



Library Copy

# Ombudsreport 1994

Annual Report of the Ombudsman, Province of British Columbia

Mr. Koki Ishii, Parliamentary Vice-Minister of the MCA greets the Ombudsman, Dulcie McCallum



May 25, 1995

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

It is my pleasure to table my 1994 Ombudsman Annual Report to the Legislative Assembly. This report is provided in accordance with s. 30(1) of the *Ombudsman Act* and covers the period from January 1 to December 31, 1994. The report will be available on Internet and can be made available on audio cassette.

This is my third annual report as Ombudsman for the province of British Columbia. The past two and a half years since my appointment as Ombudsman have been full of tremendous change and growth within my Office. The mandate of the Ombudsman's Office has expanded from investigating 280 agencies and ministries to 2800 next year. I commend my staff for their creativity, perseverance and diligence throughout this period. The financial growth of the Office has been considerable and has supported the dramatic increase in jurisdiction over new authorities experienced as a result of proclamation of all of the remaining sections of the Schedule.

In order to deal with the changes resulting from proclamation, new approaches to Ombudsmanship have been developed and implemented. I congratulate public officials within all public agencies for their receptivity and openness to our suggestions for more effective and efficient ways to manage Ombudsconcerns internally within government.

1994 has been a year full of change and challenge. The process throughout proclamation of our new authorities has presented the Ombudsman's Office with significant and constant demands. Early 1995 will mark the final stage of the increased jurisdiction of the B.C. Ombudsman with the inclusion of all forms of local governments. As the

Office has moved through its many changes, we have transformed the decision-making process for both administrative and operational purposes. The new Guiding Principles articulates both the long-standing goals and the new direction of the Office.

Notwithstanding these challenges, two Public Reports and one Special Report were issued. *Listening: A Review of Riverview Hospital* provided an ideal opportunity to assist an authority with a host of changes that will greatly benefit psychiatric patients and their families. *Building Respect: A Review of Youth Custody Centres in British Columbia* focused on how custody centres deal with young people and the phenomenon of peer abuse. The Special Report, *The Nikki Merry Case* dealt with a particular investigation of the challenges a woman faced in bringing her complaint of sexual assault by her physician before the College of Physicians and Surgeons.

During the year I played host to the Ombudsmans of Canada. The conference was held in Victoria just before the **Stronger Children – Stronger Families** Conference which I co-hosted with the University of Victoria. Both conferences were a great success.

I had the good fortune to be invited by the Prime Minister of Japan to attend an international Ombudsmans Conference hosted by the Management Control Agency of Japan. While I was the only Canadian Ombudsman to attend, I was joined by my counterparts from around the world including Sir John Robertson, the then Ombudsman for New Zealand and President of the International Ombudsman Institute, recently named Lieutenant Governor.

When the government first announced its intention to expand the jurisdiction of the Ombudsman to include schools, hospitals, universities, self-governing professional bodies and local governments, it was done at the same time as committing to the establishment of an independent Privacy Commissioner. Concerns regarding the jurisdiction of the Privacy Commissioner to examine information held by the Ombudsman have been raised with the Attorney General as the Minister responsible for the *Ombudsman Act* and will, I hope, be addressed in the spring session of the legislature in 1995.

Respectfully submitted,

*Dulcie McCallum*

Dulcie McCallum  
Ombudsman for the  
Province of British Columbia, Canada

## Highlights:

Local Governments Proclaimed	3
Child and Youth Advocate Appointed	3
Progress at ICBC	4
Social Services Co-operates	8
B.C. Securities Commission Responds	20
<i>Listening</i> Report Adopted	24
<i>New Forest Practices Code</i>	29
Post-it Poster	insert

## Guest Comments:

- Professor Bill Black  
Law School  
University of B.C.  
**Human Rights Review** 5
- Shelley Milne  
Manager, Ombudsman Inquiries  
Insurance Corporation of B.C.  
**Response to Complaints** 7
- Susan Park  
Program Manager, Enquiry BC  
**You Have Questions?** 18
- Brian Green  
Selections Standards Project Manager  
Public Service Employee Relations Commission  
**Competency-based Hiring** 22
- Dianne Macfarlane  
President and C.E.O.  
Riverview Hospital  
**Riverview Hospital Review** 25
- Dr. John W. Ekstedt  
Director, Institute for Studies  
in Criminal Justice Policy  
Simon Fraser University  
**Justice in Sentencing** 32

MAIL ➔ POSTE

Canada Post Corporation Société canadienne des postes  
Postage paid 01291661-93  
Blk Nbre  
#(01291661-93)  
Victoria, BC

## Arigato ありがとう

The International Symposium on Ombudsman, sponsored by the government of Japan, was held in Tokyo, June 22 – 24, 1994. It was the first Ombudsman Conference to be held in Asia, and the first meeting of Japanese ombudsman officials with foreign Ombudsmans. Nine countries were invited to send representatives: Canada, United States, Austria, Korea, Sweden, France, Northern Ireland (UK), China and New Zealand. A total of 1200 people took part in the proceedings.

It was a great honour to be invited to Japan. The sessions provided me with an overview of ombudwork in other parts of the world. They also gave me the opportunity to explain British Columbia's role in ensuring fair, accountable and transparent government. The truly exciting part of the Symposium was meeting with the many dedicated volunteers who form the foundation of the Japanese system. I was delighted and moved by the kindness and generosity the Japanese officials showed me during my visit.



## Ombuds World at a Glance

Japan	2
Sri Lanka	2
Canadian Ombudsmans Conference	3
Stronger Children – Stronger Families	15
Hawaii	30

Office of the Ombudsman  
Parliament Buildings  
Victoria, B.C.  
V8V 1X4



## Speech

## Fairness the Japanese Way

excerpts from an address given in Tokyo at the International Symposium on Ombudsmans

**M**ay I begin my remarks with a few brief comments about my Office in British Columbia, Canada.

The British Columbia Office of the Ombudsman has undergone enormous changes since my appointment nearly two years ago. The most profound of these changes is proclamation of the remaining sections of the Schedule to the *Ombudsman Act* that defines my jurisdiction. As a result of proclamation, the number of authorities has increased dramatically. The Ombudsman can now investigate all public bodies. All of the structural and administrative changes have been made with several specific goals in mind: to stay relevant, to be an agent for social change and to be accountable, fair, just and equitable.

The internal changes have been undertaken with the overall goals of the Office in mind. These are:

1. To encourage respect for public servants. The public service in British Columbia, as in Japan, has over the past many years become discredited and dishonoured. Public servants are the front-line decision makers, the professionals. For a variety of reasons, as a collective, they have borne much of the criticism from the public. They need to be respected and rejuvenated as decision makers.
2. To promote self-help. We have entered an era where citizens are not prepared to let things be done to them by government. We have a sophisticated and learned electorate. Part of our role is to provide them with the information, guidance and skills that enable them to find their own solutions.
3. To ensure that we, as Officers of the Legislature or Parliament (Diet), are administratively fair internally to improve our own sense of accountability and to set an example for government.
4. To focus our attention on prevention. A strategic plan of outreach and education has meant more authorities are learning how to be fair first.

I want to discuss the parallels and important distinctions I see between B.C.'s system and where Japan is currently in its democratic evolution towards *fair, accountable, and transparent government*, the theme for this symposium. Japan does not have a parliamentary ombudsman system. Ombudsman functions are the responsibility of the Management and Co-ordination Agency, an external organization of the Prime Minister's Office headed by a Minister of State. The Agency is responsible for ensuring that administrative systems, organizations and their policies are democratic, fair, efficient and effective. Japan has a unique method of administrative counselling that effectively integrates the work of the Management and Co-ordination Agency with that of administrative counsellors, volunteer citizens who help to resolve people's grievances as neutral third parties at the community level.

As I understand it, the system of administrative counsellors was established in 1961 in order to make it easier for citizens to lodge complaints about administrative actions. The system obtained legal status in 1966, and there are currently 5046 counsellors, one to every 50,000 residents. The administrative counselling

system suits the social climate of the country. Japanese citizens are generally disinclined to settle disputes by way of open confrontation; rather, they prefer harmonious solutions to issues through discussions and other non-confrontational means.

Counsellors are selected from among respected citizens who have deep roots within their communities and are perceived by local residents to be congenial and empathetic. They try to settle grievances through mediation. If they are not successful, they refer the grievances to the appropriate officials within the Administrative Inspection Bureau.

The work of MCA and its counsellors' association is to be celebrated. Organized, utilitarian, volunteer efforts through the service of citizens is remarkable and is to be congratulated! In my country, in response to the huge expansion in new authorities, we have focused our attention on training of government personnel and orchestrating high level meetings regularly with Presidents, CEOs, Ministers and their Deputies in order to enhance government's appreciation of and attention given to the goal they are intended to achieve – administrative fairness.

Ombudsmans are increasingly becoming brokers. As I see it, what I am trying to do is to encourage government to establish fixed points of responsibility within government to provide fair, equitable and just services and processes in the first instance. From my perspective, I see the work of MCA as already having this in place – an agent of the executive of government working to ensure that the government is receptive to the grievances and concerns of its citizens. This effort in my province, which will have as an ideal outcome the Ombudsman being seen as a remedy of last resort, is just in its formative stages. In contrast, the work in Japan is now not to work within government because that goal has been achieved in large part by MCA. It is rather to establish an independent Ombudsman mechanism *outside* of government. This may be done through the Administrative Reform Committee or by whatever means will complete the picture of having available both internal and truly independent external sources of redress for citizens.

The emphasis in recent reports has been to urge professionalism for all public servants, to promote self-help among citizens and to identify the Ombudsman as a remedy of last resort. In the end, those in Japan and I face a very similar task. That is to ensure fairness *within* the government. We are taking considerable steps to establish a means to hold government accountable from *without*. Both, I submit, are essential dynamics of any optimally functioning democracy.

The crisis being experienced here in Japan about government is not unlike the situation that faces us in British Columbia and Canada. There has been a serious credibility problem with the public service in our respective countries. There have been significant changes within government in Japan that have been done in a very sophisticated and well-planned way.



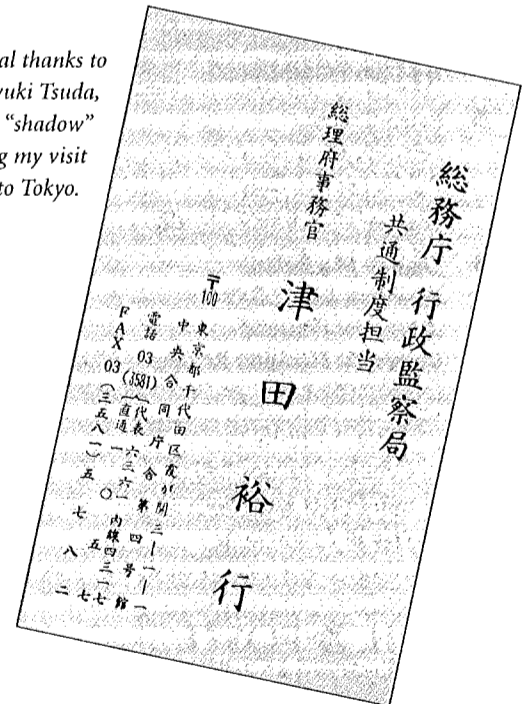
Ombudsmans at Japan Symposium

Deregulation, decentralization, mechanisms to curb expansion and means to co-ordinate, such as through secretariats, are all examples of this. Why then the level of public discontent, as in my country, and how can we take steps to resolve this phenomenon?

The position and function of the Ombudsman is but one way of facilitating administrative reform. Ombudsmanship affords us the advantage of undertaking democratization and reorganization of the public service without political influence. In addition, while those with power and influence can often be heard by leaders within government, those without power are, in any democracy, equally entitled to be heard and often are not. This often leads to dissent and discontent and can only be resolved by a recognition they should be entitled to have their interests considered. Because an Ombudsman has the power only to recommend and does not make decisions, and because she speaks from a position of status and respect, independent from the executive government, the Office does not diminish democratic tradition but simply makes the democratic process more just, equitable and inclusive of all the people served. The key to the position of Ombudsman is independence, flexibility, accessibility and credibility.

At the end of the day, Japan must find its own way of implementing an administrative fairness mechanism. What is fairness and what the Ombudsman's model should look like in any particular country or situation must be context-specific. This means they must be relative and sensitive to the environment where they are taking hold. A model that enhances the sanctity of parliament or of the Diet will in the end inevitably serve to promote democracy for us all.

A special thanks to  
Hiroyuki Tsuda,  
my "shadow"  
during my visit  
to Tokyo.



Canadian Cataloguing in Publication Data  
British Columbia. Office of the Ombudsman  
Ombudsreport : annual report of the Ombudsman,  
Province of British Columbia. – 1993 -

Annual.

Title from caption.

Issued also on sound cassette.

Continues: Annual report of the Ombudsman. ISSN 1195-3373  
ISSN 1200-528X = Ombudsreport (Victoria)

1. British Columbia. Office of the Ombudsman – Periodicals.

2. Ombudsman – British Columbia – Periodicals.

I. Title. II. Title: Annual report of the Ombudsman, Province of British Columbia.

JL429 .5 .04B74 354 .711009'1 C95-960241-0

### Ombudsreport 1994

The Ombudsreport is published annually and tabled in the British Columbia Legislature. Copies may be obtained by phoning (604) 387-5855.

Editor.....Eileen King

Designer.....Dee van Straaten

Production.....Denise Nicholls

## In Sri Lanka ... Direct Access now to Ombudsman

**T**he Parliamentary Commissioner for Administration (Amendment) Bill was passed in December 1994. Previously a person with a grievance had to go with his problem to the Ombudsman through Parliament's Petitions Committee. The amendment was aimed to give people with grievances direct access to the Ombudsman... to make the office of the Ombudsman more vibrant.

# Local Governments are “In”

In September, 1977 the British Columbia Legislature passed the *Ombudsman Act*, providing the legal authority for the organization and operation of the Office of the Ombudsman which began nearly two years later on July 1, 1979. The Ombudsman model was intended to strike a balance between the prerogative of government to develop and implement public policy and the citizen's legitimate interest in being treated fairly by government.

At the outset it was recognized that time was needed for the Office to become established. For that reason, the legislature proclaimed only sections 1 and 2 of the 11 sections in the Schedule of Authorities that defines jurisdiction.

These read:

- Ministries of the Province
- 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;
  - (c) responsible to the Province.

For the first thirteen years, the Ombudsman was responsible for these authorities, numbering approximately 280. Then, in rapid succession, starting on November 1, 1992, six of the remaining sections were proclaimed, starting with schools and school boards. During 1993, provincially vested corporations, universities and boards, colleges and boards, hospitals and boards (with the new regional and local health boards and councils already added to the Schedule), and governing bodies of professional and occupational associations were brought within the Ombudsman's jurisdiction. We anticipate that the remaining sections of the Schedule, including

municipalities, regional districts, the Islands Trust (together with the further authorities of Improvement Districts, boards of variance, Municipal Boards, Committees and Commissions being added to the Schedule), will be proclaimed in the spring of 1995.

The addition of all forms of local government represents a large increase in the Ombudsman's responsibilities and potentially, a dramatic rise in work load. There are 189 municipalities, regional districts, towns, villages and cities. Add to this approximately 310 improvement districts whose actions can be considered separate from those of municipalities and their boards and commissions. The proclamation of local government adds nearly 500 new authorities, bringing the total number of authorities under the Ombudsman's jurisdiction to over 2800!

It is difficult to predict how many complaints will be received annually relating to local government. Many complaints will involve complex public policy issues and cross-jurisdictional matters that will require considerable time and effort to investigate appropriately. We are helping local governments develop further strategies for dealing with public complaints through information and education.

Beginning as early as 1992, the Ombudsman's Office began an intensive speaking campaign to acquaint local elected officials and local government administrators with the role of the Ombudsman. They explained how they proceed in investigating complaints, the powers granted under the *Ombudsman Act* and offered assistance to local governments to develop their own internal public complaints process, one that respects the principles of administrative fairness.

Among the many appearances made were:

- a pre-conference training session on the role of the Ombudsman, preceding the 1993 UBCM Conference

- plenary address at the 1993 UBCM Conference by the Ombudsman
- presentations at the 1994 UBCM Conference
- presentations to the Municipal Officers Associations in Qualicum Beach, Prince George, West Vancouver, Penticton
- presentations at the UBCM conference on Municipalities and Multiculturalism; the Canadian Bar Association Municipal Law section; the GVRD Regional Administrators Advisory Commission
- meetings with the Islands Trust on Galiano Island and the Council of the District of Hope.

In addition, the Ombudsman has formed a Local Government Team made up of experienced investigators. A secondment from the Nanaimo Regional District will be part of the team in 1995. This secondment position will be filled in subsequent six-month periods by representatives from Vancouver and North Vancouver. The team has received training on a variety of aspects of municipal law. Part of the proclamation plan for the new team has been to set up a clear process to work with local governments. I have written to local governments asking that a contact person be named to be the liaison with the Office of the Ombudsman.

The expansion of the Ombudsman's jurisdiction to municipalities will entail new challenges for the Ombudsman and her staff, as have previous extensions of her jurisdiction. Each expansion of authority has presented staff with a learning opportunity as they consider how the Ombudsman's views of fairness can fit with the decision-making processes of the new agencies. My goal is that we grow in our understanding of local governments and work with the new authorities to strengthen their initial decision making and to develop or improve their own internal review procedures. These initiatives will assist us greatly in meeting our goal of "Promoting Fairness for all British Columbians."

## Ombuds-editorial

### A Child Advocate is Born

For many years, the Ombudsman and others in British Columbia have urged government to create an office responsible for children. Increased attention has been given to the needs of children since the tragedy of Matthew Vaudreuil came to light. I publicly urged the government to conduct an investigation into matters resulting in his death. Subsequently, the Minister of Social Services named Justice Gove as a single person inquiry who will report in 1995.

In an effort to promote the interests of young people during 1994, I travelled the province to meet with and listen to young people. Prior to doing so, I circulated a paper to focus the discussions. This was the first time an Ombudsman had undertaken this kind of outreach. The children and youth provided me with invaluable insights. I consolidated these in a further paper entitled "Children should be Seen and Heard." This paper was circulated at the **Stronger Children – Stronger Families** Conference held in Victoria. Copies of both of these papers can be obtained through the Office of the Ombudsman.

The message I heard was clear – children and youth need the opportunity to be heard. I again urged government to create a position that would enable youth to be heard. At present we do not have a cabinet minister responsible for children and youth. Services are delivered by a multitude of ministries including social services, health and the attorney general. Without a fixed point of responsibility within government, notwithstanding best efforts on the part of a number of child-serving ministries, it is difficult, if not, in my opinion,

impossible to achieve integrated service delivery. Young people in need of publicly funded services suffer from the resulting confusion and inconsistency.

The government has appointed the first Advocate for Children, Youth and Families. She will be the fifth Officer of the B.C. Legislature, and, as such, intended to be independent from government and impartial in her work on behalf of children and youth. This position provides an external mechanism to hold government accountable for and to advocate on behalf of those young people in care of the State. The government is to be commended and congratulated for establishing this Advocacy Office.

I have, however, some concerns about the limited jurisdiction of this Officer. Her mandate is to advocate for those children, youth and their families in receipt of or in need of services from the Ministry of Social Services. The rationale for including families within the mandate of the Officer is, at present, unclear. Restricting the jurisdiction of an Officer of the Legislature to one ministry of government is counterproductive to the intent and spirit of the child advocacy legislation and incompatible with what is meant by an independent Officer.

Establishing the position is a good starting point but jurisdiction needs to be complete. Many young people have dealings with many departments in various ministries. Some children in care of the state find themselves in mental health or correctional facilities. From a youth's perspective, if the assistance of an advocate is required, it matters little which ministry is the primary service provider. I have suggested to government that the jurisdiction of the Advocate be expanded and that all ministries responsible for serving children and youth be included in a Schedule to the legislation from the outset. Young people who are the most vulnerable may be in the weakest position to access the services of the Advocate. I am encouraged by the receptivity of government to date to these suggestions but a concerted action plan is required. The public are likely to become confused and distrustful about the way the Advocate's office is currently constituted.

## National Ombudsmans' Conference

In June 1994 my Office hosted the annual National Conference of Canadian Ombudsmans. The focus was how to enhance the quality of Ombudsman investigations and operations.

The conference provided us with many opportunities, including a time to demonstrate our new computer Case Tracking System for our Ombuds colleagues. Norman Kunc presented a humorous challenge to Ombudsmans in his presentation, "In Whose Best Interest?" describing how persons with disabilities have been inappropriately served despite the good intentions of service providers. He introduced us to one of his videos, *"The Other Side of Therapy: Disability, Normalcy and the Tyranny of Rehabilitation."*

Dianne Macfarlane, President of Riverview Hospital gave her perspective on being the object of an Ombudsman investigation. Initially dreaded, the investigation became a valuable exercise in co-operation and growing understanding.

Cynthia Price Cohen spoke on "Child Ombudswork" and "Ombudsmanship and Child Advocacy, a Comparative Analysis".

The Privacy Commissioner and the Auditor General joined the Ontario Ombudsman and the Vice-Protecteur de Citoyen (Quebec) to discuss "Accountability of Government: The Roles of the Legislative Officers" in a session that explored their effectiveness in holding the executive branch of government accountable.

The Lieutenant Governor, the Honourable David C. Lam, hosted the Ombudsmans and their staff at a reception at his home. The Speaker of the Legislature, the Honourable Emery Barnes, invited the Ombudsmans to an informative lunch at the Legislature. On a lighter note, a double decker bus took the party to Butchart Gardens for a delightful tour and dinner, which they all enjoyed immensely.

# Attorney General

## Working Together

**1994 has been another positive and productive year in the Ombudsman's relationship with ICBC**

For some years the Ombudsman has referred most of the complaints she receives about ICBC to a special staff unit exclusively dedicated to resolving these complaints. (See *Guest Comment* in this section). If the Ombudsman feels that a complaint cannot be handled internally, she can conduct her own investigation. To date most complaints have been successfully addressed by ICBC's special staff unit.

Some of the issues we discussed with ICBC during 1994 include:

### Subrogated Claims

These are claims for which ICBC has not attempted to obtain a judgment certifying that the debtor is responsible for the debt. While it is not improper to make a demand for payment without a judgment, ICBC's collections department has also attempted to withhold renewals of drivers' licences and insurance coverage, actions to which it is not legally entitled without a judgment. After several complaints the Ombudsman obtained ICBC's agreement to discontinue such actions, and to correct misleading statements in collection notices.

### Settlements for Children

The law requires all settlements for minors under \$10,000 to be reviewed and approved by the Public Trustee. (Settlements of \$10,000 or over are approved by the courts). When the proposed settlement is presented to ICBC, the Public Trustee reviews it to ensure that it is sufficient, and that any legal fees are appropriate. Inevitably, this process delays finalizing the settlement, and may lead to increased legal costs if the settlement is found to be inadequate. For some years, ICBC has authorized staff to ignore this requirement if the settlement is gratuitous. (A gratuitous settlement is one in which ICBC pays compensation even though it does not accept legal liability for the claim). Recently, ICBC instructed staff that gratuitous settlements up to \$4000 need not be approved by the Public Trustee. While it is true that such settlements are not binding on minors, who may challenge them upon reaching nineteen years of age, the gratuitous settlement device could be used in cases where legal liability is not in doubt, in order to avoid the scrutiny of the Public Trustee. The Ombudsman is concerned about the risk to minors, and is pursuing the issue with ICBC and the Public Trustee.

### Prime Rate

In the last few years we have received several complaints about the 18 per cent interest rate on debts owed to ICBC. Since the rate does not fluctuate with the prime rate, the 18 per cent rate may be either reasonable or unreasonable, depending on the prime. ICBC's main consideration in determining the rate is not the prime rate but the rate charged by other comparable agencies. While this is certainly relevant, not factoring in the prime rate has meant that in 1993 and 1994, ICBC's 18 per cent rate has often been higher than that of most major credit card issuers. ICBC legitimately points out that its high interest rate is intended to serve some purposes that may not apply to credit card issuers, such as deterring customers from postponing payment of debts and offsetting the costs of collections. Because the prime rate represents the accepted norm from which to calculate other rates, we think it is important that ICBC's rate bear a greater relationship to the prime. We will continue to pursue this matter.

### Plate Theft

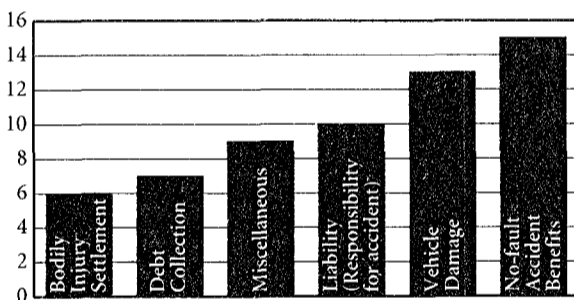
When a vehicle is stolen, ICBC will normally compensate the customer only for those items that are permanently attached to the vehicle. As licence plates are not permanently attached, ICBC has not

paid to replace the plates. In 1994, we received a complaint from a customer who felt that it was unfair for ICBC to withhold compensation when she did not have the option of not replacing the plates. ICBC reconsidered its previous policy and now offers coverage of replacement plates when a theft occurs.

## Use of Key Words in Closing Files

To help the public understand the major areas of complaint against a specific authority, our staff have developed key words to assign on closing a file that identify the key elements to a complaint. We have worked in co-operation with authorities to use terminology common to both of us. Using key words is helping the Ombudsman and the authority to determine when a trend is developing and whether some systemic change may be needed. Key word closings for the last quarter of 1994 are shown below for ICBC and on page 10 for the Income Assistance Division of the Ministry of Social Services.

### ICBC Top Key Words for Closed Files, October - December 1994



*Follow-up  
Ombudsreport 1993  
page 5*



### Impersonation

*Individuals with impersonation complaints will now receive from their local Motor Licensing offices an information package with clear instructions...*

Has someone else been using your name to avoid a traffic fine? If you have received a bill for a traffic violation you did not commit, the people at your local Motor Licensing office may be able to help. The new procedures described in our 1993 report have now been operating for a full year and, as expected, have succeeded in virtually eliminating this category of complaint to the Ombudsman. The Manager of Investigations reported opening over 200 impersonation investigations during the year, a considerable saving of time and inconvenience for the many innocent victims who previously had to resolve each ticket separately with each police force. Now, individuals who bring impersonation complaints to Motor Licensing offices are given a clear written statement of what they have to do and what the Motor Vehicle Branch will do on their behalf to resolve the problem. Congratulations! The development of this procedure clearly indicates that we can look forward to the branch continuing to enhance its internal complaint and review procedures.

## For Your Eyes Only

It was a dark and stormy morning. In the middle of a snowstorm a driver skidded into a parked car. Although the street was dark and deserted, he stopped and left his name and number on the other car's windshield. He carefully noted the point of impact and that the only damage appeared to be some black scuff marks. The next day he contacted ICBC to report the accident.

The other driver contacted ICBC some weeks later. Our complainant was then notified that he had been found liable for the damage, and was offered the opportunity to pay for the repairs so that he would not lose his safe driver's discount. While he had no problem with his liability for the accident, he was surprised at the high cost of the repairs, given the very minor impact.

*The man felt that he was being accused of lying about the extent of the damage.*

He contacted the adjuster who told him that there were three points of impact consistent with his own statement describing the damage. When he questioned this finding, he was told that the adjuster who had estimated the damage was a trained professional who never makes mistakes, and that people often underestimate both the amount of damage they have done and the cost of repairs. The man felt that he was being accused of lying about the extent of the damage. He asked ICBC to inspect his car to see whether it could have caused the damage at the particular points of impact on the other car. His request was repeatedly refused. Finally, the complainant wrote to the president of ICBC. The Customer Relations Unit handles most letters of complaint to ICBC on behalf of the president. Often, but not always, the unit is able to resolve the problem to the customer's satisfaction. Sometimes, however, the internal review is not sufficiently thorough and objective.

Two months after writing to the president the man received a response that essentially reiterated the adjuster's position without any apparent fresh review of the facts. To add insult to injury, a statement he had made in one of his letters of complaint was taken out of context and treated as an admission of responsibility for the damage. His statement was obviously ambiguous, but he was not given an opportunity to clarify it before any conclusion was drawn.

*A complaint that should have been resolved very quickly through an immediate inspection of his car instead had to be resolved by an external agency.*

The complainant then contacted the Ombudsman because he believed that ICBC had not done a thorough review in response to his letter to the president. The Ombudsman contacted the Customer Relations officer and asked him to arrange for the man's car to be inspected. We met with some initial resistance, and even after ICBC agreed to the inspection, there were delays. Eventually, however, ICBC inspected the car and immediately determined that it could not have caused all the damage claimed by the other driver.

Although the complaint was eventually resolved (some ten months after the accident) the way ICBC handled his complaint meant that the man not only lost confidence in the claim centre that had handled the claim, but also in the corporation's ability to treat complaints fairly. A complaint that should have been resolved very quickly through an immediate inspection of his car instead had to be resolved by an external agency.

