seriously breached by the delays.

This decision left the women who had brought the accusation of abuse without a judicial resolution to their many years of distress. They speculated that the Crown Counsel had not believed their evidence, and feared that they might be blamed for the problem. As well,they felt that many of their questions about the prosecution had not been fully answered in their previous meetings with the Crown. We met with the women to discuss their concerns, and then arranged a meeting with the Regional Crown and one of the senior prosecutors involved in the case. The meeting was attended by four of the women and their counsellors, as well as representatives of the School Board and the Ombudsman's Office. The meeting was emotional but productive.

The women discovered that there were avenues they could have followed to address their concerns while the prosecution was underway, had they known of them. This lack of knowledge was all the more unfortunate because it seemed clear that had they known of these procedures and followed them, some problems might have been identified at an earlier stage while they could still influence the process. The Crown agreed that these avenues may not be adequately publicized. They have offered to work with the Ombudsman's Office to revise some of their brochures for victims of crime and to ensure that they are distributed to all concerned when charges are first laid.

We were also able to identify that although the Crown could not proceed against the accused on the charges that had been stayed, there may be other individuals who have not previously contacted the Crown with their allegations. In these cases, the Regional Crown Counsel may still be able to lay charges.

Maintenance Complaints Persist

The purpose of the Family Maintenance Enforcement Program is to collect, monitor and enforce court orders for maintenance and maintenance agreements filed with a court. The program is administered by a private agency under contract to the government, overseen by the Director of Maintenance Enforcement in the Community Programs Division of the Ministry of the Attorney General.

The Ombudsman's Office receives several complaints a week from both people entitled to receive maintenance and people required to pay it. The most frequent types of complaint concern communication breakdowns among creditor, debtor and program staff; the inaccessibility of program staff to resolve individual complaints; disagreement over the amount of arrears; unreasonable payment demands for arrears; enforcement errors; unwarranted or unnecessary enforcement action; lack of enforcement action; and unfair features of the program's design or legislation.

The Ombudsman's Office receives several complaints a week from both people entitled to receive maintenance and people required to pay it.

All new complaints to the Ombudsman's Office are examined immediately and handled in different ways. Individuals are referred to court if the remedy clearly lies in an application to vary or cancel a court order. Complainants with proposals for changing the legislation (and with no immediate personal matter requiring investigation) are advised to write to the Attorney General and their local MLA with a copy to our Office for information purposes. Virtually all other complaints are referred to the Director of Maintenance Enforcement for review and response directly to the complainant. The Director returns a written disposition report on each of the complaints referred. Our referral confirmation letters to complainants include an invitation to call our Office again if they are not satisfied with the Director's response.

Fortunately, this procedure appears to deal adequately with the immediate concerns of most people. However, the underlying sources of many of these complaints require a closer examination. As a starting point, beginning in the spring of 1994, we will be working with the Director's staff and the program's Managing Directors to prepare quarterly reviews of complaint patterns and the issues arising from them. Regular reviews may present opportunities to identify changes in legislation, policy, procedure or practice that might reduce the number and type of recurrent complaints.

Advocacy

Many people come to our Office thinking we will become advocates for them to pursue the position they wish to advance. It is important to distinguish between advocacy and ombudsmanship, and to recognize that the Ombudsman is not an advocate in the sense that a lawyer is. The role of the Ombudsman is to investigate complaints of unfairness objectively and impartially, and where complaints are substantiated to recommend change. Our role is to advocate for administrative fairness, which may or may not match the position advanced by a complainant. In some cases we might discover an issue that has not been raised by the complainant directly. We will still pursue this matter if we consider it important in encouraging government to have fair administrative practices.

Advocacy takes many forms. Persons might pursue particular objectives on their own behalf, or an organization or family might intercede on behalf of those they serve or care for. Advocacy is practiced by unions, families, professional service providers, friends and community non-profit organizations.

Many people consider that advocacy organizations simply promote the issues of single interest groups, and thereby discredit their efforts. I think it is important to see their work in a different light. Many advocates urge government and communities to consider the perspective of those who have been historically under-included. Many groups who have been marginalized or disempowered have found it increasingly important to work with advocates who support them. People require different kinds of supports to enable them to participate fully in the community. Children especially may need the support of advocacy to enhance their opportunities to be heard and respected.

Government has recognized the important role advocates can play in promoting a more inclusive and respectful society. Fair administrative practices can mean incorporating advocacy within government as in the positions of Advocate for Service Quality and the Businesswomen's Advocate, whose functions are described elsewhere in this report. Fairness also means responding appropriately to advocacy by providing people the opportunity to be heard and listened to. The role of the Office of the Ombudsman is to ensure that government is responsive to those who wish to participate in the design and implementation of policies intended to serve the public. The Ombudsman also can assist people working within government to recognize when they can be advocates for people or groups.

Children & Youth

Unique Role for Schools

In November 1992 the Ombudsman was given jurisdiction over public schools and school boards. Complaints about services to children are handled by the Ombudsman's Children and Youth Team. The enquiries and complaints we received about schools, 331 in 1993, fall into four categories:

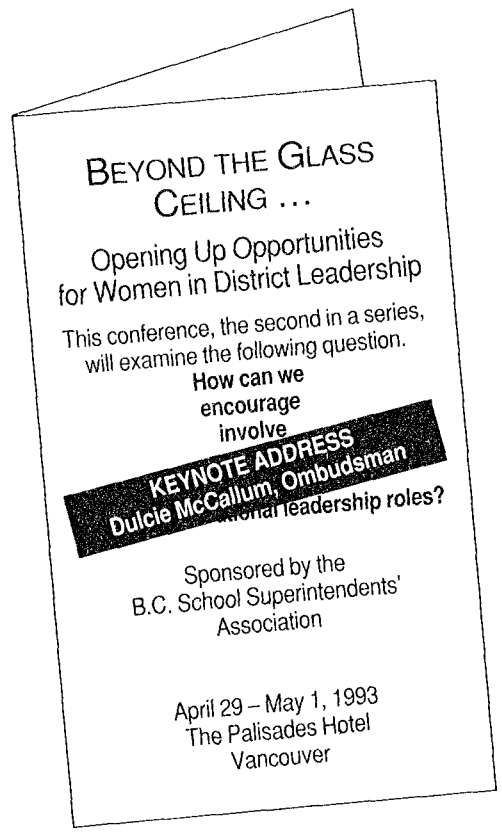
- inadequate resources to serve children who have exceptional needs
- disciplinary measures taken by school officials, especially suspension or expulsion
- teacher conduct
- school bus services and transportation

Complaints are generally initiated by adults, but the Ombudsman's investigation is child-centred.

Is the process the school used to address this concern fair? – is our key question.

Section 11 of the *School Act* requires school boards to establish procedures for students or parents to appeal a decision made by an employee of the board if the decision significantly affects the education, health or safety of a student.

We regularly encourage complainants to use this available remedy. We have circulated draft guidelines to all school districts for what we believe would be a fair appeals procedure. Many school districts have responded with helpful suggestions for modifications to these guidelines. The Ombudsman believes that children should be aware of their right to appeal, should have access to a clear process, and should be free from retribution. We plan to deal with these issues in 1994 in a public report reviewing our involvement in schools since proclamation.



Our work with the school system supports our experience in other jurisdictions that services for children need to be integrated if they are to meet children's needs.

Although we always direct people to use established complaint mechanisms, we have undertaken a number of investigations on behalf of complainants when there was no other available remedy, and when we believed some benefit could be obtained for the child.

A goal of our Office is to promote self-help and self-advocacy. As much as possible we encourage students, their parents and other natural advocates to resolve issues on their own. We give them information about their rights and the remedies available to them. We regularly encourage people to become active with their local and district Parent Advisory Committee and to seek support from other parents and students. Where appropriate, we contact young people directly to hear their views concerning a complaint.

Our experiences with school authorities have been challenging and respectful. Schools are in a unique position to provide role models for children in demonstrating the principles of democracy and fairness.

A parent of a child with a disability eloquently expresses the experience of many child advocates:

> ***We felt like a ping-pong ball getting bounced continually from one side of one ministry to the other side of another ministry. We are very tired of everyone passing the buck. As parents we are at the end of the rope. We are frustrated, stressed to the max, and spend every waking hour advocating for our child.***

Life's Not a Lottery

A parent complained that a school had awarded Passport to Education stamps to students on the basis of a lottery or draw instead of using overall school performance criteria. In addition to providing recognition for effort, the stamps were worth $250 towards college tuition fees. The school had only three stamps to issue to ten students with equal academic grade levels. The complainant felt that citizenship factors should have been considered in determining who received the scholarships, and that holding a lottery was not fair. His child had been active in sports and community service and was class president.

The Ombudsman contacted the authority and confirmed the information received from the parent. We also reviewed Ministry of Education policy guidelines for this program and found that they recommended using citizenship criteria as a tie-breaker when students had equal academic grades. The authority expressed concern that some would see the use of citizenship criteria as unfair because it was subjective and open to bias. We expressed the concern that youth could perceive the lottery process as meaning that effort did not count and that achievement was a matter of luck.

Ultimately, the authority provided the complainant's child with a cheque for $250, equivalent to the cash value of the Passport to Education stamp.

Children are People First

Past annual reports have identified problems with the way social and financial services are administered under GAIN, the *Guaranteed Available Income for Need Act.* Young people and their advocates continue to be confused by the inconsistent way the staff of the Ministry of Social Services interpret law and policies. This confusion is reflected in the number and complexity of complaints we received in 1993.

For children between the ages of 16 and 19 years, the social service system is confusing and gives inconsistent messages.

Often what appeared to be a complaint about income assistance turned out to be about family and relationship breakdown, and conflict between parent and youth about how to resolve it. Too often, when dealing with requests for service from youth, ministry staff fail to exercise their discretion. Too often, they treat young people as belonging to their parents, or to the system, as "chattel." Interventions are often guided exclusively by the wishes of the parent or professionals, without due regard to the views of the young person.

Ministry financial assistance workers tell us they are not well equipped to deal with youth issues. As well, case-load pressures and confused mandates result in inadequate service to youth and a lack of accountability. Too often, public service systems act in a discriminatory manner towards young people and fail to treat them as persons deserving of respect and dignity. This attitude is of particular concern when family relationships break down, when a young person's views or interests diverge from those of his or her legal guardian, and when, as a result, the young person seeks help and support from social services. These youth often lack the necessary education, skills or experience to support themselves independently. For children between the ages of 16 and 19 years, the social service system is confusing and gives inconsistent messages. This age group is generally viewed as too old for child welfare services but too young for adult services.

Many young offenders can attest personally to links between neglect, alienation and crime.

A thorough social assessment of an underage income assistance applicant may lead to a number of alternate service options, but too often the narrow scope of these assessments leads only to the youth being told to return home. When serious family problems exist, this may not be a viable option. Social service systems must provide young persons in these situations with a fair and caring review. When young people are not treated fairly they can become angry and alienated. Provincial correctional and mental health institutions are full of youth who have become alienated from adult authorities. Many young offenders can attest personally to links between neglect, alienation and crime.

Child advocates within and outside government must be vigilant to ensure that child welfare system approaches are not used to maintain children and youth as "chattel." In keeping with the ***United Nations Convention on the Rights of the Child,*** fairness requires that young people be treated with dignity, and that their views and interests be respected and carefully considered. The Ombudsman hopes that upcoming reforms to the *Family and Child Service Act* will address the inconsistencies and confusion in youth services.

When Children Die

The death of a young person from unnatural causes is a concern for the Ombudsman. We believe it is important to scrutinize closely deaths of children, for example by suicide or homicide, in order to learn what we can about preventing such tragedies. The Ombudsman has begun discussions with the Chief Coroner to develop a protocol between our Offices. We would like to review the recommendations the Coroner makes to public authorities concerning the circumstances leading to the death. This might help us understand what was happening in the child's life prior to the death, and how to prevent similar deaths in the future. The protocol will also assist us in monitoring how government responds to the Coroner in the case of deaths of children.

Children & Youth

Abuse of Deaf Students Investigated

One of the fundamental elements of fairness is the right to be heard. This is not a right reserved to those who communicate orally, relying on their ability to speak and to hear. It is a right that belongs to everyone regardless of the means by which they communicate. The children at Jericho who struggled to let their claims be known were ignored, discredited, and unsupported. Their claims were measured strictly on the basis of whether there was evidence sufficient to justify criminal charges being laid. The administrators responsible for Jericho seemed to consider only the criminal aspects of the reports. Few considered the importance of early, appropriate and fair intervention. This was an error.

The investigation into Jericho Hill School, like other reports emanating from our Office, documents the tragedies that occur for some children who are dependent on government services outside of their natural homes. It is hoped that this report serves as a further guide and an incentive to improve how we meet the needs of children in British Columbia, particularly their need to be safe, in the hope that such tragedies are not repeated.

These words are taken from a letter from the Ombudsman to the Minister of Education, and introduce *Public Report No. 32 – Abuse of Deaf Students at Jericho Hill School.* This report, released in 1993, concluded the investigation into abuse of children at B.C.'s only provincial school for deaf and hard of hearing.

An interim Report on Jericho was issued in June of 1992. The then minister responsible asked for suggested names for the Advisory group. Since that time, government has not acted further on this recommendation. One function for the Action Council would be to advise government before any changes take place regarding the management and construction of new residences for Jericho Hill students. The Ombudsman believes that this independent council could provide timely advice to government to ensure smooth transition of the management of the residences from the Ministry of Education to the Deaf community. The participation of the Action Council would ensure that the new residences are designed and constructed from the point of view of the deaf who will reside and work within them.

Recommendation:

- *that government appoint and provide resources to an independent Action Council made up of members of the Deaf community with a mandate to make recommendations to ensure fair access to all public services.*

In response to the Ombudsman's final report the Ministry of the Attorney General has appointed former Supreme Court Justice, Mr. Thomas Berger, Q.C., to review claims for compensation. Mr. Berger's appointment, as Special Counsel to the Attorney General, is unprecedented in British Columbia. He will make recommendations to the Attorney General on a process to resolve these claims on a non-confrontational basis. It is not necessary for individuals to have filed a report with police to be able to put forth a request for compensation to Mr. Berger. As with any vulnerable person, the Ombudsman supports the entitlement of those who choose to access Mr. Berger to be accompanied by a support person, a friend or an advocate.

We intend to review government's progress in implementing the recommendations regarding Jericho Hill School, and will summarize this review in our 1994 Annual Report. Our Office will release the Jericho Hill School Report in a video format in American Sign Language in 1994.

The complete report, *Public Report No. 32,* is available from the Office of the Ombudsman.

Principles underlying the report:

- All children and youth have the right to be valued and to be treated with respect and dignity.
- All children and youth have the right to understand, to be heard, to be listened to, and to access appropriate advocacy supports.
- All children and youth have the right to enjoy the fundamental human rights outlined in the *UN Convention on the Rights of the Child.*
- All children and youth have a right to a safe physical and emotional environment.
- All children and youth have the right to receive appropriate programs from adequately trained and properly motivated staff.
- All children and youth should have the opportunity to access publicly funded services as close to their home communities as possible.
- Deaf children are entitled to have their membership in Deaf culture recognized and respected.

Recommendations from the final report:

- that the government publicly acknowledge abuse occurred at Jericho Hill school in a forum and manner it considers fit
- a province wide protocol for Crown Counsel and Police should be developed to guide the process when dealing with abuse victims and witnesses with unique communications needs
- the government of British Columbia should introduce legislation to acknowledge that American Sign Language (ASL) is the language of Deaf culture and that it be recognized as a complete language
- government should take immediate steps to issue a clear commitment to non-confrontational alternative means of determining compensation to those who alleged abuse while residing at Jericho Hill School for the Deaf and enter into negotiations with the victims of abuse to determine an appropriate settlement of compensation

Children Should be Seen AND Heard

Children are our province's most valuable and vulnerable natural resource. But their perspectives are rarely sought, let alone heard, when public officials make decisions that affect them. Child advocacy is essential to safeguard the rights of this marginalized population. Believing in the inherent dignity of the child, the Ombudsman defines child advocacy as:

> **activities undertaken by self or others intended to ensure that the rights, interests and viewpoints of children are carefully considered and fairly represented in all matters that affect them. These advocacy efforts are particularly in relation to public policies and services and are directed at both individual and systemic issues.**

In 1990, *Ombudsman Public Report No. 22 – Public Services to Children, Youth and Their Families: The Need for Integration,* called for major reforms of children's services, including strengthened child advocacy. In 1993/94 the Ombudsman participated in the Task Force on Child Advocacy convened by the Ministry of Social Services. The task force was established following the report of the Community Panel on the *Family and Child Service Act.* With other Task Force members, the Ombudsman urged government officials to establish a provincial Child Advocate Office spanning all children's authorities. The Advocate would be an officer of the Legislature

Individual fairness and systemic reform of children's services will require strengthened advocacy within the public service, designed to empower young people and respect their views. The Ombudsman has long promoted integrated approaches among government departments serving children so that policies and programs are delivered in a more coherent, consistent and holistic manner. Current laws, policies and practices tend to divide children and their families into "functional" administrative components so that the mental health, social service and special education needs of a child are viewed separately. But to young people and their advocates, these needs are inextricably linked.

...the Ombudsman urged government officials to establish a provincial Child Advocate Office spanning all children's authorities.

Since October 1993, in preparation for the Ombudsman's promised follow-up to *Public Report No. 22,* the Ombudsman has met with hundreds of young people and their advocates from around the province to explore ways to strengthen child advocacy. To focus these discussions, the Ombudsman released a Discussion Paper, *Advocacy for Children and Youth In British Columbia.*

A "report card on children's services" will be made available to government sometime in 1994 with public release targeted for June 1994. A major theme of this report, the need for strengthened child advocacy, will reflect the ideas expressed to the Ombudsman by young people themselves.

