Ombudsreport 1995

Annual Report of the Ombudsman, Province of British Columbia

Dulcie McCallum, Ombudsman, addressing the BC Council, Canadian Federation of University Women

Highlights:

Guest Comments:

Office of the Ombudsman
Parliament Buildings
Victoria BC
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June 3, 1996

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

The year 1995 has been a busy and rewarding one at the Office of the Ombudsman. Proclamation of the Schedule to the *Ombudsman Act* was completed in June of this year with the inclusion of all forms of local governments. I am proud to report to the Legislative Assembly that it is because of the commitment, hard work and creativity of all those working at my Office that the proclamation period has been such a success. In addition, credit must be given to all those managing and working within the new authorities. I recognize that the period of adjustment can be challenging for agencies who are not familiar with the mandate of the Ombudsman to investigate. Worthy of note are the efforts of authorities to put internal review and appeal mechanisms in place with a view to making their own complaints departments fairer. These initiatives have proved to be productive and in keeping with one of the principles of Ombudsmanship that I have promoted throughout the proclamation period.

This year completed our oversight role of *Public Report No. 32 – Abuse of Deaf Students at Jericho Hill School.* The government has established a compensation panel that will begin its work in 1996. This panel will consider applications for compensation to the victims of sexual abuse while they were students at Jericho Hill School. Included in the compensation package will be an apology, which I consider a paramount remedy for those who suffered the abuse. This annual report features the importance of a formal apology.

In the past few years our province has seen a number of new Officers of the Legislature appointed. While the traditional posts remain, including myself as Ombudsman, the Auditor General and the Commissioner of Conflict of Interest, the "new kids on the block" include the Information and Privacy Commissioner, David Flaherty; the Child, Youth and Family Advocate, Joyce Preston and the Chief Electoral Officer, Robert Patterson. This annual report features articles written by each of the Officers, describing their work.

There were many opportunities to share the work of my Office throughout this year. I was invited to the Australasian Pacific Ombudsman Conference hosted by the Hong Kong Commissioner for Administrative Complaints. It was a wonderful opportunity to meet all the Pacific Rim Ombudsmans and to exchange information and ideas about how to improve our work.

For the first time ever, a Canadian Ombudsman was elected to the board of the United States Ombudsman Association. Serving in this position, as one of two vice presidents, has improved our relationship with our colleagues within the North American Region. I have enjoyed working with the board, particularly at the conference hosted by Minneapolis at which I was invited to conduct a plenary session on how to do a systemic review. My speech focused on our work leading to the *Listening* Report involving Riverview Hospital and the Ministry of Health, put out by my Office in 1994. This venue also gave me the opportunity to do a detailed presentation on our Case Tracking System, which is considered one of the best in the world. Indeed both the Human Rights Commission of the Russian Federation and the Portland Ombudsman's Office have indicated an interest in using our system. The logistics of this are yet to be worked out.

The Canadian Ombudsmans were privileged to attend our national conference in Fredericton, New Brunswick. Ellen King, the Ombudsman of that province, was a perfect host. The conference had very instructive working sessions and wonderful social events.

This annual report includes a new way of reporting our statistics and our budget. The statistics indicate that our strategies to deal with the volume associated with the new authorities appear to be working. Our enquiries are down in numbers because of the available remedies within authorities. Our investigation numbers are on the increase, with clear indication that there is a growing complexity in the investigations we undertake.

This annual report and 1994's are available on the Internet at www.ombud.gov.bc.ca. The brochure enclosed with this annual report is our new version being circulated for use by authorities and the public. I am proud of the brochure, which is long overdue but was awaiting the completion of proclamation.