# Attorney General

## The End Does Not Justify the Means

When they are sued for damages, agencies like WCB and ICBC may use private investigators to obtain evidence to present at trial. The Ombudsman receives complaints from people who feel either that surveillance is inappropriate under any circumstances, or that the actions of a particular investigator are inappropriate. ICBC has attempted to deal with this very sensitive issue by developing guidelines for the conduct of private investigators.

In a particularly contentious case in 1994 a woman claimed that she had been permanently disabled in a motor vehicle accident some years previously. ICBC suspected that she was deliberately exaggerating the extent of her injuries. However, an independent medical report ICBC had commissioned from an orthopedic specialist indicated that she was genuinely disabled and could not return to work.

*The Ombudsman receives complaints from people who feel either that surveillance is inappropriate under any circumstances, or that the actions of a particular investigator are inappropriate.*

The woman and her husband had listed their house for sale. Although he did not have specific instructions from ICBC to do so, the private investigator contacted the real estate agent and misrepresented himself as a prospective purchaser. He told the agent that as his wife was unable to join him in viewing the property, he would like to videotape it for her. On that basis, the realtor obtained the plaintiff's consent for the purchaser to enter her home

and videotape it.

The videotape shows the investigator engaged in a very detailed conversation with the home owner about the condition of her home and how it might meet his needs. He also got her to talk about her health and how badly it had been affected by the accident. None of this was particularly prejudicial to her, but the videotape showed her moving about the house and carrying out various domestic duties without any apparent restriction on her movement. ICBC showed the videotape to the physician who had previously found that she was disabled. Without consulting her or conducting a further examination, the physician gave an opinion based on the videotape that she had deliberately exaggerated her injuries to him.

ICBC decided to use the videotape and the second medical opinion at the trial. In the meantime, the woman discovered the investigator's misrepresentation and complained to the Ombudsman. After viewing the videotape, the Ombudsman believed that ICBC had acted unfairly in using surveillance material obtained as a result of unlawful entry and an invasion of the woman's privacy. As well, the actions of the investigator were clearly in breach of ICBC's own guidelines that, in part, prohibited investigators from misrepresenting themselves and from trespassing on private property. We discussed our concerns with ICBC, and they agreed that they would not use the videotape or the second medical opinion at the woman's trial.

In pursuing this issue, the Ombudsman was mindful of the need for agencies to use all possible legitimate means to detect and prevent fraud. In her view, it is not unfair for ICBC to use surveillance to gather evidence. However, the surveillance must be conducted in compliance with the law, and according to the guidelines developed by ICBC.

As a result of this complaint, ICBC has developed a new set of guidelines that reflect the legitimate interests of all the parties involved. We appreciate the commitment to fairness evident in ICBC's response to this complaint.



Guest  
Comment

## Human Rights Review

by Professor Bill Black  
Law School  
University of B.C.  
at the invitation of the Ombudsman

The Ministry responsible for Multiculturalism and Human Rights had concerns that the *Human Rights Act*, which came into effect in 1984, had limitations that undermine its effectiveness. I was engaged to evaluate the Act and its administration and to find solutions for any problems identified.

Public consultation was a central feature of the review:

- A pamphlet in five languages, in both print and Braille formats, announced the study.
- A longer discussion paper was distributed to help individuals and groups identify the key issues.
- Individuals and groups provided written submissions presenting detailed research into the Act and its operation, the results of surveys of a community and of workshops.
- People who had been parties to a human rights complaint were surveyed. Over 400 letters were sent to a random selection of persons asking for their impression of the system and for suggestions for improvement. This survey was carried out within strict guidelines developed by the Information and Privacy Commissioner.
- Meetings were held in nineteen communities around the province, both round-table discussions with human rights groups, business groups and labour groups to provide an informal exchange of ideas outside the public spotlight, and public meetings to allow all interested people to express their views about the *Human Rights Act*.

These meetings, papers and discussions brought home realities that are distant from my university perspective. For example, they revealed the

courage that it takes for someone in a small community to file a complaint of sexual harassment. They also showed how an individual in Dawson Creek or Smithers, for example, feels when she or he must deal with an official in Victoria.

Among the most important themes that emerged repeatedly from the study were:

- The need for more education and information
- The need to make the system more accessible
- The need to speed up the process
- The need to co-ordinate the human rights machinery with other legal protection.

As I said in my report, there are two primary reasons why the present system does not achieve all of the goals of human rights enforcement. The first and most important is that the structure of the B.C. Council of Human Rights makes it almost impossible to achieve many of the goals...[T]he council is responsible for adjudication along with all other aspects of human rights protection. The neutrality required for adjudication makes many other activities difficult or impossible. The council cannot initiate cases because it would be hearing its own claim. It cannot represent the public interest during litigation for the same reason. It has no statutory mandate for education or information ... In short, it is almost impossible for a single agency to take all the positive steps needed to protect human rights while serving as the tribunal that decides human rights cases.

The second key issue is resources. For example, the council has no resources for education, research or policy development. It must rely on staff from another ministry to carry out the key functions of investigation and mediation. Measured either in terms of the size of the province or the number of cases, B.C. spends significantly less money on human rights protection than many other Canadian jurisdictions.

The assistance I received from participants in the consultations is undeniable. I hope that this was a two-way street and that the consultations helped to inform participants and other members of the community about the *Human Rights Act*.

## Ombuds-editorial

Professor Bill Black's long-awaited review of British Columbia's *Human Rights Act* and its administration by the B.C. Council of Human Rights deserves attention.

In my 1993 *Ombudsreport* I suggested that the extensive delays in dealing with complaints might be significantly reduced if the council had full control over its own investigative staff who currently work for Employment Standards. However, as Professor Black notes, the problem of delay cannot be solved by simply providing more funding and staff without also developing a more efficient and administratively fair organizational structure.

Professor Black has proposed a

clear separation of the intake-mediation function (with the power to dismiss claims in some circumstances) from the functions of the human rights tribunal that would conduct full hearings and review decisions of the Director of Intake and Mediation. With her own staff and some decision-making powers, the proposed Director of Intake and Mediation position could have the tools to resolve most of the complaints our Office receives against the current council including complaints of unreasonable delay, incomplete investigations and inappropriate investigator assignments.

The other Ombuds issue in "complaint prevention" concerns Professor Black's comments on the lack of an

adequate human rights education program in this province. Mass media coverage of human rights issues often focuses on problems elsewhere in the world and it is easy for Canadians who have not personally experienced discrimination to assume that all is well here at home. Those of us who have witnessed the extent of discrimination in our own society appreciate the importance of human rights education. Education is important not only for those who offend, but also for those who permit discrimination to continue by failing to recognize and work against it.

The *Canadian Charter of Rights and Freedoms* and our provincial *Human Rights Act* reflect the heart of our democratic society and are based on the

fundamental values about how we wish to treat others and how we might expect others to treat us. Everyone can benefit from knowing these rules, and knowing there are remedies available if they are violated. Professor Black proposes that a Commissioner of Human Rights be appointed, who will develop and implement human rights education and information programs. Such programs are important to ensure people know their rights and how to access a remedy if those rights are not respected. I am hopeful that the government will take this particular recommendation, along with the others, seriously. I will be watching with interest as the government considers how to implement Professor Black's report.

# Attorney General

## Cramped Quarters

**P**ublic reaction to crime and to criminals who have been released into the community calls for greater security and supervision. Agencies such as the Parole Board are the focus of attention and pressure from the press and the public. Internally, the Corrections Branch is now more cautious about allowing inmates into the community on temporary absence programs. The result is that more people stay in custody for longer periods of time, causing overcrowding and higher costs.

Dealing with overcrowded remand and secure facilities was a challenge for the Corrections Branch in 1994. Recently constructed centres originally designed for a set number of inmates were pushed to the limit and stretched even further by adding double bunking. While we expect to see efficient use of space and good stewardship of provincial money, we must not ignore the risks of overcrowding.

*Public reaction to crime and to criminals who have been released into the community calls for greater security and supervision.*

In the Kamloops Regional Correctional Centre, overcrowding has resulted in bunks being placed in the segregation area. Segregation cells usually hold inmates who have been disciplined for breaking the rules of the centre. Putting two such inmates together increases the risk to the staff of handling a disturbed inmate. Adding another bed also calls for greater diligence in supervision. The frame of an upper bunk could be used by a disturbed inmate intent on suicide. Also, staff must be careful in their choice of inmates to share a cell. Some may victimize or abuse other inmates. When the Ombudsman placed these concerns before staff, she found them responsive to moving

inmates out of double bunking.

One incident of a complaint of sexual abuse was raised this year at a Pretrial Centre and was referred to the Investigation, Inspection and Standards office by the Attorney General. A final report on the matter is still expected.

Overcrowding also puts pressure on staff to send more inmates to less secure settings. The classification process assesses inmates and matches their needs with the branch's interest in holding as many inmates as possible in the lowest level of security required. In practice a number of inmates who normally would not be sent to camps, because of overcrowding are sent, and have difficulty participating in the programs. Their presence increases the need for security against the flow of prohibited items, and escapes.

Overcrowding is also reflected in the high volume of complaints to the Ombudsman. Many complaints come from inmates who are transferred to another centre without being consulted, as the branch tries to even out the number of inmates in each centre. These transfers disrupt inmate visits, families and release plans, as well as increasing the potential for the loss of personal possessions.

*When the Ombudsman placed these concerns before staff, she found them responsive to moving inmates out of double bunking.*

In order to deal with the number of complaints, we continue to ask inmates to use the branch's internal complaint system before requesting an investigation by the Ombudsman. We also refer callers to the Investigation, Inspection and Standards office, formerly known as the Division of Inspection and Standards. An amendment to the *Corrections Act* this year

changed the name of this division and made it independent of the Corrections Branch. The director now reports directly and solely to the Attorney General, rather than to the Assistant Deputy Minister of Corrections. The office continues to be responsible for carrying out periodic inspections of institutions and probation offices, as well as investigating complaints from individuals. The amended legislation also provides for the director to carry out an investigation on his or her own initiative.

## As Time Goes By

**O**ne hundred ninety-two hours confined to your cell! An inmate in a B.C. Correctional Centre may receive such a punishment if a disciplinary hearing finds him or her guilty of an offence. The time, a maximum of 192 hours, may be served on weekends, holidays or evenings. A man who had received such a sentence complained to the Ombudsman that the unit officers were inconsistent in the way they credited the number of hours he spent in his cell.

We resolved this complaint by speaking with the director of operations. Because inmates work at different assignments they may finish work at different times and have different "evenings." The director instructed the officers who conduct disciplinary panels to be more specific in assigning cell hours. Unit officers were to follow the instructions of the disciplinary panel. Our investigation helped correctional staff to establish some consistency in the interpretation of the rule. We also encouraged officers to vary the types of disciplinary punishments they impose.

## Don't Talk Behind My Back

**O**n appeal to the B.C. Board of Parole, a man whose parole had been cancelled was granted parole, which he completed successfully.

However, the complainant reported that, before the hearing that cancelled his parole, and outside his presence, Corrections Branch staff discussed his situation with two Parole Board members who would be deciding whether to cancel his parole. He contacted the Ombudsman to complain about the unfair procedure.

We found that at least two Corrections staff had met with the two Parole Board panel members before the final hearing, although the recollections of those involved differed considerably. One Parole Board member denied having participated in any conversation outside the complainant's presence about his application or circumstances. The other conceded only that procedural matters had been discussed with branch staff. A Corrections Branch employee admitted that he had brought to the attention of the panel information not previously given to the panel and to the applicant.

While the contents of the discussion remained unclear, we concluded that the complainant's application had indeed been discussed while he was not present, and that the Parole Board members had acted inappropriately in allowing this to occur. We had not received other similar complaints, but felt that such a fundamental breach of the rules of natural justice should not go unremarked. At our request, all members of the board were reminded that any discussion of a case must be conducted in the presence of the applicant.

## The Price of Wisdom

**A**n inmate of a correctional centre is not permitted to carry money. Wages earned within the centre and any other funds are deposited in the inmate's trust account administered by Corrections. A disciplinary panel may order that wages be withheld, for example, when an inmate has damaged property, but all withdrawals from the trust account must be authorized in writing by the inmate.

The complainant needed two wisdom teeth extracted, a procedure not included in the medical coverage for inmates. Before the extractions were done, the complainant signed an agreement with Corrections to pay 30 per cent of his weekly wages, "until the total dental work cost is paid in full." He also agreed to a provision that if the balance in his account exceeded \$25, the excess would be applied against the dental bill.

As the man came within a week of his release, he contacted the Ombudsman to complain that the entire amount of his previous week's wages had been applied to the dental bill, contrary to the agreement he had signed. The next day he complained that, after staff had escorted him to Social Services to obtain interim financial assistance upon his release, they asked him to apply the small amount he received to the cost of the dental work.

When the agreement was signed it had been clear that the total cost of removing his teeth might not be covered before the man completed his sentence. To make matters worse, the final dental bill was approximately \$1000, four times the cost originally estimated by the correctional centre's dentist. The centre claimed the oral surgeon who did the work had exceeded his instructions by

extracting all rather than just two of the man's wisdom teeth. Corrections staff suggested the complainant bore some responsibility for agreeing to the additional work. Staff felt the man owed the total amount billed and were attempting to collect as much as possible before he was released. When we suggested that their actions exceeded the terms of the agreement with the inmate, and were contrary to branch policy governing the administration of trust accounts, they reversed their decision. Staff then stated they intended to retain all the wages earned in the week prior to the man's release. At our request, the District Director intervened, and staff were directed to uphold the agreement and to deduct only 30 per cent of the wages earned.

## Forgiveness

**A** man awaiting trial in a remand centre was charged with assaulting a staff member. He was confined in separate custody apart from other inmates. He complained to the Ombudsman that he was deprived of books, of the Bible and of the weekly allotment of tobacco, all of which the other remand inmates received.

The regulations governing the handling of inmates stated that inmates confined in separate custody must not, for that reason only, be deprived of any privilege that can reasonably be given them and that they would otherwise enjoy. We could not find a justification for refusing to give this man his tobacco products and a Bible. When we contacted the director, he agreed to change the local policy immediately. Ironically, the person who provided the inmate with the Bible was the Chaplain, the person he was accused of assaulting!

# Attorney General

## Under the G - Gaming Under the N - Notice BINGO!

**Y**ou may run a bingo game, but you may not play! You may carry chips to the roulette table, but you may not play! Volunteers and employees working at casinos and bingo halls were taken aback when they discovered they could not play at the location where they worked even when off duty! With no prior notice, the Gaming Commission had instructed Regional Managers in November 1994 to make effective immediately the following addition to the Terms and Conditions of Licence:

*No employee engaged in the conduct or management of a licensed gaming event at a gaming location shall participate as a player in any event at that location at any time.*

The negative reaction of bingo employees and volunteers was immediate and intense. Several complaints to the Ombudsman.

In response, the commission delayed the implementation of the new condition until January 1, 1995. A notice to this effect was issued to all licensees and gaming sites giving those affected an opportunity to present written submissions to the commission by November 29, 1994. Within this short period, the commission apparently received many letters, and petitions with over 4000 signatures. At its December meeting, the commission changed its policy to reflect the concerns that bingo and casino operations were being treated differently from other gaming events and that some consideration should be given to the special role of volunteers. The revised Terms and Conditions of Licence permit volunteers to participate as players in bingo or casino events they are not conducting or managing. However, employees engaged in conducting or managing a licensed casino or bingo event at a gaming location may not participate as players in any event at that location at any time.

An Ombudsman investigation of these complaints was not necessary because of the quick and appropriate response of the commission to the concerns expressed by bingo employees and volunteers. A representative of the commission has assured us that, in the future, the commission will be more likely to give adequate notice and an opportunity to comment in advance to those who may be affected by any proposed policy changes.

## Safe and Secure

The Security Programs Division is responsible for:

- licensing and regulating individuals and security businesses and their employees under the *Private Investigators and Security Agencies Act*
- licensing and controlling firearms.

Under an agreement with the federal government the division approves and monitors instructors in firearms safety. The director of the division is also the Chief Provincial Firearms Officer.

If a licence issued under the *Private Investigators and Security Agencies Act* is suspended, or if renewal is refused, the legislation provides for an appeal to the B.C. Police Commission. In such cases, the Ombudsman will, in accordance with Section 11 of the *Ombudsman Act*, refer a complainant to that right of appeal. This occurred in the case of one complaint during 1994.

The division has been very co-operative with the Ombudsman concerning the small number of complaints we dealt with during 1994.



Guest  
Comment

## Response to Complaints

by Shelley Milne  
Manager, Ombudsman Inquiries  
Insurance Corporation of B.C.  
at the invitation of the Ombudsman

**I**CBC has had a department responsible for processing Ombudsman contacts since proclamation of the *Ombudsman Act* in 1979. The main function of the department has been to work with investigators in the provincial Ombudsman's Office to deal with complaints made to the Ombudsman by customers of ICBC. In 1994 the department handled approximately thirty-five complaints per month.

In 1994 the president of ICBC agreed to meet regularly with the Ombudsman and to designate a position with the corporation to deal solely with Ombudsman matters. At present the unit consists of a manager and one customer relations officer. In co-operation with the Ombudsman's Office we have developed a consultative approach to complaint handling. On receipt of the initial information from the Ombudsman's Office the customer relations officer will attempt to clarify the complaint either by speaking directly to the customer or by speaking with the Ombudsman investigator. The customer relations officer will then begin the investigation by reviewing the file, speaking to the staff involved, and drawing upon any other resources that may be necessary to obtain a complete picture of the case. Other resources may include internal legal staff, corporate underwriters, collections officers and other claims staff. Throughout this process the customer relations officer will maintain contact with the Ombudsman investigator and the customer.

The first question we ask is whether the decision

complained of is consistent with existing corporate policies and procedures. If it is not, we will work with the Ombudsman and the relevant corporate staff to review and possibly revise the decision.

Even when we determine that the decision was in accord with existing policies and procedures, the matter may not end there. In some cases we will consider, in consultation with senior management, whether the particular policy or procedure needs review and revision. Reasons for review may be that the decision is not fair or that it does not meet the customer service standards set by the corporation.

The manager of Ombudsman Inquiries supervises the handling of all complaints and acts as a liaison between ICBC and the Ombudsman. Working co-operatively, the offices develop effective internal complaint handling and discuss broader issues about corporate policies and procedures. By separating the broader issues from the particular complaints that brought them to light, ICBC and the Ombudsman can review policies and procedures in a non-confrontational process and look for new ways for ICBC to be more effective and fair.

Having an internal department to handle complaints made about the authority to the Office of the Ombudsman has many benefits:

1. Facilitates the handling of complaints in a timely, and more consistent and effective manner.
2. Gives the Ombudsman's investigators access to someone familiar with the internal operation of the authority and its staff, whose main responsibility is to ensure that investigations into complaints are appropriately conducted and resolved.
3. Provides a means for the authority to track complaints and keep statistics, allowing the authority to identify chronic problem areas and to take action in resolving these problems.
4. Enables the department to act as a "sounding board" for corporate staff in the development of new policies and procedures.
5. Respects the role and responsibility of the authority to have the first opportunity to investigate complaints and find a solution.

## The Law Society and Service Quality

**U**nder the *Legal Profession Act* the Law Society is responsible for regulating the conduct of lawyers in British Columbia and for setting standards for the education, professional responsibility and competence of its members. In October 1993, the Ombudsman was given the authority to investigate complaints against such self-regulating professional governing bodies as the Law Society.

Many complaints are handled successfully by society staff, through correspondence with the lawyer concerned whose response is relayed to the complainant. If still not satisfied, the complainant has a right to request a review by the Complainants' Review Committee.

A complaint about, and showing evidence of professional misconduct is forwarded to the society's Discipline Committee. The Competency Committee deals with complaints about a lawyer's competence.

Many complaints to the Law Society fall within none of the above categories but concern service quality, including such things as delay in completing a task, failing to return phone calls within a reasonable time, rudeness and overbilling.

In the past, since such problems are neither professional misconduct nor incompetence, the Law Society has taken no action on them. Instead, the complainant typically receives a letter stating only that the evidence does not suggest professional misconduct or incompetence.

The lack of acknowledgement of these problems can be very frustrating for the complainant, who may assume that the phrase "no professional misconduct"

means "no service quality problem." The Law Society is sensitive to the public's concern about service quality and in 1995 will be considering what measures to adopt in order to address these problems.

The Ombudsman and the Law Society are currently discussing several other issues:

- delay on the part of the Complainants' Review Committee in completing its reviews of complaints; and the need to provide complainants with a written explanation of the results of a review
- delays in completing Conduct Review reports for the Discipline Committee
- the need for amendments to the rule that permits a member to withhold from the complainant her or his response to the complaint
- the need for plain language in communications with the public.

The Law Society has been responsive to our concerns and we hope that some of these outstanding issues will be resolved in 1995.

### Attorney General Team

Files Open Dec. 31, 1993	451
Files Received in 1994	2354
Closed - No Investigation	332
Closed - Investigation	1986
Internal Team File Transfers	487

# Income & Community Supports

## A Meeting of Minds



The Ombudsman has continued to meet quarterly with the Deputy Minister of Social Services and her staff. We have reviewed issues arising from our files, discussed the relationship between our offices and assessed the progress of commitments made by the ministry to improve the service and information provided to the public. In the spirit of co-operation that has developed between the two offices, the ministry invited us to comment on amendments to ministry policy on income assistance appeal rights for individuals. Our comments and recommendations were based on an analysis of the complaints received by the Ombudsman during

recent years. We hope that the amendments will result in an improved policy.

We are gratified that the Ministry of Social Services has recently incorporated administrative fairness into the core training for both new and experienced Financial Assistance workers. An approach worthy of imitation! Other authorities have also asked the Ombudsman to provide training for staff on the principles of administrative fairness. We try to accommodate all of these requests because an ounce of prevention is always our preference. It is exciting to see how the principles come alive for staff when placed into the context of their authority's specific mandate.

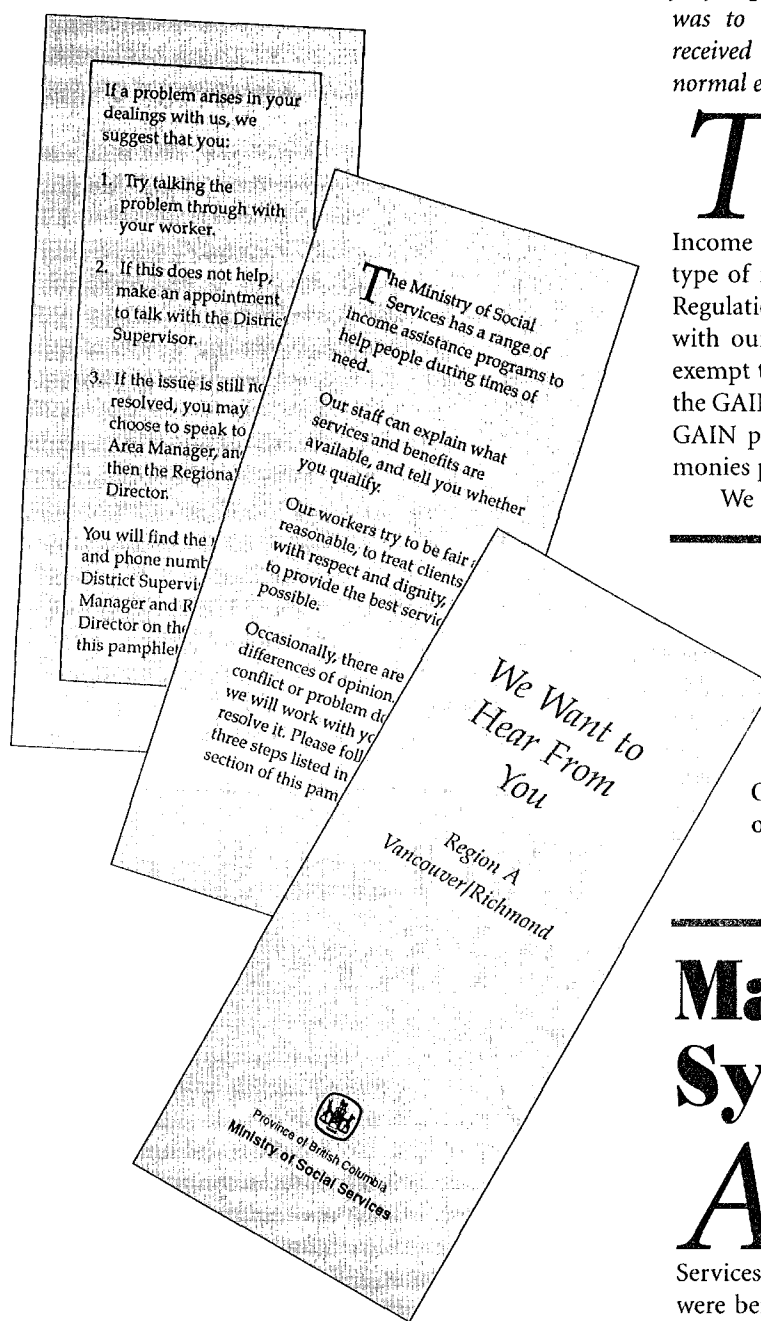
## Follow-up Ombudsreport 1993 page 21

### Know Your Rights

The Ombudsman made recommendations to the Ministry of Social Services about how to make sure clients are aware of appeal procedures regarding income assistance benefits, and complaint procedures regarding non-financial issues such as discourteous service.

The Office of the Ombudsman has tried to assist the Ministry of Social Services to achieve these fair results. The ministry has produced a pamphlet for its clients describing the internal "review" process, and including the names and phone numbers of the local ministry employees to contact with concerns. As part of ongoing efforts to ensure that clients are aware of their rights and options the Deputy Minister and the Ombudsman issued a joint letter to all front-line ministry staff involved in financial decisions. The letter reminds staff of their responsibility to advise income assistance clients and applicants of their options within the GAIN appeal system whenever a negative decision is made. It is too soon to measure the effect of this strategy for empowering ministry clients but we are optimistic.

The ministry also commissioned a review of its appeal system and has put the resulting proposals to the government for decision. The Ministry of Social Services seems committed to strengthening the community's role in the tribunal system, to considering plans to provide training for tribunal appointees and to find ways to recognize and appreciate their service.



## Follow-up Ombudsreport 1993 page 21

### Destroyed Assets Compensated

A woman purchased a replacement vehicle with insurance money she received from ICBC for the loss of her previous vehicle. Her district office considered this money unearned income, even though the GAIN Regulations appeared to exempt insurance money received for the loss of a destroyed asset. As a result of this decision, for the month of December 1993, she was eligible for hardship assistance only, her child tax credit was not considered exempt, and she was not eligible for the Christmas allowance. The Ombudsman successfully argued that the intent of the GAIN Regulations was to exempt this type of payment. The woman received her regular cheque for December with all the normal exemptions and allowances included.

To clear up the uncertainty about this section of the GAIN Regulations, the Ombudsman asked the Assistant Deputy Minister of Income Support to clarify the exempt status of this type of insurance payment by amending the GAIN Regulations. The Assistant Deputy Minister agreed with our Office that the GAIN Regulations clearly exempt this type of payment. Rather than amending the GAIN Regulations, the ministry has amended the GAIN policy, instructing staff to exempt insurance monies paid as compensation for a destroyed asset. We applaud the ministry's decision.

### NEWS FLASH

The Vancouver Office of the Ombudsman is moving to a new location. As of August 1995 the address will be:  
2nd floor, 1111 Melville Street,  
Vancouver, B.C. V6G 2X5

## Masking the Symptoms

A couple receiving Income Assistance complained to the Ombudsman that they were not being allowed to come to the Social Services Ministry offices. They believed that they were being discriminated against because they were black and because the husband had been diagnosed as having AIDS.

Our investigation revealed that their Financial Assistance worker and other staff were concerned that the wife was also ill with active and infectious tuberculosis. She had, on one occasion, appeared at the ministry office wearing a mask, despite the ministry's request that she not enter the office, and against the advice of her physician. Whether or not the husband was a potential carrier of TB was unclear.

We asked that the couple provide evidence from their doctor as to whether either or both were infectious. The medical report confirmed that the wife was infectious and subject to quarantine, but that the husband, despite his AIDS, was not a TB carrier.

The arrangements made with the ministry allowed the husband to go to the office when necessary, subject to regular medical reconfirmation that he remains TB free. This was a reasonable resolution because it considered both the applicants' need to be respected and the public servants' right to work in a safe environment.

## Too Close for Comfort

That's not fair! – a common cry of children. Adults facing any kind of judgment – of a court, a review panel, a tribunal – are more inclined to accept the judgment, even a negative one, if the judging body is seen to be fair and impartial. There seems to be something inherent in human beings that sniffs out unfairness and reacts against it.