Proposals from Advocacy Discussion Paper

1. Strengthened support to natural advocates and the removal of barriers to natural advocacy, such as the fear of complaining.
2. Reform of legal advocacy to ensure that children are heard and fairly represented as persons in all legal proceedings that affect them.
3. A *Children's Charter* that would detail the entitlements of children in one Act as part of a process of consolidating children's legislation.
4. A newly created Ministry and/or Cabinet level Commission exclusively concerned about children, to act as a fixed point of responsibility for child advocacy within the executive branch of government.
5. A separate Children's Ombuds or Advocate Office to represent the views and interests of children to the Legislative Assembly and to make recommendations to government on children's issues.
6. Discussions with First Nations to ensure that the particular advocacy needs of Aboriginal children are adequately addressed at this time when self-government is being negotiated.

Children & Youth

Remedy Sought for Historical Abuse of Children in State Care

The numbers of historical abuse complaints to the Ombudsman are steadily increasing. People reported that when they were children, residing in publicly funded facilities or homes, they were abused. Some reported the abuse to someone when it happened; others have never spoken of their trauma until now.

Many have identified this abuse while "in care" as the cause of serious problems in their adult years. Some have said they do not know how to be good parents. Some have said that because they were being abused, they could not concentrate at school, and therefore lack an education. Some have said that they have had difficulty forming healthy relationships as adults. Others have said they cannot trust. Some have turned to drugs or to alcohol to help them cope with their memories.

There is still an urgent need for government to establish a clear and fair process to deal with cases of historical abuse.

In view of the number and the nature of the complaints, the Ombudsman, in 1990, asked the government to establish a process that would respond fairly to anyone who reported having been abused as a child in state care. To date government has responded by:

- establishing a cross-ministerial Historical Abuse Committee
- amending the *Limitations Act* to enable those who were victims of sexual abuse to pursue civil litigation without time limitation
- providing some mental health services through the Residential Historical Abuse Program for individuals who were victims of sexual abuse while residing in publicly funded facilities
- paying small compensation claims to individuals who were victims of abuse after 1972 through the Criminal Injuries Compensation programs of the Workers' Compensation Board
- appointing former Supreme Court Justice, Mr. Thomas Berger, Q.C., to advise the Attorney General on a process to address claims for compensation from former students who were abused while attending Jericho Hill School for the Deaf

In each annual report since 1990 we have expressed the hope that the government would establish a process to deal with cases of historical abuse. We await a report from the Historical Abuse Committee as to what steps it believes government should initiate to respond to these complaints.

The Ombudsman believes that those who have come forward with historical abuse complaints about provincial government ministries and agencies have waited long enough for a non-litigious resolution. In 1993 we made the first formal recommendation to government to pay compensation to one individual who did not receive appropriate care from the Ministry of Social Services.

The individual had come into care as an extraordinarily fragile child who had suffered a horrendous ordeal. He had witnessed the murder of two family members, and had survived attempts on his own life. After a brief stay in a hospital under psychiatric care, the youth was sent to a foster home in an isolated area. The foster parents intimidated and belittled him. They threatened him with bodily harm and humiliated him in front of other children. Because of his past experiences, he believed that any action against a person was possible, no matter how horrific. The treatment he received shattered any self-esteem or sense of self that survived the original trauma.

Today this young man is working towards healing. He is fragile, but he is a functioning and contributing member of society. He is receiving support from the Criminal Injuries Compensation division of the Workers' Compensation Board for the physical injuries that disabled him. An important step for his recovery was to have the government, as the authority responsible for placing him in an abusive foster home, acknowledge that error and apologize to him. The young man also wanted compensation. He came to the Ombudsman with his concerns.

Some have said that because they were being abused, they could not concentrate at school, and therefore lack an education.

After investigating the situation, the Ombudsman agreed that government had failed to put a fair process in place to review his claim that while in the care of the state his needs had not been met. Therefore, we recommended that government pay him a modest sum of money as compensation for failing to provide appropriate care, a sum equivalent to his orphan's benefits.

Government said no. Their response was based solely on a strict interpretation of whether or not the state was legally responsible. Our position was that there was a lack of process constituting "maladministration," quite apart from whether there was legal liability.

The young man was devastated by the response of government. Accompanying this article, with his permission, is an exerpt from a statement he wrote after hearing the decision.

There is still an urgent need for government to establish a clear and fair process to deal with cases of historical abuse. We hope we will be able to report to the public the details of this process in our 1994 Annual Report.

"To be quite honest, I felt relieved after my dad freaked out. I thought I would not have to live in fear any more. Boy, was I wrong. I knew from the start I did not want to live at the foster home where I was sent. The foster parents yelled, screamed and threatened the kids every day. After I had been there a few days and watched what happened to some of the kids, I was scared for my life.

The overcrowding bothered me a lot too. At one point I had to sleep in a storage room with one foot of space between my bed and two others. I wondered what I did wrong to be treated this way.

The first time I went to see my dad who was supposed to be punished for killing two people, I was quite upset to learn that his living conditions and treatment were so much better than my own. He slept in a great big room with ten to fifteen feet between beds, with his own closet and chest of drawers. Staff treated him well and talked to him like a human being. They went bowling, had a big woodworking shop for hobbies, and even had pinball machines and a pool table.

All I did was work eight to ten hours a day. The foster parents humiliated me on more than one occasion. They threatened to cut off my ... if I didn't behave. They hit me and yelled at me and I started really fearing for my life. Just a few months earlier I watched my dad kill my whole family and now I was with people who treated me worse than he did, so I was in constant fear.

After I turned 19 I was well immersed in a life of drugs, constantly trying to make myself feel better. I had little or no self-esteem and had not been able to grieve over my loss because I was so worried about my own survival.

About five years ago I started seeing a doctor and began to realize if I had been put in a loving environment I would have been able to live at ease and work on dealing with what my father had done. When I first went to the Ombudsman, I thought that government was good. I thought after government heard my story and read the letter from my doctor stating that I had been damaged by the experience in foster care, that government would give me back the money they used for my maintenance and would apologize. Boy, was I wrong!

Government says it is not legally responsible. I have a hard time with that answer. Government took over my life, told me where to live, paid for my care out of my orphan's benefits, not to mention the work I put in at the foster home. What else am I supposed to think other than that I deserved all the emotional and physical abuse I got? Why was I treated worse than my father?

Sometimes I think about killing myself to make government listen, but I do not want to give it the satisfaction. The anger I feel from the disrespect, the immorality and total indifference I feel government has shown me is immense. I also feel like I have been punished for what my dad did and that government feels that is okay. This complaint to the Ombudsman was to help me heal and to feel better about myself, but it has turned out to be the opposite. I am hurting."

A Penny Saved Doesn't Make a Lot of "Sense"

A school district removed support staff from a classroom for children with disabilities and redistributed them throughout the district. As a result, a child who required a full-time support worker could no longer attend school. The child's parents contacted the Ombudsman.

When we contacted the authority we were told that a recently arbitrated contract settlement with teachers required the district to make changes in order to balance its budget. By reallocating staff they were able to serve more children with disabilities, but within the same budget.

These changes, while appearing to distribute limited resources more fairly throughout the district, had different impacts for children with different needs. For some it meant a reduction in the number of hours of individualized attention they received each week. For others it meant access to special supports not previously available. For our complainant's child it meant a total exclusion from school. This was not fair.

We are aware of an increasing number of children whose needs cannot be met because of budget restrictions.

The money we save today by not meeting the education needs of children with disabilities can carry a high price in the future as these needs continue to be unmet. We believe that all children are entitled to participate in the public school system. Making sure that services are available to enable them to participate is money well spent.

Finance & Employment

Consistency's the Aim - PSERC's the Name

The Public Service Employee Relations Commission, known as PSERC, is the successor to the Government Personnel Services Division. As the central personnel and labour relations arm of the government, it negotiates collective agreements with public service unions and establishes corporate policies for human resource management.

In 1992, the government commissioned Judi Korbin to investigate, broadly, the public service in the province. Ms. Korbin handed down her report in June 1993. Among its many recommendations was the creation of a new *Public Service Act*; a draft of which formed part of her report. The government quickly adopted most of the recommendations in the report and brought in a new *Public Service Act*, with the greater part proclaimed in September 1993. One of the significant changes is that PSERC, unlike its predecessor, is functioning as a centralized corporate personnel agency. We expect to see more of a focus on ensuring consistent personnel management policies across ministries. In the past, the Personnel Services Division, while promulgating policy, did not devote a lot of time to ensure that those policies were followed, and, as a result, personnel issues were dealt with quite differently from ministry to ministry.

Once PSERC was formed, they agreed to meet to hear our perspective on some outstanding systemic issues. That meeting is scheduled to take place early in 1994.

Most of the issues we deal with tend to involve excluded and management employees. The reason for this is that most public servants are unionized and the collective agreements provide for representation as well as mechanisms for resolving disputes, whereas excluded and management staff do not have these same protections. The most frequent complaints we receive concern the hiring process, the policies on short-and long-term illness, and the evaluation\termination process. Across the broad public sector, we receive about 300 personnel complaints a year.

Back in the Fold

Mr. B had been a government employee for 17 years with an unblemished employment record. One day, while Mr. B was on vacation, a fellow employee reported his suspicions that Mr. B had been involved in deceiving his employer. Since the allegations were serious, the employer consulted with a lawyer, who interviewed the informant. Upon his return from vacation Mr. B was interviewed by his employer and given an opportunity to tell his side of the story. However, the employer did not believe Mr. B's version and fired him. No one advised Mr. B that he had a right to have his Deputy Minister review the dismissal.

Mr. B sued. While waiting for his case to come to court he looked for work but was unable to find more than a temporary job; it is not easy to find work when you have been dismissed by your employer of 17 years for breach of trust. Mr. B was forced to re-mortgage his house when the rates were high in order to keep his family going.

Over a year after his dismissal, in preparation for trial, there was an examination for discovery. The sworn testimony given by the informant was not what it had originally been. The government recognized its mistake. Mr. B received a settlement of 16 months salary. But Mr. B was still unemployed and the settlement left him far back of where he might have been if none of this had occurred.

Mr. B visited the Ombudsman. During our investigation we discovered that agencies of the government were still sending correspondence alluding to the fact that Mr. B had been dismissed for breach of trust, but not stating that he had been exonerated. We intervened to stop the continuing unfairness. We approached Government Personnel Services Division (as it was then), and told Mr. B's story. We spoke of the unfairness. We told of a loyal employee of several years. We spoke of how his employment had been wrongfully stripped from him. We spoke of how a person's pride cannot be measured in terms of a legal settlement. We struck a chord. Soon after, GPSD found contract work for Mr. B with the government. And on Christmas Eve, 1993 the news came: GPSD had, with the assistance of the B.C.Government Employees Union, found a permanent job in government for Mr. B. He was back in the fold.

As It Should Be Done ☆

In the summer of 1986 Ms. J fell ill. She had been an auxiliary employee at St. Paul's Hospital for a year or so and had recently become full time. She was put on probation and was a month into her probationary period when her health failed. Since long-term disability benefits were not available to employees on probation, Ms. J just faded away.

In 1991 Ms. J wrote to the long term disability plan holder to ask for benefits. She was told that she did not qualify and that even if she did her application was four years too late.

Ms. J came to the Ombudsman. Hers was a confusing story. She was not sure what year she had last worked at St. Paul's. She was not sure why she had not applied for long-term benefits. Although not certain how we could assist her, we contacted the hospital to see if anything could be done.

The Director of Human Resources met with us. She had never dealt with our Office before and was unsure of our jurisdiction, but she listened to the complaint. She asked for time to review the file. Less than a week later she called us back. There had been a mistake, she said. Because Ms. J had been an auxiliary for more than a year she did not need to go through a probationary period. She was automatically full time, and had in fact been entitled to apply for long-term disability benefits. The hospital had erred. We were impressed with the Director's candour in admitting the error.

But the Director was not through. She was not content with simply uncovering the error; she wanted it remedied. She took the matter to the Hospital Board and asked them to right the wrong. They agreed. She took the matter to the Health Labour Relations Board and asked them to waive the time limitation. They agreed. Soon Ms. J was filling in her application for benefits.

All this within one week. All this because they acknowledged a mistake. All this because St. Paul's believed that when you make a mistake you fix it. That's doing it as it should be done. Take a bow, St. Paul's.

What a Difference a Year Makes

The B.C. Securities Commission regulates the securities industry in this province. Its twin goals are to promote investment growth and to protect investors.

In 1987, the Principal Group Ltd., a group of Alberta-based companies, collapsed. The Group sold investment contracts through two subsidiaries, and promissory notes through its trust company. Investors throughout Canada lost hundreds of millions of dollars. Our Office investigated the sale of investment contracts. In September, 1989 we released *Public Report No.19 -- The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers.* We found that the province had been administratively "negligent" in regulating the Group's investment contract companies. As a result of our recommendation the province paid out close to $24 million dollars in compensation.

We also investigated the sale by the Group of promissory notes in B.C. In October 1991 we released *Public Report No.28 – The Sale of Promissory Notes in British Columbia by Principal Group Ltd.* Although we did not find administrative negligence in this case, we made recommendations that would help prevent a similar tragedy recurring.

The 1992 Annual Report noted that the response of the B.C. Securities Commission to *Report No. 28* was unsatisfactory.

This year we are pleased to say that the Commission has taken steps towards implementing our recommendations. They have:

- developed a plain language information pamphlet for wide circulation
- provided toll free access for the public (through Enquiry BC)
- proposed legislative amendments to protect investors by restricting the availability of certain investments

We believe that with these and other recommendations the commission will be implementing, the likelihood of another "Principal Tragedy" has been lessened.

Persistence Brings "Back" Justice

A worker came to us when he was denied a pension by the Workers' Compensation Board. The board had determined that his back injury in 1957 and another in 1983 had not caused him any permanent disability. The worker also complained about the board's denial of a pension following his compensable knee injury in the early 50s.

The worker had already appealed the decision on his back claim to the Review Board and to the former Commissioners, and his representative had also unsuccessfully made an application for judicial review. The worker submitted a further medical report to WCB following the failed judicial review, that markedly differed from the medical opinion relied on by the board up to that point. The former Commissioners did not accept the specialist's report as significant new evidence and again rejected the request for reconsideration.

After investigation, we submitted to the Appeal Division that the former Commissioners had erred in law by refusing to follow their policy on significant new evidence, and therefore had failed to consider section 99 of the *Workers' Compensation Act.*

Regarding the worker's knee injury, we made a separate submission to WCB recommending a review of the earlier decisions on the basis of conflicting medical opinions of board doctors.

After obtaining further medical evidence, the board agreed that the worker's 1952 injury had accelerated the degenerative changes to his right knee and that the worker should be assessed for a permanent pension.

In the course of assessing the worker's knee impairment, the Disability Awards Medical Adviser also concluded that part of his disability was related to his 1957 back injury and to the cumulative effect of all his back injuries.

The Chief Appeal Commissioner determined that the recent medical evidence gave grounds for reconsidering the former Commissioners' decision. She found, on weighing the evidence, that the worker's 1957 back injury had significantly affected his current back disability. She therefore referred the file to Disability Awards to determine the worker's pension entitlement retroactive to the date his disability became permanent.

Finance & Employment

Guest Comment

Comment on Korbin

by John T. Shields
President of the BCGEU
at the invitation of the Ombudsman

On March 6, 1992, Premier Harcourt announced the formation of the Commission of Inquiry into the Public Service and Public Sector.

The government chose Judi Korbin as sole Commissioner, and she turned out to be an extraordinarily good choice. She quickly assembled an experienced staff. But her unique strength in accomplishing so much in the year allotted was her ability to involve management and unions, people with special expertise, and concerned individuals and groups, in working together towards the goal of an improved public sector. The effect of this in itself is helping to remold long established antagonisms into new working relationships.

To understand the Commission's work it is important to grasp the difference between public service, public sector and the broader public sector.

Public service refers to the government's 40,000 direct employees, who are hired under the *Public Service Act.*

Public sector is the much larger group of workers and functions paid for through provincial and municipal funds, about 260,000 people who provide services in education, health, Crown corporations, agencies and commissions, funded social services and municipalities.

The term broad public sector encompasses the whole spectrum generated by public funding. In all there are about 300,000 British Columbians in this group, 20 per cent of the provincial work force. About 60 per cent of the 1993/94 provincial budget of $19 billion goes to compensation of public sector workers.

The Korbin Commission worked for 18 months, producing a two volume final report containing three draft bills, two of which – the *Public Service Act* and the *Public Sector Employers Act* – were introduced by the government as proposed legislation and passed by the house.

Because the BCGEU represents workers in the public service and each of the groups within the public sector, we were closely involved with most of the project work of the Commission. In the public sector where our union has been organizing new members, we were keenly aware of the fragmentation and multiplicity of employers. There is little communication or co-ordination within sectors or between them. The Commission soon identified the fact that there are 2800 different employers and 500 different bargaining tables.

Public sector funding is budgeted through an individual ministry, such as health, to provide the service. The sectors have grown into hydra-shaped delivery systems, each with its own administration. The issue facing the Commission was to find the balance between the interests of the government that funds and mandates public bodies, and the functional autonomy of the agencies.

The Korbin Commission's key recommendation was the establishment of an employers' council consisting of a representative from each of the seven directly funded groupings within the public sector, seven representatives from government, and observer status for the municipal sector. While respecting the autonomy of the public sector employers, the new structure recognizes that the province provides the funds, and in the final analysis is held responsible by the electorate for its fiscal and policy choices.

The Commission further recommended that six sectoral groups – health, education K-12, colleges and institutes, universities, crown corporations and agencies, and social services – form employers' associations for their sector. The very act of co-ordination will force the sectors to address many of the issues identified by the Commission as needing attention.

During the Commission's tenure I was more personally involved with the work being done on the public service. The BCGEU had been in an almost decade-long series of campaigns to advocate for public service and against privatization. The union had experienced its public service membership fall from a high of 40,000 in the early 80s to 36,000 during the restraint program of the Bennett administration. As a result of privatization under Premier Vander Zalm the number tumbled to 27,000.

Along with the decline in numbers went a reduction in skill and capacity of the public service to meet public needs. The reduced capacity brought low morale. One of our objectives was to work with the Commission to find a way to renew the public service.