Respectfully submitted,

Dulcie McCallum

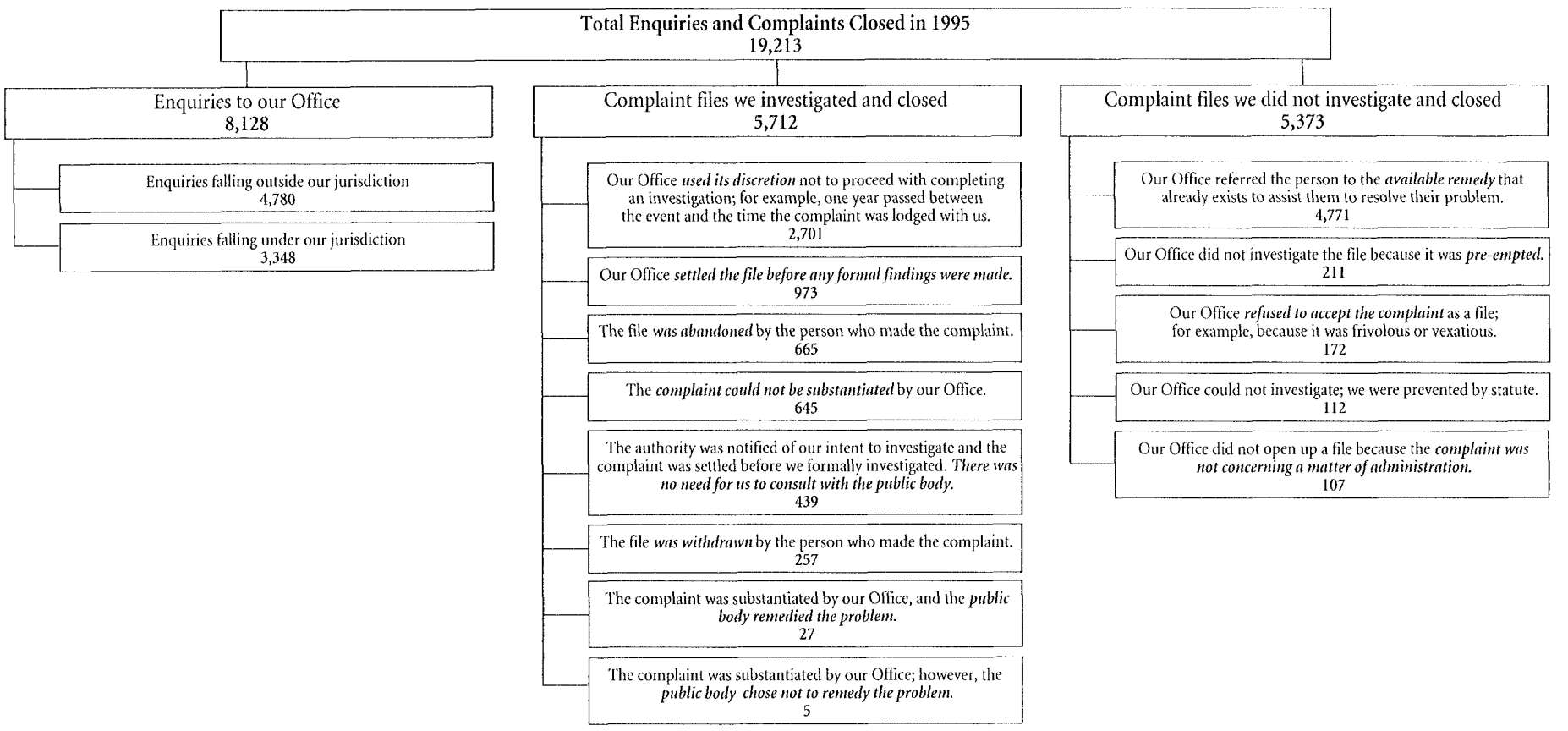
Dulcie McCallum
Ombudsman for the
Province of British Columbia, Canada

Ombudsman and Ethics

One of the underlying principal responsibilities of an Ombudsman is to recognize the importance of ethics and continue to apply and develop ethical codes in his or her investigations and reports. When an Ombudsman publishes his or her findings, one of the consequences of this process – besides the immediate one of remedying the complaint – is to gradually build up a code of ethics for those administrative agencies whose conduct has been investigated and also for those who become aware of the report. They refine their knowledge of the difference between right and wrong. In this way, the published report of an Ombudsman has an important educative function.