The Regulations governing GAIN appeals attempt to ensure that a tribunal (review) panel is independent of the parties concerned. The Regulations restrict the Ministry of Social Services from appointing an "employee, officer or official" of the government or of any municipality or community resources board; the income assistance client may not appoint a relative.

A number of people who do not fit these categories still may be perceived to have a bias or to

be in a conflict of interest when serving on a tribunal. Should the client, for example, be able to appoint an ex-spouse or a person who could benefit from the decision, such as a chiropractor if the appeal is about additional payment for chiropractic service? Should the ministry be able to appoint people working for ministry contractors, ministry-designated volunteer counsellors or foster parents? The Ombudsman has requested the ministry to study this issue and to develop policy, or perhaps revise the Regulations, to ensure that all members of tribunals are, and are seen to be impartial. In the meantime, the ministry has agreed to permit a woman whose case raised this issue to apply for service again. She may have a second tribunal free from the appearance of bias, one that looks more fair to both parties.

# Income & Community Supports

## A Healthy "Top up"

Suddenly the woman could barely breathe. Her mechanical breathing aid was useless as she had run out of money to pay for the asthma medication to be inserted in the machine. She called an ambulance and told the driver that she could not renew her prescription until her husband was paid in three days.

After giving emergency medical assistance, the ambulance driver called the Ministry of Social Services' 24-hour emergency number to report that the woman needed help to buy her medicine. The emergency line staff said that they could not cover prescription costs for someone not on assistance. At the suggestion of the ambulance driver, the woman called the Ombudsman for help.

*... any family with high medical costs for such items as prescription drugs, supplies for a colostomy, or needles for conditions requiring injections such as diabetes, may be eligible for help from the Ministry of Social Services.*

The good news is that careful examination of the family's income by local Social Services staff showed that the husband's wages were low enough to qualify for ministry "top up" assistance, because of the family's high medical costs. The family will now receive ministry health benefits, including free prescriptions. Many people are not aware that any family with high medical costs for such items as prescription drugs, supplies for a colostomy, or needles for conditions requiring injections such as diabetes, may be eligible for help from the Ministry of Social Services. If the medical costs equal or exceed the amount by which family income exceeds the income assistance amount, the ministry may help. To find out if one is eligible for help, a person should apply for "medical only" assistance, and provide verification of the family's income and expenses.

## No Room at the Inn

Ms. C, who was seven months pregnant, left her home in the B.C. interior to visit a bereaved friend in Vancouver. While there she fell ill. She contacted a Vancouver Social Services Income Assistance office about her anticipated late return home because she needed bus fare and was concerned that she would miss the deadline to pick up her cheque.

She arrived home to find that her estranged husband had failed to pay the rent and the landlord had rented her accommodation to someone else.

When she went to the Income Assistance office the next day to pick up her cheque, she was told her file had been closed that morning, and she was denied her cheque. When she asked for an appeal kit, she was told that she did not qualify for an appeal and the possible reinstatement of benefits since her file was no longer open. She was told that she would have to reapply in order to have her file reopened. The District Supervisor, later supported by the Area Manager and the Regional Director, also rejected her appeal application on the same basis.

Ms. C was given an appointment for seven days later to reapply for benefits. The ministry staff, meanwhile, referred her to a women's shelter but made no arrangements with the shelter on her behalf. She was

turned away from the shelter, either because it was full or because she did not meet the residence's requirements. Because of an intervening long weekend when all the ministry offices were closed, she was without shelter and destitute during the next five days.

She called the Ombudsman on the fifth day. Our contact with the ministry resulted in her being accepted at the women's shelter. She requalified for Income Assistance benefits on the seventh day.

The Ombudsman questioned the Ministry of Social Services about the

*Our concern was that this practice would effectively allow the ministry to arbitrarily block any or all appeals by closing files. Thereby rendering the appeal provisions of the Act inoperable.*

legality of refusing this woman her right to appeal under the *GAIN Act* and Regulations and of disallowing reinstatement of her benefits based upon the closure of her file. Our concern was that this practice would effectively allow the ministry to arbitrarily block any or all appeals by closing files, thereby rendering the appeal provisions of the Act inoperable. We asked the ministry to consult legal counsel and obtain an opinion, based upon our investigation of the situation.

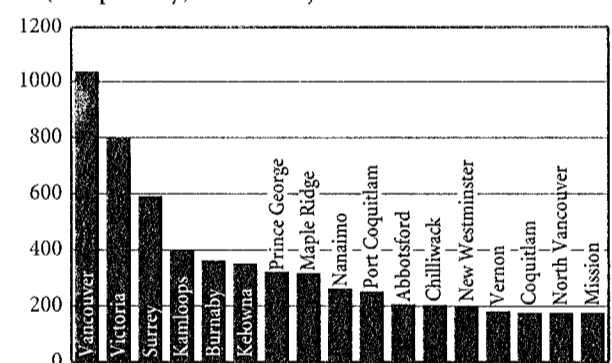
The legal opinion upheld the appeal provisions under the *GAIN Act* and Regulations and stated that the ministry had acted incorrectly in these circumstances by denying the woman her right to appeal and by failing to reinstate her benefits during the appeal period.

## Complaints by City

The Ombudsman's services are for all British Columbians even though there are offices only in Vancouver and Victoria. The Ombudsman can be contacted 24 hours a day, 365 days a year by toll free number (answering machine evenings and weekends), by mail and by fax. The graph shows the centres from which most complaints are received, with a high of 1033 from Vancouver. In all, people in 340 centres in B.C. have forwarded complaints to the Ombudsman. Complaints have also been received from more than twenty-five centres outside the province of B.C. about matters arising here.

## Files Received by City, 1994

(Sample only) Not all major centres



## To Their Credit



A major fear many citizens have in our high-tech world is that everything about them is in a data bank somewhere. Some have particular fears and misconceptions about credit bureaus. The Ombudsman occasionally receives inquiries or complaints about information held in the files of credit bureaus across Canada. A credit bureau is simply a "clearing house" for credit history information. Credit grantors provide the bureau with information on how their credit customers pay their bills. The bureau keeps an updated consumer file. Credit grantors, with the permission of the consumer, or upon providing adequate notice to the credit bureau, can obtain credit reports about pay-back habits of prospective borrowers.

The Credit Reporting Branch of the Ministry of Housing, Recreation and Consumer Services is responsible for the administration of the British Columbia *Credit Reporting Act*, and the Credit Reporting Regulations, which legislate control of credit reporting in this province. The Act provides for the appointment of the Registrar of Credit Reporting Agencies who ensures compliance with the statute.

During 1993 the Registrar of Credit Reporting Agencies received fewer than 150 complaints that required investigation. In ten of these cases, the Registrar ordered changes to the consumer record. In the same year the Credit Bureau of Vancouver provided approximately 62,000 free credit file

disclosures to consumers. These consumers were satisfied with the response of the bureau.

Credit Bureaus share information within a system known as the National Equifax Network. The network observes strict standards governing reporting of adverse information and purging of credit reporting records. The credit bureau must investigate and use its best efforts to confirm disputed negative information. Appeal of an action taken by a credit bureau may be referred to:

The Registrar of Credit Reporting Agencies  
1019 Wharf Street  
Victoria, B.C. V8V 1X4  
(604)387-1747

A decision of the Registrar may be appealed to:

The Commercial Appeals Commission  
1304-865 Hornby Street  
Vancouver, B.C. V6Z 2H4  
(604)660-2987

A consumer has a right to full disclosure of the content and the source of any information on her or his file. The Registrar of Credit Reporting Agencies recognizes that all complainants consider their issues to be very serious. For that reason the Credit Reporting Branch insists that credit reporting agencies and creditors provide prompt and complete reports to the consumer about adverse credit information.

The system in place is to their credit.

The *Credit Reporting Act* protects several rights of consumers:

1. The Act applies only to consumer transactions.
2. Reports may be given to a person seeking information only for the purpose of:
  - extending credit or collecting a debt
  - a tenancy inquiry
  - employment or insurance verification
  - under authority granted by a government statute
  - otherwise, as a direct business requirement.
3. Before a person may obtain a report, she or he must:
  - have the consumer's consent in writing, or
  - notify the consumer by mailing a notice postmarked at least three days before obtaining the report.
4. If a consumer is denied credit or has an increased cost as a result of information obtained in a credit report, the person must be notified promptly by the person denying credit.
5. The consumer has a right to place a 100 word statement (50 recommended) on the credit bureau file, to be given to anyone who obtains a future report.
6. A consumer has a right to see the file and has a right to receive a copy of any report.

# Income & Community Supports



**Follow-up**  
**Ombudsreport 1993**  
page 22

## Admitting Problem Solved

*The government proposed to offer a central admission system for students applying to provincial colleges and universities.*

**T**he fine points have yet to be settled, but the Post-Secondary Association Service, or PASS BC, has been created. PASS has begun to develop common application forms with the post-secondary education institutions, so that by the fall of 1996 students will be able to make just one application covering up to five institutions, with one or two programs at each. For an expected basic fee of \$30, and \$10 for each additional institution, the application will be available electronically to all the institutions of the student's choice. Each will communicate an offer or rejection to the student. We expect that students will be able to hold only one offer, but may leave their other application(s) "in the ring" to see if a preferred offer comes through.

This process should allow for faster service, should resolve the concern of both institutions and applicants about students "holding" several spots and will dramatically reduce the paperwork and the cost of multiple applications.

## Students on the Job

**T**he Ombudsman receives very few complaints about provincial colleges and universities. Most of those we receive relate to student practicums. In courses such as nursing, teaching, social work and some of the technical and trade courses, students must successfully complete one or more work placements in order to graduate. Generally the student works on the site of a "private" (non-college/university) employer, under the supervision of one of the employer's staff who acts as the agency supervisor. The supervisor evaluates the person's performance following the criteria of the college, often in consultation with the college practicum placement supervisor, to determine if the student will pass.

Although the system generally works well, there are some inherent problems. For example, a student who is given a failing grade can appeal through the college or university's grade appeal process, but the employer and agency supervisor cannot be compelled to participate in the process. The employer may be reluctant or unwilling to release to the college or university records the student feels are relevant,

especially since the introduction of freedom of information and protection of privacy legislation.

Another problem faced by both students and instructors is that good practicum placements are not easy to find. A suitable alternate placement may not be readily available to a student who experiences difficulties in an original practicum. The college placement officer may be tempted to avoid dealing with shortcomings in a placement if she or he fears that the employer might totally withdraw from the program. In smaller communities placing students who already have a poor reputation or profile in the industry or in the community can be difficult.

In the cases the Ombudsman has reviewed so far, we have found that college staff have seriously tried to deal with these problems, and to ensure that every student has a chance to succeed. As more programs include work experience or placements, colleges and universities may need to develop a new kind of appeal structure to hear disputes, making sure that both employer agencies and the licensing organizations are represented.

*As more programs include work experience or placements, colleges and universities may need to develop a new kind of appeal structure to hear disputes ...*

## Ask the Right Question ...

**A**dult jokes like "how long is a piece of string?" can infuriate children because they don't understand the rules of the question. We often see similar factors at play in complaints. Members of the public who don't know the context of a question sometimes don't give an answer considered adequate by the agency asking the question. This non-communication can be costly for everyone and can create all kinds of misperceptions about motives and facts, as the following case illustrates.

Ted applied for and received a student loan to take a course lasting eight months. Part way through he injured himself in the classroom, went to the hospital, had his hand stitched and missed several days of class. The college's rule for this intensive, full-day-all-day occupational training course was that persons who missed more than five days of class had to drop out. Next time the course was offered they could re-enter at the point where they had left.

Ted did drop out. The college followed its responsibility to the province to report the "withdrawal" of a student receiving loans. A student loan official wrote to Ted telling him he had to repay immediately all the loan applicable to the period after

his injury. By the time he received this letter, Ted was back in school, picking up where he had left off. The financial aid officer suggested he apply for a second loan to repay the previous one. Ted thought it was ridiculous that he borrow more money to repay the first loan, and wrote the student loans officer a heated letter in which he explained that he was completing the course for which he had been funded so shouldn't have to repay the loan and especially borrow more money to do so.

*... non-communication can be costly for everyone and can create all kinds of misperceptions about motives and facts ...*

Ted called the Ombudsman. When we reviewed Ted's complaint we had to walk everyone back to the beginning to find the failures and miscommunications that had caused Ted to feel so angry about the government's program, and the student loan officer to insist that Ted fill in the proper forms in the right order. When that was done, we easily found a way to schedule a reassessment of Ted's loan and the demand for immediate repayment.

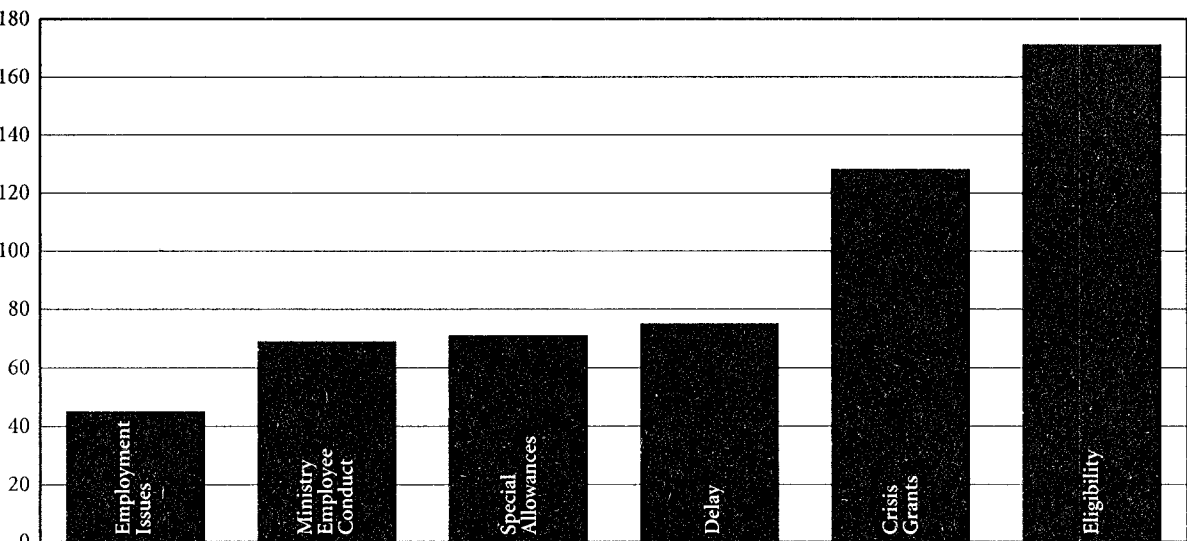
### NEWS FLASH

A complaint to the Ombudsman about the University of Victoria has been resolved. The complaint was that the university had failed to treat fairly members of the Committee to Make the Department of Political Science More Supportive to Women, ("Chilly Climate"). After an early attempt at mediation the university engaged University of Saskatchewan Professor Beth Bilson and former B.C. Supreme Court Judge Thomas Berger to review the issues. The university committed itself in advance to implement the committee's recommendations, subject only to the constraints of bylaws and budget. The Bilson/Berger report contained ten recommendations, ranging from more precise terms of reference for departmental committees examining climate issues, to the availability of appropriate resources, and guidance on the proper use of complaint procedures. Two key recommendations, which the university is currently implementing are:

- the appointment of a respected academic, preferably a woman, from outside the university to the position of Chair of the Department of Political Science
- formulation of a code of professional ethics for faculty.

"We are optimistic that real and meaningful changes continue to take place at the university, which will improve the environment for those who work and study there. As the university's implementation plan provides for the involvement of the university community, we trust that all those individuals most affected now and in 1993 will participate in the process," said the Ombudsman, Dulcie McCallum.

## Income Assistance - Top Key Words for Closed Files October - December 1994 (see page 4 for Use of Key Words)



### Income & Community Supports Team\*

Files Open Dec. 31, 1993	338
Files Received in 1994	1436
Closed - No Investigation	228
Closed - Investigation	1336
Internal Team File Transfers	210

\* As of January 1995 known as Community, Adult Services and Education Team (CASE).

# Children & Youth



**Follow-up  
Ombudsreport 1993**  
page 8

## Report Card: Services to Children, Youth and Families

Ombudsman Public Report No. 22 called for an integrated service approach for children and youth. In 1995 we will, by way of a report, review the progress made to date.

In the spirit of our longstanding commitment to an integrated approach to child and youth issues we will focus this "report card" on the following areas:

- ✓ **Integration of Services**  
"Integration, Integration, Integration"
- ✓ **Under Nineteen Income Assistance**  
"Poor Kids"
- ✓ **Corrections Branch**  
"Building Respect"  
"Post-Provse"
- ✓ **Advocacy**  
"Advocacy in Action"
- ✓ **Schools**  
"School Days"
- ✓ **Public Trustee**  
"Children in Trust"
- ✓ **Family and Child Services**  
"Partnership"  
"Rights of Children in Care"

### Integration, Integration, Integration

The Ombudsman's Public Report No. 22 – Public Services to Children, Youth and their Families in British Columbia: The Need for Integration was released in November 1990. The report outlined the need to develop strong inter-agency and inter-ministry service plans so that youngsters and their families might experience child-focused and cohesive service delivery. It also decried:

- the lack of integrated service planning
- the fragmentation of services between ministries
- the ongoing frustration many families, young people and service providers experience when they attempt to put together an integrated service plan.

Since the release of Report No. 22, the Ombudsman has commented annually on the need for the integration of services. After many years of experimentation, inter-ministerial and collaborative approaches have either not existed or have not been put in place effectively. Despite the positive initiatives of the Child and Youth Secretariat, the Ombudsman continues to receive many complaints

The forthcoming public report will evaluate the above policies and programs against the following principles:

- Children are entitled to be treated with dignity and respect.
- Children deserve first priority in the consideration of the public good and in the allocation of resources.
- Children are entitled to a clear statement of their rights, and these rights, including those set out in the *UN Convention on the Rights of the Child* and the *Canadian Charter of Rights and Freedoms* should form the foundation for children's services and child advocacy.
- Children's rights, like those of all people, are inalienable; that means the rights are not given to children by benevolent adults as privileges, but are entitlements to them as people.
- First Nations children deserve unique attention and their views must be appropriately represented when individual and collective decisions are being made during and following the transition to aboriginal self-government.
- Children should be supported in developing self-advocacy skills in a manner consistent with their interests, abilities and cultural backgrounds.
- Natural advocates for children such as parents, families and child care organizations should have recognized status, community support, adequate resources and access to information.

from children, youths and their families who question us about what services are available, how they can access them and why the services are not integrated. They experience long waiting periods, and fragmentation or overlapping of services.

Currently steps are being taken to bring about regulatory or policy reforms in child welfare, children's mental health, family justice, youth corrections and child care licensing. However, these sectors are operating in relative isolation from one another, although they are interdependent in their function and mandate – to serve children, youth and their families. While laws or policies in themselves do not solve human problems, inconsistent or inadequate legislative and policy planning can seriously affect the quality of public services provided to communities.

**.. "partnership" between the provincial government and the local communities must shift from a loosely defined concept to a clear, viable inter-ministerial policy with a fixed point of responsibility.**

The Ombudsman acknowledges and applauds the efforts of the local Community Youth Councils (CYCs). Some communities and many individuals have made positive strides to integrate services for children, families and youth at the local level. Some communities have developed CYCs where they previously did not exist, or they have worked to strengthen them and make them more effective. The Ombudsman believes that CYCs are a useful forum for networking, especially now that many have opened their membership to communities, and some to youth. However, she sees little hope of Community Youth Councils alone achieving the fundamental reforms

needed to properly empower communities and ensure effective local planning and integration of services.

The Ombudsman believes that children's services should be delivered as close to home as possible. However, focusing all reform efforts on local communities ignores the important impact of provincial policy and resource allocation. Too often, service providers adopt an attitude of "us and them," rather than one of true partnership between provincial and local authorities.

If local integrated planning initiatives are to succeed, "partnership" between the provincial government and the local communities must shift from a loosely defined concept to a clear, viable inter-ministerial policy with a fixed point of responsibility. This shift must take place if we are to establish "one-stop shopping," in other words a means for cohesive inter-ministerial planning for children. Provincial leadership is an essential element of that process.

Our experiences continue to underscore the need for integration of services. The following case exemplifies the positive impact an integrated approach can have on a child and his family.

*A father came to the Ombudsman seeking help for his son. The boy, who had been diagnosed with a mental illness, was charged with an offence and placed on probation. Since his condition was not improving, he was sent to Maples Adolescent Treatment Centre. The goal was to return him to his home community and family once they had a plan for ongoing support. But there were obstacles. The family was dedicated to caring for the youth but could not meet his needs. A neighbouring community had a residential facility that provided employment training and all the services the*

- Child advocacy services provided in the public sector must span all public agencies, services and departments that serve children and youth.
- Children's views must be actively sought and carefully considered when decisions are made that affect them, individually or collectively.
- When serious disagreements exist among adult care givers and service providers, children must have access to an independent advocate of their choice, the opportunity for a legal or administrative hearing, and have their views and interests fairly represented and considered.

The Ombudsman is encouraged by recent changes that will positively impact children, youth and families, notably the appointment of a Child, Youth and Family Advocate as an Officer of the Legislature. New legislation in the *Child, Youth and Family Advocacy Act*, and the *Child, Family and Community Service Act* provides further protection for some children and youth in care of the state. We welcome these significant legislative changes as well as the efforts of both individuals and communities to include young people in decisions that affect them. No matter how brightly these beacons of light shine, unfortunately we are all too often reminded that some children and youth continue to be treated as marginalized citizens, alienated from their communities and from mainstream society.

*youth required, but it was for adults and the youth was only eighteen. Everyone agreed that this facility was suitable for the young man, and his father asked if we could help to secure a place for him there.*

*While we were looking into the situation, the people closest to the problem took some action. Staff from Maples, from the community and regional mental health office, the licensing board, the residential facility, youth probation, the family and the youth all met to decide what to do.*

- *The facility agreed to request an exemption from the licensing board to enable them to admit a person under nineteen.*
- *The licensing board indicated that they would view the request favourably and promptly.*
- *The regional mental health office agreed to provide an additional staff person to work with the youth, recognizing that he needed additional assistance to help him with the transition to adulthood.*
- *The probation officer agreed to supervise the youth's probation while he was in the facility, and supported the overall plan.*
- *The family had access to the facility so they could maintain ongoing contact with their son. The people closest to the situation did a superb job of accurately assessing the needs of the youth, identifying the obstacles to meeting his needs, and co-operating and consulting to find ways to overcome the obstacles and to activate the plan. The result was that the youth received the services needed to resume his life in the community.*

This case is an excellent example of what we mean by integration of services, and of how effective it can be.

# Children & Youth

## Under Nineteen Income Assistance

### Poor Kids

Although people under nine teen are eligible for income assistance, they often find it difficult and confusing to work through the application and assessment process and to convince ministry officials that they qualify for assistance. The Ombudsman will intervene in many situations and especially when:

- a youth has been denied the right to apply for income assistance
- someone is denied assistance simply because the parent refuses to give permission
- the decision to deny assistance is clearly based on irrelevant grounds or considerations such as the worker's own personal values
- the young person's views have not been carefully considered
- the child's situation has not been thoroughly assessed.

We hope that the new *Child, Family and Community Service Act* will assist those young people who currently fall into the gap between child welfare services and income assistance for adults. Under this new legislation the ministry may make a written agreement with a youth who needs assistance and cannot be re-established in her or his family, or has no parent or other person willing to assist. The agreement may provide for residential, educational and other services. However, since the decision as to whether or not a child can be re-established in her or his family rests with ministry staff, a thorough, open-minded, unbiased assessment that is sensitive to the child's views is still essential.



## Corrections Branch

### Building Respect

*Young people should not have to fear for the safety of their person or their property while attending a provincially run or funded residential youth program.*

This statement is taken from the Ombudsman's *Public Report No. 34 - Building Respect: A Review of Youth Custody Centres in British Columbia*, released in June 1994. The standard described has yet to be achieved for many of the youth in detention.

The Ombudsman, in an open letter introducing *Building Respect*, stated:

*The Office of the Ombudsman believes that youth facilities must be safe and caring. The aberrant conduct of youth living in custody centres cannot be used to relieve officials from the responsibility of providing a respectful environment. Comprehensive change is required, not band-aids. A complete overhaul of the way youth services are delivered must be undertaken if youth in residential facilities, particularly youth custody centres, are to live without the fear and threat of violence.*

The report was based in part on the work of a Task Force on Peer Abuse, established by the Office of the Ombudsman in 1990 to "assist in the systemic review of peer abuse within British Columbia's Youth Custody Centres." The Ombudsman's Children and Youth Team contributed their considerable experience and their investigating abilities. The report's forty-one recommendations go beyond the issue of youth safety. They deal with how positive change can take place in the lives of youth through the process of building respect, recognizing that many of the youth concerned have experienced family violence and abuse as children.

The principles outlined in the report concern the physical, mental and emotional well-being of youth who have been temporarily removed from the community by the courts.

The recommendations in the report highlight the pressing need for adequate qualified staff, enhanced programming and improved facilities.

Conditions in secure youth custody centres appear to have deteriorated recently. We believe that the concerns are so serious and so widespread within the youth corrections system that immediate action is required. Although there are many committed, competent professionals within the system who strive to provide an environment consistent with the principles outlined in *Building Respect*, the conditions in some facilities are so marginal, the programs so limited and the relationships between staff and youth so dysfunctional that the problems seem almost insurmountable. Immediate implementation of the recommendations listed might provide the groundwork for rectifying the problems.

### Principles underlying this report:

- All children and youth, regardless of their situation, 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 have access to appropriate advocacy services.
- All children and youth have the right to the benefit of the fundamental human rights provided in the *UN Convention on the Rights of the Child*.
- All children and youth have the right to receive appropriate programs from appropriately trained and properly motivated staff.
- All children and youth should have the opportunity to access publicly funded services in their home communities or as close to their home as possible.
- All children and youth have the right to receive culturally and developmentally appropriate services.

### Recommendations:

- That the Corrections Branch, in close consultation with child welfare, children's mental health, youth forensic and educational authorities, develop an implementation plan to address the recommendations in this report and that this implementation plan be made available, upon request, to interested communities for their comment.
- All residential programs and services for young people, regardless of the administering authority, should be managed in accordance with explicitly stated government principles as stated in this report. Policies and procedures should be established to ensure that residents and staff are aware of these rights and principles.
- In order to be clear, government should develop legislation that outlines the rights of all children, particularly those who are receiving or should be receiving services from government.
- The Ministry of the Attorney General should act immediately to separate youth from adult correctional services through the establishment of a separate division with exclusive responsibility for services delivered pursuant to the *Young Offenders Act*.

To obtain copies of *Building Respect: A Review of Youth Custody Centres in British Columbia*, please call or write the Office of the Ombudsman.

## NEWS FLASH

In early 1995 the government responded to Ombudsman *Public Report No. 34 - Building Respect: A Review of Youth Custody Centres in British Columbia* with an Inter Ministry Implementation Plan. We look forward to reviewing and monitoring their plan in the coming year.

## Family and Child Services

### Partnership

A significant number of the complaints received by the Ombudsman's Children and Youth Team relate to the Family and Child Service division of the Ministry of Social Services. Three main areas of complaint have emerged.

1. Families call the Ombudsman because they do not understand the process of apprehension of a child. They often do not know what their rights are, nor how to exercise them.
2. Young people call us when they do not agree with a plan developed

for them by their social worker. They tell us that they do not know how to protest nor how to have input into the plan.

3. The most troubling complaints are from young people who are not able to obtain the services they are seeking.

Young people are often labelled manipulative by ministry staff when they express their positions in an assertive manner. Ombudsman staff would like to suggest another way of viewing these so-called manipulative youth.

Many young people are attempting to advocate for themselves, but lack the sophistication to be self-advocates in a polished manner. In their own way they are attempting to

find out what the system can offer and whether or not they are eligible for the services they seek. What looks like manipulation or aggression may simply be their attempt to seek out for themselves the help they feel they need. Ministry staff who work in partnership with young people and respect their efforts to advocate, may well find solutions that are mutually acceptable.

As a result of the death of Matthew Vaudreuil, the provincial cabinet appointed Judge Thomas Gove to conduct an inquiry and make recommendations on the adequacy of services, policies and practices of the Ministry of Social Services, including the training and work load of their staff. He will issue his report in 1995.

*Many young people are attempting to advocate for themselves, but lack the sophistication to be self-advocates in a polished manner.*

The Family and Child Service Division has produced a video for all young people coming into the care of the ministry, to inform them of their rights. The video, likely to be released early in 1995, also explains the role of the Ombudsman in the lives of children in care.

Many of those working within the division find time for youth and have developed ways and means to listen to them. Good examples should be celebrated.

# Children & Youth

## ✓ Corrections Branch

### Post-Prowse

The problems in youth corrections are not only serious, they are chronic. In 1985 the Ombudsman released *Special Report No. 13 – The Willingdon Case*. This report and its thirty-five recommendations dealt with the problems encountered in British Columbia's largest youth custody facility.