A major problem in the way of renewal was the practice of contracting that had grown up as part of privatization. An independent review done for the government by Peat Marwick identified 1446 contractors who were in fact and in law, actually employees who should have been hired under the *Public Service Act.* Determination of the appropriate status of the shadow public service was a question of law. Several expensive arbitrations were scheduled to hear the cases, but it was within the mandate of the Commission to find a more efficient remedy.

The Commission concluded that no framework exists within government to determine whether or not contracting generally, or specific contracts, provided good value for public expenditure. Recommendations were made to reconsider the terms of reference for the letting of consultant and commercial contracts.

The event that dominated the work of the Commission was the Forum held to address the issues facing the renewal of the public service. From March 10 to 12, 1993, approximately 130 participants including the premier, cabinet ministers, leaders of all the public service unions, deputy ministers, managers and line workers met with the Commission to chart a new direction for B.C.'s public service. This was the first such gathering in the history of the province. For all who attended it was a watershed experience.

Among the far-reaching recommendations that came from the Forum, was a call for a new *Public Service Act,* which the Commission proposed as the core of its recommendations. Another outcome of the Forum was the "Partnership Committee," an ongoing leadership group from government and the unions. This group has become a vital force in working for the renewal of the public service.

The draft act proposed in the Commission's final report is a model in Canada, promoting employment equity and career development. Its recommendations include responsive service to the public, encouragement of creativity and initiative, and promotion of harmonious relations between the government and its employees and their unions.

The draft act entrusted collective bargaining to be the means of balancing management and union interests in posting and promotion policies, staffing and recruitment, classification appeals and employment equity remedial policy.

Korbin's Commission of Inquiry into the Public Service and Public Sector left a substantial body of significant recommendations, but she also left a different legacy: a new spirit, a new atmosphere of respect and cooperation and a search for common interest among the principals in the public service. The public has seen the results in the 1994 round of bargaining between the government and the BCGEU.

The most significant contribution of the Commission may well be the inspiration Korbin imparted to solve old problems in a new way. She and her Commission can take credit for bringing out the best in many people who will continue to make a difference for British Columbia.

Just Be Clear

A worker complained to our Office after a Medical Review Panel composed of orthopaedic specialists found that his work injury in 1984 had caused no permanent disability. The panel found that the worker's psychogenic pain disorder had been **initiated** but not caused by the injury. We requested that the Appeal Commissioners seek clarification from the panel on the psychological aspect of the injury. The panel's response was that the psychogenic pain disorder had been **activated** but not caused by the injury. Since a worker is entitled to compensation if a work injury **precipitates or triggers** a disability, we requested that the former Commissioners consider the legal implications of that wording. We proposed that the former Commissioners refer the psychological aspect to a second Medical Review Panel composed of psychiatrists. In the interim, however, the B.C. Supreme Court considered the scope of Medical Review Panels and determined that WCB could not refer a matter to a second Medical Review Panel on the sole ground that a panel had made determinations on medical issues outside its area of specialization. The decision suggested, however, that there may be grounds for a second panel if there were ambiguous matters that would be resolved by another panel, or if it became apparent as a result of a panel's report that a second panel with different expertise was required.

... since a Medical Review Panel is final and conclusive on the matters certified, the reasoning of the panel should be clear and logically consistent.

The former Commissioners rejected our analysis that the wording of the certificate was ambiguous, and responded that the full intention of the panel could only be understood by analyzing the rest of the certificate and comments in the narrative report. The former Commissioners also took the position that our Office had "perhaps unconsciously" adopted certain views about what was the proper use of medical terminology, and understandings of the mechanics of pain, that were incorrect.

After the new Appeal Division came into effect, we requested that this decision of the former Commissioners be reconsidered on the grounds of an error of law. Our concern was that since a Medical Review Panel is final and conclusive on the matters certified, the reasoning of the panel should be clear and logically consistent. Moreover, although the panel decision is conclusive on the medical issues, the board has a duty to consider the causation issue as a legal question.

The Chief Appeal Commissioner subsequently determined that the wording of the certificate was ambiguous and that the former Commissioners had exceeded their jurisdiction when they attempted to resolve the ambiguity by imposing their medical judgment on the matter. She therefore referred the issue of the cause of the psychogenic pain disorder to a second Medical Review Panel composed of psychiatrists to make a final determination on the psychological issue. This resolved the complaint.

What She Can Say

Recommendations from the Ombudsman can be based on a decision, recommendation, act or omission of an authority that was:

- contrary to law
- unjust, oppressive, or improperly discriminatory
- based on a mistake of law or fact
- an application of arbitrary, unreasonable or unfair procedures
- otherwise wrong

Finance & Employment

Workers' Compensation Board

Many of the complaints we receive from workers about the board are about delays in having their complaints heard, and difficulties in communication. In 1993 we continued the effective referral system we established with WCB in 1990 to address these types of complaints. We refer the complaints to selected Board Managers and ask the workers to contact our Office again if they do not receive a response to their complaint from the board. We are happy to report that few complainants call us back.

We were concerned, however, when, during the third quarter of 1993 there was a 68 per cent increase over the second quarter in complaints about delay and communication. Ninety-six referrals were made to Board Managers in July, August and September 1993 alone, as compared with 152 during all of 1992.

... the Ombudsman Act requires workers to exhaust their rights to appeal and review available under the Workers' Compensation Act before we can conduct an investigation.

In November 1993 WCB reorganized its six claims units in Richmond into seven service delivery areas, each corresponding to a separate geographical area. Claims are now assigned based on the claimant's work place. Obviously, the reorganization has been effective, since, during the last quarter of 1993, there was a significant decrease in delay and communication complaints.

Several levels of appeal are available to workers under the *Workers' Compensation Act*. The first level is to the Workers' Compensation Review Board, an independent tribunal. If a decision of the Review Board is unacceptable, the worker may apply to the Appeal Division of WCB. If a claim involves a medical dispute, the worker has a further right of appeal to a Medical Review Panel.

What is sometimes confusing to workers is our refusal to investigate their claim. We explain that the *Ombudsman Act* requires workers to exhaust their rights to appeal and review available under the *Workers' Compensation Act* before we can conduct an investigation. If the complainant has a right of appeal we can refer her or him to Workers' Advisers, employees of the Ministry of Skills, Training and Labour, for advice or assistance. These individuals can provide services ranging from simply giving information to personal representation at a hearing.

We receive a few complaints from workers who have exhausted all appeals. These cases are frequently complex. Our ability to have these cases reconsidered by WCB is very limited. We are advising workers of this limitation while they are still in the appeal process.

Although complaints about other departments of WCB are infrequent, important issues about the Prevention Services Division of the board, formerly the Occupational Safety and Health Division, arise. This Division is responsible for investigating and imposing sanctions against employers who are found to be in violation of Industrial Safety and Health regulations. Our Office has received two serious complaints about the procedural fairness of board decisions not to impose sanctions against employers. One complaint is summarized below. Another complaint involves a serious industrial accident in which a new employee suffered severe injuries as a result of violations of safety regulations on lock-out procedures. A preliminary report has been written on this complaint and our concerns have been raised with the vice-president of the Prevention Services Division. We continue to seek a resolution.

Guest Comment

Advocacy for Women in Business

by Kathleen Costello
Businesswomen's Advocate
at the invitation of the Ombudsman

You don't have to be pushy, popular, look like a model or be rich to start your own business. A great idea, hard work, and good organizational skills are far more important!
from ***Step up to Success in Your Own Business.***

In 1992, 34.4 per cent of all business owners in British Columbia were women. The Ministry of Small Business, Tourism and Culture is committed to helping these women, and in April 1991 appointed the first Businesswomen's Advocate, Kathleen Costello. Her role is to increase women's participation in the start-up of new businesses and to improve their chances for survival and growth. She is asking women and businesswomen's organizations throughout the province for their input and assistance.

Trends across Canada show that businesses started by women have a higher survival rate than those started by men, but it is also true that women have a harder time getting into business in the first place, and need special support systems. Surveys indicate that women entrepreneurs have more barriers to overcome in running their businesses successfully, such as:

- difficulty in accessing financing
- lack of business training and information
- lack of encouragement from peers

The Businesswomen's Advocate produces a number of publications, including *The Women in Business Start-up Kit*, a guide for starting a successful business; *Step up to Success in Your Own Business*, a pamphlet to introduce the idea of entrepreneurship to young women in school; and *B.C.'s Business and Professional Women's Organizations – Networking Directory.*

These publications and further information are available from the Businesswomen's Advocate at:
Ministry of Small Business, Tourism and Culture
4th Floor, 1405 Douglas Street
Victoria, British Columbia V8V 1X4
Phone: (604) 356-5118 or Fax: (604) 387-5633

Workers Participate in Penalty Review Process

An Occupational Hygiene Officer had recommended a penalty of $15,000 against an employer for a number of violations of the Industrial Health and Safety Regulations on the identification and handling of materials containing asbestos. Several union workers were potentially exposed to airborne chrysotile asbestos as a result of these violations. The proposed penalty was cancelled following a meeting between the employer and WCB. A union representative complained to the Ombudsman that the union was denied permission to attend the penalty hearing.

Exposure to airborne asbestos poses a risk of developing a debilitating lung condition known as asbestosis, as well as lung or other cancers. Latency periods for these conditions can be lengthy, often in excess of twenty years.

WCB stated that the process had been fair, particularly to the employer, and that the board did not want to become involved in industrial relations disputes. We did not accept this position and carried out an investigation of the incident. In May 1992, we advised the board of our preliminary opinion that the decision to exclude the union was unfair, and proposed that workers and their representatives be entitled to participate in the penalty review process. We met with consultants commissioned by the Board of Governors of WCB to conduct an administrative audit of the Occupational Safety and Health Division. The Administrative Auditors endorsed our proposed recommendation in their report.

Exposure to airborne asbestos poses a risk of developing a debilitating lung condition known as asbestosis, as well as lung or other cancers.

WCB confirmed in December that it has adopted the practice of permitting workers and their representatives full participation in the penalty review process. This change in practice resolved the complaint. The Vice-President of Prevention Services also informed us that a draft amendment is being prepared for consideration by the board, even though such a step is not necessary to validate the procedural change that has already occurred.

Speech

Ombudsman Jurisdiction Extended

from an address by the Ombudsman to the Certified General Accountants and MLAs, April 1, 1993.

The establishment of the Ombudsman Office was never intended to diminish the role of MLAs. The Ombudsman operates within broad powers of investigation, and pursuant to a strict oath of confidentiality, neither available to elected members. Therefore, we consider the role of the Ombudsman and that of the MLA to be distinct but complementary. Both MLAs and the Ombudsman seek to ensure that the public is well served by government.

The schedule to the *Ombudsman Act*, to be proclaimed September 1, reads:

> *Governing bodies of professional and occupational associations that are established or continued by an Act.*
>
> **It must be stressed that our jurisdiction does not mean that our Office will replace the role of the governing body of professionals or that we will become a court of appeal for disgruntled citizens, unhappy with the decision of the professional association about one of its members.**

Extending jurisdiction to the governing bodies of professional groups means that where an agency is providing a service to the public,whether or not the service is itself publicly funded, and the service providers ... are governed ...under a provincial statute, the Ombudsman should be able to scrutinize the actions of the watchdog agency named under the enabling legislation.

What is fair is always context-specific. By that I mean, the litmus test for the decision-maker will depend on such factors as:

- what are the interests at stake
- who is the complainant
- what does the governing statute say
- what is the nature of the profession or occupation

Our advice is for professional and occupational associations to scrutinize their practices, policies and procedures for dealing with complaints from the public, to ensure that they balance fairly meeting the needs of their members and serving the public interest.

The 1993 Administrative Fairness Checklist

new and improved

The administrative fairness checklist was first produced in an annual report in 1990. Many people have found the checklist to be helpful. The following is a revised version that incorporates new ideas. Working with the checklist over the last three years has enabled the Ombudsman to refine in more detail the kinds of issues people ought to consider in asking what is fair?

Information and Communication

1. **Public Information:**
   Is information for the public available in a format that is understandable, that uses plain language and that is accessible by request or available in alternate formats such as audio-cassette, braille etc.
2. **Initial Contact Information:**
   During 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?
3. **Forms:**
   Is the purpose of each form clear? Are the questions asked appropriate under the *Human Rights Act*? Is the form in plain language and easy to read? Are individuals provided immediately with copies of all forms and statements they've signed?
4. **Letters:**
   Is all correspondence clear and written in plain language? Is correspondence available in other formats for people who are illiterate or marginally literate or blind?
5. **Courtesy:**
   Are all people treated with courtesy and respect?

Facilities and Services

6. **Telephone and Fax Access:**
   Are numbers of calls and message returns monitored? Are you able to leave a message by voice mail? Are ringing telephones answered promptly? Is there a 1-800 number available? Is there TDD/TTY access in place including a 1-800 number? Is there a publicized fax number?
7. **Personal Access:**
   Is the public able to access the premises? Is the front door level entry and automatic opening, are there wheelchair washrooms, is braille in the elevator? Is there designated wheelchair parking? Is the office child-friendly?
8. **Facilities:**
   Does the physical plant of the agency provide a safe and healthy work place? Is it designed to respect the public's right to privacy?

Decision Procedures

9. **Opportunity to be Heard and to Respond:**
   Are the parties affected by a decision given an adequate opportunity to present information and evidence in support of their positions?
10. **Timelines:**
    Are decisions made and actions taken within a reasonable period of time?
11. **Reasons for a Decision:**
    Are affected parties provided with adequate reasons for decisions and actions? Are the reasons communicated in a way that is meaningful and available to the affected parties?

Appeal, Review and Complaint Procedures

12. **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? Is this information provided to the person affected in a non-confrontational, respectful way? Are these rights brought to the attention of the public through posters and brochures?
13. **Complaint Procedures:**
    Are there clearly defined complaint procedures at all levels? Are there procedures for actively promoting public input for improvements in service?

Organizational Issues

14. **Labels for Roles:**
    Do labels and classifications clearly and simply describe the function performed, and are they appropriate?
15. **Reorganization:**
    Is there any way to combine, separate or re-organize what the agency does to achieve a higher quality of service delivery?
16. **Co-ordination:**
    Would policy or procedural adjustments in our relationship with other community or government agencies improve service quality and fairness to the public? What mechanisms are in place to encourage this kind of internal audit of practices? Is there an attitude that promotes continuous improvement?

Agency Review and Planning

17. **Consultation with the Public:**
    Are affected individuals and groups invited to participate in the planning of program initiatives and modifications? Is this consultation done in a meaningful and timely way? Is the way in which the final decision will be made, clear from the outset to the participants?
18. **Use of Statistics in Planning:**
    Are appeal, review and complaint data incorporated in the planning and review of programs and policies? Are there systems in place that accurately record and collate statistical information designed to evaluate and improve performance?

In the Eye of the Beholder

When B.C. residents write us complaint letters we encourage them to enclose all supporting documents, audio cassettes, photographs and various and sundry memorabilia. This information explains their problem as they see it, and provides support for their position.

Because we don't have the opportunity to visit all parts of B.C. as often as we would like, we have enjoyed seeing our complainants' worlds through their eyes.

The videos have included shots of complainants' homes, gardens, pets, children and neighbours. They provide invaluable insight into the details of the complaint to our Office. We treat the videos as part of a confidential complaint file.

If you have a complaint, please keep sending in your tapes and letters!

Why Are You Asking All Those Questions?

People who contact the Ombudsman's Office to initiate complaints or discuss concerns usually have some general understanding of the role of the Ombudsman. Not surprisingly, however, they are frequently uncertain about our procedures and the information we require. During preliminary discussions with complainants we are routinely asked:

- **Does the Ombudsman charge a fee for service?**
  No.
- **Will the Ombudsman be handling the complaint personally?**
  No. She delegates her investigative powers to her staff. She is responsible to oversee all matters.
- **Is it is necessary for the details of a complaint to be submitted in writing?**
  It is preferable. If a person is not in a position to do so, he or she will receive assistance on the telephone or in person.
- **What documentation should be provided?**
  Copies of all documents in the possession of the complainant that are relevant to the complaint.

We appreciate the opportunity to answer questions. We find that our discussions with complainants are more effective when they understand the process we follow and the type of information we hope to obtain during the interview. This information will vary depending on the nature of the complaint; however, if you have a complaint, we will almost invariably want to know:

- ☑ your name, address and telephone number
- ☑ the title(s) of the authority or authorities involved
- ☑ any file, case, claim or other identity numbers assigned by the authority
- ☑ a description of the decision or action to which you object
- ☑ the dates of any relevant events, decisions or actions relating to the complaint
- ☑ details about any steps, formal or informal, you have taken to remedy the matter, including appeals or previous contact with the Ombudsman
- ☑ the names, titles, addresses and telephone numbers of the people with whom you have been dealing at the authority
- ☑ the authority's explanation for the decision or action taken
- ☑ a description of the remedy you seek

Once we have this information, we can decide how best to deal with your complaint.

FOLD-OUT POSTER

The Ombudsman: promoting fairness for British Columbians.

The founding principle of the Ombudsman is to ensure that all people have the opportunity to be heard and to have their interests considered.
The Ombudsman is an Officer of the Legislature — independent, impartial and at arm's length from government. This chart helps to define the role of the Ombudsman.

① If it's information you need...

Before you call the Ombudsman:

➢ If you are looking for current information on provincial government programs and services, call Enquiry BC:
- in Metro Vancouver: 660-2421
- in Metro Victoria: 387-6121
- all other locations in B.C.: 1-800-663-7867

➢ If you are seeking information or documents that are in the care and control of government, you can first call the office or ministry that holds the information you require. If you are not satisfied, call the office of the Freedom of Information and Protection of Privacy Commissioner at 387-1992.

We recognize that access to information is important. These agencies may go a long way to providing you with the information you seek. If you are still not satisfied, please call us.

② Do you think you have been treated unfairly by a provincial government ministry, agency or corporation?

Before you call the Ombudsman, try to find a remedy on your own first. Here are some helpful hints:

➢ **Call first.** Try contacting the government agency or ministry by telephone. Try to determine who can best help you to solve your problem. Often problems can be solved quickly by a personal contact with the right person. Enquiry BC can be helpful in finding the appropriate department or person.