Sir Charles Maino, Chief Ombudsman of Papua New Guinea, as quoted in the *Proceedings of the International Ombudsman Symposium.* See the centrespread for more details.

How Enquiries and Complaints Were Handled



A Picture Is Worth a Thousand Words

In 1992 when I became Ombudsman I was responsible for administrative fairness in 180 public bodies. In stages over the past three years, the Schedule of Authorities under the *Ombudsman Act* has increased the number to 2,800.

Corresponding with this widening jurisdiction was a dramatic increase in complaints and enquiries, peaking in 1993. I realized the volume would continue to increase if I did not manage the way in which both my Office and authorities dealt with complaints of unfairness.

The following initiatives have contributed to the decline in the number of *enquiries* to our Office:

- Consolidating our Reception function so that it ceased duplicating the work of agencies such as *Enquiry BC* and *Reference Canada*, whose primary function was to answer general questions;
- Setting up a highly trained Intake Team who efficiently and effectively focus details of complaints and direct files either to an Ombudsman Officer for an investigation or to an available remedy within a public body;
- Implementing an education and training program on administrative fairness for our newly proclaimed authorities;
- Creating protocols and Ombuds-like functions within high volume public bodies such as WCB and ICBC.

All of these steps, and more, have contributed to the steady decline in the past couple of years of general enquiries to my Office.

On the other side of the coin, however, Ombudsman Officers have seen a steady increase in the number of files requiring an investigation. Each January 1 we start the year with open files carried forward from the previous year. Every year the number of open files at the beginning of a calendar year increases. Files open at January 1, 1995 increased 150 per cent from January 1, 1994 and 372 per cent from the year prior.

Recognizing this trend, I adopted a number of strategies.

- I established a consistent investigative record to ensure investigative consistency between teams.
- Officers were grouped into issue-based, self-managed work teams and have become responsible for file management, investigation consistency and quality assurance through peer file review.
- The Management Team, which I lead, weekly reviews caseloads by team and business function. This constant monitoring has enabled me to make quick, sound decisions on resource allocations, such as shifting Officers from one team to another.

In spite of these aggressive measures, we continue to see an increase in *investigative files.* Two factors account for this increase:

The nature of an investigation is changing

In the past, a portion of open files involved relatively straightforward investigations. This has altered, as files today predominantly are complex in terms of issues and increasingly involve multiple authorities. Not surprisingly, the time it takes to complete these intense investigations is also growing. This file complexity requires my staff to be thoroughly trained in the topics at hand and to know their authorities well.

An obligation to present Public and Special Reports about systemic administrative unfairness

These Reports are of benefit to the government, the public and my Office as they are very effective and cost efficient in resolving large volumes of issue-specific complaints with an authority. An added benefit is the inevitable improved understanding and commitment on the part of the authority during and after the Report. My current ability to issue these Reports is severely hampered by staff and budget constraints within my Office.

Budgetary cutbacks and staffing freezes are a reality. I recognize that I cannot solve caseload problems by simply adding more staff. What I can, and intend to do, is to ensure my existing staff have the tools they need to do their jobs. By implementing the strategies in our Systems Plan and following the direction set out in my Strategic Plan, I intend to further reduce the file backlog and continue to meet the statutory requirement to report publicly.

The successes we have achieved indicate to me that we are on the right path. One indicator is the constant (weekly) requests I get from public bodies, both within the province, and internationally, asking me how our Office runs, how to set up internal Ombuds-like positions with authorities, for copies of our Investigation and Intake Policies and Procedures Manuals and our Case Tracking System.