Four years later, in January 1989, the Ombudsman released *Public Report No. 17 – Willingdon Youth Detention Centre*. This report was in response to a number of incidents of self-harm by youth within the centre. In the concluding comments the Ombudsman stated:

*The vexing problems of self-harm, victimization, inadequate facilities, appropriate staff levels and training, classification and segregation, and containment philosophy require specific attention by the Corrections Branch. They will also be the subject of continuing review by this Office.*

The Prowse Commission of Inquiry Report on the Transfer of Daniel Michael Perrault to the New Haven Correctional Centre was released in July 1994. Although the report is not about conditions within youth custody facilities, the Honourable Madam Justice Prowse, in commenting on rehabilitation, stated:

*It is clearly in society's interest to have the Corrections system do its utmost to achieve the rehabilitation of young offenders. This is so because it is only if young offenders are rehabilitated that society can be protected from further antisocial behaviour upon their release. In 1993 the Supreme Court of Canada endorsed this viewpoint:*

*In the long run, society is best protected by the reformation and rehabilitation of a young offender. In turn, the young offenders are best served when they are provided with the necessary guidance and assistance to enable them to learn the skills required to become fully integrated, useful members of society.*

*R. v. M. (J.J.), (1993) 20 C.R. (4th) 295 at 304*

*"Warehousing" offenders is nothing more than a short-term solution to what is usually a long-term problem. A three year custodial sentence in which the facilities permit minimum opportunity for effective rehabilitation will protect the public from that offender for three years, and no longer. It is only if efforts are made to rehabilitate offenders, particularly youthful ones, that there is any realistic hope that they will not offend again. (Prowse Report, page 11).*

Some of the recommendations contained in the Prowse Report have apparently had a significant, though negative effect. The director of the Youth Custody Centre and some staff were disciplined by the most senior officials for the "errors in judgment" identified by Justice Prowse. Now

many youth custody directors and their staff fear that they too could face disciplinary action for any incident involving a youth on temporary absence. As a result, the use of temporary absences as an important rehabilitative tool has been virtually eliminated. This action is inconsistent with the principles of the *Young Offenders Act*. As well, it confirms Justice Prowse's concern about an overreaction to her report by corrections officials that could negatively affect the rehabilitation of youth. Notwithstanding the Judge's apprehension, the employees have a legitimate reason to be concerned.

The effect of eliminating temporary absences is twofold. The opportunity to provide youth with a gradual reintegration into society through family, professional and community contact has been lost, and youth custody centres are overcrowded.

*Although the public perceives that violent crime among youth has significantly increased, there is no evidence that it has.*

In *Building Respect* the Ombudsman stated that the youth court should retain responsibility for deciding whether a young offender should be placed in open or secure custody. We believe the same principle should apply to the transfer of youths to the adult system. Our laws have given the courts the task of assessing risk to the community while considering the needs of the youth, and we believe that this is an appropriate role for the court. The role of corrections officials is to provide the court with the best information available. The court is responsible for the final decision. When a young offender's transfer to an adult facility is authorized by the court, thereafter the adult system is responsible for ensuring that the community is protected by determining the level of security required. Why the Prowse Commission faults the director and staff at the Youth Custody Centre for recommending the transfer when the court had made the decision is unclear and regrettable.

Although the public perceives that violent crime among youth has significantly increased, there is no evidence that it has. Because of the community's concern about crime in general and violent offences in particular, there has been increased pressure on the justice system to "lock up" more youths for longer periods of time. Since many of the youths in custody were abused and neglected as children, and most have extraordinary needs, they require exemplary programs run by highly trained and skilled staff. Most often these programs are not available. Poor conditions and lack of effective programs in youth custody centres have a detrimental effect not only on the youth who are incarcerated, but on everyone involved in the system. The fundamental principles of healthy, positive relationships among people regardless of age and circumstances must be the paramount consideration. This goal has yet to be achieved in youth custody centres.

## ✓ Schools

### School Days

Approximately six hundred thousand students from kindergarten to grade 12 attend 1600 schools in 75 school districts in B.C. The system includes students, parents, teachers, support personnel, administrators, non-teaching staff, locally elected officials and the Ministry of Education. The public may be legitimately confused and unsure of who is accountable for what.

The Ombudsman has received approximately 500 complaints from the public since her jurisdiction over schools and school boards was proclaimed in November 1992. Considering the size of the system and the number of people it serves this does not indicate a high level of dissatisfaction. Schools must be doing many things right.

The complaints we do receive, however, are significant to those who are aggrieved, and tend to fall into a few broad categories:

- lack of services to meet individual needs of students
- transportation
- exclusions, suspensions and expulsions.

How to resolve disputes within the school setting or to appeal decisions considered unfair has been the subject of many complaints to the Ombudsman from students and their parents or advocates. As a result of discussions with students, parents,

teachers and other staff the Ombudsman soon became aware of how little information about appeal procedures was being made available. Few students or their families know that the *School Act* gives them a statutory right to appeal, or that specific appeal procedures exist; many have little faith that they will be given a fair hearing; and they are afraid that, if they complain, their problems could be made worse by retribution.

Ombudsman staff encountered

many fine examples of school districts making sure that students and parents are aware of appeal procedures, and allaying any fears about the process. In some school districts staff encourage people to bring an advocate to support them in making a complaint or pursuing a formal appeal. This practice provides students and parents with a sense of being supported and heard in the process and demonstrates that fair

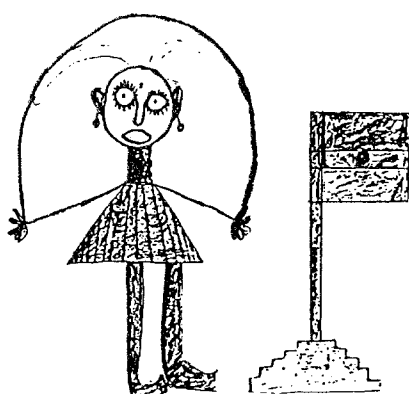
administrative practices in schools are possible and positive.

Although many districts have made progress, all participants in the education system need to work together to develop better dispute resolution mechanisms, and to educate everyone within the system about the principles of administrative fairness. Resolving issues at the local school level is the best approach for all concerned. These resolutions require thorough and unbiased investigation of complaints by school administrators at the initial stages and fair consideration of the facts.

The child has a right to free and compulsory primary education, equal access to secondary and higher education and school discipline which reflects the child's human dignity.

The State shall ensure that education is directed at developing the child's personality and talents; preparing the child for responsible life in a free society; and developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others.

*UN Convention on the Rights of the Child*



Adeline – India

### Supporting Inclusive Education

The Ombudsman is concerned that we have not achieved fair access to equitable education opportunities for all children. Parents of children who need support services in order to succeed in school frequently report that these services are either unavailable or have been cut back because of budget constraints. Many children and youth do not find our schools welcoming or helpful in meeting their learning needs. The Ministry of Education's policy statement on

Special Education proclaims the belief "that all students are unique, all students are to be valued, and that all students can learn." Canada is also signatory to the *UN Convention on the Rights of the Child*, which recognizes the right of all children to an education. The principles stated in the *UN Convention* and by the Ministry of Education can serve as a mission statement, setting a goal for all of us involved in educating children.

The Ombudsman has seen some encouraging examples of school districts working with advocacy groups to provide workshops and training for both parents and educators to better support children in achieving learning goals. The next important step is to educate children and youth about their rights and how to secure advocacy support when they need it.

The Ombudsman is in the final stage of preparing a public report on her experiences to date with schools and school boards. Entitled *Fair Schools*, this report will be tabled with the legislature early in 1995.

# Children & Youth

Public Trustee

## Children in Trust

In relation to children the Public Trustee has the responsibility:

- to protect their legal and financial interests when both parents have died without naming a guardian, or when the child becomes a permanent ward of the Superintendent of Family and Child Service
- to audit private trustees and investigate reports of financial abuse.

The Ombudsman has previously recommended that the Office of the Public Trustee develop an active liaison with the Ministry of Social Services on behalf of permanent wards. Communication between these offices still appears to be lacking. The *Family and Child Service Act* requires that the Ministry of Social Services notify the Public Trustee of a permanent custody order. The trustee then takes over the guardianship of the estate of the child. Recently we learned that this does not always happen. In order to protect the legal rights and financial interests of children who become permanent wards, the Public Trustee must receive notice and be kept informed of custody orders, and of the legal and financial status of the children concerned.

Furthermore, the Ombudsman is concerned that the administration of children's funds by private trustees is rarely monitored. The *Estate Administration Act* requires that the Public Trustee be notified when estate funds are set up for children. Although an open file in the child's name is often held by the Public Trustee, the Services to Children division, unlike Public Trustee Services to Adults, does not have staff available to monitor these funds on a regular basis. Unfortunately, when there is an allegation or evidence of financial abuse by a private trustee, the responsibility may fall on the guardian of the child to take legal action. Regular monitoring of funds and appropriate action by the Public Trustee in cases of abuse are necessary to protect the financial interests of child beneficiaries.

Family and Child Services

## Rights of Children in Care

- to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in placement
- to be informed about their plans of care
- to be consulted and to express their views, according to their abilities, about significant decisions affecting them
- to reasonable privacy and to possession of their personal belongings
- to be free from corporal punishment
- to be informed of the standard of behaviour expected by their care givers and of the consequences of not meeting their care givers' expectations
- to receive medical and dental care when required
- to participate in social and recreational activities if available and appropriate and according to their abilities and interests
- to receive the religious instruction and to participate in the religious activities of their choice
- to receive guidance and encouragement to maintain their cultural heritage
- to be provided with an interpreter if language or disability is a barrier to consulting with them on decisions affecting their custody or care
- to privacy during discussions with members of their families, subject to subsection (2)
- to privacy during discussions with a lawyer, the Child, Youth and Family Advocate, the Ombudsman, a member of the Legislative Assembly or a member of Parliament
- to be informed about and to be assisted in contacting the Child, Youth and Family Advocate
- to be informed of their rights under this Act and the procedures available for enforcing their rights.

Taken from section 70 of the *Child, Family and Community Service Act*, 1994.



## Speech

### International Week

excerpts from a speech given at Shawnigan Lake School, November 14, 1994

While the Office of the Ombudsman cannot currently investigate complaints about independent schools, I am often called upon to assist them informally or to address their students.

In communities such as ours that are made up of diverse interests, my Office can serve only to promote fairness, not necessarily achieve it. That job is up to all of us. The task becomes increasingly important for your generation as the profile of our communities, our cities and our country changes by the moment. We see vigilante acts such as the tragic shooting of the physician in Vancouver last week. This act is a striking example of the degree of intolerance some people have for others whose opinion differs from theirs. One attitude that surfaces time and again from the 30,000 inquiries and complaints my Office processes each year is intolerance. Your mission as the Now Generation is to promote and "live" fairness for all. This event you celebrate today, "The International Week at Shawnigan Lake School," embodies what that truly means. Four concepts come to my mind:

#### Celebrating Differences

It is not enough merely to show tolerance of religious, racial, national or ethnic differences; colour, gender or disability; we must actually rejoice in what distinguishes one from the other.

#### Striving for Inclusion

We as a world must redesign our systems and processes so that everyone's needs are accommodated and everyone is "in"!

#### Promoting Respect and Dignity

We must understand what our values and principles are that cross all boundaries, be they geographic, religious, racial or other, and put these principles into action in our daily lives.

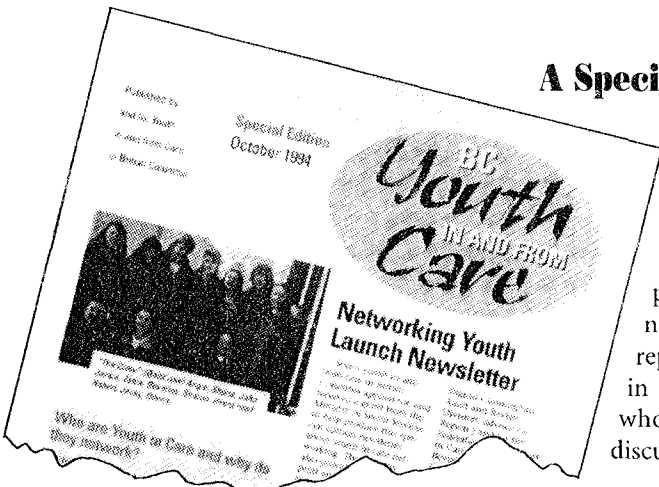
#### Distinguishing between Opinion and Judgment

An Ombudsman's role is to ensure that the principles of fairness are respected. One of the primary principles is the right to be heard. The Ombudsman is required to hear and consider people's opinions, wishes and desires and not to judge them based on my opinion or what I consider to be "right."

This school provides you with the opportunity to develop a sense of service, of understanding and of celebration of those things that define our lives and distinguish us from one another. This International Week gives you the opportunity to understand what is of value to others, to learn how in a non-judgmental and open way you can celebrate the differences of other nationalities and other people, and what you can do to improve their lives and your own. You are fortunate to have this opportunity and I am honoured to have been asked to participate.

### A Special Thank You!

During 1994 I toured the province to meet with children and youth. We discussed problems they experience accessing public services. A special note of appreciation to representatives of the Youth in and from Care Network who helped organize the discussion sessions!



Advocacy

## Advocacy in Action

In 1994 the Ombudsman saw some encouraging progress in the area of advocacy for children and youth.

- First, we acknowledge all those front-line service providers who take risks within their own organizations to advocate on behalf of the children they serve. Long may you prosper!
- We wish to acknowledge the support by the Ministry of Social Services to the Youth in Care Network, a voice for young people who have been recipients of services provided by the ministry. The network will celebrate its second anniversary in early 1995 at a conference in Kamloops. All the young leaders involved should

- be congratulated for their work and dedication.
- In 1990 the Ombudsman recommended that a provincial office of advocacy for children and youth be established. Since that time, the Office of the Ombudsman has pressed for action. In 1994 the legislature passed the *Child, Youth and Family Advocacy Act*, and proclaimed section 3, which will establish an independent Officer of the Legislature for children and youth.
- The Assistant Deputy Minister of Regional Operations in the Ministry of Social Services sent a letter to all ministry staff informing them that they were expected to act as advocates for their clients. The nod to incorporate advocacy in their work was supported by the fact that individuals, both staff and clients, are protected against retribution for any action taken to support a complaint to the Ombudsman.

- Efforts by community groups to establish Children's Advocacy have resulted in the Children's Advocate for the City of Victoria. The position has been filled by a colleague of the previously established Children's Advocate in the City of Vancouver. In addition, we have been informed of local initiatives on Vancouver Island to ensure advocacy for children in the public school system.

#### Children & Youth Team

Files Open Dec. 31, 1993	1075
Files Received in 1994	1216
Closed - No Investigation	348
Closed - Investigation	1118
Internal Team File Transfers	825

# Stronger Children - Stronger Families

Conference co-sponsored by the Ombudsman's Office and the University of Victoria

June 1994



*Probably the biggest issue for most of the youth..was finding a voice and being "heard" by the experts and the professionals.*

that they would be part of natural networks in order to continue work on their return home.

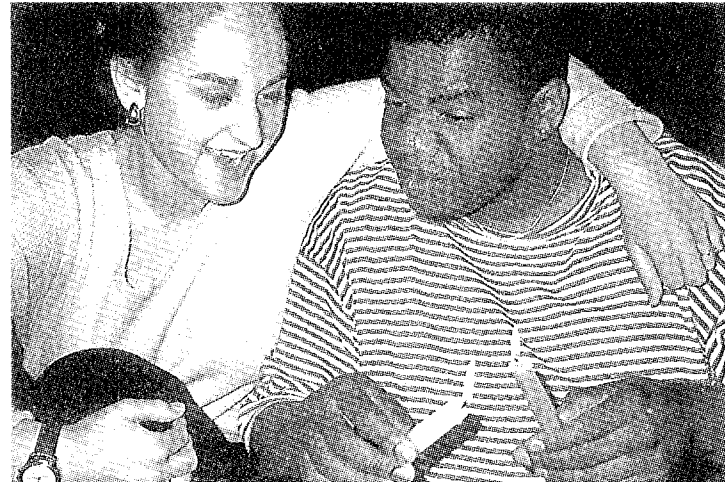
The adults who joined the youth delegates for the final four days included professionals from Canada and around the world in the fields of education, health, recreation and social services, as well as senior representatives from federal and provincial governments. The conference program reflected eight major "streams," themes addressed by the *UN Convention*: Education; Play and Recreation; Child Care and Development; Children in Situations of Emergency; Supporting Families, Children and Youth with Disabilities; Legal System; Programs and Policies to Support Children and Families; Respecting Cultural Heritage; Basic Health and Welfare.

*We (street youth, youth in care, young offenders) have struggled and struggled for acceptance, rarely with success. At the conference youth from around the world not only accepted us, but loved us, and at times admired us for the resiliency we had shown in surviving our circumstances.*

Young people came from all across Canada; they came from India, Rumania, Kenya, Grenada, Zambia, Bangladesh, and twenty-four or so other countries, a total of 200 youth. Adults came from all over the world, 600-strong. They came for one purpose – to understand and to breathe life into the *UN Convention on the Rights of the Child*. Canada and B.C. signed the Convention in 1991, but many of its terms have yet to become part of policies and practices.

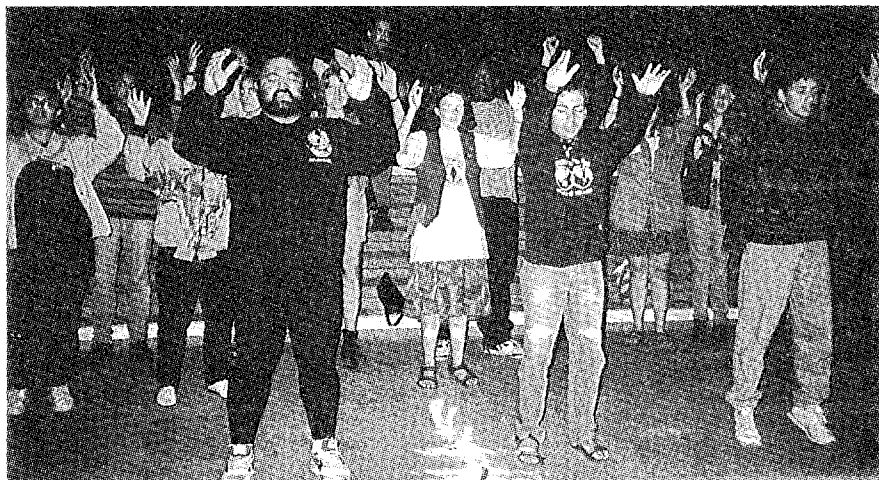
The conference was unique in its involvement of youth at every stage, and a model for planning a conference on youth issues. Two young people co-chaired what would become the first conference on the Rights of the Child organized for youth by youth. An eighteen member Youth Steering Committee included high school student council members, street youth, youth in care, youth in the performing arts, gay youth, aboriginal youth and international youth from Pearson College. They ranged in age from 14 to 26.

The two-day youth conference preceded the main conference. The Canadian International Development Agency and many other national and provincial organizations sponsored youth from developing countries to attend. International youth delegates were chosen from existing organizations, in the hope



▲ Unity is the aim  
The truth we hold dear...

[We] can soar high like birds  
And can shine bright as stars. ▼



*I had to rethink everything I thought I knew about children and families. I felt that I lived in denial of the reality of the way other people live, particularly the youth, both in Canada and the rest of the world.*

## Eagle Spirit Runners

Broken dreams  
Heartache and desire  
Your hopes  
Your dreams  
The youth you can inspire  
Anger at the past  
Of use and abuse  
The rebuilding can start  
With just a whisper to a roar  
With vision of the eagle  
Grandmother Moon guides us  
The Creator's hand is near  
Our time had come  
The sleeping giant awakens  
Voices speaking of untold stories  
Rise up and be counted  
Our time is here  
Unity is the aim  
The truth we hold dear.

Written by Franklin Henry Doss, a youth delegate on the planning committee to whose memory an hour-long documentary on the conference was dedicated.

## What Was Said

### ...on Resiliency

What characteristics make it possible for some children to overcome great odds and adversities without losing the song in their hearts?

- an "easy" temperament and an ability to actively recruit competent adult care givers
- an ability to ask for help when needed
- a strong belief that they can control their fates by their own actions
- at least one person in their lives who accepts them unconditionally.

### ...on a Socially Toxic Environment

The social world in which children live has become poisonous to their development. The most vulnerable children identified the major environmental risk factors: being poor, being a victim of racism, having a single parent,

being burdened with drug addiction, alcoholism or emotional problems in the family. The accumulation of these factors can overwhelm a child, without a parallel accumulation of opportunity factors. The social toxicity of the environment demands that parents be more effective in rearing their children to be steady

and brave  
and responsible  
and more resilient than ever before.

### ...on Families

Despite all the bad publicity the family has received in the recent past, families are still central to who we are as individuals, to our communities and, for most of us, our very survival and well-being.

If we are to create stronger children, we must dedicate ourselves to creating stronger families.

### ...on Children's Rights

*In our community the rights for our children were given to us by our parents, by our grandparents, by our uncles and aunts, by our nephews and nieces and cousins; and by our brothers and sisters, by our chief and by our environment. Now these rights are being given to us from the United Nations. I think that responsibility for empowerment should come back to ourselves.*

*Please support us in allowing us to make decisions for our children, our families, our communities, our environment, and our country.*

Howard Reti, Director of the Ngatiwai Wananga Raorao Foundation of Aotearoa (New Zealand)

### ...on "Best Interests" of the Child

Deciding what is "best" for a child requires answering fundamental questions about what is important in life.

Some of the youth delegates understand that parents have obligations to the child, but question what rights they have over the child. The reality for a lot of children is that parents have the right at any time to check out of that child's life.

Despite all of these limitations and problems, the best interests of the child can be one useful guiding principle. It reminds society, families and judges to make decisions on an individualized basis ...in order to promote a particular child's welfare. When, on the other hand, it is used to decide for a child or youth without their input and involvement, it is less than helpful.

## The Legacy

The most significant outcome of the event was that two hundred young people left Victoria with new awareness, and new confidence in their continuing efforts to realize the Rights of the Child.

## Other Outcomes

- An animated video on Racism was produced at the youth conference by six youth, directed by Clifford Cohen of AnimAction Inc. "I continue to screen this film internationally as I feel this kind of message holds a great importance and regard it as a fine piece of educational material and a worthy resource."
- UVic's School of Child and Youth Care has organized a meeting on "resilience" and "empowerment" as they relate to policies and programs to support youth in difficult circumstances and, in partnership with UNICEF, a "Training the Trainers"

- International Summer Institute on early childhood education and child care policy.
- The Society for Children and Youth in B.C. is undertaking a two-year project to promote awareness of the *UN Convention* in B.C.
- The Committee for Racial Justice in B.C. published "Rights of the Child," based on the *UN Convention*.
- UNICEF and the Centre for the Advancement of Community Based Rehabilitation are including chapters by conference participants in a book about children in situations of conflict and warfare.

- Edmonton Parks and Recreation is co-ordinating The Bombay Project, a plan to link children in Edmonton and Bombay via the Internet, using computer play as a basis for cultural exchange.
- All those who attended will receive an hour-long documentary video on the conference, a book highlighting conference events, a copy of *As if Children Matter: Perspectives on Children, Rights and Disability*, published by The Roehrer Institute and a CD Rom on the conference and the Rights of the Child.

## Who the Ombudsman Can Investigate

[illegible]



# The Ombudsman

## *Promoting Fairness for British Columbians*

### ① If it's information you need ...

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 first call the public authority that holds the information. If you are not satisfied, call the office of the Freedom of Information and Protection of Privacy Commissioner.

- in Victoria: 387-1992

### ② If you think you have a problem with a public authority, try to solve it.

Call first. Contact the public authority by telephone. Determine who can best help to solve your problem.

Be ready. Have your questions and important reference numbers ready when you call.

Ask questions. Determine why and how the public authority made its decision.

Keep a record. Make notes of your calls and the answers to your questions.

Review all information carefully about any review or appeal process to which you are entitled.

### ③ Have you already explored existing remedies within the public authority?

Prior to investigating a complaint, the Ombudsman will encourage, and sometimes require a person to exhaust existing remedies within the public authority. We can assist you by giving you information about existing remedies.

### ④ Is your complaint within the jurisdiction of the Ombudsman?

The Ombudsman has the authority to investigate complaints about the following public authorities:

- ministries of the province
- crown corporations
- colleges and universities
- schools

- hospitals
- governing bodies of professional and occupational associations
- local governments

### ⑤ Is your complaint a matter of administration?

The Ombudsman is authorized to investigate and resolve complaints about administrative unfairness. Her concern is whether the policy, practice, process, guideline or law that a public authority 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.

### ⑥ When you need to contact the Ombudsman ...

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

- By free telephone access:  
1-800-567-3247 (all of B.C.)  
1-800-667-1303 (TTD/TTY)
- By local telephone access:  
387-5855 (Victoria)  
387-5446 (Victoria TTD/TTY)
- By mail:  
931 Fort Street  
Victoria, B.C. V8V 3K3  
2nd floor, 1111 Melville Street  
Vancouver, B.C. V6E 2X5
- By fax:  
387-0198 (Victoria)  
660-1691 (Vancouver)

### ⑦ When the Ombudsman investigates ...

After an investigation, when a complaint has been substantiated, she can make recommendations to the public authority that will attempt to resolve your complaint and promote fairness.

#### GUIDING PRINCIPLES for the Office of the Ombudsman

##### Respect

Recognizing that everyone is entitled to be treated with dignity and respect.

##### Inclusiveness and Accessibility

Promoting equality, access and inclusion in all public services and facilities for all persons regardless of age, gender, sexual orientation, disability, race, national or ethnic origin, religion or creed, language, and family or economic status.

##### Empowerment

Promoting and encouraging self-help for people using public services.

##### Education

Educating and instructing public officials about the principles of fairness in order to prevent complaints.

##### Co-operation

Recognizing the value of co-operation as the primary means to achieve resolutions.

##### Commitment

Striving to be consistent, innovative, courteous and impartial at all times with the public and public officials.

##### Leadership

Ensuring that the Office of the Ombudsman has in place administrative policies and practices that are fair, and consistent with these guiding principles.

# The Welcome Mat

To manage the dramatic increase in complaints received by the Ombudsman since 1992 and to prepare for the continued swell that is anticipated in the future, we have made changes to our operations to improve our efficiency. As a result of this review, an Intake Team was formed to receive complaints and provide referral information to the public. Previously, the Ombudsman's administrative and investigative staff shared responsibility for the intake function. Since each staff was required to perform intake duties relatively infrequently, they had little opportunity to acquire and use the skills and knowledge required. We believed that efficiency and service quality would be improved by assembling a smaller group of individuals responsible solely for intake duties. Having a good working knowledge of community and government resources is a huge undertaking. The staff on this team become familiar with community resources, administrative remedies and appeal processes, and, when it is appropriate, give this information to callers. In very many cases, information of this sort is just what a caller wants and needs. The call is recorded as an inquiry, for "information only" and does not result in formal complaint intake. The Office is encouraged by the initial results of this approach.

However, if a caller has an unresolved complaint for the Ombudsman's attention, intake staff will record the relevant information and forward it in the form of an intake summary to an investigator for review. Here are two examples of the type of information an investigator would receive from an intake officer.

*A number of years ago a Corrections Officer was cornered in a room and attacked by several inmates. The officer sustained multiple injuries including two broken legs, which his doctor believed would never fully heal. The officer applied to the Workers' Compensation Board for a permanent partial disability award. The application was denied on the grounds that the claimant's condition was attributable to a bone disease he had prior to the injury. The person contacted the Ombudsman after an appeal body upheld the initial decision.*

*Forty years ago a farmer was given permission to bury a creek and subdivide the property through which it ran. Over time, the provisional pipeline intended to contain the creek succumbed to erosion and the creek gradually regained independence. Unfortunately, it had a penchant for basements and the hum of water pumps became a familiar sound in the neighbourhood. Residents were unable to walk on their lawns with any certainty that their weight would be supported, and analysis of water collected from basements revealed septic content. The Ministry of Health and the Ministry of Transportation and Highways both assessed the situation and were contemplating the appropriate action when a resident contacted the Ombudsman to complain. She was upset that someone had approved the burial of the creek and complained that authorities were not responding to the matter swiftly enough.*

After receiving this information summary, if she or he determines the complaint has merit and is within the Ombudsman's jurisdiction, the investigator will contact the complainant and begin the investigation process.