➢ **Be ready.** Have your questions ready when you call or write. Keep any important numbers, such as your claim number, handy for easy reference.

➢ **Ask questions.** Ask the agency why it made the decision it did and what policy or rule the decision was based on. You can ask to receive a copy of the policy or rule.

➢ **Keep a record.** Make notes of your calls and write down the answers to your questions. Keep copies of all letters or forms you sent to or received from the agency.

➢ **Review all information carefully.** There are many appeal processes within government. When you receive information, read it very carefully as it may advise you of the review process and any relevant deadlines.

We are here for all people — regardless of age, sex, race, nationality, place of origin, religion or disability.

③ Is your complaint within the jurisdiction of the Ombudsman?

➢ The Ombudsman has the authority to investigate citizens' complaints against the following government agencies and bodies:
- ministries of the Province
- provincial government corporations, commissions, boards, bureaus or other authorities
- schools, school boards, colleges and universities
- hospitals and other provincial institutions
- governing bodies of professional and occupational institutions, such as the Law Society, the College of Physicians and Surgeons, and the Association of Foresters

Local governments, including municipalities, regional districts and the Islands Trust are scheduled to be included in early 1995.

If you are not sure whether your complaint falls within our jurisdiction, please call us.

④ Is your complaint a matter of administration?

➢ The Ombudsman is authorized to investigate and resolve complaints of administrative unfairness. We are not a court of appeal and we cannot change decisions. Our concern is whether the policy, practice, process, guideline or law that an agency has applied in your case is fair. An unfair decision is one that is unjust, discriminatory, unreasonable or based on a mistake of law or fact.

If you are not sure whether your complaint is a matter of administration, please call us.

"Everyone is entitled to be treated with dignity and respect."

Dulcie McCallum
OMBUDSMAN FOR BRITISH COLUMBIA

⑤ Have you already explored existing remedies within government?

➢ Prior to investigating a complaint, the Ombudsman will encourage, and sometimes require, a person to exhaust existing remedies within government. Some examples of these remedies are:

- *Workers' Compensation Board:* Workers' Advisors
- *ICBC:* Government and Public Enquiries
- *Hospitals:* Patient Relations Coordinator or Director of Patient Care
- *Income Assistance:* Internal Appeal Process
- *B.C. Hydro:* Regional Reviewer
- *Public Schools:* Appeal to School Board
- *Colleges and Universities:* Appeal Committees

We can assist you by giving you information about existing remedies within government, or you can obtain this information through the government agency or ministry, or through Enquiry BC. If your concern involves a strictly legal matter, you can consult a lawyer or go to Legal Aid. If your concern is not a matter of administration, you can approach the minister responsible or your MLA.

We encourage self-advocacy — and we are here to assist you in that effort.

⑥ When you need to contact the Ombudsman...

➢ You can reach us:
- **By free telephone access** through 1-800 numbers:
  Victoria: 1-800-567-3247
  Vancouver: 1-800-661-3247
  TTD/TTY: 1-800-667-1303
- **By local telephone access**:
  Victoria: 387-5855
  Vancouver: 660-1366
  Victoria TTD/TTY: 387-5446
- **By mail** to both offices:
  - 931 Fort Street, Victoria V8V 3K3
  - 202–1275 West 6th Avenue, Vancouver V6H 1A6
- **By fax** to both offices: Victoria: 387-0198 / Vancouver: 660-1691
  If you do not have ready access to a fax machine, you can use the fax at any government agent's office.

Our goal is to provide services that are fair and accessible.

Ombudsman
PROVINCE OF BRITISH COLUMBIA

Case Tracker

The Office of the Ombudsman received a total of 24,462 enquiries and complaints in 1993, both jurisdictional and non-jurisdictional. The number of authorities will increase from 270 in 1992 to 2800 by 1995. In order to handle the volume, the Office developed a sophisticated case management system. Inaugurated in June 1993, the new computer program has come to be known affectionately as the "Case Tracker."

The Intake Analyst records on the Case Tracker every complaint, about both jurisdictional and non-jurisdictional authorities, whether it is received by telephone, fax, mail or in person.

1. The Intake Analyst starts by entering a complaint summary.
2. The complainant's name, address and telephone number are added. If an agent is calling on behalf of the complainant, her or his name and address is also recorded.
3. The complaint summary is linked to the authority being complained about, such as ICBC or the Ministry of Social Services.
4. The Case Tracker automatically gives the new complaint a file number.
5. The file is assigned to the Ombudsman Team and Investigator responsible for complaints about that particular authority. This step is important, as files are not assigned by the geographical location of either the complainant or the authority, but by rotation in the team.

Since the Case Tracker contains a record of every complaint received, it has become an important tool for our reception staff. By checking the Case Tracker, the receptionist can quickly find out if a caller has an open file, and can direct the call to the investigator assigned to the complaint. Callers who do not have an open complaint file are referred to an Intake Analyst. The Intake Analyst may also check the Case Tracker for recent contact from a caller. If the caller is inquiring about a recently closed file, it may be more useful for him or her to speak directly with the investigator who was responsible for the matter, rather than opening another complaint file. If the investigator decides to reconsider the complaint, the file can be reopened on the Case Tracker.

Once an investigator begins investigating a complaint, she or he "receives" the complaint file electronically. The investigator records on the Case Tracker all information regarding interviews, telephone calls, electronic mail and documentation relevant to the investigation. The Case Tracker automatically codes each entry with the date and time it was made. If a complainant calls for an update on an investigation, and the assigned investigator is not in the Office, another staff person can find the current status of the investigation on the Case Tracker, relate the information to the caller, and record the details of the complainant's call.

When an investigation is concluded, the complaint file is closed. However, the information regarding the complaint, the investigative notes and the reasons why the file was closed, remain on the Case Tracker. If a person calls back about the same complaint a year later, the Intake Analyst has full access to the details of the previous complaint.

One of the more important functions of the Case Tracker is "reporting." The Ombudsman provides information to authorities about the frequency and nature of the complaints we receive. The Case Tracker can produce printed reports setting out the information we require.

The reporting capability of the Case Tracker can also be used for investigative purposes. This process is still being developed, but it promises to be extremely useful. For example, an investigator concerned about an apparent trend with a particular authority might decide to print out a specially tailored report. The investigator will be able to track trends in complaints about specific authorities, as well as specific types of complaints.Such a report is valuable not only for investigative purposes, but also as a tool for our Office to review administrative practices by authority.

New Reporting Format for Authorities

Enquiries (information only)
Complaints
- No Investigation
  - Referrals and Information
  - Statute Barred
  - Refusal
- Investigation
  - *Currently Active
  - Closed
  - Closed – No Findings
    - Abandoned
    - Withdrawn
    - Discretion
  - Settled
  - Closed – with Findings
    - Substantiated
      - Remedied in Whole or Part
      - Not Remedied
    - Not Substantiated

Outstanding Recommendations
(Remedy pending)

** The Currently Active figure at the time of printing in 1994 is not included as part of this Annual Report. It varies from day to day.*

How Jurisdictional Files Were Closed

Authority	Enquiries	Complaints							TOTAL
		No Investigation			Investigation				
		Referrals & Info	Statute Barred	Exercise of Discretion	Closed – No Findings	Settled	Closed – With Findings: Substantiated	Closed – With Findings: Not Substantiated	
B.C. Assessment Authority	6	0	0	7	3	2	0	5	23
B.C. Building Corporation	0	0	0	0	2	1	0	0	3
B.C. Ferry Corporation	5	0	0	7	2	4	0	2	20
B.C. Hazardous Waste Management Corporation	0	0	0	1	0	0	0	0	1
B.C. Hydro & Power Authority	1	29	0	57	7	3	0	3	100
B.C. Lottery Corporation	1	0	0	1	0	0	0	0	2
B.C. Railway Company	0	0	0	1	0	0	0	0	1
B.C. Transit Authority	5	0	0	4	6	0	2	2	19
Colleges and Universities	6	0	0	4	3	5	0	0	18
Conflict of Interest Commissioner	0	0	0	0	0	0	0	0	0
Hospitals	13	1	0	12	11	7	0	4	48
Insurance Corporation of B.C.	37	189	1	310	49	28	3	15	632
Ministry of Aboriginal Affairs	1	1	0	0	1	0	0	1	4
Ministry of Advanced Education, Training & Technology	44	0	0	18	25	67	0	6	160
Ministry of Agriculture, Fisheries & Food	4	0	0	7	2	0	0	4	17
Ministry of Attorney General	183	2	8	878	127	400	3	289	1,890
Ministry of Education	14	0	3	5	6	15	1	2	46
Ministry of Employment & Investment	0	0	0	0	0	0	0	0	0
Ministry of Energy, Mines & Petroleum Resources	3	0	1	4	0	4	0	4	16
Ministry of Environment, Lands & Parks	34	1	1	18	16	14	5	19	108
Ministry of Finance & Corporate Relations	24	0	1	27	16	25	3	23	119
Ministry of Forests	15	0	2	9	9	19	1	10	65
Ministry of Government Services	10	0	0	1	0	12	1	7	31
Ministry of Health	73	3	6	91	54	118	5	41	391
Ministry of Housing, Recreation & Consumer Services	1,034	2	2	87	35	43	1	39	1,243
Ministry of Municipal Affairs	19	0	2	11	8	10	1	14	65
Ministry of Skills, Training & Labour*	127	55	219	311	43	102	1	3	861
Ministry of Small Business, Tourism, & Culture	3	0	0	3	3	1	0	1	11
Ministry of Social Services	262	109	15	1,856	182	441	5	149	3,019
Ministry of Transportation & Highways	37	0	2	33	40	69	6	66	253
Ministry of Women's Equality	2	0	0	1	0	0	0	0	3
Office of the Premier	1	0	1	2	0	0	0	0	4
Professional & Occupational Associations	91	0	0	2	0	0	0	0	93
Public Schools	65	0	2	42	17	49	1	10	186
TOTAL	2,120	392	266	3,810	667	1,439	39	719	9,452

** Workers' Compensation Board included with Ministry*

Health

The Health Team

On April 1, 1993, our Office was given authority to investigate complaints about all hospitals in British Columbia. This investigative authority is unique, as no other Canadian Ombudsman has jurisdiction over hospitals at this time.

Early in 1993, we began to contact all the hospitals in B.C. to tell them of our upcoming jurisdiction. We outlined how the Ombudsman Office was structured and how we carried out our work. We provided them with a copy of the latest annual report, our administrative fairness checklist and information about the terms the Ombudsman uses to conclude files. We asked each hospital to send us a copy of their internal complaint resolution mechanism.

We set up the following procedures:

1. We refer a person to the hospital complaint process if they have not already used it.
2. We request that the hospital respond directly to the complainant with a copy to us.
3. We developed form letters for outlining the complainant's concerns to the hospitals, and for explaining to the complainant what we have done. Building on this system we hope to develop a data bank of complaint processes within hospitals.
4. We developed a hospital complaint categorization system for our own use and shared this information with all the hospitals. Our aim is to standardize our reports and provide a basis for more meaningful statistical reporting for our Office and for authorities in the future.
5. Ombudsman staff will eventually visit each hospital and meet with key personnel and patient representatives to discuss our role. We hope to visit all hospitals in the province within the coming years.

In September 1993, the Office of the Ombudsman became responsible for complaints from a wide variety of health-related authorities. In addition to complaints regarding hospitals, the Health Team now considers complaints about all programs of the Ministry of Health, including the Medical Services Plan, Continuing Care, Pharmacare, and Alcohol and Drug Programs. The team also investigates complaints regarding a number of health-related boards, commissions and agencies, such as the B.C. Review Board, the Emergency Health Services Commission, the Forensic Psychiatric Services Commission, and the Provincial Adult Care Facilities Licensing Board.

Our goal is to ensure that the principles of fairness and natural justice are met.

In October 1993, self-governing professional and occupational associations came under the jurisdiction of the Ombudsman. The Health Team assumed responsibility for complaints about 14 self-governing bodies associated with the health professions in British Columbia. These include, among others, the College of Physicians and Surgeons, the College of Chiropractors, the College of Dental Surgeons, the Registered Nurses Association, and the College of Pharmacists.

Drawing on our experience with the hospitals, we initiated a similar process of introduction and education. We met with each of the 14 self-governing bodies to establish a working relationship. We are now learning about the structure, responsibilities and internal review mechanisms for each of the new authorities we investigate so that we can share this information with those who contact our Office.

We are aware that the amount of government influence over a person's life, when she or he is hospitalized, is tremendous.

There are many reasons why the Ombudsman should be involved with complaints about hospitals and health services.

1. We can act as an alternative to litigation in matters of administration. In some cases it will be necessary for a person to choose the legal route. In some cases we can provide an alternative remedy, where appropriate.
2. The Ombudsman can investigate complaints from patients, the patient's family, from staff members, from community groups and other organizations.
3. If the team notices a recurring problem, we can recommend that the Ombudsman initiate an investigation, particularly when the person(s) affected are not in a position to come forward.
4. We can facilitate communication among hospitals, the Ministry of Health, professional associations, and union groups, where appropriate.
5. The Ombudsman's Office can provide information to the public through our annual and specialized reports, such as our report on Riverview Hospital, soon to be released.
6. We regularly visit institutions providing service to individuals in the mental health community, to people with disabilities and to seniors. These on-site visits allow any person who wishes to make a complaint, but who may not have the opportunities because of their situation, to do so. Not everyone finds it easy to call us by telephone. Not everyone can write a letter of complaint. We are aware that the amount of government influence over a person's life, when she or he is hospitalized, is tremendous. Hospitals and similar health care institutions have many rules and policies. For those who are hospitalized over a long period, the fairness of the institution's policies and procedures becomes critical.
7. We are uniquely situated to bring about change to the complaint processes currently used in hospitals. Review by the Ombudsman can assist in standardizing these procedures. As we receive complaints from hospitals all over the province, we get the whole picture, with the strengths and weaknesses of each model. Standardization may lead to a more equitable situation. Patient/resident rights will be determined by a common standard, and by whether the facility has patient-centred policies and procedures, and an effective internal review.

The team works to ensure patient-centred service delivery in every investigation we initiate. Even in those cases in which we must refer the complainant to the hospital for internal review, we make sure that either our Office or the hospital, and usually both, keep the complainant informed. We are careful to ensure that the complainant feels invited to return to us, should she or he still be dissatisfied after the internal review process has been completed.

The Health Team works to provide resolution, mediation and negotiation services to all parties involved in a complaint. We always attempt to reach resolution, whenever possible, and not attach blame.

There are no physicians or nurses on the team, we are not specialists in health care, and we make no attempt to second-guess the medical judgment of health professionals. However, we are specialists in the area of administrative fairness. The Health Team brings this expertise to its review of the policies and procedures of health care organizations. While we may not comment on medical diagnosis or clinical judgment, we can and do comment on related administrative procedures.

The Health Team works to provide resolution, mediation and negotiation services to all parties involved in a complaint. We always attempt to reach resolution, whenever possible, and not attach blame. Our goal is to ensure that the principles of fairness and natural justice are met.

Ombuds*goal 2*

To focus on prevention.

Be Careful Where It Hurts

Three days after he was hired, a new employee was injured at his work place and transported to hospital by ambulance. The B.C. Ambulance Service billed his employer, a small manufacturing firm, for $444. The firm's accountant contacted the Ombudsman on behalf of her client. She felt that the ambulance charge was excessive, especially since the cost for the ambulance would have been $45 if the man had been injured at home.

When we contacted the Ambulance Service,they told us that since the fee in question was set by Cabinet, they could not change it. The Emergency Health Regulations, which had been revised effective January 1, 1993, determine the fees charged by the Ambulance Service. The reason that a person injured at work pays more for an ambulance than a person injured at home is that the *Workers' Compensation Act* governs the person at work. The Act requires employers to provide emergency transportation when an employee is injured. In such cases, the Regulations set a flat rate of $444 for the transportation of an employee.

Closer to Home and Still Fair

The government's decision to overhaul the health care service delivery system, as recommended by the Seaton Royal Commission, will affect many people. The reorganization will consolidate the 700 local hospital boards and municipal service providers into a more efficient and cost-effective administrative mechanism closer to the communities they serve.

When the plans were first announced to create new Regional Health Boards and Community Health Councils under the new *Health Authorities Act,* we identified to the Ministry of Health the impact that might have for our Office. We were concerned that many people would be receiving services from new agencies not contemplated by our statute when it was written in 1978. The Ministry of Health has agreed that those responsible for administering health care under the new arrangement will fall within the jurisdiction of the Ombudsman. The government recognizes that it is important for the public to be served by administrative agencies that are committed to fair practices, policies and procedures. During the period of transition, there is likely to be some confusion. The government plans to issue an order in council early next spring(1994) that will extend our authority to include the Boards and Councils. Members of the public can rest assured that they will still be able to bring their concerns about health care in their communities to our Office.

Health

Speech

Ombudsman Oversees Hospitals

from an address by the Ombudsman to the B.C. Health Association, May 1, 1993

Our Office is not insensitive to the complexities faced by health care professionals and health delivery institutions in 1993. Some of the factors compounding the delivery of health care services are recent jurisprudence regarding access to medical files, freedom of information, new legislation for emancipated minors, the guardianship review, new policy directions outlined in "Closer to Home" and other Ministry of Health policies. These developments are compounded by the challenges of hospital closures and ensuing potential for loss of employment, sense of public desperation over unemployment, an increasing ageing population, and identification by multicultural and disabled groups of their needs within generic services. It is hoped that the involvement of the Office of the Ombudsman with hospitals will have a positive result.

...

Our first position [regarding complaints] is to refer the member of the public to available remedies within the institution against which there has been a complaint. Whether that involves a referral to the Chief Executive Officer, the attending physician, an internal ethics committee or a hospital complaints/patient relations position, we encourage the authorities themselves to have responsive and appropriate systems in place.

The role of the Ombudsman is to investigate allegations of administrative unfairness in public authorities over which she has jurisdiction.