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Ombuds*report 1995*

The Ombuds*report* is published annually and tabled in the British Columbia Legislature. Copies may be obtained by phoning (604) 387-5855. The Report is also available on the Internet at http://www.ombud.gov.bc.ca

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Designer.....Dee van Straaten
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1998 will mark the 50th anniversary of the founding of the United Nations. I invite you to share with me your ideas on how we in BC can celebrate our commitment to human rights. Please mark your letter or fax "United Nations 50th" and send to:

The Ombudsman
931 Fort Street
Victoria BC
V8V 3K3
Fax: 387-0198

Fairness May Mean Having to Say You're Sorry

In our everyday lives, we often rely on apologies to set matters straight between friends, family or business associates. The simple words, "I'm sorry," can often work magic to repair relationships that have been harmed. What is it about an apology that can have such a significant impact on an association and work wonders in restoring a relationship to well-being?

Why is it that the Alberta government was not prepared to apologize to a woman even after the Queen's Bench had found her entire life had been "changed, warped and haunted" by government's actions? She was awarded massive damages for wrongful sterilization while she was a child in an institution for people labelled mentally handicapped, but no apology! Compare this with the historic apology made by President de Klerk of South Africa at a news conference on April 29, 1993. He explained that the former leaders of the party were not vicious people and stated, "It was not our intention to deprive people of their rights and to cause misery, but eventually apartheid led to just that. Insofar as that occurred, we deeply regret it. Deep regret goes further than just saying you are sorry. [It] says that if I could turn the clock back, and if I could do anything about it, I would have liked to have avoided it ... It is a statement that we have broken with that which was wrong in the past and are not afraid to say we are deeply sorry that our past policies were wrong."

An apology has two essential components. The first is that the person offering the apology acknowledges the offence committed, explains why it was done, makes it clear that the people responsible did not intend harm and expresses regret. The second critical element is that the person making the apology acknowledges the harm to the victim and offers reparation.

The concept of apology is often not well understood by those who may be in a position to apologize partly because an apology is wrongfully associated with admitting legal liability. The Red Cross, for example, has offered no apology to those who contracted AIDS from tainted blood, and to their families. By way of contrast, immediately following the 1982 Japan Air Lines crash in Tokyo Bay, the President of the airline met with the surviving victims and the families of the deceased to offer apologies and full compensation. There were no lawsuits arising out of that disaster.

At home, there is a growing awareness of the positive effect of offering an apology. When a public authority apologizes to an individual for its actions, it is evident that the person affected has had an opportunity to be heard, that the system has listened and that the apology alleviates the effect of the wrongdoing. An apology embodies a major principle of administrative fairness – the opportunity to be heard. For that reason, in my role as Ombudsman, I encourage public bodies to offer an apology when it is called for. A hospital, on realizing the administrative error resulting in a bill to the wrong party, apologized to the woman concerned (see page 24). In an article by the new Discrimination Ombudsperson for the Law Society of BC (see page 12) she cites apologies as one of the reasons for the positive outcomes attributed to the intervention of her office. Interestingly enough, the Hong Kong Ombudsman has just added apology to his new and improved version of our Fairness Checklist (see centrespread).

After investigating alleged abuse of deaf students at Jericho Hill School, I recommended that the government offer appropriate compensation and an apology to those who had been abused. The government has developed a compensation panel and I expect that they will fulfil the intent of my recommendation and offer an apology. This would be a very important move. Those who were sexually interfered with as children while resident at Jericho, throughout our investigation repeatedly expressed how important it is for them to receive an apology. Those to whom a wrong is done often receive greater comfort and solace from an apology than from monetary restitution. Knowing that the wrongdoer recognizes the wrong done and acknowledges the impact it has had on the victim, restoring their sense of well-being – that is the miracle of an apology.

The Ombudsman Apologizes

The Ombuds*report* 1994 in the article entitled Bingo on page 7 incorrectly stated the revised *Terms and Conditions of Licence* put out by the BC Gaming Commission in 1994.

An editorial error lost the distinction between employees at a licensed casino event and employees at a licensed bingo event.