## Office of the Ombudsman

### Telephone Calls at Reception

Month	Vancouver	Victoria	Total
January	3,751	3,989	7,740
February	3,633	4,077	7,710
March	3,891	4,998	8,889
April	3,136	4,559	7,695
May	3,807	4,582	8,389
June	3,435	4,348	7,783
July	2,900	3,868	6,768
August	3,177	3,788	6,965
September	3,464	3,905	7,369
October	3,325	3,846	7,171
November	3,614	4,175	7,789
December	2,994	3,531	6,525
Total 1994	41,127	49,666	90,793



### Guest Comment

## You Have Questions?

by Susan Park  
Program Manager, Enquiry BC  
at the invitation of the Ombudsman

The Enquiry BC program was created in 1991 to provide easy access to reliable, current information on provincial government programs and services. The program operates the Enquiry Centre and is responsible for the publication of the *Government of British Columbia Telephone Directory*, the *BC Guide to Programs and Services of the Provincial Government* and the *Province of British Columbia Blue Page* listings in all public telephone directories.

The program goals are:

- to provide equal access to current, reliable provincial government information for all British Columbia residents
- to provide excellent service at the first point of contact with government and to refer and/or transfer requests to the correct point in government
- to provide direct answers to common program enquiries
- to provide cost-effective methods of accessing information about or communicating with the provincial government
- to assist individuals in identifying the responsibilities of the various levels of government.

During 1994 the Enquiry Centre staff handled 686,287 calls. The Centre provides answers to

general questions, multi-lingual service and direct access to the person or program that callers need to reach. Enquiry BC's toll free service has equalized access to government for B.C. residents outside of Victoria and Greater Vancouver.

All the directories published by Enquiry BC contain plain language references to programs and services so that people can locate a program without having to know which ministry is responsible for the program. The BC Guide contains a large key word index. The latest edition of the Government Telephone Directory has new individual ministry indexes to make locating programs simpler. During 1994 key word sections were added to all rural telephone directories in the province.

Enquiry BC is committed to providing quality services to the people of British Columbia. We strive continually to enhance and improve our service and publications. We welcome your feedback and suggestions regarding the program. These can be made to Susan Park, Program Manager at Enquiry BC.

**Enquiry BC service is available from  
7 a.m. to 7 p.m. Monday through Friday  
and from 9 a.m. to 5 p.m. on Saturdays.  
The Enquiry Centre can be reached at:**

**660-2421 (Vancouver)  
387-6121 (Victoria)  
1-800-663-7867 (all of B.C.)**

**Copies of the BC Guide can be  
purchased through Queen's Printer by  
calling 1-800-663-6105.**

# Goin' Down The Highway

Systems initiatives in the Ombudsman's Office have undergone considerable transition over the past year. 1994 has been a time for solidifying our systems foundation and enhancing the automation currently in place. Consolidation was essential as we moved through the final stages of proclamation and prior to local governments becoming jurisdictional.

Information systems at the Office run in a client/server, open-system environment over 3 local area networks and 1 wide area network. Support was provided to 80 users in Victoria and Vancouver for the 18 application software programs, 8 databases, 10 communication software products, 84 personal computers and various printers, modems, gateways, routers and bridges.

The three member Systems Team is responsible for both operational maintenance and development. Typical operational activities include hardware and software support, security, meeting the needs of our users, training and database maintenance. Our principal development projects have been to improve our Case Tracking System, firm up our policies and procedures and create long- and short-term systems plans – all in consultation with the users of the systems.

Preparing for our Victoria Office move was the major project for 1994. We designed a central computer room and planned where structured wiring would go in the new building. We co-ordinated the moving of the equipment with the least "down time" possible. On one April weekend we moved all the hardware and set up the systems for a Monday morning startup!

We spent much of the summer setting up routines for our backup methods for server software, disk storage handling and the exchange of electronic mail with offices external to our own. We have written standards for our Case Tracking database, rewritten our User Manual and modified our case tracking reports. Our goal was to improve the quality of the reports of the Ombudsman in order to further meet the needs of authorities and of our own staff.

Case tracking screen enhancements, internet usage, network performance tuning, preliminary planning for our Vancouver office move in 1995 and year-end statistical analysis took much of our time towards the end of the year.

Because of the systems technology in the background, staff are able to focus on dealing with the public and handling their complaints more quickly and more efficiently. A recent innovation, the use of key words when closing a file to identify the nature of a complaint, enables the investigating team and the authority concerned to determine when a trend is developing. (See examples of key word closings for ICBC and Income Assistance complaints on pages 4 and 10 respectively.) Staff members in Vancouver and Victoria can communicate electronically with one another within each office and from one office to another; they can communicate with other government offices and send and receive mail electronically; receptionists can record and transfer phone calls to each computer station if a person's phone is busy. Investigators can now access the database of some authorities to get information they need to conduct an investigation. For example, instead of phoning the Corrections Branch to find out how and when a certain prisoner was transferred from one prison to another, and having the information sent by mail, staff can directly access the Corrections database and get the required information. This capacity will inevitably be an area of growth for our Office in coming years.

Overall the Systems Team strives to be flexible in meeting the operational needs of the Investigation, Intake, Administration and Management Teams. Our aim is to ensure we are using technology to our best advantage and to manage its impact on the organization effectively and efficiently in order to provide good service to the public.

# Finance & Employment

## Retailers Look for a “Win/Win/Win” Situation



Having a lottery terminal in your retail outlet can be beneficial, not only for the lottery income, but for the other business people do before or after they buy their lottery tickets. The Ombudsman has received a number of complaints from retailers who were upset because lottery terminals were removed from their business outlets. They were unclear about what the B.C. Lottery Corporation required of them in order to have a terminal replaced. The complainants did not know whether BCLC had any internal review or appeal procedures, nor how to use them if they did exist.

When BCLC informed us that they did have internal review/ appeal mechanisms, the Ombudsman suggested that they consider distributing information about their appeal process to retailers who dispute their decisions. BCLC has adopted our suggestion and will send our Office a draft information package for our input.

The Ombudsman commends the Lottery Corporation for a move that is progressive, positive and that enhances administrative fairness. Many complaints can be remedied within the existing BCLC dispute mechanisms once complainants are aware of the internal review procedures and how to follow them. This process is a win/win/win for administrative fairness, for aggrieved retailers and for the B.C. Lottery Corporation.

## A Date with History

Can one day make a difference between being equal and not being equal? A number of women receiving Workers' Compensation Board widow's pensions found this to be so one day in 1985 and called the Ombudsman with their complaint.

The 1993 *Workers' Compensation Amendment Act* repealed Sections 19(1) and (2) of the *Workers' Compensation Act*. The amendment permitted the resumption of benefits for the spouse of a deceased worker who died after July 1, 1974, if the spouse had benefits terminated because of remarriage or entering a common-law relationship on or after April 17, 1985. The 1985 date was chosen because it was the date the equality provisions of the *Canadian Charter of Rights and Freedoms* were proclaimed.

In 1994 a further amendment repealed Section 19(4) of the Act. Now benefits can be reinstated for widows of workers who died prior to July 1, 1974, and who had benefits terminated because they remarried or entered a common-law relationship on or after April 17, 1985.

Despite these amendments to the *Workers' Compensation Act*, an injustice still exists for those women who, following the death of their spouse, remarried prior to April 17, 1985.

The Ombudsman believes that the requirements of administrative fairness prevailed prior to 1985 and have been codified in the *Canadian Charter of Rights and Freedoms*. Accordingly, deceased workers' widows who remarried prior to April 17, 1985 should be entitled to the resumption of benefits. They should be given fair treatment, regardless of the date the equality provisions of the *Charter* were implemented.



Follow-up  
Ombudsreport 1993  
page 12

## Workers' Compensation Board - Prevention Division

A young electrician in the Okanagan suffered a terrible injury in 1989 while carrying out repairs requested by the shift electrician. Shortly after this incident, the shift electrician was cited by the Workers' Compensation Board for failing to lock out energized equipment, as required by Industrial Health and Safety regulations. The injured worker had started his new job only five days before the injury occurred. Five years later, he continues to be unable to work because of the residual effects of his serious injury, which also reduces his enjoyment of life with his young family.

Some time after the accident, the injured worker complained to the Ombudsman about the decision of the board's Occupational Safety and Health Division not to proceed with penalty action against his employer. He believed that his former place of employment was not adequately committed to employee safety and wanted to prevent further injuries.

During our investigation we learned that the investigating Occupational Safety Officer had recommended a penalty of \$15,000 against the complainant's employer, for failing to provide proper supervision and instruction of mill workers in lock-out procedures. In making his recommendation, the Safety Officer had considered the employer's previous history of lock-out violations.

The Safety Officer's recommendation was approved by the Regional Manager. However, the board's former Director of Field Services issued a warning letter rather than proceed with any sanction. This decision followed an undocumented meeting between company and WCB officials. The reason for the director's decision was that the employer had made commitments to improve the worker safety program. The Safety Officer protested that the decision to issue only a warning letter constituted preferential treatment and was contrary to board policy.

Following our investigation of this complaint we sent a preliminary report to the recently appointed Vice-President of the board's Occupational Safety and Health Division (now the Prevention Division). We noted that prescribed procedures regarding sanction recommendations were not followed in this case. Our initial difficulty in obtaining complete information about the undocumented meeting with the company caused concern about deficiencies in the board's documentation and record keeping. In deciding whether to relieve an employer of a penalty, the board was required by legislation and policy to review the past record and determine whether the default was excusable. The board had no apparent authority to waive a penalty on the basis of a promise

for future improvement. We also found that no warning letter was ever sent to the employer.

The Ombudsman sent the preliminary report to the employer company, as a party adversely affected, but received no response. In the report, I expressed concern that in this case the board had not acted in a concerted way to meet its responsibility to prevent injuries. I proposed a number of recommendations to WCB to address specific issues. After a meeting with the Vice-President of the Prevention Division, and a subsequent exchange of correspondence, a resolution to the complaint was found.

I had proposed that the Occupational Safety Officer's Recommendation for Sanction be entered on the WCB computer system so that it constituted part of the company's record. This proposal was implemented. The new Director of Field Services sent a memorandum to Prevention Managers directing that essential information from meetings between management, officers and company representatives be recorded. The board also advised us of a plan to establish a complete central record system in 1995. This plan should address the concern about stringent record keeping, and ensure that all company records are considered in the review of safety violations at any work site.

I also proposed a formal review process to address disputes within the department. In response, the board established a formal procedure for an officer or manager to raise concerns about a decision not to proceed with penalty action, up to the level of the Vice-President. The policy also provides for additional safeguards in the penalty process. For example, any Recommendation for Sanction not approved by a Regional Manager must now be forwarded to the board's head office.

The Workers' Compensation Board had provided for worker involvement in the penalty review process since December 1992, in response to recommendations on an earlier investigation. We were informed during this investigation that the new practice was formally approved by the Board of Governors as board policy in July 1994.

The preliminary report also included a proposal that the board reconsider its decision not to impose a penalty on the employer and that the complainant be interviewed by the board in the course of its reinvestigation. There was considerable exchange regarding these proposals. The board initially responded by presenting a different justification for the 1989 decision. The new explanation given for not imposing a penalty against the employer was that the violation had resulted from the independent action of a trained worker, the shift electrician.

Following further submissions by the Ombudsman, the board proposed an action plan to address current employee safety concerns at each of the employer's mills. After consideration I decided to accept this plan as a good alternative to reconsideration of the 1989 decision. The board's plan appeared to address my underlying concern about employee safety, which was also the motivation for the original complaint.

I acknowledge and applaud the initiative taken by the Vice-President of Prevention towards achieving a resolution of this very serious complaint.

## Social Reform through Empowerment - entourage Volume 8, Number 1

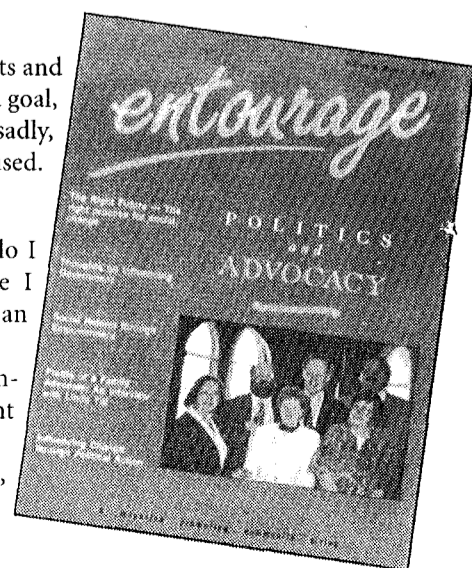
excerpted from a guest article by the Ombudsman.

Fairness is a word and concept frequently associated with human rights and equality. However, as a concept, fairness is not always fully understood. As a goal, it is not always achieved. As an element or part of a process it is often, sadly, albeit inadvertently or unintentionally, lacking. As a word, it is often overused.

...

Three questions remain for me as an Ombudsman:

1. As a person in a position of power, as a leader and change maker, do I consistently and without misgivings practice what I preach? Have I ensured that reforms within my own Office are informed through an inclusive, fair and equitable process?
2. As the person charged with overseeing administration of the government to determine if it is fair, do I insist and ensure that government process is inclusive, fair and equitable for everyone?
3. As the person responsible for recommending change to government, do I inform myself in developing those recommendations through a process that is inclusive, fair and equitable?



# Finance & Employment

## Rescind and Reconsider - "and" Means and

A woman applied for a position with the Liquor Distribution Branch. She came in second to someone considerably junior to her in experience. As a result she appealed the decision to the Public Service Appeal Board. The board ordered the branch to "rescind and reconsider" its appointment. The Appeal Board was not able to substitute its own judgment on who should have been appointed because the section of the *Public Service Act* that would have allowed for substituted judgment has not been proclaimed. However, during the hearing the board was critical of what it said was the employer's "minimalist" approach to the woman's experience.

As a result of the board's order the employer rescinded the appointment and re-posted the competition; it did not reconsider. The woman complained to the Ombudsman because she thought the re-posting was not fair. She believed that had the branch followed the guidance of the board and reconsidered the competition she would have been appointed. As the complainant raised some significant issues a decision was made to review the matter.

We looked over the tests of the leading candidates, the reasons for judgment of the board, and met with the branch. In our view it was possible to re-mark the competition. We suggested that the branch come up with an improved method of evaluating both past work performance and experience as had been suggested by the board.

It was early October 1994. The Liquor Distribution Branch stated that they wanted to deal with this issue quickly in order to get on with other competitions including this re-posted one, but not before resolving our concerns. The branch took some time to do its re-marking. We reviewed their new method and pointed out some shortcomings with it. We proposed an alternative, and knowing their desire for haste, asked for a quick response. A month went by with no word from the branch. Then our complainant called. She told us that she had been chosen to write the exam on the re-posted competition. We called the branch and met again. Still no response to our concerns. In December we wrote them requesting a quick

reply. They called saying that they were too busy with other pressing matters and that they hoped to reply in early to mid-January, by which time they would have set interview dates for the re-posted competition. We expressed our displeasure to the branch. An answer came that day.

I reviewed their reasons and responded with a tentative recommendation that they declare the complainant the winner of the earlier competition. I also asked that they not proceed with the interviews until they had responded to my letter. Shortly thereafter, our complainant called to say that she had been invited to an interview. We still had not received any response from the branch. When we called them they said they expected to go ahead with the competition but would send us a letter the following week. Their letter arrived the following week, two days before our complainant was to be interviewed.

The woman was interviewed and was not offered the position. She has appealed, once again, to the Public Service Appeal Board.

By proceeding with this competition the branch showed a disregard for due process not only with its employee but with the Ombudsman's Office as well. Ombudsman legislation has given persons the opportunity to have an impartial review of the process by which government makes decisions. By choosing to proceed with the re-posted competition while the Ombudsman was reviewing its actions and seeking its response, the branch has effectively denied our complainant her right to complain. As well, the branch has denied itself the benefit of full discussion of the issues and the opportunity to either correct an administrative unfairness or be exonerated of any claim that it acted unfairly.

As a result of the branch's conduct we have decided to continue with the investigation. The fact that the competition is once more being appealed is of concern to us. I have recommended that the government proclaim forthwith s. 18(4)(c) of the *Public Service Act*, which would allow the Public Service Appeal Board to appoint an appellant after hearing an appeal.

## NEWS ALERT

Section 18 (4) of the *Public Service Act* provides the Public Service Appeal Board with three options after it has heard an appeal from an employee who unsuccessfully competed for a position:

- to dismiss the appeal
- to direct that the appointment or proposed appointment be rescinded and reconsidered
- to direct that an appellant be appointed to the position. (This subsection has not yet been proclaimed.)

Because the board cannot direct the appointment of an appellant, even when to do so is fair, the way is open for a re-posting, another competition, and another appeal on the same position. Just such a case is described in "Rescind and Reconsider" in this report. The government should consider proclaiming this subsection now.

## Passing the Test Isn't Good Enough



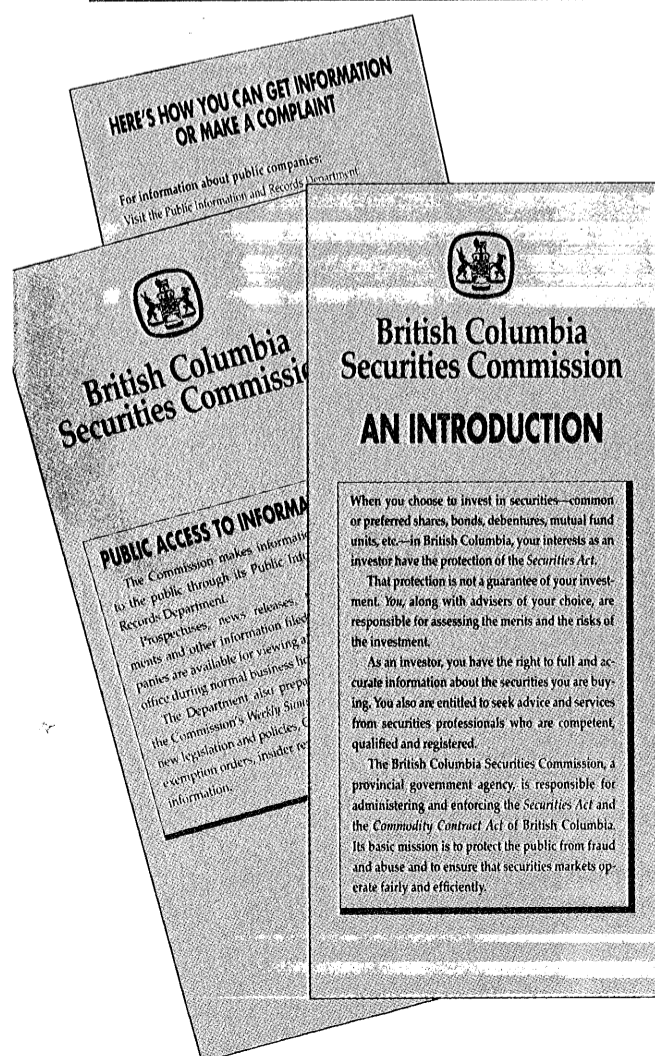
Mr. F wanted a job; his contract position was coming to an end. He decided that he wished to drive a bus. B.C. Transit was hiring drivers and Mr. F tossed his hat into the ring. But becoming a driver involved jumping through many hoops. First, one had to pass the initial screening. In eight months 3075 persons applied; 231 survived the initial screening. One of them was Mr. F. Next, one had to take a battery of what might be termed "aptitude" tests. Next came the "can you drive a big bus without causing a great deal of trouble?" test. Mr. F came through both successfully. Then on to the Personnel Department for an interview. Mr. F passed. The 231 being considered were now down to 72.

Another interview, this time with the line supervisor. The interview was tough, but at the end of it the line supervisor sent Mr. F to the company physician for a physical. The last hurdle, a month and a half after the testing had begun. On June 11 Mr. F passed the physical with flying colours! That Friday night was the best one in a while. Mr. F went home to his family with the good news and a bottle of wine to celebrate with his wife. Two days later a letter arrived from B.C. Transit informing him, with regret, that they could not offer him a position.

Mr. F contacted the Ombudsman.

We reviewed the applications of all 72 persons who attended the Human Resources interview. Our investigation uncovered a number of irregularities. Some, but not all, were based upon the number of applicants processed and the complexities of the hiring process. All the applicants who had the physical and passed were hired except Mr. F. We found one individual, Mr. V, who had passed all the interviews but who had not been sent to the physical as he should have been. We did not think that either Mr. F or Mr. V had been treated fairly. We also thought that the hiring process, because of its complexity, was causing unnecessary administrative problems.

We raised our concerns with B.C. Transit. They were receptive. They agreed that neither Mr. F nor Mr. V had been treated fairly. They met with them, and now both of them work for B.C. Transit. But B.C. Transit went beyond doing what was right for these two; they also invited our comments on the fairness of their hiring process, as a matter of administration. As a result they have developed a more efficient and less unwieldy process. The Ombudsman is pleased to deal with an authority that recognizes we are partners in a common cause; we both want what is fair.



Follow-up  
Ombudsreport 1993  
page 10

## The British Columbia Securities Commission

We reported that the Commission was taking steps to seek changes to the *Securities Act* and Regulations as a result of the 1991 Ombudsman's *Public Report No. 28 - The Sale of Promissory Notes in British Columbia by Principal Group Ltd.*

This process was begun on October 7, 1994 when the commission circulated a compendious supplement to its Weekly Summary (a publication distributed to interested parties in the securities field) in which it invited industry to comment on its proposed changes to the Act and Regulations. Of particular note are those changes proposed for the sale of long-and short-term promissory notes. If enacted, these changes, which were recommended in our *Public Report No. 28*, will provide greatly improved protection to unsophisticated purchasers of these notes. As well, the Securities Commission has published a brochure outlining its mandate and how it can be contacted for assistance. While we note that the length of time has been exceptional for the commission to create a brochure and circulate a summary of draft changes, I am pleased that some progress is now being made.

# Finance & Employment



**Follow-up**  
**Ombudsreport 1993**  
page 10

## The Public Service Employee Relations Commission (PSERC)

*One of the significant changes [in the new Public Service Act] is that PSERC, unlike its predecessor [the Government Personnel Services Division] is functioning as a centralized corporate personnel agency. We expect to see more of a focus on ensuring consistent and fair personnel management policies across ministries.*

Over the last year, PSERC has been moving to fulfil that mandate through the activities of its five branches.

### Management Services:

- produces *PSERC News*, a quarterly publication to keep government employees up to date with developments
- is revising PSERC policy manuals in plain language.

### Labour Relations Branch:

- negotiates collective agreements with government unions and associations.

### Employee Development and Staffing Branch:

- is revising the recruiting and hiring process, moving to competency-based hiring; generally that means placing greater emphasis on knowledge, skills and abilities as criteria for hiring, rather than education and years of experience
- is expanding the Employee Development Centre to improve the ongoing training of current government employees.

### Compensation and Benefits Branch:

- focuses on achieving pay equity throughout the public service.

### Equity and Diversity Branch:

- is reviewing ministries to ensure that there are equal opportunities for advancement for all employees
- provides training on harassment and discrimination
- is concluding an agreement with the British Columbia Government and Service Employees Union on a new policy for resolving complaints about harassment and discrimination.

PSERC and the BCGSEU have signed a memorandum of agreement to work together through the Partnership Council to develop more effective ways of improving service to the public. We are pleased to see PSERC taking a leadership role in co-ordinating personnel matters among ministries.

*As both the Ombudsman and PSERC have a fair, open and co-operative public service as our goal, I find PSERC's reluctance regrettable.*

I met with the Commissioner of PSERC in the spring and we exchanged views on a number of topics. An Ombudsman Investigator also met for a full day with the directors at PSERC. These were very useful meetings. However, since that time, in some of the individual cases the Ombudsman has brought to PSERC, we have met with some reluctance and confusion on the part of PSERC representatives to understand the Ombudsman's statutory interest in personnel matters. PSERC has suggested that in cases of dismissal of excluded public servants, the appropriate remedy is for the former excluded employee to take the matter to court. This may be a non-remedy because of the delay and cost often associated with the court system. The commission has further suggested that in cases involving unionized employees the provisions of collective agreements outline the full extent of the government's responsibilities. This is regardless of whether or not the administrative matter complained of is addressed in the collective agreement. The legislature, in passing the *Ombudsman Act*, clearly gave jurisdiction to the Ombudsman to review administrative matters such as the two noted above. The fact that other remedies exist does not necessarily remove this jurisdiction. As both the Ombudsman and PSERC have a fair, open and co-operative public service as our goal, I find PSERC's reluctance regrettable. The Ombudsman's view of the public service is a unique one, looking at issues with no vested interest, only fairness. We believe PSERC would benefit by listening to the experience of the Ombudsman as it has benefited by listening to the viewpoints of its other partners. Working co-operatively and with respect for each others' statutory responsibilities will advance our common interest in a fair, open and progressive public service. We are committed to improving PSERC's understanding of our role, in order to facilitate resolutions of the complaints we receive, which we intend to investigate.

## Unblemished Career Ends Badly

Through her years of employment with the government she had maintained an unblemished record. Suddenly the social worker found herself involved in a number of disciplinary episodes with her employer. As she was coming towards the end of her career, she spoke to her union about arranging an early severance package.

The government and her union entered into negotiations. Unfortunately, while both parties believed that they had reached an agreement, they had different views of what that agreement involved. The government believed that the worker was willing to resign without the six months severance pay she had been requesting. The union believed that the settlement embraced other issues, that the worker had not resigned, and that the severance pay issue had yet to be negotiated. (Eventually, this issue went to arbitration and the arbitrator supported the government's position.)

A few days later the disagreement between the negotiating parties became clear. Nevertheless, the government maintained its position that the worker had resigned and terminated her pay and benefits, but no one informed the woman of this decision. She was on leave at the time and did not realize what had happened until she received her next month's bank statement and discovered that no pay had been deposited to her account. To make matters worse, she had in the interval embarked upon some expensive dental surgery, which would not now be covered.

The Ombudsman maintains that the employer has a duty to notify an employee when it is taking an action as serious as terminating the employee's benefits. PSERC held that the union was responsible for informing the worker about her status. Furthermore, they said they were not able to speak to her directly without the union's permission so long as she had grievances in process. We questioned whether those conditions were still relevant since the settlement PSERC insisted had been agreed upon declared the grievances fully resolved.

The Ombudsman made several recommendations to PSERC:

- that such discontinuances of employment ought to be addressed in the employer's policy to prevent future recurrences
- that the government pay the complainant's dental costs incurred as a consequence of their failure to inform her
- that the government pay the woman the equivalent of about a month's pay and benefits to compensate for the fact that had she been told earlier of her employment status she could have made application sooner for the CPP benefits subsequently awarded her.

PSERC agreed to address the policy matter but refused to accept any responsibility for the financial losses suffered by the worker.

## Go Back - Pay Back

The man had worked for the provincial government for more than ten years when his ministry decided to reorganize. He was advised to compete for any new positions as his job could not be guaranteed. He competed unsuccessfully on two jobs and filed an appeal in one. Shortly after his appeal date was set, he was told that his current position had ended. He was offered a severance package. One of the terms of the settlement agreement was that while he was collecting severance, he could not apply for or accept employment with the provincial government. He accepted the settlement.

When the man's appeal came before the Public Service Commission, the government successfully argued that as he had agreed not to work for the government there was no point hearing the appeal because, even if he were successful, the government would not have to hire him. The man appealed for assistance to the Ombudsman.

We had previously raised concerns regarding the use of the work restriction clause in severance agreements. We were concerned because not all severance agreements contained the clause. In the case cited, the employee did not appreciate that his existing appeal in a competition would be affected by

the terms of his later settlement. Some employees had successfully argued to have the clause omitted. In those cases a clause was inserted saying that in the event the government rehired the employee during the severance period, that employee must repay any severance that overlapped with the new salary. This seemed a fair and practical way to proceed as it removed the disincentive to re-employment.

In June 1994 we met with PSERC to review our concerns and followed up with a letter asking for a response. The response essentially stated that PSERC preferred to have flexibility in these matters. We continued to pursue the matter and asked for a detailed response, asked if there were any recent policy discussions on the issue and invited discussion in order to define our common ground more precisely. PSERC's response indicated, once again, that they preferred to have flexibility in these matters. As well, they noted that the severance policy was currently under review but that our suggestions would be considered. We have yet to be advised of the outcome of that review.

I will continue to pursue this issue in 1995.



# Finance & Employment



Guest  
Comment

## Competency-based Hiring

by Brian Green  
Public Service Employee Relations Commission  
at the invitation of the Ombudsman

If you're applying for a job, the first thing you do is update your resume, perhaps gearing it to the position you're applying for. You try to make it as impressive as possible, so that it will pass the initial screening. Then you find several people to act as references for you. You familiarize yourself with the qualifications for the job and try to prepare for the interview – if you get one.

The Provincial Government, in partnership with the B.C. Government and Service Employees Union, is trying a new approach to hiring for government jobs, competency-based hiring.

In the past, formal levels of education and years of experience were used as minimum qualifications and were assessed prior to considering a person's knowledge, skills or past performance. Using these factors as screening criteria presents a number of problems:

- credentials and years of experience are, in many cases, of limited value in predicting success
- over-reliance on these factors to the exclusion of others can discriminate against persons who have had problems in accessing higher education or who have had to leave the work force because of child raising responsibilities or, in the case of non-traditional careers, have not had the opportunity to gain lengthy on-the-job experience
- other means of gaining skills and knowledge,

such as job exposure, self-study, volunteer work or life experiences, are not considered.