There may be other remedies available to the public that go beyond the bounds of the hospital itself that may be appropriately pursued by the person complaining. These may include the Ministry of Health or the governing body for the self-regulating profession or occupation such as the College of Physicians and Surgeons or the Registered Nurses Association. If we do choose to investigate a matter, we do not have the power to make a decision. The role of the Ombudsman is to investigate complaints on an individual matter or systemic basis and to make recommendations to the affected authorities.

Our Office is not insensitive to the complexities faced by health care professionals and health delivery institutions in 1993.

In planning for the proclamation over the remaining hospitals in British Columbia, our Office took the following steps:

- we prepared a letter to each hospital asking them to identify a liaison person whom we could contact in the event we receive a complaint
- we asked for an explanation from each hospital of those mechanisms available to the public to which we can refer people

...

We had the good fortune to have a secondment from the Vancouver General Hospital, Mr. Terry MacKay, who assisted us to become familiar with the internal workings of hospitals and to develop an appropriate outreach program to assist authorities to prepare for our jurisdiction.

Double Jeopardy

In April 1993, a woman contacted our Office complaining that Pharmacare had denied her request to authorize duplicate receipts. (A pharmacy requires special authorization from Pharmacare, before they can issue duplicate receipts). The woman explained that she had submitted her receipts to the private insurer providing her extended health benefits. This insurer covered 80 per cent of her family's prescription drug costs, up to the Pharmacare deductible. Once she received payment, and the receipts, back from the insurer, she sent the receipts to her former spouse in Newfoundland. He was to submit the receipts to his private carrier for the remaining 20 per cent and forward the money to her, as she had full custody of their children. However, he refused to return the receipts. The woman now had a major problem, as without official Pharmacare receipts documenting that she had met the Pharmacare deductible of $400, she would be unable to submit a claim for the drug costs not covered by the private insurer.

When Pharmacare denied her request to authorize duplicate receipts, she found herself in a state of double jeopardy. Pharmacare refused to consider her claim without proof that she had met the deductible, yet would not authorize the pharmacist to issue duplicate receipts, the only way of documenting that she had met the deductible.

After some discussion with our staff, Pharmacare agreed to authorize duplicate receipts, thus resolving the complaint to the woman's benefit.

A Suspicious Death

A woman reported to our Office that she believed her husband had died in unusual circumstances after a brief stay at a hospital. According to her, after the hospital had ignored her request for information about her spouse's treatment, she became frustrated and hired a lawyer. It soon became evident to her and her lawyer that it would be expensive to pursue the matter through the courts. Furthermore, she found that she was unable to obtain the evidence she felt she needed to prove any negligence because it required asking one doctor to testify against another. Since there had been a number of nurses involved in her husband's care, she was unable to get a clear picture of exactly what had happened and when.

When she contacted the Ombudsman, she said she was asking for the investigation so that no one else would have to go through what she had. We can review all aspects of her late husband's stay in the hospital with the exception of the attending doctor's clinical care.

This is what we did:

- **concerning the doctor's actions, we advised her she could lay a complaint with the College of Physicians and Surgeons**
- **we advised her that she could refer the actions or inactions of the nurses involved to the Registered Nurses Association of B.C.**
- **we undertook to review the hospital's response to her information requests and complaints and obtain the necessary information from the hospital**

Once the hospital's reply has been received, if there are any shortcomings, from an administrative fairness perspective, the Ombudsman can recommend that changes be made by the authority, at no cost to the complainant.

Pay Now AND Pay Earlier

A family whose mother was a resident of a long term care facility in Langley, B.C., complained about a 50 per cent increase in her user fee. The letter from the Ministry of Health announcing the increase was dated March 31, 1993, but was not received by the facility until July 1993. The rate increase was considered retroactive to May 1, 1993.

Sometime in May the family was told that there would be a rate increase, but that the amount would not be determined until the facility had official word from the ministry. The family found this course of action, that is, retroactive payment of an indefinite amount, to be unfair, and also questioned the actions of the Ministry of Health in raising residential user fees by such a large amount.

We asked the Assessment and Entitlement Branch of the Ministry of Health to look into the matter. After reviewing all the information, the branch determined that the rate should be $23.40 per day, effective August 1, 1993, and not $34.00 per day, as indicated earlier by the ministry. As well, the retroactive amount was determined to be $23.30 per day from May 1, and not $33.90. How did this happen? Apparently the Ministry of Health based the mother's user fee rate on the 1991 income tax return, the most recent one they had, rather than the 1992 return, filed in April, 1993.

The family promptly sent a copy of their mother's 1992 tax return, the ministry re-calculated the fee, and a credit was applied against the mother's account in the long term care facility.

Do I or Don't I Live in B.C.?

A young man came to our Office with an unusual complaint. Although he had always lived in B.C. he was told by the Medical Services Plan that he would have to establish his residency in the province before he would qualify for coverage. How did this strange situation come about? When his parents moved to Alberta from B.C. he continued to attend college in Prince George. While in school his medical coverage had been provided under his father's Alberta medical plan. Once he graduated, and so ceased to be a full-time student, he no longer qualified for the Alberta coverage, which lapsed on November 30, 1993. When he contacted the Medical Services Plan in early December 1993, he was told that he would not be eligible for coverage in B.C. until March 1, 1994.

When investigating the complaint, the Ombudsman was advised that the Plan was bound by an interprovincial agreement. The agreement stated that when a family moves from one province to another, and a child stays behind, the child's residence for the purposes of medical coverage is that of the parents. This agreement is apparently based on the assumption that the child will later join the family, or is treated as legally their responsibility. However, as this young man had never lived outside B.C. and had no intention of moving, the Plan agreed to provide coverage effective December 1, 1993, waiving the waiting period.

Health

Listening –
The Focus in the Riverview Hospital Report

- A young man spoke of spending days on a locked ward staring out windows, listening for the sounds of traffic and passing trains, his links with the outside world.
- A couple talked of having two of their children go to Riverview at different times, and of the mix of excellent care and benign neglect they encountered.
- A woman on Vancouver Island recalled the desperate isolation she felt on being sent to Riverview, cut off from friends and family.
- A hospital social worker told of the joy she felt in seeing a long-term patient adjust happily to a placement in the community.
- A woman in the Interior related what it was like to be reunited with her sister who had spent almost 30 years living in Riverview and other psychiatric treatment facilities.

These were among the many impressive and touching stories the Ombudsman heard while conducting an investigation of Riverview Hospital, one of her major undertakings of 1993. A series of incidents led interested community groups and individuals to question the openness of the hospital to listen to the voices of patients, their families and advocates. In the fall of 1992, after hearing from many of these people, the Ombudsman decided to initiate an investigation.

Patients in any psychiatric hospital are socially devalued and vulnerable. Advocacy is one way in which their vulnerability can be addressed.

This investigation represented the first systems review of a major psychiatric hospital by a Canadian or other Ombudsman. When deciding on the scope of the inquiry, the Ombudsman decided to cast the net broadly in order to encourage as many people as possible to share their views with us. The focus of the investigation was to discover the ways in which Riverview Hospital is, and needs to be, administratively accountable to the group it serves. However, the Ombudsman asked to hear the broad range of concerns of patients to see whether and where the hospital was falling short of meeting its public responsibility to listen to and address those concerns.

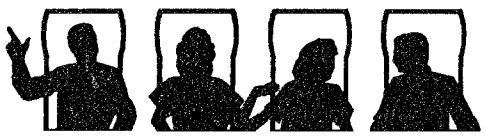
Two investigators from the Health Team spent many months of 1993 interviewing present and former patients, family members, members of community organizations working in the mental health field, Riverview Hospital staff and administrators, and Ministry of Health personnel. They considered the two key issues of responsiveness and advocacy. Interviews and group meetings were held in Campbell River, Prince George, Victoria, Penticton and Kelowna, in an effort to understand how this provincial hospital touches lives around B.C.

Over the last half of 1993, the Health Team reviewed the results of these interviews and the hundreds of documents provided by Riverview Hospital, and put together its draft report.

One of the challenges to the Ombudsman in doing this investigation was the difficulty of commenting on a system in transition. B.C.'s mental health system, including Riverview Hospital, is undergoing major structural and policy changes. The related moves of downsizing Riverview and providing more mental health service in community settings, combined with the regionalization of health care generally, created a kaleidoscopic effect. Every time it seemed we understood a part of the hospital's programs or services, the situation changed.

The focus of the investigation was to discover the ways in which Riverview Hospital is, and needs to be, administratively accountable to the group it serves.

A great deal changed in the precise area under investigation: response mechanisms at the hospital. As our investigation commenced, a new President/CEO and a community-based Board of Trustees were named to the B.C. Mental Health Society, which is responsible for the operations at Riverview Hospital. They showed energy in reviewing many long-standing policies and practices at the hospital. In many instances, they were pushed to do so by an active Patient Concerns Society, who represented the interests of the patients. Among the initiatives announced during the latter stages of the investigation was the Hospital's Charter of Patient Rights, the first such document adopted by a Canadian psychiatric hospital. The hospital also convened an Advocacy Project Team that produced a valuable study on systemic and individual advocacy by and for patients.



Patient Concerns Society*

– BULLETIN –

What Should Your Rights Be?? ...
What Would You Like Your Rights To Be?? ...
(while in Riverview Hospital)

If you have opinions or views regarding these very important topics then ...

Attend the two upcoming forums with Riverview management to discuss the proposed Riverview Hospital's Charter of Patient Rights.

The First Forum is ...

Date: Tuesday, November 23, 1993

Time: 1:30 p.m. – 3:00 p.m.

Location: "H5" Fifth Floor, Recreation Room
East Lawn Building

Refreshments will be served.

** Now incorporated as the AD Patient Empowerment Society*

The Ombudsman hopes to release *Public Report No. 33 – Listening: A Review of Riverview Hospital,* in April 1994. Almost 200 pages in length, *Listening* will contain approximately 90 recommendations dealing with the major areas of Riverview Hospital life – legal rights, quality of life issues, treatment issues and transition or discharge planning issues.

Recommendations:

- **that the hospital create a senior administrative position of Patient Relations Co-ordinator, to take a lead role in developing a complaints policy and other patient-centred initiatives within the hospital**
- **that the role of patient collective advocacy be recognized and supported to help produce change in the way things are done in an institutional facility like Riverview**

The role of advocacy in ensuring that patients are heard and their interests considered in Riverview's programs and services developed into a major theme of the Ombudsman's investigation, and led far beyond the confines of Riverview. Patients in any psychiatric hospital are socially devalued and vulnerable. Advocacy is one way in which their vulnerability can be addressed and diminished.

Recommendation:

- **the appointment of a Mental Health Advocate for British Columbia, and government assistance to develop a network of community-based non-legal advocacy services to support clients of mental health services, both those residing in hospital and those in more independent settings**

The Ombudsman intends, through these and other recommendations contained within the upcoming report, to point to a model of administrative fairness in the delivery of services that would improve not only Riverview Hospital, but the evolving mental health system in B.C. That new system is planned to include smaller, regional psychiatric hospitals to replace some of Riverview's capacity, as well as primary and secondary services adequate to support clients in their homes and communities. *Listening* will serve its purpose if it contributes to the discussion of how to keep the process of listening to persons receiving psychiatric services at the centre of our attention while our health care system undergoes major change.

The Need for Rehab:
Persons with Head Injuries

A young woman sustained a head injury that affected her behaviour to the point that she posed a risk to her own and others' well-being. As a result, she was hospitalized involuntarily in the psychiatric unit of a large urban hospital. Her mother-in-law contacted the Ombudsman. Everyone involved in the case, she said, agreed that her daughter-in-law did not belong in a psychiatric facility, since it did not have treatment to offer her. What she needed was a rehabilitation program in a secure and supportive residential setting.

We confirmed the details of the complaint with hospital psychiatrists, Ministry of Health officials and the patient herself. The young woman expressed great frustration at being held on a locked ward with no prospects for help to get her life back on track.

The young woman expressed great frustration at being held on a locked ward with no prospects for help to get her life back on track.

The Ombudsman learned that there is a serious shortage of residential and rehabilitative programs for persons with head injuries in B.C., particularly individuals who have "acquired," or organic, injuries, as opposed to those resulting from a traumatic incident. Individuals may receive good acute care in hospital following the occurrence of an injury, but have great difficulty finding the rehabilitative services needed to help restore lost skills. Those who experience changes in mood and behaviour that involve "striking out" can get caught up in the criminal justice system, or be detained in psychiatric facilities that are not well-suited to meeting their needs.

In recent years B.C. began to develop residential rehabilitation programs for persons with a head injury, but still few exist. In this particular case, we discussed with Ministry of Health officials the possibility of having the young woman transferred to a leading facility specializing in this kind of care. With their co-operation, and after discussions over program and funding mandates, the woman was transferred. Until more such facilities become available, however, many individuals in psychiatric and long-term care placements will complain to the Ombudsman that they are not receiving the kind of individually tailored rehabilitation that can allow them to achieve their full potential.

Income & Community Supports

Tribunal Appeal Upheld

A woman was denied a crisis grant to pay for the repair of her refrigerator. She complained to the Ombudsman that her request to have a tribunal review the Area Manager's decision had also been denied. The Area Manager had refused the crisis grant because the woman had already paid for the repairs using her credit card. The manager's decision to deny the tribunal was based on a Supreme Court ruling. This decision defined a crisis grant as a grant for an unexpected item of need that the applicant is unable to obtain because of lack of money or assets, or inability to obtain credit.

Our Office consulted with the ministry's Income Assistance Division. They indicated that the denial of appeal to a tribunal is **not** ministry policy, and that although a court decision sets a precedent, there is no delegated authority under the regulations to deny access to a tribunal on the grounds that the original decision-maker relied on a precedent. Income Assistance staff clarified this issue to all the district offices by memorandum.

GAIN Policy Changes

On August 31, 1988, we received an unusual complaint, and, as it turned out, a complaint that took a very long time to resolve. A woman claimed that the Ministry of Social Services had unfairly deducted funds from her income assistance cheque. She explained that she had contacted the ministry on July 28, 1988, but they had been unable to arrange an intake interview until August 3, 1988. After she had seen the intake worker, she was told that the ministry would be deducting $20 per day for the first three days of August, $60 in all. The woman felt this was extremely unfair, that she was being penalized for the ministry's inability to process her application more quickly. However, she was told that the ministry had recently amended its policy to require subtracting a portion of the support allowance for each day of the month prior to the date of application. The woman appealed unsuccessfully before coming to the Ombudsman.

...the ministry agreed to amend the policy, pro-rating benefits from the date of contact, not the date the GAIN application was completed.

We contacted the ministry and confirmed the change in policy. The ministry argued that since new clients were seen within 24 hours of contact, there was no unfairness to the client. We knew that it was common for clients to wait ten days to two weeks for an intake appointment, and so argued otherwise. The ministry then adopted the position that most district offices were interpreting the policy to mean that benefits be pro-rated from the date the client completed the pre-application inquiry form, usually the first date of contact. This did not match our experience either. We issued a preliminary report, pursuant to section 16 of the *Ombudsman Act*, stating that we were considering recommending that the policy be changed, so that benefits were pro-rated from the date of contact.

After receiving the report, the ministry surveyed the field to find out whether district offices were using the date the application was completed, as stated by the policy, or the date the pre-application inquiry form was completed. They did not formally share the results of this survey with our Office. However, after much discussion, on August 3, 1993, the ministry agreed to amend the policy, pro-rating benefits from the date of contact, not the date the GAIN application was completed.

Guest Comment

A Model of Advocacy within Government

by Pat Vickers
Advocate for Service Quality
at the invitation of the Ombudsman

In 1992 the Advocate for Service Quality for Persons with Mental Handicaps was appointed. While I report to the Minister of Social Services, I work in co-operation with but independently of both my lead ministry and the Ministry of Health.

The role of the Advocate is to support individuals and their families in obtaining service from service providers and ministry staff, to assist with problem solving and to conduct investigations and reviews when necessary.

I consult with an Advisory/ Reference Working Committee, made up of individuals with an interest in and concern for persons with mental handicaps. This group and regional representatives helped me develop principles to guide my work:

- each individual will be treated with dignity and respect
- each individual has the right to make his or her decisions
- personalized supports will be provided in assisting individuals to communicate their decisions
- individuals with mental handicaps will be given the opportunity to live as full and participating citizens in their community
- every effort will be made to ensure that the individual in question will be privy to and will agree with actions taken by the Advocate
- the interests and concerns of the individuals who have a mental handicap will be considered paramount. When conflict or impasse exist, the Advocate will take action that recognizes, first the individual, then the family or the individual's chosen advocate, then the service provider
- self-advocacy will be encouraged

Callers to the Advocate's office include family members, people with disabilities, social workers, advocates, service providers, other professionals, members of the public and people referred by the ministries and the Ombudsman.

Common complaints, problems and concerns raised:

- individuals and families not being consulted when decisions are made
- need for specialized resources
- delay in obtaining equipment
- difficulty with staff
- need for respite or support
- individuals wanting to move from extended care to the community
- financial assistance, including handicapped pension matters
- concern regarding quality of service

The Office of the Advocate for Service Quality is only one part of the advocacy network in B.C. One of the major goals of the Advocate's work is to involve, empower and support rather than replace natural advocates. I will continue to reach out to persons with mental handicaps with a philosophy of doing **with** instead of doing **for**, and to encourage self-advocacy.

To contact the Advocate:
In Greater Vancouver 775-1238
Outside Vancouver 775-1238 collect
or call Enquiry BC 1-800-663-7867 and ask to be transferred to 775-1238
Mail: Suite 103, 1675 West 10th Avenue
Vancouver, B.C. V6J 2A3

B.C. Housing Management Commission

The B.C. Housing Management Commission was established in December 1967 to manage, operate, maintain and control public housing made available to it under federal-provincial agreements. The commission's main mandate is to provide housing for people in need who are unable to secure adequate, affordable housing in the private market.

For people in desperate need, it is hard to be told by the commission that there are other people more in need than they are.

The social housing system is based on the premise that people in need should not have to pay more than 30 per cent of their income for rent. The provincial and federal governments provide subsidies to make up the shortfall between what tenants can afford and the actual cost of the accommodation. The commission utilizes a point system in determining which applicants are most in need when housing comes available. Points are allocated for such things as the percentage of income people are paying for rent, the amount of income compared with household size and whether the current accommodation is inadequate.

The decisions of this commission do not generate a large number of complaints, but we do receive small numbers of complaints on a fairly regular basis. Many of the complaints concern the waiting time for housing. Many people are seeking public housing, but there is only a finite number of units available. People often call our Office to complain that they have been waiting several months, or sometimes years, to be placed. For people in desperate need, it is hard to be told by the commission that there are other people more in need than they are. What we ask the commission to do in these cases, if they have not already done so, is to provide the client with a clear explanation of the point system. The commission always recommends that people also apply to non-profit housing organizations to increase their chances of being placed, and to consider moving to another area.

While the commission is also involved in planning for the construction of new social housing for people in need, those who need this type of housing will likely continue to outnumber the units available. The provincial Ministry of Housing, Recreation and Consumer Services is beginning to address some of the shortfalls.

Ombuds*goal 3*

To recognize and respect the role of the public service in providing fairness in the first instance.

Income & Community Supports

GAIN and What to Do If You LOSE It

Every year we get hundreds of calls from people who did not get income assistance cheques to which they felt entitled. Some had requested assistance until a UI claim came through; others asked for extra crisis money to pay a hydro bill or buy winter clothing. Some complained that the regular cheque had been stopped because of an alleged common-law situation, or that reasons for a decision were not explained. Some who did get assistance complained about the way they were dealt with, or the time it took to get an answer.

These people call us despite the fact that the Ministry of Social Services has its own appeal and complaint procedures. We have no clear evidence of why this is, but believe there are four main factors at work:

- many people do not know about the ministry's own review options
- some know, but are reluctant to trust internal reviews, or feel unable to press their own case successfully
- some know about the ministry's internal systems but cannot wait the time it takes
- some, we feel a small percentage, know about the ministry's systems but think they have a better "kick-at-the-cat" by coming through our Office

We believe that the ministry has ownership of the process to review and decide on these concerns.

The ministry, during the past year, made a strong commitment to provide direction and training to their staff to ensure that front line workers are completely familiar with the appeal provisions of the *Guaranteed Available Income for Need Act* and Regulations, and are fully informing their clients about the appeal options as the need arises. The ministry also intends to ensure that staff are telling clients, when necessary, about the ministry's administrative review process for non-appealable complaints, for example, an allegation of discourteous treatment.

The Office of the Ombudsman and the Ministry of Social Services have been working jointly to improve ways of providing information to the public about both processes.

We are looking at ways of providing clear and timely information, and of keeping the system user-friendly. To help that goal, we're including a brief guide to the ministry's system.

How do you know if you can appeal or complain?

You can APPEAL if the ministry:

- refuses your request for assistance, i.e. for money, voucher, health coverage
- gives you less than you feel is needed
- takes away a benefit such as money or health coverage

Appeal Procedure

Ask your worker or the receptionist to give you an appeal kit. If you have trouble with forms or want advice, also ask for the names of advocacy groups. The kit has full information on the process, but here are some important things to know:

1. You must appeal within 30 days after you were told the decision.
2. If you had an ongoing benefit that was cut off, your benefit will be reinstated when you file the appeal with the office.
3. If you are not eligible for reinstatement but are in urgent need, make sure the receptionist and your worker or the District Supervisor know you need a decision quickly, or some help while the review is underway.
4. If you are not reinstated, your urgent needs are not met, or you feel the ministry is not following the appeal process properly, speak to the District Supervisor, or call the Ombudsman's Office.
5. If you are under 19, you may use the appeal process, or if you wish, call the Ombudsman's Office and ask to speak with an investigator from the Children and Youth Team.

You can COMPLAIN:

any time you are dissatisfied with or do not understand the way you were dealt with.

Complaint Procedure

1. It's a good idea to discuss the problem with the staff person concerned, if you can. You might want to take a friend or advocate with you, to help you to have your position heard.
2. Any complaint about a ministry employee can be taken to that person's supervisor, and up the line from there if it remains unresolved.
   Speak first to the FAW or clerical person, then the District Supervisor, the Area Manager, then the Regional Director.

The ministry is preparing pamphlets on this process for the district offices to provide to the public.

Is a Car Exempt?

A woman receiving income assistance was in a car accident and her car was written off. She was given $1100 by ICBC as reimbursement for the car, which she promptly used to buy a second-hand car and insurance. She was then told by the Ministry of Social Services that this money was considered unearned income and would be deducted from her next income assistance cheque in full. Since the amount of the unearned income was more than her maximum entitlement, she would be eligible for hardship assistance only, and in that case, her child tax credit would not be declared exempt. As well, since the December cheque was the one affected, she was told that she would not be eligible for the Christmas Bonus! The District Supervisor assured her that her rent would be paid and that she would be issued hardship money for food. The woman felt that it was wrong to consider the money unearned income in the first place and contacted our Office for help.

We noted that the GAIN regulations specify only money from the sale of a family home as exempt if that money is reinvested into another family home. While a first automobile is considered an exempt asset, as is the family home, there is no such mention of money for a first automobile being considered exempt even if it is reinvested in a replacement vehicle of equal value. We examined the definition of "unearned income" in the GAIN Regulations. Section (d) lists "Insurance benefits except insurance paid as compensation for a destroyed asset." This section appeared to cover the insurance money paid out for the car, except that a first automobile is considered an EXEMPT asset. For this reason the District Supervisor did not feel that a first automobile fit into the definition and was not comfortable in not declaring the money "unearned income."

We contacted the Income Assistance Division, the ministry's policy division, on the matter. It was their opinion that, technically, the District Supervisor's interpretation was correct. They agreed that a first automobile (exempt asset) was not readily identifiable as a "destroyed asset" under the definition of "unearned income," section (d). However, they felt that a strict interpretation would go against the spirit of the definition. In their opinion, it would be more appropriate and more logical to interpret the section in a liberal manner, and allow the woman's automobile to be considered a "destroyed asset." The Area Manager agreed to accept the more liberal interpretation and the $1100 was considered exempt. The woman received her regular income assistance, along with her Christmas bonus.

We felt that this resolution was fair. The GAIN Regulations should, in our opinion, have a section exempting money received for the loss of a first vehicle.

Access to Information

The *Ombudsman Act* provides broad investigative powers that allow the Ombudsman to have access to a variety of records held by authorities. However,the public may not obtain access through her Office to records in the custody or control of public bodies. On October 4, 1993 the *Freedom of Information and Protection of Privacy Act* came into force. That statute gives members of the public the right to access records of a general nature and to obtain personal records pertaining to themselves. The Act is administered by the Information and Privacy Commissioner, David Flaherty, also an Officer of the Legislative Assembly. If a public body refuses access to records, members of the public may request a review of that decision by the Commissioner.

The Commissioner's address is:
Office of the Information and Privacy Commissioner
4th Floor, 1675 Douglas Street
Victoria, B.C. V8V 1X4

Because of the confidentiality provisions of the *Ombudsman Act*, the Ombudsman cannot be a vehicle through which records held by authorities can be obtained. In addition, the wording of the *Freedom of Information and Protection of Privacy Act* makes it clear that the investigative records of the Ombudsman are not accessible.

Income & Community Supports

Colleges Proclaimed

The authority of the Ombudsman to review complaints against provincial colleges and universities was proclaimed on April 1, 1993. However, since a different section of the *Ombudsman Act* gave authority over agencies the majority of whose boards were appointed by the government, we had already established relationships with all the colleges and universities.

The specific proclamation provided an opportunity to strengthen our relationships, for example by asking each institution to designate a person as our "contact." We also requested information about appeal procedures, enabling legislation, labour relations, and sexual harassment policies.

Proclamation did not bring a flood of new calls, not least because many of the colleges and universities have well-established internal review/complaint procedures. All have processes for academic appeals, and for disputes over students' grades. For some institutions the processes for other issues, like appealing a student discipline (suspension) decision, appealing eviction from campus housing or refusal of admission, are less clear. When we are asked to review these kinds of issues, as well as reviewing the circumstances of the individual case, we try to work with the institution to clarify and strengthen their internal review options.

Let Me Speak for Myself

A young woman's application for a student loan was refused because she had allegedly given false and misleading information in her application. When her appeal was denied, she called our Office. She felt that she could clarify the misunderstanding if she could appear in person before the Appeals Committee.

We wrote to the Deputy Minister and subsequently met with the Director of Student Services and the Executive Director of Administration and Support Services Division. We contended that in the absence of any legislation that clearly states an appeal process, the branch's policy should be fair. We acknowledged that a formal appeal, or hearing, would not be appropriate in all cases where students disagree with their assessments. However, as a general rule, the more severe the consequences to the person, the more safeguards for fairness must be in place. As part of a fair process the appellant should be allowed to attend in person to present her side of the story and be accompanied by witnesses and advocates if she wishes. As well, the appellants should be advised in writing of the committee's decision and its reasons.

The ministry agreed to allow the young woman to appear before the Appeals Committee. They also advised us that they would consider this as a pilot case and would prepare recommendations to develop a fair and consistent appeal process for the 1994/95 academic year.

Am I In or Am I Out?

Problems about admission to a college or university happen before you go, don't they? Not for a young man from the Prairies who came out to B.C., having been "conditionally" accepted at a B.C. institution. He found a place to stay, registered for courses and went to school for two months. In mid-November he received a letter saying his high school grades were too low, and he was not accepted. Because he was already enrolled, he was allowed to finish the term.

He appealed immediately through the institution's admissions appeal process. Since the committee did not meet until after the term ended, he learned just a few days before Christmas that he had lost the appeal and could not come back in January. By then it was too late to find a spot anywhere else, so he was out of school everywhere. To add to his problems, the appeal decision letter said he must obtain satisfactory grades in 12 units of transferable work at another institution before he could apply again.

The young man thought this was unfair and contacted our Office. The delay in telling him he was not admitted, together with the delay in hearing his appeal had cost him the spring term, and no one seemed to care that in the term he was there his marks were satisfactory. The points he raised were reasonable and important. We were especially concerned that his high school marks were available on September 11, but the institution waited until November 17 to reject him. We asked the Registrar to take the case back to the appeal committee, explaining our concern that the institution's delays had already cost the student one academic year, and that it seemed reasonable to consider his successful first-term grades in reviewing his eligibility to continue. This appeal was successful, and the student was readmitted.

Admitting - the Problem

Admission to college or university has been a "problem" from everyone's point of view. As more students seek post-secondary education and more adults return for further education or re-training, there has been tremendous pressure on all resources, especially the number of "seats" available. Hopeful students cover their bases by applying to several institutions and delaying accepting any offer until they can see what choices they have. Other students who have lower grades or who are applying to high-demand areas sit without offers, or on waiting lists, hoping the domino effect will provide space when the students with two or three offers make their choice.

Well-managed chaos can be the result for the institutions, and they have tried different techniques to minimize the problem. Some charge non-refundable registration deposits; some make conditional offers; but still there is no way to ensure that the institution allocates all its seats to the most meritorious applicants. The Ombudsman receives calls from students appalled that they must hedge their bets by placing four non-refundable deposits, or angry at being rejected in August, then offered a place in September when it was too late.

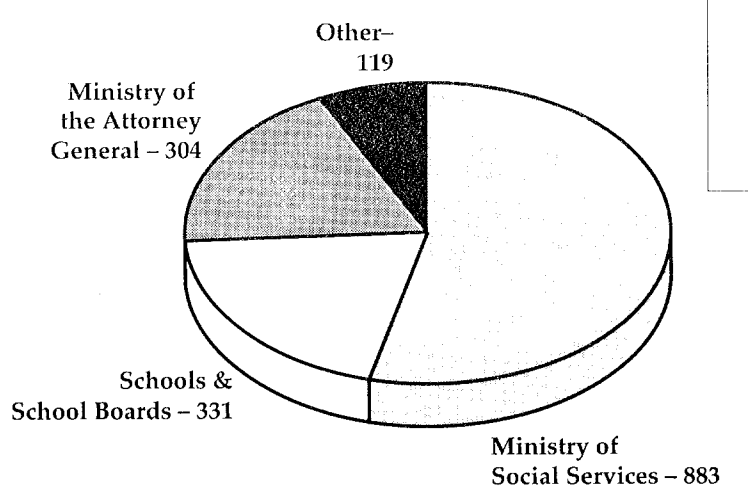
The good news is that the province is moving to a central admissions system, essentially a clearing house to match the preferences and resources of the applicants and the institutions. This may provide the means to balance the interests at stake fairly.

Calcium Supplements Granted

A woman receiving Handicapped income assistance benefits contacted the Ombudsman after the Ministry of Social Services had discontinued a monthly $50 payment for a calcium supplement, which had been awarded her by a tribunal. Normally, such an award would be issued as a "diet supplement." However, since the woman was receiving Handicapped benefits, she was not eligible for a further diet allowance. Therefore, the tribunal had awarded the supplement under Section 4 of the GAIN Regulations, which deals with crisis grants. The ministry explained that there had been a change in the GAIN Regulations since that decision. Now crisis grants could be issued only in the month they were requested. The ministry told the woman that in order to continue receiving the supplement, she must provide a monthly letter from her doctor confirming her continuing need for the calcium, as well as receipts for her purchases.

The position of our Office was that a change in the GAIN Regulations was not enough for the ministry to ignore the tribunal decision, which is binding. However, it was also our opinion that the tribunal did not intend to award the $50 for the calcium supplement regardless of whether it was actually needed or purchased. Therefore, we felt that the ministry did have the right to ensure the woman's continuing need for the supplement. We suggested that the woman provide annual confirmation from her doctor of her continuing need for the calcium supplement, along with receipts for one month. This would satisfy the ministry's need to ensure continued eligibility, and not violate the original decision. The ministry agreed and reimbursed the woman for the two months for which they had failed to pay the supplement.

Enquiries & Complaints Received by the Children & Youth Team



- Ministry of Social Services (883)
- Schools & School Boards (331)
- Ministry of the Attorney General (304)
- Other: Ministries of Education; Finance & Corporate Relations; Health; Housing, Recreation & Consumer Services; Skills, Training & Labour; and Professional & Occupational Associations (119)

Total 1637

Natural Resources

Natural Resources Team

The Ombudsman Office has organized a team structure to cope with a heavy volume of work and offer the desired high level of public service. This system gives the staff the ability to group related types of complaint and to acquire knowledge and skills in specific areas. From an Office perspective, it enhances fairness in our own administrative practices.

The Natural Resources Team, for example, embraces such areas as land use, environment, and property acquisition, thus dealing with the Ministries of Aboriginal Affairs; Agriculture; Fisheries and Food; Energy, Mines and Petroleum Resources; Environment, Lands and Parks; and Transportation and Highways. The team also handles complaints from the B.C. Ferry Corporation and the Home Owner Grant Program.

Usually investigators are assigned to several authorities. However, to allow all staff full scope for development, rotation of responsibilities is built in. The result is that any member is equipped to conduct an investigation in any area of the team's sphere of responsibility.

The Natural Resources Team is only one segment of the Ombudsman Office staff, which functions as one team, sharing a broad range of experience and expertise. Efficiency comes from a total effort, and that effort includes the raising of issues by individual citizens, coupled with the co-operation and assistance rendered to the Ombudsman's work by ministry and administrative staff at all levels.

Fair Exchange

A property had lost its access because of construction of the Trans-Canada Highway in the 1950s. The property owner provided correspondence with the ministry dating back to the early 1960s documenting his attempts to re-establish access to the lot.

While the ministry's documentation of the property acquisition for the highway was incomplete, we could infer from the available documents that the ministry had agreed to restore access to the parcel. The ministry considered various options for doing so but none proved to be feasible.

At our suggestion, the ministry agreed to exchange a parcel of nearby land it owned for the complainant's parcel. The complainant obtained a buildable lot with proper access, and the ministry acquired a source of gravel immediately adjacent to an existing ministry gravel pit. The complainant, who had earlier sought to purchase the ministry's parcel, was very happy with the resolution – and the ministry was relieved to have the dispute settled.

Site Unseen

A dispute arose from a subdivision of waterfront property in the mid-1940s. The survey for the subdivision was so poorly conducted that distances and directions shown in the plans did not correspond to the location of the boundary pins in the ground, making it impossible to draw plans for subsequent improvements on individual lots.

A group of property owners petitioned the government to invoke the *Special Surveys Act* (now part of the *Land Title Act*), which was designed to correct such problems. The special survey was completed in 1974 and redefined the boundaries of the lots within the special survey area.

One property owner objected to how the special survey was carried out. The provincial Cabinet agreed to exclude her property from the special survey and ordered a second special survey to correct the encroachment of one of her buildings on an adjacent public road right-of-way. The second special survey was never done because of disagreement over who would conduct it.

The woman whose property had been excluded from the survey complained to our Office in 1980. The Ombudsman concluded that the Ministries of the Attorney General and of Transportation and Highways had been fair to the complainant in attempting to resolve her problems. The Ombudsman also concluded that an offer made by the latter ministry in 1975 to correct the encroachment was reasonable.

The property owner complained that through all the years she had been fighting about her property boundaries, none of the agencies had ever visited the site to see first-hand what she was complaining about.

The woman left the matter unresolved until late 1991 when she decided to sell the property. She again approached this Office and we agreed to reinvestigate the matter.

The property owner complained that through all the years she had been fighting about her property boundaries, none of the agencies had ever visited the site to see first-hand what she was complaining about. We arranged an on-site meeting with the owner and a representative of the Ministry of Transportation and Highways.

At the meeting, the ministry agreed to have a survey crew stake out the boundaries of its 1975 offer so that the complainant could see precisely how it would affect her property. The ministry also agreed to re-extend the offer, and to close an irregular sliver of its right-of-way up to 15 feet in width to correct the encroachment of her building and to give her a reasonable set-back from the road boundary.