The K.S.A. model of competency-based hiring focuses on identifying the Knowledge, Skills and Abilities (KSAs) required in a job and developing testing methods that accurately and fairly test these qualifications. Teams of employees from one job type are led through a process to identify specific qualifications for their positions and related assessment methods. The KSA approach is more inclusionary in that:

- only qualifications that contribute to performance and are required at entry are assessed
- diversity of backgrounds is considered
- artificial barriers and restrictions are removed from the selection process.

Further information is available from the Selection Standards Project in the Public Service Commission, 541 Superior Street, Victoria, B.C. V8V 1X4, or by calling (604)387-0433.

## Cheque Check Checked

A resort owner claimed that she had paid her property taxes with two cheques, only one of which was properly credited. The other, she was certain, had been misplaced or lost by the Surveyor of Taxes office. Not only did she not receive credit for her taxes, but she was penalized for failing to pay on time. She complained to the Ombudsman.

We visited the surveyor's office to review the process by which incoming mail was opened and sorted. All envelopes were loaded upright in a machine that slit them on three sides as they came through the feeder. Each envelope was presented to a clerk in the form of a "V" with the contents exposed. The clerk removed the contents and placed them in designated compartments, while the opened envelope continued down a conveyor belt past a sensor that detected any remaining contents. If anything was detected, the conveyor automatically stopped and a clerk extracted the contents. The envelope then dropped into a box which, when filled, was sealed and placed in a vault to await pickup by a service organization. Twice a week the service organization took the boxes to its premises where workers again checked the envelopes against a high-powered light before tearing them to remove postage stamps. We were informed that

once or twice a month the organization actually did find some documentation that had been overlooked, usually because the material was in an unusually thick envelope that caused the sensor to miss it. Any material found was immediately returned to the surveyor's office.

The office processes one and a half million pieces of mail a year, yet claims of documentation having gone missing are relatively few. It's not beyond the realm of possibility that an item could slip through this system undetected, but it is very unlikely. The Ombudsman was satisfied that the procedure for handling the mail was as careful and comprehensive as could be expected.

Finance & Employment Team	
Files Open Dec. 31, 1993	384
Files Received in 1994	1498
Closed - No Investigation	831
Closed - Investigation	693
Internal Team File Transfers	358

## How Jurisdictional Files Were Closed

Authority	Enquiries	No Investigation			Investigation								
					Closed No Findings			Settled		Closed with Findings			
		Referred	Statute Barred	Refused	Abandoned	Withdrawn	Discretion	Consultation	No Consult	Substantiated Remedied	Not Rem	Not Sub	
12th And Oak Site (VHHSC)	0	0	1	0	1	0	6	0	0	0	0	0	0
Architectural Institute of B.C.	0	0	0	0	1	0	0	0	0	0	0	0	0
Association of Physiotherapists & Massage Practitioners	1	0	0	1	0	0	2	0	0	0	0	1	
Association of Professional Engineers & Geoscientists	0	1	0	0	0	0	0	0	0	0	0	1	
B.C. Ambulance Service	0	0	0	0	1	0	6	2	1	0	0	1	
B.C. Assessment Authority	1	2	0	0	5	1	18	0	4	0	0	3	
B.C. Building Corporation	0	1	0	0	1	0	1	0	0	0	0	0	
B.C. Cancer Agency	1	0	0	0	0	1	2	0	0	0	0	0	
B.C. Childrens' Hospital	0	0	0	0	0	1	2	0	0	0	0	1	
B.C. Ferry Corporation	1	2	0	4	4	1	11	1	3	0	0	5	
B.C. Hydro & Power Authority	14	65	0	0	5	1	11	6	2	0	0	3	
B.C. Institute of Technology	1	0	0	0	1	1	7	0	0	0	0	1	
B.C. Lottery Corporation	0	1	0	2	1	1	2	2	1	0	0	0	
B.C. Railway Company	0	0	0	0	0	0	1	0	1	0	0	0	
B.C. Systems Corporation	0	1	0	0	0	0	0	0	0	0	0	0	
B.C. Trade Development Corporation	0	0	0	0	0	0	0	0	0	0	0	1	
B.C. Transit Authority	0	2	0	0	2	0	1	2	0	0	0	4	
B.C. Women's Hospital & Health Centre	0	0	0	0	0	0	1	0	1	0	0	0	
Bella Coola General Hospital	0	0	0	0	0	0	1	0	0	0	0	0	
Board of Dental Technicians & Denturists	1	0	0	0	2	0	0	1	0	1	0	1	
Board of Registration for Social Workers	0	1	0	0	0	0	0	0	0	0	0	0	
Burnaby General Hospital	1	0	0	1	0	0	1	0	0	0	0	0	
Cabinet	0	0	0	0	0	0	0	0	0	1	0	0	
Camosun College	1	0	0	0	0	0	1	2	1	0	0	0	
Capilano College	0	1	0	0	0	0	0	0	0	0	0	0	
Cariboo Memorial Hospital	0	0	0	0	0	0	1	0	0	0	0	0	
Certified General Accountants Association of B.C.	0	0	0	0	0	0	0	0	1	0	0	0	
Chilliwack General Hospital	0	0	0	0	0	0	1	0	0	0	0	0	
College of Dental Surgeons of B.C.	2	1	0	2	1	0	1	1	3	0	0	4	
College of New Caledonia	0	0	0	0	1	0	1	0	0	0	0	1	
College of Pharmacists of B.C.	0	0	0	0	0	0	0	0	0	0	0	2	
College of Physicians & Surgeons of B.C.	12	10	0	0	2	2	8	0	0	0	0	11	
College of Psychologists of B.C.	1	0	0	0	0	0	0	0	0	0	0	1	
College of Teachers	1	0	0	0	2	0	2	1	0	0	0	0	
Commission on Resources and Environment	0	0	0	0	0	0	0	0	0	0	0	1	
Conflict of Interest Commissioner	0	0	0	0	0	0	1	0	0	0	0	0	
Cowichan District Hospital	0	0	0	0	0	0	1	0	0	0	0	0	
Cranbrook Regional Hospital	0	0	0	0	1	0	2	0	0	0	0	0	
Dawson Creek District Hospital	0	0	0	0	0	0	2	0	0	0	0	0	
Douglas College	1	0	0	1	0	0	1	0	0	0	0	2	
Dr. Helmcken Memorial Hospital	0	0	0	0	0	0	1	0	0	0	0	0	
Eagle Ridge Hospital (FBHS)	0	0	0	0	0	0	2	0	0	0	0	0	
East Kootenay College	0	0	0	0	0	0	0	0	1	0	0	0	
Forensic Psychiatric Institute	2	3	1	6	9	2	92	12	4	0	0	0	
G.F. Strong Centre	0	1	0	0	0	0	1	0	0	0	0	0	
George Pearson Centre	0	1	0	0	0	0	0	0	0	0	0	0	
Gorge Road Hospital (GVHS)	0	0	0	0	0	0	1	0	0	0	0	0	
Hairdressers' Association of B.C.	0	0	0	0	0	0	0	0	0	0	0	1	
Hospitals and Hospital Boards	0	0	0	0	0	0	1	1	3	0	0	0	
ICBC	37	57	5	15	31	25	210	93	39	17	0	28	
Kelowna General Hospital	0	0	0	0	0	0	1	0	0	0	0	0	

Authority	Enquiries	Referred	Statute Barred	Refused	Abandoned	Withdrawn	Discretion	Consultation	No Consult	Substantiated		Not Sub
										Remedied	Not Rem	
Kootenay Lake District Hospital	0	0	0	0	0	0	1	0	0	0	0	0
Kwantlen College	1	0	0	1	0	0	0	1	0	0	0	1
Lady Minto Gulf Islands Hospital	0	0	0	0	0	0	1	0	0	0	0	0
Land Surveyors of B.C.	1	0	0	0	0	0	0	0	0	0	0	1
Langley Memorial Hospital	0	1	0	0	0	0	2	0	0	0	0	0
Law Society of British Columbia	17	7	0	3	4	3	10	0	0	0	0	3
Lions Gate Hospital	0	1	0	0	1	0	3	1	0	0	0	1
Malaspina College	1	0	0	0	1	0	1	0	0	0	0	1
Maple Ridge Hospital	0	0	1	0	0	0	0	0	0	0	0	0
Mater Misericordiae Hospital	0	0	0	0	0	0	0	0	0	0	0	1
Matsqui General Hospital	0	1	0	0	0	2	2	0	1	0	0	0
Ministry of Aboriginal Affairs	0	0	0	0	0	0	0	1	0	0	0	0
Ministry of Agriculture, Fisheries & Food	4	4	0	1	5	0	5	0	0	0	0	2
Ministry of Attorney General	95	157	22	11	69	39	867	106	197	3	1	211
Ministry of Education	11	2	1	0	0	1	2	2	0	0	0	2
Ministry of Energy, Mines & Petroleum Resources	2	0	0	1	3	0	1	0	0	0	0	1
Ministry of Environment, Lands & Parks	21	26	2	14	15	3	39	13	12	2	1	27
Ministry of Finance & Corporate Relations	32	39	1	0	9	3	62	17	15	1	0	37
Ministry of Forests	11	7	0	2	14	1	16	8	8	3	0	27
Ministry of Government Services	3	4	0	0	3	0	7	0	5	0	0	4
Ministry of Health	70	36	8	10	57	14	202	43	64	4	0	70
Ministry of Housing, Recreation & Consumer Services	705	196	1	17	22	8	50	6	13	0	1	27
Ministry of Municipal Affairs	31	11	0	2	1	1	7	2	0	0	0	4
Ministry of Skills, Training & Labour	70	22	0	3	15	12	103	37	39	0	0	36
Ministry of Small Business, Tourism & Culture	5	10	0	0	2	0	2	0	0	1	0	0
Ministry of Social Services	263	1954	12	25	207	69	1046	228	306	22	1	89
Ministry of Transportation & Highways	22	17	4	17	19	13	85	52	30	3	0	59
Ministry of Women's Equality	0	1	1	0	0	1	0	0	0	0	0	0
Mission Memorial Hospital	0	1	0	0	0	0	1	0	0	0	0	0
Municipalities	5	6	1	0	0	0	1	0	0	0	0	1
Nanaimo Regional General Hospital	0	1	0	0	0	0	2	0	0	0	0	0
Nicola Valley General Hospital	0	0	0	0	0	0	1	0	0	0	0	0
North Island College	0	0	0	0	0	0	0	0	1	0	0	1
Northern Lights College	1	1	0	0	0	0	0	0	0	0	0	0
Northwest Community College	1	0	0	1	0	0	1	0	1	0	0	0
Office of the Auditor General	0	1	0	0	0	0	0	0	0	0	0	0
Open Learning Agency	2	0	0	0	0	1	1	0	0	0	0	1
Peace Arch District Hospital	0	1	0	0	0	0	0	0	0	0	0	0
Penticton Regional Hospital	1	0	0	0	0	0	1	0	0	0	0	0
Port Hardy Hospital	0	1	0	0	0	0	0	0	0	0	0	0
Port McNeill District Hospital	0	0	0	0	0	0	1	0	0	0	0	0
Powell River General Hospital	0	0	0	0	1	0	1	0	0	0	0	0
Premier's Office	1	2	0	0	1	0	0	0	0	0	0	0
Prince George Regional Hospital	0	0	1	0	0	0	2	0	0	0	0	0
Prince Rupert Regional Hospital	0	0	0	0	0	0	2	0	0	0	0	0
Public Schools	6	0	0	0	0	1	1	0	1	0	0	1
Queen Alexandra Hospital	0	0	0	0	1	0	0	0	0	0	0	0
Real Estate Council	10	2	1	1	0	0	2	0	0	0	0	0
Regional Districts	2	2	1	5	0	0	4	0	0	0	0	0
Registered Nurses Association of B.C.	0	0	0	2	0	0	0	0	0	0	0	0
Richmond General Hospital	0	0	0	0	0	0	1	0	0	0	0	0
Royal Columbian Hospital (FBHS)	0	0	0	0	1	0	1	0	0	0	0	0
Royal Inland Hospital	0	0	0	0	0	0	3	0	0	0	0	0
Royal Jubilee Hospital (GVHS)	2	1	1	0	4	0	10	2	1	0	0	0
Saint Mary's Hospital	0	0	0	0	0	0	1	0	0	0	0	0
School District #01 (Fernie)	0	1	0	0	0	0	1	0	0	0	0	0
School District #02 (Cranbrook)	1	1	0	0	1	0	0	0	0	0	0	0
School District #03 (Kimberley)	0	0	0	0	1	0	1	0	0	0	0	0
School District #07 (Nelson)	1	1	0	0	1	0	2	0	0	0	0	1
School District #09 (Castlegar)	0	1	0	0	0	0	0	0	0	0	0	0
School District #10 (Arrow Lakes)	1	0	0	0	0	0	1	0	0	0	0	0
School District #11 (Trail)	1	0	0	0	0	0	0	0	1	0	0	0
School District #12 (Grand Forks)	2	0	0	0	0	0	0	0	0	0	0	0
School District #13 (Kettle Valley)	0	0	0	0	0	0	0	0	1	0	0	0
School District #14 (Southern Okanagan)	0	0	0	0	0	0	0	1	0	0	0	0
School District #15 (Penticton)	1	0	0	0	0	1	1	0	1	0	0	0
School District #16 (Keremeos)	1	0	0	0	0	0	0	0	0	0	0	0
School District #18 (Golden)	0	4	0	0	0	0	0	0	0	0	0	0
School District #19 (Revelstoke)	0	0	0	0	0	0	0	0	2	0	0	0
School District #22 (Vernon)	0	0	0	0	0	0	0	0	0	0	0	1
School District #23 (Central Okanagan)	1	0	0	0	3	0	0	0	0	1	0	0
School District #24 (Kamloops)	0	1	0	0	0	0	3	0	1	1	0	0
School District #27 (Cariboo-Chilcotin)	0	0	0	0	0	1	0	0	2	0	0	0
School District #28 (Quesnel)	1	0	0	0	0	1	2	0	0	0	0	0
School District #29 (Lillooet)	1	0	0	0	0	0	1	0	0	0	0	0
School District #30 (South Cariboo)	0	0	0	0	0	0	1	0	0	0	0	0
School District #32 (Hope)	0	0	0	0	0	0	1	1	0	0	0	0
School District #33 (Chilliwack)	1	0	0	0	0	0	2	0	1	0	0	0
School District #34 (Abbotsford)	1	0	0	0	0	0	3	1	1	0	0	0
School District #35 (Langley)	1	0	0	0	0	0	1	0	2	0	0	0
School District #36 (Surrey)	1	1	0	1	1	0	6	2	1	0	0	1
School District #37 (Delta)	0	0	0	0	0	0	0	2	2	0	0	0
School District #38 (Richmond)	1	0	1	0	0	1	0	1	1	0	0	1
School District #39 (Vancouver)	5	2	0	0	2	1	1	4	6	1	0	1
School District #40 (New Westminster)	0	0	0	0	0	0	2	1	1	0	0	0
School District #41 (Burnaby)	2	4	1	0	1	0	7	1	2	0	0	0
School District #42 (Maple Ridge)	1	0	0	0	1	0	3	1	1	0	0	0
School District #43 (Coquitlam)	1	2	0	1	1	0	0	2	3	0	0	1
School District #44 (North Vancouver)	2	1	1	0	1	1	4	0	0	0	0	0
School District #45 (West Vancouver)	0	0	0	0	0	0	0	0	0	0	0	1
School District #46 (Sunshine Coast)	0	0	0	0	1	0	3	0	1	0	0	1
School District #48 (Howe Sound)	0	0	0	0	0	0	0	1	1	0	0	0
School District #49 (Central Coast)	0	1	0	0	0	0	1	0	0	0	0	0
School District #52 (Prince Rupert)	2	0	0	0	0	0	0	0	0	0	0	0
School District #54 (Bulkley Valley)	2	0	1	0	1	0	1	0	1	0	0	1
School District #57 (Prince George)	1	1	0	0	0	0	4	0	2	0	0	0
School District #59 (Peace River South)	0	0	0	0	1	0	0	0	0	0	0	0
School District #60 (Peace River North)	1	0	0	0	2	1	1	0	0	0	0	0
School District #61 (Greater Victoria)	3	5	0	0	2	0	8	4	5	0	0	0
School District #62 (Sooke)	1	0	1	0	0	0	0	0	0	1	0	0
School District #63 (Saanich)	1	0	0	0	0	0	1	0	0	0	0	0
School District #64 (Gulf Islands)	0	0	0	0	0	0	0	0	0	0	0	1
School District #65 (Cowichan)	0	0	0	0	2	0	3	0	1	0	0	0
School District #66 (Lake Cowichan)	1	1	0	0	0	0	0	0	0	0	0	0
School District #68 (Nanaimo)	2	3	0	0	1	0	3	0	3	0	0	0
School District #69 (Qualicum)	0	1	0	0	1	0	1	1	0	0	0	2
School District #70 (Alberni)	0	0	0	0	0	0	0	0	0	0	0	1
School District #71 (Courtenay)	0	0	0	0	0	0	1	1	1	0	0	0
School District #72 (Campbell River)	1	2	0	0	0	0	0	0	0	0	0	0
School District #75 (Mission)	2	0	0	0	0	0	0	0	1	0	0	0
School District #76 (Agassiz-Harrison)	0	0	0	1	0	0	0	0	0	0	0	0
School District #80 (Kitimat)	0	0	0	0	0	0	1	0	0	0	0	0
School District #81 (Fort Nelson)	0	0	0	0	0	0	0	0	0	0	0	0
School District #84 (Vancouver Island West)	0	1	0	0	0	0	0	0	1	0	0	1
School District #85 (Vancouver Island North)	0	0	0	0	0	0	1	0	0	0	0	0
School District #86 (Creston-Kaslo)	0	0	0	0	0	0	0	1	0	0	0	0
School District #89 (Shuswap)	1	1	0	0	0	0	0	0	0	0	0	1
Selkirk College	1	0	0	0	0	0	0	0	0	0	0	0
Shaughnessy Site Hospital	0	1	0	0	0	0	0	0	0	0	0	0
Shuswap Lake General Hospital	1	0	0	0	0	0	0	0	0	0	0	0
Simon Fraser University	1	1	0	0	1	0	2	1	0	0	0	2
Society of Notaries Public	0	0	0	0	0	0	1	0	0	0	0	0
South Okanagan General Hospital	1	0	0	0	0	0	0	0	0	0	0	0
Sparwood General Hospital	0	0	0	0	0	0	1	0	0	0	0	0
St. Joseph's Hospital	1	0	1	0	0	0	0	0	0	0	0	0
St. Paul's Hospital	0	2	0	0	0	1	11	1	0	0	0	0
Sunnyhill Hospital for Children	0	0	0	0	0	0	0	1	0	0	0	0
Surrey Memorial Hospital	0	1	0	1	1	0	6	0	0	0	0	1
Trail Regional Hospital	0	1	0	0	0	0	3	0	0	0	0	0
UBC Site (VHHSC)	0	0	0	0	0	0	1	0	1	0	0	0
University College of the Cariboo	0	0	0	0	0	0	1	0	0	0	0	0
University College of the Fraser Valley	1	1	0	0	1	0	0	0	1	0	0	0
University of British Columbia	1	3	0	1	4	2	3	2	2	0	0	1
University of Northern B.C.	0	0	0	0	0	0	1	1	0	0	0	0
University of Victoria	0	0	0	0	2	1	1	0	0	0	0	0
Vancouver Community College	1	0	0	0	2	1	4	0	0	0	0	0
Vernon Jubilee Hospital	0	0	0	0	1	0	3	0	0	0	0	0
Victoria General Hospital (GVHS)	0											

# Health

## Follow-up Ombudsreport 1993 page 19

### Riverview Hospital Listens and Responds

The Ombudsman hopes to complete her investigation and to release her Public Report, *Listening: A Review of Riverview Hospital*, in April 1994.

**L**istening was released to the public in late May 1994. The Ombudsman was pleased to be joined at the press conference announcing its release by Dianne Macfarlane, President of Riverview Hospital, and Roderick Louis, Chairperson of the Patient Empowerment Society (PES) at Riverview Hospital. Both expressed their full support for the ninety-four recommendations in the report. Their presence and support reflected the significant distance those parties had travelled during the course of the Ombudsman's investigation. Concerns about the openness of Riverview Hospital's administration to collective patient self-advocacy represented by the PES originally led to the investigation. Tensions over this issue remained high several months into the Ombudsman's involvement. We were gratified with the progress achieved by the time the report was released.

*...our concern [was] that this systemic investigation produce results not only for the hospital, but also for the wider mental health service system.*

Many of the recommendations in *Listening* deal with how to foster and support advocacy by and for consumers of mental health services, particularly in a psychiatric hospital setting. In addition to advocacy, *Listening* addressed several ways in which Riverview Hospital needed to improve its internal processes for dealing with complaints made by patients and their families.

After releasing the public report, the Ombudsman set up a process for obtaining quarterly progress reports from the hospital on the implementation of recommendations. We are pleased that the Board of the B.C. Mental Health Society, which operates Riverview Hospital, and the hospital's administration and staff have moved energetically on implementation. In October 1994, the hospital appointed two Co-ordinators of Patient Relations, one a consumer of mental health services. A Hospital Task Force composed of staff, patients and family members has been drafting detailed statements of what each right in the Hospital's *Charter of Patient Rights* means, and how the rights can be activated in hospital programs and services. Work continues on developing policies to provide change of care giver and second opinion opportunities, as well as a host of other policies to meet our recommendations.

The Ombudsman directed several significant recommendations to the provincial government and the Ministry of Health. While aware that these are highly contentious issues, the Ombudsman hoped the recommendations might contribute to reinvigorating a consultation process around the *Mental Health Act*, which ended without success in 1993. The process has not yet been reinstated.



*Listening* recommended that the provincial government appoint a Mental Health Advocate for B.C. We believe such a position is essential to ensuring that the principle of consumer advocacy in mental health services is adopted beyond the grounds of Riverview Hospital, and becomes a central focus of provincial services. The Minister of Health announced his support in principle for this recommendation, and set up a community consultation process. I look forward to hearing from the ministry in the near future on the outcome of this process.

*...patients [should have] the same right to pre-plan their medical care during periods of mental well-being as will be available to all other people under B.C.'s new guardianship legislation.*

The recommendations to the Ministry of Health, as well as several dealing with the crucial area of discharge planning for Riverview Hospital patients, reflected our concern that this systemic investigation produce results not only for the hospital, but also for the wider mental health service system. This is especially important because the downsizing of Riverview Hospital continues. The present 850 beds will be reduced to 300, while 250 tertiary in-patient beds are created in regional facilities around B.C. The central message of *Listening* is that the goal of meeting a greater part of our mental health needs from community-based services must go hand-in-hand with a conviction that the consumer's voice should be heard in the design and delivery of those services. The downsizing of Riverview Hospital and the transition period of returning health care services "closer to home" provide an ideal time for the appointment of a Mental Health Advocate to safeguard the interests of consumers and their families. We intend to keep this message at the forefront of our ongoing follow-up to this investigation.

### Advocacy Recommendations:

- making it easier for family members of patients to advocate effectively on behalf of their loved ones
- encouraging staff persons to view advocacy for patients as a legitimate part of their role as professionals
- supporting patients in their efforts to advocate for themselves, regardless of disability
- establishing minimum standards governing the frequency and quality of ward meetings
- recognizing the legitimate role of a patient-run advocacy body independent of the hospital's governing authority.

### Internal Complaint Recommendations:

- adopting and implementing a draft Hospital's *Charter of Patient Rights* to serve as the foundation for creating a patient-centred culture at the hospital
- appointing a Patient Relations Co-ordinator at a senior level of administration to develop and promote mechanisms for responding to complaints
- permitting patients to request and receive a change of care givers
- establishing a process by which patients can request and receive second medical opinions on treatment questions.

### Recommendations to the Provincial Government:

- proposed changes to mental health legislation to provide involuntarily detained patients with greater safeguards about giving consent to psychiatric treatment
- giving patients the same right to pre-plan their medical care during periods of mental well-being as will be available to all other people under B.C.'s new guardianship legislation
- appointing a Mental Health Advocate for the province of British Columbia, with the following mandate:
  - to report annually and as required to the public on the state of the mental health service system in B.C., and on the issues being encountered by consumers, service providers, advocates and those they support
  - to provide a single information and referral source for advocacy resources in mental health services in B.C.

*The central message of Listening is that the goal of meeting a greater part of our mental health needs from community-based services must go hand-in-hand with a conviction that the consumer's voice should be heard in the design and delivery of those services.*

## Riverview Hospital Charter of Patient Rights February 1994, an excerpt

### Quality of Life/Social Rights

1. The right to a safe and secure environment.
2. The right to be treated with dignity and respect at all times.  
This right applies also to patients' family members, significant others and friends.
3. The right to an appropriately prompt, reasonable and courteous response to requests for services or information.
4. The right to privacy for sexual activity between adult patients subject to capacity to consent and to engage in safe sexual practices.
5. The right to uncensored and unobstructed communication by telephone, letter or in person with any willing partner.

### Quality of Care/ Therapeutic Rights

1. The right to choose care givers and care environment where possible.
2. The right to be involved in discharge planning from the time of admission.
3. The right to receive reasonably full and complete information concerning treatment in terms and language that can reasonably be expected to be understood.
4. The right to be free from chemical and physical restraint, except in an emergency where it is necessary to protect the patient from injury to self or others. The physician must have authorized this restraint for a specified and limited period of time.

### Self-determination/Legal Rights

1. The right not to be detained unless the rules of natural justice and fair procedure are followed.
2. The right to see his/her hospital record, to attach a statement of corrections and to have specific parts of the record copied, without charge, unless harmful to third parties or self.
3. The right to be provided with a written copy of the Riverview Hospital Charter of Patient Rights and to have it posted in every patient dayroom and at every main building entrance.
4. The right of access to an organization independent of Riverview Hospital to investigate alleged violations of these patient rights.

# Health



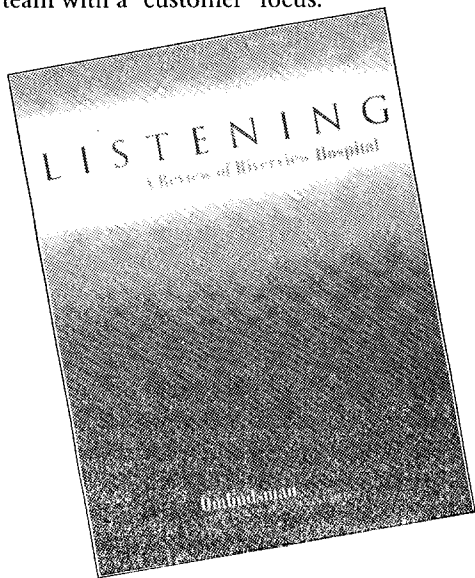
## Guest Comment

### Riverview Hospital Review

by Dianne Macfarlane  
President and C.E.O., Riverview Hospital  
at the invitation of the Ombudsman

I'd like to say a few words about the fascinating process that began in the fall of 1992 when the Ombudsman began her review of Riverview Hospital. I'm not sure either the Ombudsman or I knew what to expect. However, in retrospect, the success of the process seems to have hinged on a number of variables that came together:

- a new Ombudsman prepared to tackle a very complex subject
- a new Board of Trustees committed to making a difference for those the organization serves
- a consumer advocate with solid external support unprepared to accept no for an answer
- a new senior manager building a management team with a "customer" focus.



Each of these four functioned as an advocate for change during the process. The first twelve months were very challenging as we tried to lay the groundwork within the hospital for a more receptive and supportive service approach that puts the customer at the centre. We also knew we needed to find ways

not just to "survive" advocacy but to collaborate constructively with patients and their families. A cultural shift like this is not tinkering around the edges – it's fundamental and it's got to do with power and shifting the balance of it. At Riverview 1800 staff would be asked to give up some of their power in their one-to-one clinical relationships with patients and their family members as they developed care plans. In addition, a new infrastructure needed to be developed to include patients and family members in the larger organizational decision-making process.

The organization was anxious about the investigation. They felt there had been enough public scrutiny and enough criticism. Ombudsman's investigations and reports are not usually welcome events. However, as the Ombudsman and her staff began to compile their data, identify common themes and develop preliminary recommendations, so too did the new board and the senior management team. And the ideas from these two processes of inquiry built one upon the other and served to reinforce each other's findings. With each passing month, the kinds of changes that were needed and how they could be made became clearer to us and to the Ombudsman. Perhaps the best example is the evolution of our thoughts on advocacy services. In retrospect, it was fortunate that the scope of the review expanded and both the review and the report took longer to complete than we originally anticipated. The extra time allowed us to work together to refine the ideas on advocacy that were being promulgated in the hospital and those that appear in the report.