Ombudsman settles long-standing complaints against Ministry of Transportation and Highways

The property owner understood how the ministry's offer would benefit her and accepted the offer in settlement of her complaint. She and the ministry split the cost of the survey, and she was able to sell her property with the boundary issues resolved.

Everyone Gives; Everyone Wins!

A logging company had surveyed and registered an easement to provide access to a number of properties it owned. A rancher purchased one of the parcels, located on a relatively flat bench above a river. The easement road was located on the hillside above the bench land and was difficult to travel in the winter. The rancher was also unable to bring in hydro power at a reasonable cost because B.C. Hydro required that the road right-of-way be publicly owned and maintained.

The rancher ... discovered that his property had originally been granted by the Crown in 1912.

The rancher researched the matter and discovered that his property had originally been granted by the Crown in 1912. Documents he found and discussions with early settlers in the area convinced him that there had once been a public road to his property along the bench.

He provided his information to the Ministry of Transportation and Highways but the ministry's researcher and legal counsel found the evidence inconclusive. The rancher then complained to the Ombudsman.

After reviewing the documentation, we agreed that there was insufficient evidence for the ministry to grant B.C. Hydro a construction permit. However, we asked the Surveyor General for assistance.

Using the original survey field notes, Crown grants, official plans and early aerial photos of the area, and applying various sections of the *Land Act* and *Highways Act*, the Surveyor General's office concluded that there was sufficient evidence to establish a public road right-of-way to the rancher's property. Unfortunately, the public road was on the hillside, where the easement road had been constructed!

Matters were further complicated by bad blood between neighbours who had both hydro and public access; neighbours who didn't and wanted them; and neighbours who didn't but preferred the status quo.

...one neighbour agreed to dedicate a public road right-of-way across her property ... in exchange for the ministry closing the public road right-of-way on the hill.

We decided to meet with the neighbours individually, and then with the neighbours, the ministry and B.C. Hydro together. The meeting produced a written agreement signed by all the parties.

Under the agreement, one neighbour agreed to dedicate a public road right-of-way across her property on the bench land, in exchange for the ministry closing the public road right-of-way on the hill. She also agreed to allow B.C. Hydro to assume a portion of her private hydro line to reduce the costs to the other neighbours of bringing in hydro.

The neighbours agreed to construct a serviceable road on the new public right-of-way, to give up their rights under the easement, and not to object to the closing of the hillside road. B.C. Hydro agreed to construct a power line to the neighbouring properties under the subsidy program then in place.

The ministry surveyed the new road right-of-way, the rancher roughed out the new road with his cat and supplied the gravel for the road. Two other neighbours supplied a front-end loader and truck to load and haul the gravel. The agreement was signed in August and the three kilometres of new road and power lines were all in place before Christmas.

Natural Resources

Passing the Buck for Cleanup:
Forest Company Receives Compensation

A November 1990 storm resulted in the failure of an abandoned cannery dam on a lake, releasing a flood of water and forest debris down a creek. The debris torrent originated from provincial forest land and entered land administered by a forest company where it damaged one of the company's bridges beyond repair. The flow ended up in an inlet, taking out waterlines and a private hydro-electric generator.

The forest company directed its contractor in the area to contain and dispose of the debris before it became a serious navigational hazard or caused further damage. The bill for the cleanup was $13,547.60, for which the contractor received full reimbursement from the company. However, when the company approached the provincial government to recover these costs, reimbursement did not come quite so easily.

... the debris torrent was seen by each agency as the responsibility of one of the other agencies.

The company's insurance covered the damages but would not cover the cleanup costs. For this the company requested compensation from the Ministry of Forests, the Ministry of Environment Lands and Parks, the Provincial Emergency Program and the Port Alberni Harbour Commission. Every one of the company's requests was turned down because the debris torrent was seen by each agency as the responsibility of one of the other agencies. After two years of this "bureaucratic buck-passing," the company finally sought the assistance of the Ombudsman in November 1992.

We reviewed the particulars of the case and determined that the company's quick response to this potentially dangerous situation was commendable. The containment and cleanup costs were obviously not the responsibility of the company. As a result, we contacted the Water Management Division of the Ministry of Environment Lands and Parks, and the Provincial Emergency Program for assistance. The Water Management Division agreed that the cleanup of the debris would have been identified as an essential component of a recovery program after this incident and indicated, in correspondence with the Provincial Emergency Program, its support for payment of the forest company's claim.

Seven months after approaching the Ombudsman, the forest company received a cheque from the provincial government for the full amount claimed.

Aboriginal Sacred Sites Respected

Two families combined their resources to purchase a 1.9 acre site for a new motel. The site was truly one of a kind, with west coast ocean frontage, natural harbour topography and easy access both to the beach and to town. Having completed all development procedures, they brought in the construction equipment. A dream was about to come true – they thought.Local information indicated that their dream might be resting on a Native burial ground.

The first bulldozer scrapings proved that it was so. Seventeen individual human remains of aboriginal ancestry, estimated to be three to five thousand years old, were uncovered. A cross of two whale bones positioned on top of the bodies, a burial rite known previously only in the far northern parts of the province, increased heritage interest in the property. A professional archaeological study confirmed the site's heritage value, thus terminating any possibility for development.

The inability of the property owners to reach a settlement with the provincial Ministry of Tourism brought the citizens' complaint to the Ombudsman.

...human remains of aboriginal ancestry, estimated to be three to five thousand years old, were uncovered.

The facts were not in dispute, but the ministry had to determine what priority to give to the site. Ministry policy places priorities on 17,000 or more archaeological sites. Highest priority is given to those that are to be preserved untouched; next to those from which artifacts may be removed, and development allowed; and lowest to those whose level of archaeological value allows unimpeded development. The ministry must also consider cost factors of acquisition, preservation and ongoing maintenance.

Ministry policy places priorities on 17,000 or more archaeological sites.

With this site receiving the highest heritage value rating, acquisition by the province was in the public interest. The passage of approximately two years between discovery of the remains and Ombudsman Office involvement saw rapidly increasing property values. On what basis would fairness for compensation be set?

The key factors to consider were the interests of the aboriginal people and of local municipal government. Professional fee appraisers were engaged. They applied the standard "highest and best use" principle in their evaluations, identifying both "commercial" and "residential development" uses. From their information the Ombudsman was able to set a price in the area's rapidly rising real estate market that met requirements of all parties, and a settlement was reached.

This case was typical of many that come before the Ombudsman where different interests produce a collision of values, each interest and value requiring in-depth analysis in the search for a fair and equitable settlement.

Exercising Discretion

The *Ombudsman Act* permits the Ombudsman considerable discretion to refuse to investigate even where she has jurisdiction. Reasons for refusing to investigate include:

- the complainant has insufficient personal interest in the matter
- the issues raised are frivolous, vexatious or not raised in good faith
- the complaint is otherwise resolved
- the matter is stale, or out of date
- the complainant would not personally benefit from an investigation
- the person has other avenues of redress that ought to be exhausted first, such as the matter being before the courts, an administrative tribunal or an internal appeal process set up by the authority.

Action at Last

Obtaining permits for septic systems generated many complaints to our Office. In July 1989, we published *Public Report No.18*, summarizing the results of our investigation. It is always gratifying to our Office to see our recommendations being implemented. In October 1993, the Ministry of Health reported to us what they had done to follow up on the 1989 report.

1. Developed a policy manual for use by Environmental Health Officers, public health offices, septic tank contractors and local professional engineers who are involved in designing on-site sewage disposal systems.
2. Reviewed Health Unit case loads and hired 50 more Environmental Health Officers.
3. Initiated a pilot project in partnership with the City of Kelowna to test the viability of transferring the on-site sewage permit process to local government.
4. Provided in-service training programs and regional training courses for Environmental Health Officers.
5. Expanded the role of the Public Health Protection Branch. In cooperation with the four Lower Mainland health units, they contracted a consultant engineer to review and evaluate past and present standards and practices in the Fraser Valley and to make recommendations on improvement as required.
6. Amended the *Health Act* to allow for an appeal to the Environmental Appeal Board of decisions made under the Sewage Disposal Regulation. This amendment will come into force by regulation, and will be presented to Cabinet for consideration in 1994.
7. Initiated a voluntary certification pilot project in partnership with the Capital Regional District. If this project proves satisfactory, bonding may become unnecessary.

Further recommendations have been directed to the Ministry of Municipal Affairs, Recreation and Housing. We have written numerous letters and offered assistance to complete the recommended tasks, but we have no progress report from them.

We will continue to follow up on *Public Report No.18.*

Ombuds*goal* 4

To promote self-help for the people of British Columbia.

Natural Resources

Clayoquot Sound Land Use Decision

What Did the Ombudsman Say?

On April 13, 1993 the B.C. government announced its land use decision for Clayoquot Sound. The decision was intended to bring stability to the long-standing conflict over land and resource use in one of the province's most spectacular collections of islands, fjords, lakes, streams, mudflats, sand beaches, rocky coastline, forests and ocean. However, the decision itself became the focus of local, national and international controversy and interest.

As expected, the Ombudsman received a number of complaints from members of the public regarding the decision. Since the process leading to the land use decision in Clayoquot Sound was considered to be a matter of general public concern, in addition to responding to the specific complaints from the people who contacted the Office, the Ombudsman chose to initiate her own investigation.

Generally speaking, the primary concern raised by those who contacted us was, "The decision is not fair!" We found that the policy decision was the rightful responsibility of the provincial government, as it has the technical expertise, the legislated authority and the political accountability necessary to make such a decision. Complainants gave two main reasons why they thought the decision was unfair:

- that the government should have referred the land use decision to CORE, the Commission on Resources and Environment
- that the government was in a conflict of interest regarding the land use decision because of purchases of MacMillan Bloedel shares

We considered both of these reasons when we reviewed the fairness of the process leading to the Clayoquot Sound Land Use Decision, since they related more to the decision-making process than to the decision itself.

...the primary concern raised by those who contacted us was, "The decision is not fair!"

The decision to exclude CORE from the Clayoquot Sound decision was made by duly elected decision-makers whose political accountability would ensure adequate consideration of the public interest. However, although CORE was introduced in January 1992 as a new land use commission with the statutory mandate to "help resolve valley-by-valley conflicts throughout B.C.," we found no explicit evidence to support government's position. Government maintained that it had adequately informed the public of its intention to make this land use decision without the help of CORE if the pre-existing consensus-based process failed to produce a sustainable development strategy.

Recommendation:

- that government publicly clarify the reasons for excluding CORE from the land use decision process

Our review supported the conclusion of Mr. Justice Seaton, who headed a public inquiry into the allegation that the government was in a conflict of interest as a result of its purchases of shares in MacMillan Bloedel near the time of making the land use decision. He determined that there was no conflict of interest and that there was compliance with the sections of the *Financial Administration Act* dealing with conflict of interest.

Fairness is context-specific and we must consider who is most affected by the particular administration of government. We determined that the people most affected by the Clayoquot Sound Land Use Decision were the Nuu-chah-nulth First Nations.

Clayoquot Sound falls within the traditional territory of the bands of the Nuu-chah-nulth First Nations' Central Region. Consequently, the Hesquiaht, Ahousaht, Tla-o-qui-aht, Ucluelet and Toquaht bands consider the area to be an integral component of their heritage. They depend on the Sound's marine and land resources for sustenance, as well as for economic, social and cultural needs and aspirations.

In 1982 the Government of Canada officially accepted, for negotiation, a collective land claim from the 14 bands of the Nuu-chah-nulth First Nations. The claim encompasses a substantial portion of the west coast of Vancouver Island, including Clayoquot Sound. Though it has yet to be negotiated, the validity of the claim appears to be upheld at the provincial level by the B.C. government's recognition of aboriginal title and of the inherent right of aboriginal people to self-government.

Clayoquot Sound falls within the traditional territory of the bands of the Nuu-chah-nulth First Nations' Central Region... the Hesquiaht, Ahousaht, Tla-o-qui-aht, Ucluelet and Toquaht bands consider the area to be an integral component of their heritage.

Until the Nuu-chah-nulth First Nations' claim has been negotiated and a determination made through the B.C. Treaty Commission process, administrative fairness demanded that any interim decisions regarding land allocation and resource use within the claim area must meet the following criteria:

- the decisions must be made without prejudice to aboriginal rights and the upcoming treaty negotiations
- the decisions must be preceded by meaningful and timely consultation with the Nuu-chah-nulth First Nations

The provincial government has recognized that this land use decision "must, to the extent possible, not prejudice and be subject to the outcome of comprehensive treaty negotiations" but the Nuu-chah-nulth First Nations indicated they were not clear what this meant. The prejudice inherent in making a land use decision for an area where the ownership or jurisdiction has not been established may be unavoidable. This decision will likely result in the depletion of some resources that will take years to replace if, indeed, they can ever be replaced.

Recommendation:

- that the provincial government clearly define what without prejudice means and, in particular, how the Clayoquot Sound Land Use Decision will not prejudice the upcoming treaty negotiations or the Nuu-chah-nulth First Nations' present and future interest in the land and resources of Clayoquot Sound

The Nuu-chah-nulth First Nations were given the opportunity to participate in multi-party institutionalized consultation processes before the land use decision was made, but they were not consulted about the structure of these processes, and their interests were treated as those of just another third party, not those of a government in a land matter considered to be within its traditional territory. Moreover, when the government-structured process failed to reach consensus on a sustainable development strategy for Clayoquot Sound in October 1992, the First Nations' only mechanism for participating in the provincial government's land use decision process was gone. Unfortunately, the provincial government did not pursue further consultation with the Nuu-chah-nulth First Nations until almost six months later – one week before announcing its land use decision for Clayoquot Sound.

... the decisions must be preceded by meaningful and timely consultation with the Nuu-chah-nulth First Nations.

On April 6, 1993, Premier Harcourt met with Nuu-chah-Nulth representatives in Victoria, characterizing the government-to-government meeting as a consultation on the issue of land use in Clayoquot Sound. With April 13 set as the date of announcement, it became obvious that the decision had already been made when the Nuu-Chah-Nulth First Nations were "consulted" the week before. In fact, we learned that the provincial government had arrived at its land use decision on February 24, 1993. The government of British Columbia clearly failed to consult the Nuu-chah-nulth First Nations in a meaningful and timely manner prior to making the pre-treaty Clayoquot Sound Land Use Decision.

Recommendation:

- that the government consult these First Nations to ensure their present and future interest in the land and resources of Clayoquot Sound is meaningfully considered for incorporation into the land use decision

The details of this investigation, including the findings and recommendations, are contained within our *Public Report No. 31 – Administrative Fairness of the Process Leading to the Clayoquot Sound Land Use Decision*, released in November 1993. At the request of the Nuu-chah-nulth First Nations we agreed to review our recommendations within six months.

On March 19, 1994, the Interim Measures Ageeement between the province of British Columbia and the Nuu-chah-nulth First Nations was ratified. This is an interim measures agreement within the meaning of the June 1991 *Report of the B.C. Claims Task Force Report* and the August 20, 1993 *Protocol Respecting the Government to Government Relationship between the First Nations Summit and the Government of British Columbia.*

The Agreement intends to conserve resources for future generations of the First Nations. It is to be interpreted in light of the commitment by B.C. that the Clayoquot Sound Land Use Decision of April 1993 is "without prejudice" to aboriginal rights and treaty negotiations and does not define or limit the aboriginal rights, title and interests of First Nations.

The parties to the Agreement shall establish a joint management process to deal with resource management and land use planning within Clayoquot Sound and a working group of the First Nations and British Columbia to work together to promote economic development opportunities for the First Nations. This work has already begun.

The Agreement serves as a bridge to treaty completion and is extendable if necessary in two years.

Natural Resources

Slow and Steady Wins the Lots

In 1981 a family secured a financial interest in two city lots. Because of a loose contractual arrangement with a developer, and some oversight on the family's part, taxes were left unpaid. Upon realizing this error in 1985, the family discovered that the property had been seized by the city for tax arrears. The family claimed never to have been notified of the pending seizure, as required by legislation. The city had notified the developer, who, they expected, would notify the owner.

The family engaged a lawyer who made unsuccessful attempts to have the property returned or have compensation paid. They finally contacted the Ombudsman in 1988.

While the facts were not in dispute, there was disagreement on the interpretation of the notification requirement, the key ingredient of which was that the title holder was to be notified, not a developer. The city claimed it had met the legal requirement to notify the title holder and denied responsibility for paying compensation.

...when there are diverse opinions, complex issues and an attempt to create an atmosphere of mutual respect and openness, delay may be inevitable in reaching a fair conclusion.

The fact that the Ombudsman did not have responsibility for municipal issues complicated the process. (Expanded jurisdiction is proposed for early 1995). For that reason, the Ombudsman worked through the Ministry of Municipal Affairs, in particular through the office of the Inspector of Municipalities. The three-way communication among the Ombudsman, the Inspector of Municipalities and the city created innumerable delays.

The city based its "no-compensation" position on several points, each worthy of consideration and each receiving an element of support at the ministry level. Our concern, however, was administrative fairness. We took the position that notification directly to the title holder was the intent of the legislation, and that it was fair. Finally, in 1993 all agreed to accept the position of the Ombudsman that compensation was warranted.

Arriving at a settlement was an exercise in itself. The passage of time, the costs incurred by the property owner and the city over the years, the loss of development potential and similar factors were all considered. The final figure was based on the current market value of the two lots. The property owner and the city agreed to absorb whatever costs they had incurred and to waive any claim for interest that would normally be included.

The delay here was unfortunate. However, when there are diverse opinions, complex issues and an attempt to create an atmosphere of mutual respect and openness, delay may be inevitable in reaching a fair conclusion.

Sawmill Threatens Tranquil Setting

Three years ago, a couple purchased a prime view residential lot. In the summer of 1992, they began construction of their new family home. In August, a portable sawmill began operating on an adjoining property, disturbing the tranquil setting and the quiet enjoyment of their property. When the couple approached the sawmill operator and the person from whom he was leasing the land, they told the couple not to worry, as the industrial operation would be temporary.

The Office of the Ombudsman does not yet have the legislative authority to investigate complaints concerning local governments.