*The process the Ombudsman followed in her review of Riverview Hospital was, in my view, a model process, an ideal process.*

Positive change is occurring at Riverview Hospital and the process of the Ombudsman's *Listening* review has been a pivotal element in facilitating this change. Her report also lends credibility and external validity to the conclusions reached internally by the board and senior management. The balanced tone and tenor of the report also helped the staff respond positively to the recommendations.

The process the Ombudsman followed in her review of Riverview Hospital was, in my view, a model process, an ideal process. Though it may not always be attainable, the Ombudsman and the authorities she reviews can always strive for this ideal.

## Clarity Makes for Parity

A man was so seriously injured in a motor vehicle accident that he was no longer capable of managing his own financial or legal affairs. The court appointed his wife to be his "committee" or substitute decision maker. She took care of him in a home she purchased in both their names. For the down payment she used an advance on her husband's insurance from the accident claim. She contributed her own savings to renovations that made the home more accessible. Recently, her husband's physical needs made it necessary for him to move into an extended care facility. The woman put the house up for sale, for which she needed the Public Trustee's consent. One of the roles of the office of the Public Trustee is to monitor the performance of private persons who are appointed by court order to act as committee of an adult's financial affairs. The Public Trustee consented to the sale.

However, when it came to dividing the proceeds of the sale between the woman and her husband, the Public Trustee objected. She argued that as the husband's insurance proceeds had gone towards the

down payment, the woman held her interest in the home in trust for him. The Trustee said that any claim she had to recover funds from the home amounted to a claim for maintenance from his estate and, as such, would have to wait until litigation over the accident had concluded and it was known what funds he had.

The woman disagreed with this opinion and contacted the Ombudsman. After investigating the

matter, we concluded that the Public Trustee had interpreted the circumstances quite strictly. That the husband's funds had gone to the down payment, while his wife's had gone to other expenses,

including renovations, seemed mostly a matter of accounting. The home was certainly a family asset, and would in all likelihood, if the marriage were dissolved, be divided equally between them.

We asked the Public Trustee to reconsider the matter. She did so, and advised us that she had removed her objection to the division of proceeds, subject to receiving further accounting records showing more clearly what contributions the wife had made.

## Caution

A community agency complained to the Ombudsman that the B.C. Ambulance Service was not taking universal precautions when dealing with patients. Instead, ambulance attendants were inquiring about the HIV status of patients, in order to determine what precautions they should take. The agency felt these inquiries were intrusive, and often put other professionals in the awkward position of being asked for confidential information. We contacted the Ambulance Service to review their policy.

The policy presupposed that a patient with AIDS would have visible symptoms, or that the ambulance attendant would have acquired information regarding the HIV status of the patient. In addition, the policy included conflicting and ambiguous instructions, making specific reference to precautions taken "when transporting AIDS patients," while at the same time suggesting universal precautions for all patients. Since persons infected with HIV, whether or not they have developed AIDS, can transmit the virus, it seemed to us that the attendants should be taking universal precautions for all patients, rather than attempting to identify HIV patients.

The Ambulance Service is currently rewriting its policy manual, specifying that appropriate precautions apply to all patients. A copy of the draft policy regarding universal precautions has been reviewed by our Office. The service will show us the final revision before it is released to the field.

## Taken Seriously

A person who described herself as an elderly lady said that she had a complaint against a long-term care facility where she was a resident. She told the Ombudsman that the nursing staff were treating her and the other residents poorly. According to her, staff had lied to her, stolen from her, abused and embarrassed her. She recalled one incident of a nurse accusing her of hiding some medication down her blouse. She said the nurse had pulled her blouse open to search her. As if this were not bad enough, the incident had happened in front of a room full of people, causing her a great deal of embarrassment. When the woman spoke with the director of the facility, the director told her she had no idea that these events had been occurring. She assured her, however, that she would have a staff meeting to look into the matter.

We interviewed the facility's senior staff about the woman's allegations and reviewed the relevant nursing notes. We found extensive notations on the woman's file concerning the allegations. All the incidents she had spoken of had been documented and investigated at the time they were reported. We noted that these investigations were competently done by appropriate staff and all the complaints had been found to be without merit. Of particular relevance, the file noted that all of this activity had occurred at a time when the woman's condition had been deteriorating. Shortly thereafter, she needed psychiatric intervention and hospitalization. By the time we completed our investigation the woman had been released from the psychiatric hospital and her condition had improved to the extent that she was living successfully in independent lodgings in the community. We also found that she was by then in regular contact with a Ministry of Social Services Seniors' Counsellor, with whom we confirmed that she was managing well in her new environment.

When we receive complaints from persons residing in long-term care facilities, we usually attempt to resolve them in close consultation with the complainants, their families and the facility staff. Most often this method resolves the complaint to everyone's satisfaction.

# Health

## “New Directions” Takes Shape

The Ombudsman's Health Team deals with complaints made against a number of authorities operating in the health and health-related fields. These include programs operated by the Ministry of Health such as Pharmacare, the B.C. Ambulance Service, the Mental Health Services Division, and the Continuing Care Division; the Medical Services Commission; Riverview Hospital; and the Forensic Psychiatric Services Commission. The Health Team also handles complaints against the Services to Adults division of the office of the Public Trustee. In 1993, the Ombudsman acquired jurisdiction over two new authority groups: acute care hospitals, and the governing bodies of self-regulating health professions, such as the College of Physicians and Surgeons and the Registered Nurses Association of B.C.

The health field in this province is undergoing dramatic changes. The *New Directions* policy of the provincial government is introducing a new regional governance structure into health care. Over 100 Regional Health Boards and Community Health Councils will take over much of the decision-making authority exercised until now by the Ministry of Health and individual hospital and service societies. The *Health*

*Authorities Act* sets up the new boards and councils. The schedule to the *Ombudsman Act* was amended to include these new bodies within our jurisdiction.

***We are optimistic that a health service model that focuses on decisions being made closer to the service recipient has the potential for enhancing fairness.***

The process of designating boards and councils and appointing their first members advanced rapidly in 1994. Our Office is not yet aware of the full impact *New Directions* will have on our investigative role in health matters. Different regions are at various stages of development. Some organizations and communities are struggling with the changes. To date, however, we have not received many complaints. A considerable number of new board and council members attended a panel discussion that included the Ombudsman at the Health Trustees Association annual conference and learned about the work of our Office. We will continue to monitor developments in this area closely. We are optimistic that a health service model that focuses on decisions being made closer to the service recipient

has the potential for enhancing fairness.

1994 was the first opportunity for our Office to maintain statistics for hospital complaints over a one-year period. Almost half the cases closed in 1994, 75 out of 159, were closed as “Without Findings - At Our Discretion.” That is to say, in these cases we realized that the complainant had not utilized the hospital's internal complaint-handling mechanism. The Ombudsman's role in many cases is to give a person particulars about how and to whom to complain. Hospitals should have the first opportunity to resolve complaints against them. Therefore, with the person's permission, we send the complaint to the hospital, asking them to investigate. When we do this, we always tell complainants that if they are not satisfied with the hospital's investigation, they may contact our Office again and we will review and possibly investigate the complaint. We are happy to report that, in the majority of cases, the hospitals were able to resolve the matter to the complainant's satisfaction without direct involvement of our Office. These figures suggest, however, that hospitals could improve how they share information with patients about their internal complaint-handling mechanisms, before complaints are made.

## Who is Calling?

Several months after she had been injured, a woman consulted an orthopedic surgeon. The physician asked his secretary to call Lions Gate Hospital, where she had been treated, in order to determine if X rays had been taken at the time of her injury.

According to the woman, she was standing within earshot of the conversation between the physician's secretary and the hospital's representative. She heard the hospital representative confirm the fact that there were no X rays taken at the time of her injury in October 1993, but that she had been given a mammogram several years previously.

On April 8, 1994, the woman contacted the Ombudsman. She was concerned that the hospital had not confirmed the identity of the caller and had given out personal information that was not only confidential but was not requested.

Our Office sent a letter to the hospital notifying them of this complaint. We asked them to investigate and to report back to both the complainant and our Office. We also wrote to the complainant to tell her what we had done. We invited her to contact our Office again if she still believed she had been treated unfairly, once the hospital had reviewed her concerns.

Lions Gate Hospital promptly sent a

letter to the woman on April 18, 1994, acknowledging receipt of the April 8 letter from our Office. They informed her that they were inquiring into her complaint and asked her to contact the hospital to set up a meeting with the Vice-President of Medical/Diagnostic Services. The purpose of the meeting was to ensure that the details of the woman's concerns were clear to the hospital, so that they could address the issues to her satisfaction. The woman did so.

On June 2, 1994, the hospital outlined to the woman what they had done. The Administrative Director of Imaging Services reviewed the woman's concerns with her staff. Appropriate clerical staff were instructed that only information requested is to be given out. Also, staff are to check the identity of the caller by requesting the physician's billing number if they do not recognize the voice on the telephone. Apparently, in this particular instance, the Imaging Department were familiar with the orthopedic surgeon's secretary, as they receive frequent requests for information from his office.

The hospital invited the complainant to contact them if she was dissatisfied with their handling of her complaint. To date, the woman has not recontacted either the hospital or the Ombudsman's Office in relation to this matter.

## Respecting Grief

Ms. M suffered a miscarriage in Grace Hospital twenty weeks before her due date. Within twelve hours of the miscarriage, the hospital conducted an autopsy, against the mother's wishes. She had not wanted an autopsy performed because she did not want to find out that she may have contributed to the death of her child. She also felt that having the autopsy performed while she was still in the hospital had hindered her healing process. Because the physician who performed the autopsy had imposed a quarantine, Ms. M could not view the remains, and could not hold a service.

While still at the hospital, Ms. M signed a paper approving burial arrangements. She agreed to cremation because the Ministry of Social Services told her that they would not pay for a burial when there is no birth certificate. The hospital gave her a phone number for a Vancouver crematorium and told her that the ashes would be available in thirty days. When Ms. M phoned the crematorium to pick up the ashes they told her that they had never received the remains. Ms. M then called the hospital and to her dismay, discovered that the hospital could not locate the remains. Greatly upset, she sought assistance

from Legal Aid, who referred her to the Ombudsman. The case was given priority because of the effect events were having on the mother's grieving process.

Our Office notified B.C. Women's Hospital and Health Care Society of this complaint and asked them to investigate. They did so quickly. The hospital's investigation showed that their procedures regarding the disposition of the body of a premature infant needed clarification. The hospital staff also reviewed the guidelines for performing autopsies and for obtaining parental consent. As a result of this investigation, the hospital has now implemented policies outlining the steps required before Embryo Pathology requisitions are sent to the Pathology Department with fetal remains. Parental consent must be obtained prior to an autopsy of fetal remains, regardless of gestation (or age of the fetus), following a spontaneous abortion. A patient must also be fully informed of how the body will be disposed of and must give her consent.

The hospital informed Ms. M of the policy changes. She was pleased that they had modified their practices, and that other women would not have to go through what she had.

## Sticking to the Letter

The difficulties of being an immigrant, unable to speak English, and soon to give birth were compounded for Mrs. J. She arrived in Canada in June 1993. Upon arrival, her husband contacted the Medical Services Plan to obtain coverage for his wife. The plan told him that she would be eligible for coverage as of September 1, 1993. Mrs. J gave birth in September, and her child was then added to the father's medical coverage. Mr. and Mrs. J were confident that the \$6000 medical expense related to the birth could be billed to the plan. However, this was not to be the case, although

Mrs. J had received a letter dated February 7, 1994, confirming coverage retroactive to September 1993.

The Medical Services Plan later took the position that because she had not become a permanent resident until December 1993, she was not eligible for coverage until April 1, 1994. Needless to say, Mrs. J felt this was very unfair. A friend, acting as her agent, contacted the Ombudsman. She explained that Mrs. J had intended to apply for permanent resident status upon arrival, but the birth of her child, and a family tragedy had made it impossible for her to apply until

December. She felt that her friend was being penalized for difficult circumstances beyond her control.

While we agreed that the correct date for coverage to commence would have been April 1, 1994, we were also aware that MSP had written to the complainant confirming coverage effective September 1, 1993. We suggested that the plan write a formal letter of apology to the woman, or abide by the commitment made in their letter of February 7, 1994. MSP took the second option, providing Mrs. J with coverage retroactive to September 1, 1993.

# Health

## Sexual Assault Investigated

Ombudsman Special Report No. 16, 1994.

Ms. Nikki Merry accused her physician of sexually assaulting her. The physician was subsequently charged and convicted of the offence. After the matter was aired publicly, the Minister of Health expressed concerns to the Ombudsman about how the complaint had been handled by the College of Physicians and Surgeons. Governing bodies of professional and occupational associations, such as the College of Physicians and Surgeons, had come under the jurisdiction of the Ombudsman just one month earlier, in October 1993.

Having obtained Ms. Merry's permission, the Ombudsman gave formal notice to the college of her intention to investigate their handling of the complaint about Dr. Thomson, the physician concerned. The focus of the Ombudsman's investigation was the college's initial intake process and its subsequent preliminary investigation of Ms. Merry's complaint.

### A Summary of the Ombudsman's Recommendations

1. The college should develop written investigative policies and procedures in order to define and clarify the college investigator's role and responsibilities during investigations. Comprehensive written investigative policies and procedures should incorporate the following:
  - College investigators should gather facts only and leave the testing of facts to the counsel of the college in preparation for a formal hearing.
  - Within a reasonable period after the initial interviews, the investigator will formalize the complaint in writing. The time should be sufficient for the investigator to gather the relevant information and for the complainant to have the opportunity to review, correct and approve the complaint statement.
  - The college should clarify and define the role of its staff and support person during an interview.
  - College policy should clarify:
    - when a complainant may have a support person
    - that the investigator will advise the complainant of her right to a support person and provide her with a copy of the relevant policy
    - that the complainant may choose the support person. When no support person is available, the investigator may suggest the female intake person recommended in *Crossing the Boundaries*, the Report of the Committee on Physician Sexual Misconduct, 1992.
  - The college should instruct its investigators on when the "reasonable woman" standard may be relevant and important to apply
  - The college should develop investigation policy standards for interviewing complainants. Interviewers should have the skills to establish trust during the initial interview, to ensure a free-flowing discussion by the complainant and to be empathetic and objective throughout the investigation. The policy should outline criteria for soliciting personal information from the complainant and determining its relevance.
2. When a physician has been complained against for major misconduct, rather than relying on voluntary undertakings, the college should invoke the power to suspend a member pursuant to the *Medical Practitioners Act* (s.50.6). If it continues to rely upon voluntary undertakings, the college should develop policy about how to monitor behaviour more explicitly and make the policy available to the public.

3. The Ministry of Health and the Attorney General should recognize the importance of informing the college of all proposed and proclaimed amendments to their governing statute, and explore a new method of improving communications to ensure this recommendation is implemented.
4. When a special Resolution imposes conditions or restrictions on a physician, the college must ensure that the public is protected by:
  - making a clear distinction between "prescription" and "administration" of controlled and narcotic drugs
  - giving effective notice to the public about restrictions placed on a physician's practice
  - adopting more timely peer review when a physician's practice is restricted
  - exploring ways of obtaining direct patient input about a physician's conduct.
5. The Office of the Crown Counsel is reviewing the policy entitled "Professional Organizations-Allegations of Criminal Offenses by Members." The review should examine ways to improve exchange of information among the investigating police agency, the Criminal Justice Branch and the College of Physicians and Surgeons. With current information, the college will be better able to fulfil its obligation of investigating in a timely manner all complaints received from the public. The review should also specify the process to be followed to determine if and when the college should cease investigating a matter pending any criminal investigation and/or prosecution, and who is responsible for communicating with the complainant or victim in such a case.

## The Real Cost of a Changed Name

A woman wanted to change her name. A lawyer, acting on her behalf, obtained a Change of Name Certificate for her in April 1993. On May 12, 1994, the lawyer wrote to the Vital Statistics Division, requesting a birth certificate in the woman's new name. The cheque required to cover the cost of this service was cashed by the division on May 20, 1993. However, after numerous telephone calls and letters, the lawyer had still not received the new birth certificate when he contacted our Office in February 1994.

When we contacted the Vital Statistics Division, we were told that the new birth certificate had been mailed to the lawyer's client at her out-of-province address. The lawyer expressed great surprise at this. He explained that his client did not live out of province, and to the best of his knowledge had never lived at the address provided by the division. We contacted Vital Statistics again on February 21, 1994, and explained that the certificate had been mailed to the wrong address. We were concerned that they could not explain where the out-of-province address had come from. We gave the division the lawyer's address, and asked that a new birth certificate be mailed to his attention. We also asked the lawyer to notify us when he received the certificate. It did not arrive. On March 7, we again contacted the division, and learned that the certificate had not been mailed to the address we had given them, but rather to the lawyer's address on file. Unfortunately, the lawyer's office had moved eight months earlier. The certificate had again been mailed to the wrong address, and returned to Vital Statistics. Once more we provided the division with the correct mailing address. This time the birth certificate reached the lawyer, resolving the complaint. He contacted our Office to confirm receipt of the document, some ten months after the original application had been received by the Vital Statistics Division.

## Uninformed Choice

A surgical procedure, which is normally covered by the Medical Services Plan, cost a woman \$2354 for the surgeon, and \$1401 for her hospital stay. She complained to the Ombudsman that MSP had refused to authorize the surgery, which she said was medically necessary to correct a problem resulting from several births by Caesarian section.

We found that MSP had, at the surgeon's request, authorized payment under the Medical Services Commission Fee Item 6152. However, it appeared that the surgeon had not communicated this information to the woman. Furthermore, he had suggested a more elaborate procedure, usually billed under Fee Item 6155. Not knowing that the less elaborate procedure had been authorized, the woman agreed with her surgeon's proposal, and opted for the more elaborate procedure. MSP confirmed that no billing for the surgery had ever been received, but since Fee Item 6152 had been approved, the plan was able to make payment for that portion of the surgery. They determined that the woman was responsible for the additional surgery, which was regarded as cosmetic.

When we gave the woman this information, she obtained reimbursement from her surgeon, equal to the payment he received from MSP. However, the hospital refused to provide reimbursement, citing a section of the B.C. Hospital Programs Policy related to an uninsured procedure performed concurrently with an insured procedure. The policy states that "charges for the uninsured service shall be the same as charges that would have been levied if the patient had come to the hospital solely to have the uninsured service performed." As the woman had not been aware that she had a choice between an insured and an uninsured procedure, application of this policy seemed unfair. The Ministry of Health agreed, and directed the hospital to reimburse the woman. She was able to obtain the money just prior to Christmas 1994.



Two essential elements to fulfil the Ombudsman's mandate are guaranteed confidentiality and her unrestricted access to information. There are others who are also under a confidentiality requirement such as those in the medical profession. An amendment to the *Medical Practitioners Act* was recommended by the Ombudsman to balance the interests being served in both cases.

Section 61(3) of the *Medical Practitioners Act* reads:

*Subject to the Ombudsman Act, each person employed...including a person conducting an inquiry or investigation, shall preserve confidentiality with respect to all matters or things that come to [her or] his knowledge or into [her or] his possession in the course of [her or] his duties...*

This change will enable the Ombudsman to continue to have unrestricted access to evidence required in an investigation.

### Health Team

Files Open Dec. 31, 1993	471
Files Received in 1994	779
Closed - No Investigation	133
Closed - Investigation	704
Internal Team File Transfers	413

# Natural Resources

## Where There's Smoke ...



**D**uring extremely hot and dry weather in 1983 a forest fire, known as the Swiss fire, broke out in southwestern B.C. and raged out of control for several days. The fire spread over more than 18,000 hectares and travelled 24 kilometres before it could be brought under control. During this time fire storms developed with 200 foot flames, and updraughts hurling logs into the air where they exploded into flames as they came in contact with sufficient oxygen.

Ministry efforts to prevent the fire from spreading towards Houston townsite and Buck Flats, where nine homes were situated, were unsuccessful. Firefighters constructed fire guards and "burned off" fuel between the guards and the main fire. But prevailing winds pushed the fire first towards the town of Houston, then southeast in the direction of the Equity Silver Mine. The advancing fire forced firefighting crews to flee and destroyed the nine homes in Buck Flats.

Gradually, temperatures dropped and the relative humidity increased. Over the next two and a half weeks, cool and wet conditions prevailed, and the fire was brought under control.

The Ministry of Forests appointed a Board of Review to conduct an internal audit of the ministry's efforts to control the fire. The board heard evidence from the residents who had lost their homes, alleging that their losses resulted from fires set by the ministry in their failed efforts to control the main fire. The Review Board report identified deficiencies in the fire suppression activities, but did not address the issue of whether people whose private property was destroyed should receive compensation from government for their loss. The families turned to the Ombudsman for help.

The Ombudsman's investigation found no conclusive evidence that the ministry's efforts to control the fire, directly or indirectly, caused the loss of the homes. Given the extreme fire behaviour and the prevailing winds, it was likely that the main fire would have consumed the homes in spite of ministry efforts. However, the Ombudsman criticized the Board of Review for not investigating these questions when the evidence was more readily available, and concluded that "the Review Board's investigation of the burn-off and backfire attempts was inadequate."

Her report also criticized the ministry's lack of communication with the residents, both during and after the fire. The property owners contacted both the ministry and their MLA soon after the fire occurred, and were led to believe that their claims would be properly investigated and a decision made regarding compensation.

The Ombudsman's report found that the ministry had a duty to investigate the allegations of the property owners and their claims for damages, and that the ministry failed to fulfil that duty. It also concluded that, given the nature of the loss of the

property owners (homes and possessions), and given the perceptions prevailing in the community regarding the ministry's actions, the ministry should have conducted a full and open public inquiry into the property owners' allegations, and should have released the results of the inquiry to the public.

These two findings were the primary basis for the subsequent recommendation that the property owners should be compensated. As the Ombudsman's report stated:

*Our investigation in this case has identified deficiencies which individually may not constitute negligence, but which, in total, constitute unfair treatment deserving of compensation... We believe that those who lost their homes in the Swiss fire should be compensated by government. We suggest that compensation on an ex gratia basis, without a finding or admission of legal liability, would be the most appropriate resolution to their complaints.*

On the Ombudsman's recommendation, compensation to the Buck Flats residents was based on the guidelines for flood disaster assistance. Since there is no precedent for compensating wildfire victims without substantial evidence to support a finding of negligence, the compensation package required the approval of Cabinet.

**... from a public policy perspective, forest fire damage should be treated as a natural disaster, analogous to flood damage.**

The flood assistance program is set out in the Disaster Financial Assistance Guidelines administered by the Provincial Emergency Program. It provides assistance to flood disaster victims to re-establish the basic necessities of life including shelter, clothing and essential furniture. Assistance is provided only to a fixed dollar limit, with deductibles, and is not intended to replace insurance coverage with compensation.

Under existing government policy, the Swiss fire case was unlikely to set a precedent since compensation was based on unique circumstances, which were unlikely to recur. However, the Ombudsman also recommended that government adopt a general policy for assisting wildfire victims in a like manner to flood victims. This recommendation is based on the Ombudsman's conclusion that:

*... whatever the source of ignition, a forest fire is, in essence, a natural occurrence. Unless there is early detection and suppression, a fire's behaviour, and the ministry's ability to control it, is based almost entirely on weather and fuel conditions. Damage to private property is simply a function of where, and under what conditions, the fire occurs. We therefore believe that, from a public policy perspective, forest fire damage*

**\$460,000 compensation from Ministry of Forests to Buck Flats fire victims!**

*should be treated as a natural disaster, analogous to flood damage.*

As the result of the Ombudsman's investigation and recommendations, the Ministry of Forests granted compensation of over \$460,000 to the nine families whose homes were destroyed in the Swiss fire.

The Ministry of Forests had taken the following steps to correct administrative deficiencies even before the Ombudsman's investigation began:

- a fuel index system, the "Fire Behaviour Prediction System", came into effect in 1984
- in 1986 the ministry established the Forest Information Special Team (FIST) program to provide counselling to wildfire victims and to assist them to access the appropriate government services
- the ministry improved their practices in fire preparedness and training of fire fighters
- they improved their communication with and assistance for residents likely to be affected by a wildfire.

These improvements were evident in the Par Fire, which occurred in the same area in 1991. Local residents were provided with pumps and hoses to protect their property, and were given ongoing information on the status of the fire.

After the Ombudsman's preliminary conclusions and recommendations were delivered to the ministry in March 1993, the *Emergency Program Act* was passed. The Act establishes a statutory framework for providing compensation and assistance for a much broader range of natural disasters than its predecessor. The Act's definition of "disaster" can include damage caused by wildfire. However, government must enact regulations to make wildfire damage specifically eligible for assistance. Those regulations are currently being drafted.

Since the regulations under the *Emergency Program Act* will provide assistance only to restore "necessities of life," such a program will not constitute a replacement for adequate fire insurance. Eligibility for the program will also be restricted to those who have taken preventive measures to protect against wildfire damage. These measures might include establishing a buffer of green lawn between buildings and trees or brush; not storing firewood or other combustibles close to residences; or using only fire resistant materials for roofing.

The ministry demonstrated its commitment to improving how it deals with third parties who suffer wildfire damage with the Garnet fire, which destroyed a number of homes near Penticton last summer. Immediately after the fire was brought under control, those families were contacted and their losses assessed. The ministry has appointed a private management consulting firm to conduct a public review of the Garnet fire and to make recommendations. The results of the review will be made public once the Minister of Forests has received the report.

## Don't Blame It on the EHO!

**A**n nightmare for any householder would be to have a septic field installed, then have to pay further to have it torn up and reinstalled. A home owner complained to the Ombudsman about just such a nightmare. He felt that the Environmental Health Officer who inspected the original installation was at fault, and that the local health unit should reimburse him for the additional cost of \$944.81 for reinstallation.

The Ombudsman's investigation showed that, because of wet weather, and because an open trench dug for electric wires at the front of the property had water in it, the installation contractor had a new three foot hole dug at the rear of the septic field site. The EHO inspected the hole, found it to be dry and approved the installation. He instructed the contractor, however, that the field should be kept as high as possible.

The field was installed, but when the EHO returned to inspect it, he found water in the trenches. Initially, he took responsibility for not letting the test hole sit longer. Further investigation showed, however, that the contractor had installed the pipes at a lower level than the EHO had recommended, in order to fit the level of the exit pipes from the house. The level of the exit grade had been determined before the installer and

the EHO became involved.

Although the owner had to reinstall the whole field, raise its level and put in a pump to prevent sewage from flowing back into the house, the investigation showed that the Environmental Health Officer was not at fault. For that reason, the owner's claim to compensation could not be substantiated.

# Natural Resources

## Too Much Heat?

The Office of the Ombudsman continues to receive a steady flow of complaints about the province's decision to disconnect radiant ceiling heating panels (RCHPs) in homes throughout the province.

The RCHPs in question are flexible plastic panels through which electricity passes and generates heat. The panels are stapled to the exposed ceiling joists of the residence and drywall is then fastened to the interior ceiling in the usual fashion. Finally, the ceiling insulation is inserted, enclosing the panels between the insulation and the ceiling drywall. The panels generate heat and radiate it to the room below.

As a result of several fire investigations in British Columbia and the rest of Canada, the Electrical Safety Branch of the Ministry of Municipal Affairs issued disconnect orders for certain models of the panels in February 1994. The disconnect orders were expanded to include those panels manufactured by another corporation in November 1994. To date, several thousand home owners in British Columbia have been affected by the disconnect orders.

*The Ombudsman believed that...the safety net designed to protect the Canadian consumer had failed.*

All parties involved with the regulation, manufacture, testing and certification, and installation of the panels have sought to determine a cause for the panel failures, even though the panels comply with approved standards. These efforts continue.

A common theme is apparent in the complaints of affected home owners.

- All have had to come to terms with an inoperable heating system.
- They must employ often less than satisfactory temporary and expensive alternate heat sources to protect their home and assets from damage.
- They face the prospect of expensive heating system replacement without compensation, questionable insurance coverage and an attendant devaluation of their homes.

The regulatory bodies and manufacturers have consistently denied any individual responsibility for the dilemma; some of them suggest that the problem could be most appropriately addressed through the courts.

The Ombudsman's investigation and consultations with the parties involved led this Office to the conclusion that the problem could not simply be addressed on the basis of product liability alone, as some parties have suggested. The Ombudsman believed that the problem was more complex, that the safety net designed to protect the Canadian consumer had failed. Responsibility for the problem, therefore, might more appropriately rest with all parties who participate in that regulatory regime, including the consumers.

With the scope of the dilemma broadening and no apparent solution at hand, the Ombudsman was encouraged when, on December 2, 1994, the Minister of Housing, Recreation and Consumer Services appointed David Cohen, Dean of Law at the University of Victoria, to conduct a special investigation into the problem. His report will be made public in 1995.

The essence of our primary recommendation is that all parties: the manufacturers, the Canadian Standards Association, the government of British Columbia and the home-owners, by representation, participate in mediation in order to resolve the dispute. We have made our findings known to the special investigator.

The Office of the Ombudsman will continue to monitor the RCHP situation, but will suspend investigation pending the outcome of the Cohen investigation.

## Home Lost in Tax Sale

A young man on a disability pension failed to pay the municipal property taxes on his home for three successive years. In order to recover the taxes and administrative fees owing, the municipality exercised its right under the *Municipal Act* to have the home sold by public auction.

The minimum bid permitted by the *Municipal Act* on a tax sale is the total of the delinquent taxes and the administrative fees. The young man's house sold for \$3000, a small fraction of its assessed value. He had one year from the date of sale to redeem his property by paying the back taxes and fees. If he failed to do so within the redemption period, the sale became final and title to the property passed to the purchaser.

As required by the *Municipal Act*, the municipality gave the young man proper notice of the sale of the property and of the redemption period. The Act does not require and the young man did not receive written notice of the actual amount required to redeem the property.

Two months before the redemption period expired the young man and his girlfriend went to the municipal hall to inquire about the payment required to redeem his property. He was told by the counter clerk that the amount outstanding was approximately \$1600.

The following week the man paid the amount, received a receipt from the same counter clerk and was assured that his property would be removed from the tax sale. One month after the redemption period expired, the man received an eviction order from the purchaser, who had acquired title to the property.

When the man contacted this Office, we explained that we did not have jurisdiction to investigate his complaint against the municipality, but that we would make some inquiries on his behalf. The municipality agreed to give us information

about the complaint, but denied any liability. They maintained that the young man had failed to make it clear to the counter clerk that he intended to redeem his property, and therefore she had calculated and he had paid the current year's taxes.

The young man pointed out that it would be "crazy" for him to pay taxes on his property without redeeming it. He and his girlfriend were adamant that they had made it very clear to the counter clerk that they wished to redeem the property from the tax sale.

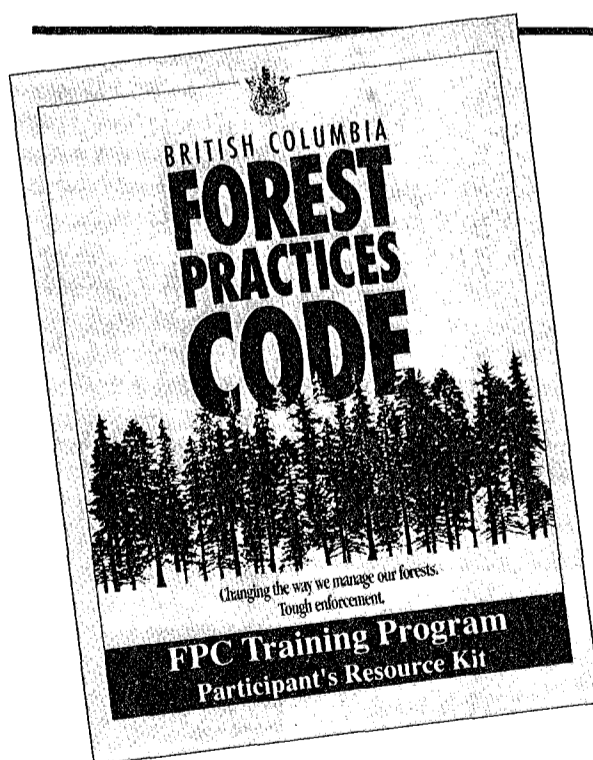
The investigator made sure that the young man gave the municipality formal notice of his intention to appeal the tax sale before the remarkably short limitation period provided by the *Municipal Act*. After some discussion, the municipality agreed to refer the matter to their insurer.

*This case illustrates clear deficiencies in the tax sale process under the Municipal Act, the responsibility for which rests with the province.*

Once title to a property has transferred to a purchaser on a tax sale, the *Municipal Act* does not allow the property to be returned to the original owner, even if he or she can prove that the municipality was negligent in handling the tax sale. The only remedy available is damages. The young man, who is legally blind, had lived in the house for many years. He was familiar with both the layout of the house and the services in his neighbourhood. He didn't want damages; he wanted title to his home back.

We discussed the matter with the municipality's insurer and asked that, if they found any liability, they consider repurchasing the home for the young man as part of any settlement. They did repurchase the home, but without admitting any liability.

This case illustrates clear deficiencies in the tax sale process under the *Municipal Act*, the responsibility for which rests with the province. The administrative unfairness of this process has been drawn to the provincial government's attention in the past in reports by the Law Society of British Columbia, and by this Office. The Act remains unchanged. The Ombudsman may have to address this issue again once she gains jurisdiction over municipalities in 1995.



## You Can See the Forest for the Trees

The government plans to proclaim the new *Forest Practices Code* soon. In preparation, Part 8 of the Code, which establishes an independent Forest Practices Board, has been

proclaimed. The board will carry out independent audits of compliance with the forest practices requirements and will investigate public complaints regarding forest practices.

To ensure that the board will be prepared to take complaints from the public when the full Code comes into force, a chair and four members will be appointed, effective January 1, 1995. The chair is Keith Moore, a specialist in forest land management and environmental assessment. The other members have expertise in forest resource management, forest ecology and agrology.

Part 9 of the Code, when proclaimed, will establish a Forest Appeals Commission, which will hear appeals from those directly affected by a decision or order under the Code. The Forest Practices Board will also have the right to initiate an appeal before the commission when it believes that an improper decision or omission has been made under the Code.

The Office of the Ombudsman will retain jurisdiction to investigate complaints of administrative unfairness against any authority administering the Code, including the Ministry of Forests; the Ministry of Environment, Lands and Parks; the Forest Practices Board and the Forest Appeals Commission. However, as required by s.11 of the *Ombudsman Act*, this Office will not investigate complaints until the affected person has exhausted any available right of complaint or appeal under the Code.

# Natural Resources

## The Centre Will Hold

An island off the coast of Vancouver Island, which has been referred to as beautiful, peaceful and serene, was subdivided many years ago and the highway right-of-way placed in the centre of the island. As no cars are allowed on the island, the right-of-way had been used by the residents as a footpath. Septic fields have been allowed on the right-of-way when private lots could not support a septic system. In 1992 residents who were against continuing the practice complained to the Ministry of Transportation and Highways. In response to the complaint, ministry staff announced that they would no longer issue permits to use the right-of-way for septic fields.

When residents complained to the Ombudsman, she undertook to review the fairness of the administrative decisions that affected residents and land owners on the island. Ombudsman staff visited the site and made inquiries with the local health unit and the Ministry of Transportation and Highways.

The health unit is responsible for issuing permits in accordance with the *Health Act* and the Sewage Disposal Regulations. In relation to this situation, the unit had taken the following steps:

- reviewed the permit process
- prepared a set of application criteria and communicated them to property owners on the island
- developed criteria that restricted use of the right-of-way to lots that cannot support a sewage disposal system, and only when the Ministry of Transportation and Highways grants a construction permit that allows use of the right-of-way.

The Ombudsman was satisfied that the health unit was dealing adequately with health-related concerns on a lot-specific as well as an island-specific basis.

After a number of discussions and meetings with staff of the Ministry of Transportation and Highways District Office, the Ombudsman was assured that applications for a permit to construct a sewage disposal field for gray water on

the highway right-of-way would be considered on a case-by-case basis. To make a blanket administrative decision to refuse all applications without due consideration of each request would be to fetter the discretion given to the ministry by the legislature, and would be administratively unfair. The Ombudsman supports considering each application on its own merits.

The Ministry of Highway's Geotechnical Branch has recommended that for this island:

1. Septic field construction on the right-of-way should be considered only in exceptional circumstances.
2. The discharge of gray water only will be considered, providing the health department requirements are met.
3. The water should be contained in a buried pipe and discharge must not cause erosion or stability problems to the right-of-way.
4. The septic field must not affect the existing pathway.
5. No trees may be removed from the right-of-way and the disturbed area must be replanted with new shrubs.
6. Construction must be done by hand; no machines will be allowed.
7. The encroachment field must be close to the property line and is not to exceed thirteen feet in width.

The Ombudsman was satisfied that the decision process was fair, since applications will be considered on a case-by-case basis, and the Ministry of Transportation and Highways guidelines are clear and consistent with the position of the health unit. Our Office now directs complainants to contact the Area Managers at the Highways Regional District Office regarding highway matters, and the health unit in their area regarding health matters for this island.

We hope that the resolution of this complaint has returned this island to the peaceful, tranquil, relaxing place it was prior to the dispute regarding septic fields on the highway right-of-way.



*Follow-up  
Ombudsreport 1993  
page 24*

## Progress is Slow but Steady

*We will continue to follow up on Public Report No. 18 – The On-site Septic System Permit Process.*

Recommendations made by the Ombudsman in *Public Report No. 18* continue to be implemented. The Ministry of Health undertook the following in 1994:

- ✓ Amended the *Health Act* effective August 1994 to allow for an appeal to the Environmental Appeal Board for decisions made under the Sewage Disposal Regulations.
- ✓ Commissioned a study by the Department of Soil Science and Resource Management Sciences at UBC in land-use planning. The study provides technical documentation to support recommendations for appropriate lot sizes involving less than four feet of native soil depth. The study was shared with the Ministry of Municipal Affairs and covers the similar geological and climatic characteristics found in North and Central Vancouver Island and Coast-Garibaldi Health Units.
- ✓ Recommended revised subdivision standards for on-site sewage disposal using the soil sciences study. The standards will be reviewed by approving officers and regional districts within a year.
- ✓ The voluntary certification pilot project initiated in the Capital Regional District, ongoing for a year, will be evaluated in 1995. A similar project was begun in the Fraser Valley in 1994.

We will continue to follow up on Ombudsman *Public Report No. 18* in 1995.

## Ghost Workers

A heavy equipment owner/operator complained to the Ombudsman about the assignment of "day labour" work by the local office of the Ministry of Forests. "Day labour" consists of short-term contracts with private sector heavy equipment owners to provide equipment at an hourly rate for forestry road maintenance. The Ministry generally hires equipment on a rotational basis and gives preference to local owners.

The complainant alleged that the local District Forest Office was unfairly assigning work to a grader operator from outside the district. He also alleged that much of the work the grader was assigned should have been performed by another contractor under a separate road building contract with the ministry.

*We acknowledge and commend the steps taken by the ministry to conduct a full and impartial investigation...*

office and report to us on the findings.

The ministry appointed an audit team of ministry engineers and auditors, headed by an auditor from an independent firm. We met with the head of the audit team to review terms of reference and procedures for handling any evidence of criminality.

The audit team uncovered more than \$200,000 in excess payments through falsified records such as amended time sheets and "ghost" employees. They turned all this information over to the RCMP Commercial Crime Section.

As a result of the investigation, the employee responsible for the equipment hire program is no longer employed by the ministry and has been charged with criminal fraud and breach of

trust. A contractor from outside the district has also been charged with fraud.

This Office reviewed the audit team's report and confirmed that its recommendations for improving the equipment hire program have been implemented. The Ombudsman is satisfied that the complainant's concerns were fully investigated and that the appropriate corrective measures were taken. We acknowledge and commend the steps taken by the ministry to conduct a full and impartial investigation and to refer the matter to the RCMP.

## In Hawaii ...

### 25th Anniversary Report, 1969-1994

*an excerpt*

With the kind permission of British Columbia Ombudsman, Dulcie McCallum, we are pleased to present her new, improved 1993 version of the administrative fairness checklist. The original version of the checklist was the subject of some interest in the Hawaii legislature and was the basis of proposed legislation introduced during the 1994 legislative season...We have followed with interest the ongoing work being done by the British Columbia Ombudsman's Office in improving the administrative fairness checklist and, in the process, refining in more detail the kinds of issues people ought to consider in asking what is fair.

# Natural Resources

## A Covenant Binds a Family Together

Longstanding farming residents asked a land surveyor to act for them in subdividing a portion of their farmland to create a separate residence for their son and his family.

They own several parcels totalling hundreds of acres. Two of the parcels, ten acres each, were proposed for realignment of property boundaries creating no more lots than the two that currently exist.

A house was constructed on the northwest corner of the north ten acre block in 1990-91. A permit for a septic field was issued, and importation of suitable fill was approved at that time. The Agricultural Land Commission approved the realignment, to subdivide a parcel of approximately 2500 square meters off the north block and to incorporate the remaining area with the other ten acre parcel.

The Ministry of Transportation and Highways can approve the proposed subdivision pursuant to s. 996 of the *Municipal Act*. The section permits subdivision of land for immediate family into smaller parcels than permitted by zoning if other subdivision requirements can be met.

The Regional District granted approval on that basis. The Ministry of Health, through the local health unit, however, refused approval because the proposal did not meet the ministry requirement that a lot have forty-eight inches of natural porous soil

and be at least five acres in size to allow for a replacement septic field if the existing field fails.

Because the Ministry of Health withheld approval, the Ministry of Transportation and Highways could not approve the subdivision. The Environmental Health Officer suggested that a creek, ravine and lands south of the house be added to the lot size, increasing it to four and a half acres, closer to the five acres required by the Ministry of Health. Although the creek, ravine and lands south of the house were added, this area was useless as a replacement septic field. Measurements taken of the area between the existing field and tank confirmed that sufficient space for an alternate field existed on the proposed 2500 meter parcel.

Clearly the complainants were being denied approval because of strict adherence to policy.

The farmer and the land surveyor complained to the Ombudsman that they found the position of the Environmental Health Officers rigid and impractical, and sought a "logical and satisfactory conclusion to the matter."

The Ombudsman first required the land surveyor to pursue his informal appeal to the Medical Health Officer to request a review of the decisions of the Environmental Health and Chief Environmental Health Officers. The land surveyor was further advised that if he was not satisfied with the Health Officer's

decision he could return to our Office.

The Medical Health Officer's response to the land surveyor's request for a review was that he was not prepared to make an exception in this case.

The Ombudsman investigator met with the complainant and the land surveyor and discussed the particulars of the complaint. She also visited the site and confirmed that the depth and position of the ravine and the creek made the land south of it almost useless as an alternate site.

She then spoke with the new Medical Health Officer, as the person who had made the previous decision was no longer in this position, and discussed the details and findings of her investigation. The MHO agreed to review the file and to advise our Office of his conclusions.

The Medical Health Officer reported that the health unit would support the proposed subdivision under two conditions:

- that a covenant be placed on the area between the existing septic field and the house
- that the remainder of the land be covenanted to disallow any building.

The farmer used the land for grazing and farming, and merely wanted a residence for his son. He was pleased with the outcome and happy to agree to the proposed covenants.

## A Smell in the Well ★

A property owner objected when the Ministry of Transportation and Highways decided to stockpile in a gravel pit immediately above his property asphalt removed from a highway which was being repaved. He feared that the asphalt would contaminate his well. The ministry assured him that there were no grounds for his concerns.

Three years later the neighbour began to notice staining of his plumbing fixtures and an unpleasant smell in the water. Some time later a sheen developed on the surface of the water. Water samples from the well tested in the Ministry of Health's lab showed no detectible levels of hydrocarbons, but indicated high levels of iron, which might account for the staining.

The neighbour complained to the Ombudsman, demanding that the Highways Ministry remove the asphalt from the gravel pit. The highways district staff pointed out that the test results supported their position that there was no contamination from the asphalt. The fact that the neighbour had a commercial gravel operation on his own property and the porous nature of the soils in the area also made it very difficult to identify the source of the contamination.

After the sheen developed on the water, the environmental health officer, suspecting contamination from logging debris, took further samples to be tested for tannins and lignins, byproducts of decomposing wood. Again, the results were negative. Because a salmon bearing stream flowed nearby, the Ministry of Environment took its own samples with the same results - no detectible hydrocarbons or other organics.

As the test results did not appear to explain the field observations, the Ombudsman's Office discussed the results with the test lab. High iron levels would not produce the taste, odour and sheen that the environmental health officer had observed. The lab suggested further sampling and testing for a broader range of hydrocarbons. The agencies, which had expended considerable funds on the lab tests, were reluctant to test further unless the property owner contributed towards the costs.

Ombudsman staff contacted the Environmental Engineering Branch of the Ministry of Transportation and Highways and provided them with the earlier test results and the comments of the

field and lab technicians. They agreed to investigate further and consulted a terrain analyst with the ministry's Geotechnical and Materials Engineering Branch who was doing a study on asphalt recycling.

The terrain analyst explained that old asphalt is an unlikely source of water contamination as it is relatively stable and inert. In order to rule out that source of contamination, or any other from the ministry gravel pit, he undertook to investigate in more detail.

His investigation included further sampling and testing of the well water. This time, the tests showed low levels of the types of hydrocarbons associated with asphalt oils and lubricants. Still not satisfied as to the source of the contamination, he researched the history of the use of the gravel pit.

He discovered that a plant had been set up in the pit for a large paving project in the 1970s. This discovery led him to speculate in his report that

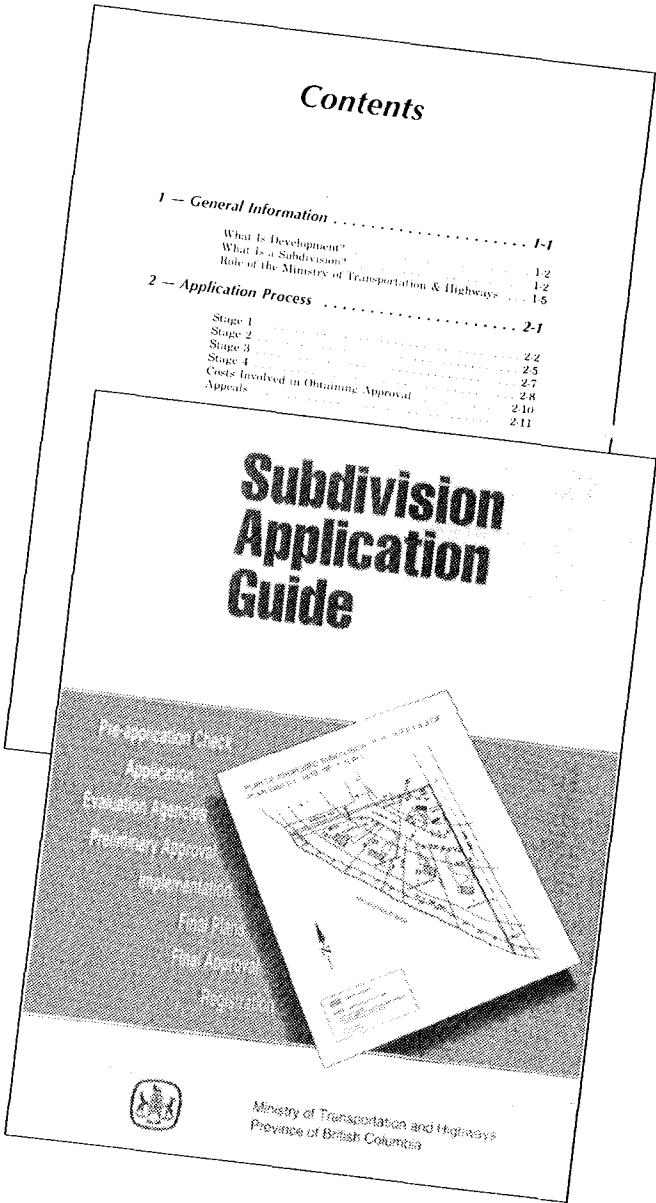
*during the paving plant operation it is likely that large volumes of solvents, asphalt hydrocarbons and possibly gasoline or diesel were spilled onto the soils within the gravel pit and that they may be only now working themselves down into the groundwater system.*

The terrain analyst's report concluded that, although there was no definitive explanation for the source of contamination of the well water, the evidence was sufficient for him to recommend that:

- the Ministry of Transportation and Highways dig a new, deeper well for the complainant
- two ponds in the gravel pit be drained to reduce the water table in the area.

The ministry has since confirmed that the ponds have been drained and that the new well is producing good water. A further action provided a pleasant bonus for the landowner. Although the ministry was satisfied that the recycled asphalt had not contributed to the well contamination, they removed it from their gravel pit.

These results would not have been achieved if the ministry had not been willing to take a careful second look at their position regarding the contamination of the well water. The Ministry of Transportation and Highways is to be commended for persistence beyond what is reasonably required in investigating this complaint.



Natural Resources Team	
Files Open Dec. 31, 1993	368
Files Received in 1994	802
Closed - No Investigation	162
Closed - Investigation	499
Internal Team File Transfers	509



## Guest Comment

### Justice in Sentencing

by Dr. John W. Ekstedt  
Director, Institute for Studies  
in Criminal Justice Policy  
Simon Fraser University  
at the invitation of the Ombudsman

*Young people with Fetal Alcohol Syndrome/Effect have long been underdiagnosed and misunderstood. The Ombudsman is concerned about the results and therefore has invited a commentary on the Reasons for Sentence in the case of Victor Daniel Williams.*

On November 24, 1994, Victor Daniel Williams appeared in Victoria before Mr. Justice David Vickers for sentencing, having been tried by jury and convicted of robbery. Mr. Williams was eighteen years old at the time of the offence, a First Nations person, and according to the Reasons for Sentence, had "significant physical and intellectual deficits." There was evidence that he had been manipulated by another person to carry out the physical act of committing the robbery. In his Reasons, the judge speculates that such exploitation was possible because of Mr. Williams' vulnerability, associated with his "handicap" or "disability."

Tragically, this case presents itself as fairly typical. Indeed, over time, an entire industry has emerged to describe and assess such persons. Equally tragic, very little is available within government to assist or "treat" such persons. Mr. Justice Vickers complained more than once in his Reasons that access to the support or treatment that does exist is available only for those who have been officially "labelled" as candidates for intervention. He mentioned the derogatory and limiting effects of such labelling. Apart from the stigma applying to the person, practitioners respond to labelling by developing programs that encourage specialization with no co-ordination and co-operation among them. The judge clearly found such a state of affairs unsatisfactory and stated that he intended to fashion a sentence specific to the individual that would require co-ordination among agencies.

Mr. Justice Vickers approached this task with considerable energy and in spite of several setbacks. He requested a probation plan as provided for in the B.C. Corrections Branch Manual of Operations and did not receive one. He requested assessments directed to a suspected diagnosis of Fetal Alcohol Syndrome/Fetal Alcohol Effect. While he had identified the experts he wished to hear from, delays were experienced as he received assessment reports from other persons who picked up the case as it made its rounds through the system. He commented on these difficulties but clearly perceived himself to be powerless to address them.

In the end, however, the judge did make his order consistent with the intentions he had expressed early in the sentencing process. He identified an individual to fashion a program for Mr. Williams on the basis of interministerial co-operation and with attention to the assessments that had been provided. He imposed a prison sentence of four months, in

part to provide sufficient time for an individualized plan to be formed and for alcohol counselling to begin. The prison term is to be followed by a term of probation for two years, with conditions.

Among several important points this case illustrates, one of the most crucial is that the sentencing process is essentially a judicial responsibility. However, judges, for a variety of reasons, are at the mercy of a functioning bureaucracy whose members report to government, not the courts. These bureaucracies have their own ideas and mandates regarding the processing and treatment of persons under court order. As Mr. Justice Vickers pointed out, "[i]n the ordinary course, some assessments and all classifications are carried out *after* (emphasis mine) sentence is imposed." There are good reasons for many of these practices. But, over time, the separation between the justice and social services bureaucracies and the judiciary has become so great that one often feels they are working not only to different rules but to different purposes. In my opinion this gap needs to be closed. The principles of judicial independence should not impede the judiciary in a desire to intervene more directly in sentencing administration. The professional bureaucracy should not be threatened by the obvious need to develop innovative, interdisciplinary approaches to the custody and treatment of persons whose life circumstances have left them disadvantaged or dysfunctional. Bureaucratic managers and administrative judges should, to the extent possible within their mandates, encourage innovation and risk-taking without threat to the person, livelihood or careers of those making such attempts. More important, since sentencing is a legitimate responsibility of the court, judges should be given all assistance possible *prior* to sentencing in order that their judgments may be fair, effective and efficient. Much has been made recently of the weaknesses within the criminal justice system concerning the management of offenders. It is highly likely that the roots of this difficulty (which is real) occur in the sentencing process itself.

As to the matter of interministerial co-operation and the related problems of protective responses associated with personal career development and professional specialization, what is there to say any more? I believe many persons wish to see improvements in this area. It is not hard to imagine the benefits that could result from genuine co-ordination and co-operation. But such behaviour needs a supportive and flexible structure. Committees cannot provide this structure; it must be forged within the organization of government itself. Government should encourage those efforts that are underway and address the problem of "burn-out" for those who try to effect co-ordination around difficult cases.

Obviously, one reason for Mr. Justice Vickers' approach to this case is his own well-known interest in the problems inherent in responding to persons with intellectual, emotional or physical disabilities. Judicial education is an important factor in developing alternative strategies for such persons.

This case has been most helpful in identifying concerns that apply within all the human service areas, but especially criminal justice. The Reasons for Sentence would be useful required reading for all students of criminal justice reforms.

# Ombudsman Publication List

## Annual Reports

1979-1994

## Special Reports

1. Garibaldi Case, 1981 (Environment)
2. Lotteries Case, 1981 (Government Services)
3. Cuthbert Case, 1981 (Harbours Board)
4. Certificate of the Attorney General, 1982 (Attorney General)
5. Reid Case, 1982 (Transportation and Highways)
6. "A Matter of Administration" : B.C. Appeal Court Judgment, 1982
7. Shoal Island Case, 1984 (Forests)
8. Workers' Compensation Board (No. 1)  
Vol. 1 - WCB, 1984.  
Vol. 2 - An Investigation by the Ombudsman into Eleven Complaints about the WCB, 1984.
9. Supreme Court of Canada Judgment, 1985.
10. Section 4 of the *Highway Act*, 1985. (Transportation and Highways)
11. The Cobb Case, 1985 (Forests)
12. Workers' Compensation Board (No. 2)  
Vols. 1&2 - WCB, 1985
13. Willingdon Case, 1985 (Corrections Branch)
14. Hamilton Case, 1985 (WCB & Attorney General)
15. Workers' Compensation Board (No. 3)  
Vol. 1 - WCB, 1985.
16. Nikki Merry Case, 1994 (College of Physicians and Surgeons)

## Public Reports

1. East Kootenay Range Issues, 1981 (Environment; Forests; Lands, Parks and Housing)
2. Ombudsman Investigation of an Allegation of Improper Search for Information on Five Individuals on the Part of the Ministry of Human Resources, 1982.
3. Expropriation Issues, 1983 (Transportation and Highways)
4. The Nishga Tribal Council and Tree Farm Licence No.1, 1985 (Forests)
5. The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People, 1987 (Social Services and Housing)
6. Liquor Control and Licensing Branch Fairness in Decision Making, 1987 (Liquor Control and Licensing Branch)
7. WCB System Study, 1987.
8. Skytrain Report, 1987 (B.C. Transit; Municipal Affairs)
9. Practitioner Number Study, 1987 (Medical Services Commission)
10. B.C. Hydro's Collection of Residential Accounts, 1988.
11. Pesticide Regulation in British Columbia, 1988
12. Investigation into the Licensing of the Knight Street Pub, 1988 (Labour and Consumer Affairs)
13. Abortion Clinic Investigation, 1988 (Attorney General)
14. Investigation into Complaints of Improper Interference in the Operation of the British Columbia Board of Parole, Particularly with Respect of Decisions Relating to Juliet Belmas, 1988.
15. Aquaculture and the Administration of Coastal Resources in British Columbia, 1988 (Crown Lands)
16. Police Complaint Process: The Fullerton Complaint, 1989 (Matsqui Police)
17. Willingdon Youth Detention Centre, 1989.
18. The Septic System Permit Process, 1989 (Municipal Affairs, Recreation and Culture)
19. The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)
20. An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd., 1989.
21. Sustut-Takla Forest Licences, 1990 (Forests)
22. Public Services to Children, Youth and their Families in British Columbia, 1990.
23. Graduates of Foreign Medical Schools: Complaint of Discrimination in B.C. Intern Selection Process, 1991 (Health)
24. Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act, 1991 (Social Services and Housing)
25. Public Services for Adult Dependent Persons, 1991 (Social Services and Housing)
26. Access to Information and Privacy, 1991.
27. The Administration of the *Residential Tenancy Act*, 1991 (Residential Tenancy Branch)
28. The Sale of Promissory Notes in British Columbia by Principal Group Ltd., 1991
29. A Complaint about the Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus, 1992 (Vancouver Community College)
30. Court Reporting and Court Transcription Services in British Columbia, 1992 (Ministry of Attorney General)
31. Administrative Fairness of the Process Leading to the Clayoquot Sound Land Use Decision, 1993
32. Abuse of Deaf Students at Jericho Hill School, 1993 (Education)
33. Listening: A Review of Riverview Hospital
34. Building Respect: A Review of Youth Custody Centres in British Columbia (Attorney General)

## Discussion Papers

1. Advocacy for Children and Youth in British Columbia, 1993.
2. Children Should be Seen and Heard, 1994.

## All Enquiries and Complaints Received by Year