In the spring of 1993, the couple learned that the Ministry of Transportation and Highways was considering issuing a lease to the sawmill operator over another 2.5 acre parcel of Crown land situated within a park-like setting that adjoined both the couple's property and the private land on which the sawmill was located. The couple, fearing that the issuance of a lease would lead to an expansion of the sawmill operation, contacted the Kootenay Regional Highways office, and the District Highway office to inquire about the status of the proposed lease. They sent letters of objection to the ministry and the Regional District.

Several months later, having been unable to resolve their concerns, even after attending several Regional District and ministry meetings, the couple contacted our Office. They felt that the ministry had not fully considered their interests prior to the letting of the lease. Neither this couple nor other residents affected by the operation of the portable sawmill wanted any form of industrial land use next to their homes.

The Office of the Ombudsman does not yet have the legislative authority to investigate complaints concerning local governments. However, we contacted the Regional District to inquire about the zoning of the subject Crown lands.

Regional District staff told us that, in preparation for developing a rural use by-law for the electoral area, they had completed a three-year land-use study. The process they followed was consistent with provisions of the *Municipal Act*. The parcel of Crown land under consideration by Highways for leasing was zoned M-1, which permitted light industrial use.

Local government learned of the complainants' concerns and opposition to the industrial activity at the time the by-law was being considered for third reading. Prior to that time, they had heard no objections. Currently, the Regional District is considering a rezoning application for the property, to amend the zoning from industrial to park and recreational use. The decision on the application will depend in part on the final disposition of the Crown lands under consideration.

We were unable to substantiate the complaints against the ministry.

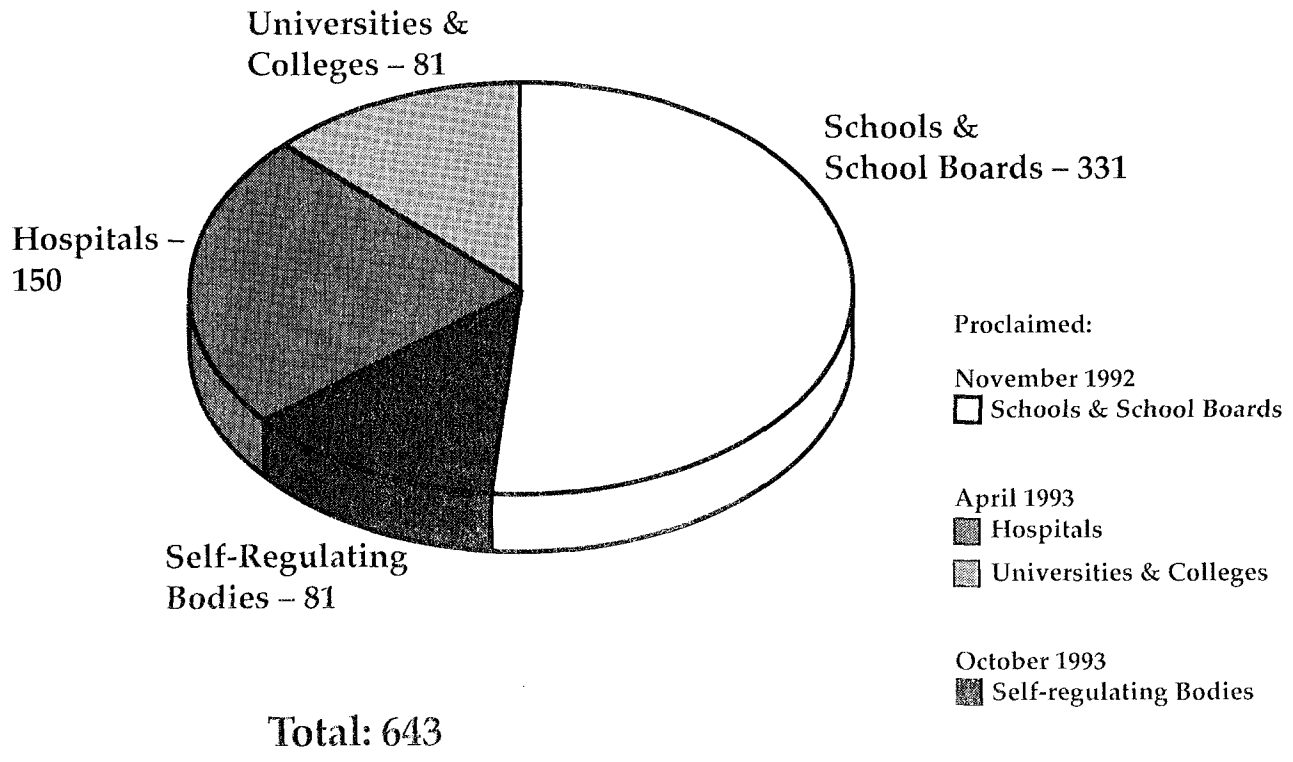
Unknown to the complainants, the Ministry of Transportation and Highways had been negotiating with the sawmill operator for lease of the Crown-owned lot since 1990. Pending a decision to transfer the property, which was surplus to their needs, to B.C. Lands, ministry staff decided to lease the subject Crown parcel to the sawmill operator. We determined that this practice to lease land to third parties was consistent with the *Highways Act*.

We were unable to substantiate the complaints against the ministry.We were satisfied that they had made reasonable and diligent efforts to resolve local resident concerns by working closely with the Regional District, the MLA, the sawmill operator and the residents affected by the operation of the sawmill. They had held two meetings with all concerned parties to clarify the local residents' concerns and to discuss how to resolve the issues identified.

Based on these discussions, the ministry drafted the lease in such a way as to intentionally limit the term to a period of one year, to include a 90-day cancellation clause that could be invoked by the ministry at the time of transfer, to restrict activity to log storage and storage of finished wood products, and to require strict compliance with not only the terms of the lease but requirements of other regulatory authorities. The latter provision effectively prohibited the expansion of the sawmill operation on the Crown lands under lease.

We explained this process to the couple, and also the process for the anticipated transfer of the subject Crown lands. Pending the transfer, we advised the couple to contact B.C. Lands and the Regional District if they wished to pursue retaining the parcel for public park and recreational use.

Enquiries and Complaints about NEW AUTHORITIES



Beyond the Ombudsman's Jurisdiction – But Not for Long!

Mr. C owns two adjacent properties in a rural area. In 1987 B.C. Hydro supplied power to the area and Mr. C hooked up one of his properties for residential purposes. On a portion of the other property he generates his own electricity using diesel generators for a small sawmill operation. When he began his operation electricity was not available, and after it became available Hydro could not supply it in a form required by his mill.

When he received his property tax notification in 1988, Mr. C noted that he had been assessed a local service tax for the newly supplied electricity. One levy, which he did not dispute, was for his residential property, and the other substantially higher levy was for his light industrial property. He complained to the regional district that he should not be taxed for a service that could not be supplied to him. At this juncture Mr. C's frustration began.

When he appealed to the Ombudsman for assistance in April 1993, Mr. C had paid over $7000 in disputed taxes.

Mr. C repeatedly tried to convince the regional district of the unfairness of the levy, with no success. He was referred to the properly constituted by-law that empowered the regional district to impose the tax, without any explanation as to why he had to pay taxes for a service that was not available to him. Mr. C obtained a letter from B.C Hydro verifying that they could not supply him with the type of electrical service he required to run his mill operation. Unsatisfactory replies to his protestations continued for several years, as did his taxes. When he appealed to the Ombudsman for assistance in April 1993, Mr. C had paid over $7000 in disputed taxes.

The Ombudsman's investigation revealed that the somewhat complex process of calculating property taxes involves several different provincial authorities as well as the regional district. When a municipality or regional district passes and adopts a by-law in accordance with the terms of the *Municipal Act*, it can then impose a local service tax on properties within its jurisdiction. On the authority of the by-law, the B.C. Assessment Authority then evaluates the property's actual use and current value and assigns it a code. This information is conveyed to the Surveyor of Taxes who calculates the taxes owing on the property based upon the authority of the by-law, the mill rate in effect and the information supplied by the Assessment Authority.

In Mr. C's case, the sawmill property was classified and taxed as light industrial. Whether or not the service for which the taxes were being raised was actually available had nothing to do with the requirement to pay taxes under a duly constituted by-law. Unfortunately, when Mr. C registered his complaint, the Ombudsman did not have jurisdiction over municipalities and regional districts and so could not take the investigation any further.

We advised Mr. C accordingly. He must either continue to seek a resolution with the regional district or wait until 1995 when the government plans to extend the Ombudsman's jurisdiction to include municipalities and regional districts.

Schedule of the Ombudsman Act

The public bodies the Ombudsman can take enquiries and complaints about are listed as a Schedule to the *Ombudsman Act.* Regional Health Boards and Community Health Councils have recently been added. Only the local government sections have yet to be proclaimed into effect.

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.

Recent Amendments:

- Regional Health Boards
- Community Health Councils

*To be proclaimed March 1995

Speech

Municipalities Come Under Ombudsman's Jurisdiction

extract from an address by the Ombudsman
to the Union of B.C. Municipalities, September 20, 1993

May I begin by saying that proclamation is not a commentary on the quality of processes and services currently in place in your communities. I want to highlight what I consider to be the critical issues facing municipalities and my Office as we move through the next year towards the planned proclamation date of September 1994. [Editorial note – Since this speech, I recommended to the Attorney General that proclamation be deferred until 1995 to give our Office the opportunity to prepare and to work with the new authorities. The Attorney General has agreed to March 1995.] It is important for elected and employed officials within municipalities to be clear about the role of the Ombudsman in relation to investigating the actions or inactions of officials at the municipal or regional district level. It is equally important for all of us to be clear with the public.

The role of the Ombudsman is to promote fairness in public administration in the province of British Columbia and to investigate and resolve complaints of administrative unfairness.

In an ideal world, the public would receive services from government under laws, rules, policies and procedures that were fair, reasonable and equitable. Where fairness required it, authorities would have internal review and appeal mechanisms designed to respect the principles of natural justice and administrative fairness. When government has constructed a public service designed with these requirements in mind, it is important for the Ombudsman to respect those efforts and to refer the aggrieved citizen to the process in place.

We are not advocates for the person complaining to our Office.

At present we have a co-operative and positive working relationship with the office of the Inspector of Municipalities. The statutory mandate of the Inspector will in no way be diminished by our new jurisdiction. In addition to the Inspector, our preference for most municipalities is that they have in place a mechanism for dealing with complaints by the public.

During the next year, my suggestion to local governments is to ask themselves the following questions:

1. What resources can they dedicate to conflict resolution in order to avoid over-reliance by the public on our Office? Have adequate steps been taken at the local level to manage information and access requests?
2. How can local government bring greater clarity to its own administrative practices?
3. Will local government be able to adopt clearly understood standards defining what is a conflict of interest in matters such as contracting, land zoning and development permits?
4. Will the local government institute administrative appeal mechanisms to provide for the review and possible resolution of what otherwise could be considered as an arbitrary or excessive exercise of a statutory/by-law power?
5. Have adequate steps been taken at the local level to manage the proclamation of the *Freedom of Information and Protection of Privacy Act*?

In an ideal world, the public would receive services from government under laws, rules, policies and procedures that were fair, reasonable and equitable.

When a complaint is made, and we proceed to investigate, several things should be kept in mind in addressing the question of fairness:

1. We are not advocates for the person complaining to our Office.
2. Once the decision has been made to file a formal complaint which we accept jurisdiction over, we provide full disclosure to the authority of the basis on which the complaint is made.
3. When the investigation is complete, if the complaint is not substantiated we provide reasons to the complainant and to the authority. If the complaint is substantiated, we attempt to achieve a fair resolution.

One of the principal advantages to proclamation will be the ability of our Office to deal with matters in a holistic and integrated way. We will provide you with our administrative fairness checklist, and we will try to provide some consultations at the local level.

Our role is to ensure that local governments deal with their constituents fairly. We do not replace your decisions or even review decisions on their merits; our job is to review the process by which a decision was reached. We will respect the role of local government.

Stronger Children – Stronger Families Conference

Designed by Randy Bell, a young native artist. A global symbol of commitment to "giving voice" to children and families as they build their future – and everyone's future.

June 18-23, 1994

University of Victoria

Purpose: to share experience, knowledge and expertise on how the *United Nations Convention on the Rights of the Child* can have a positive impact on the lives of children and families.

Participants: an international group of youth, government representatives, researchers, policy makers and practitioners.

Sponsors: B.C. Ombudsman and University of Victoria School of Child and Youth Care

The Conference is being held in the International Year of the Family.

Si vous vous sentez lésés dans vos droits face à un ministère ou un organisme du gouvernement de la Colombie-Britannique, vous pouvez faire appel à l'Ombudsman.

L'Ombudsman peut vous conseiller sur les recours possibles ou faire enquête sur des problèmes dans des domaines variés: sociaux, environnement, accidents du travail, éducation, etc.

Vous pouvez appeler, écrire, envoyer un fax ou vous présenter au:

L'Ombudsman de la Colombie-Britannique
202-1275 6e Avenue ouest,
Vancouver, C.-B., V6H 1A6

660-1366
sans frais: 1-800-661-3247
Télécopieur: (604) 660-1691

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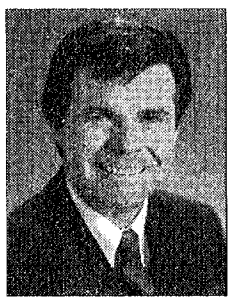

Deputy Ombudsman Named

Brent Parfitt

In 1993 the position of Deputy Ombudsman was created. Having a Deputy enables me to meet the needs of the public and our authorities more efficiently and effectively. I congratulate Brent Parfitt on his appointment.

The position of Deputy is a very important one to the work of the Ombudsman. 1993 marked the first full year of proclamation of the new authorities. The number of authorities will have increased by over 2500 by 1995. Many of the new authorities expect and want personal contact with the Ombudsman or her delegate at their meetings and conferences. We have relied solely on the resources of our Office to educate the staff working for new authorities. My Deputy and I perform most of the public relations and educational work of the Office.

In the past, though the position was not provided for in our statute, there was a Deputy Ombudsman for Children and Youth. That position was held by Brent Parfitt and was created to give attention to the special needs of children and youth particularly in the wake of Canada being a signatory to the *UN Convention on the Rights of the Child*, in 1991. While advocacy work on behalf of children and youth continues to be important to our Office,the Deputy and I now share the work in this area with the Children and Youth Team, who have had to assume more responsibility. We hope that government over the coming year will provide an advocacy mechanism for children that is given a public profile, that is accessible to those it serves, properly resourced and independent from government. A recent Bill in Saskatchewan provides for a Child Advocate through the Office of the Ombudsman.

The profile of the B.C. Office of the Ombudsman has remained prominent both nationally and internationally. The Deputy and I remain committed to promoting ombudsmanship at these levels.

New Kid on the Block

Costa Rica Appoints an Ombudsman

In October Brent Parfitt attended the inauguration of the first Ombudsman for Costa Rica, Señor Rodrigo Alberto Carazo, and brought greetings from my Office, the International Ombudsman Institute, and our federal and provincial governments. Mr. Parfitt spoke on the role of the Ombudsman in providing services to vulnerable people including persons with disabilities. A copy of the video "Person to Person," developed by our Office with óthers, was presented to Señor Carazo's office staff who will translate it into Spanish.

During the Conference a bi-lateral agreement was signed by the Ombudsmans of Costa Rica and El Salvador, pledging mutual support and co-operation.

To strengthen our relationship with this newest of Ombudsman's Offices we have proposed to link the conference ***Stronger Children – Stronger Families*** to a Costa Rican school classroom by interactive satellite. In addition, Señor Carazo's father, a former President of Costa Rica and a world renowned human rights activist, will be attending the Conference as a presenter.

The creation of the Institution of Ombudsman in any country is not only the sign of a healthy democracy, but also a reflection of the maturity and confidence of those entrusted by the people to govern on their behalf.
The role of an Ombudsman
is not a threat to any democratic process, rather it is a guarantee that a country is serious about enhancing its democratic processes.

[Message from the International Ombudsman Institute]

NATIONAL OMBUDSMANS' CONFERENCE

November 2-4, 1993
Toronto, Ontario

The Ontario Ombudsman, Roberta Jamieson, hosted the annual Canadian National Ombudsmans' Conference.

Stephen Lewis, former Ambassador for Canada to the United Nations, gave a dynamic presentation as the keynote speaker on "Challenges on the International Horizon." He spoke of a resolution at the Vienna Human Rights Conference calling for universal ratification of the *UN Convention on the Rights of the Child* by 1995. If this happens, it will be the first Convention to achieve universal consensus. We hope the ***Stronger Children – Stronger Families*** Conference will promote this ratification. The Conference will share information on the *Convention* and its implementation with its 800 participants.

The topic, "Working Smarter: the Ombudsman in a Time of Fiscal Restraint" challenged the Ombudsman to become a catalyst for change. People are becoming more questioning of government and asking it to "show us," and are not likely to accept shallow promises. Can an Ombudsman be part of the solution in a cost-effective manner? Two solutions were posed. The Ombudsman can empower people, can become proactive rather than reactive by interacting with government respectfully, co-operatively and within its mandate. The Ombudsman could consider developing a mediation process to resolve a complaint prior to an investigation.

An address entitled, "Accountability vs. Independence" dealt with the dilemma faced by Ombudsman Offices. Even as independent Officers of the Legislature, Ombudsmans recognize their need to be accountable. Some jurisdictions have Special Committees of the Legislature to provide an accountability mechanism.

There is a danger that such Committees could fetter the independence of the Ombudsman by establishing rules and procedures. It is important that the independence of the Office be guaranteed by its governing statute. The Ombudsman should be seen as an Officer of the Legislature, not as a servant. Ombudsmans are unique in that they can recommend not only what is legal but what is fair and reasonable. They can comment on systems, on inequity and unreasonableness, matters often beyond the scope of the courts. Delegates exchanged ideas on how to become more accountable while remaining independent.

B.C. will host the 1994 National Ombudsmans' Conference, June 16-18 in Victoria. Many of its delegates will also attend the ***Stronger Children – Stronger Families*** Conference.