The error was brought to our attention by a volunteer at a bingo establishment. I appreciate his having done this and I apologized to him and to the commission for the error as soon as I was aware of it. The commission was grateful for our timely acknowledgement of the error. The correct revised *Terms and Conditions of Licence* are:

1. No volunteer engaged in the conduct or management of a licensed bingo or casino event shall participate as a player in that event.
2. No employee engaged in the conduct or management of a licensed casino event at a gaming location shall participate as a player in any event at that location at any time.
3. No employee engaged in the conduct or management of a licensed bingo event at a gaming location shall participate as a player in that event.

How Jurisdictional Files Were Closed

Authority	Enquiries	No Investigation					Investigation								Total
							Closed No Findings			Settled		Closed with Findings			
		Referred	Statute Barred	Refused	Not Matter of Admin	Invest Preempted	Abandoned	Withdrawn	Discretion	Consul-tation	No Consult	Substantiated Remedied	Substantiated Not Rem	Not Sub	
Ministries	2,542	3,766	71	65	85	43	485	155	1,941	698	348	12	4	489	10,704
Ministry of Aboriginal Affairs	4	1	0	0	0	0	0	0	0	0	0	0	0	1	6
Ministry of Agriculture, Fisheries & Food	5	1	0	1	0	0	6	0	6	2	0	0	0	3	24
Ministry of Attorney General	224	212	11	8	9	0	121	52	905	178	177	2	0	205	2,104
Ministry of Education	14	7	0	0	0	0	3	1	3	6	0	0	0	0	34
Ministry of Employment & Investment	1	0	0	0	0	0	0	0	0	1	0	0	0	1	3
Ministry of Energy, Mines & Petroleum Resources	2	3	0	0	0	0	3	1	7	0	0	0	0	3	19
Ministry of Environment, Lands & Parks	35	31	4	4	1	1	24	8	26	28	8	2	1	37	210
Ministry of Finance & Corporate Relations	64	7	1	0	2	0	2	4	28	12	4	1	0	19	144
Ministry of Forests	26	6	0	1	0	0	26	3	20	12	3	1	0	9	107
Ministry of Government Services	4	3	0	0	0	0	1	1	2	1	0	0	0	2	14
Ministry of Health	118	42	13	16	3	0	39	19	84	58	12	1	0	60	465
Ministry of Housing, Recreation & Consumer Services	1,436	61	2	2	8	0	31	4	125	3	6	0	0	9	1,687
Ministry of Municipal Affairs	34	7	0	1	1	1	4	0	6	3	2	0	0	17	76
Ministry of Skills, Training & Labour	228	31	3	1	2	9	14	10	115	69	9	0	0	22	513
Ministry of Small Business, Tourism & Culture	15	2	0	0	0	0	1	0	2	1	4	0	0	2	27
Ministry of Social Services	282	3331	32	28	57	32	191	42	533	288	110	5	3	52	4,986
Ministry of Transportation & Highways	46	21	5	3	2	0	17	10	79	34	12	0	0	47	276
Ministry of Women's Equality	4	0	0	0	0	0	2	0	0	2	1	0	0	0	9
Commissions and Boards	311	555	23	65	7	159	34	27	298	87	20	3	0	45	1,634
Workers' Compensation Board	126	483	18	56	1	153	14	16	140	39	9	3	0	8	1,066
Other Commissions and Boards	185	72	5	9	6	6	20	11	158	48	11	0	0	37	568
Crown Corporations	143	241	6	15	4	0	51	29	160	108	16	0	0	26	799
BC Hydro	39	104	1	0	0	0	26	3	12	18	5	0	0	2	210
ICBC	90	124	4	14	4	0	19	25	134	81	9	0	0	16	520
Other Crown Corporations	14	13	1	1	0	0	6	1	14	9	2	0	0	8	69
Municipalities	46	35	3	4	4	2	9	11	15	11	0	10	1	28	179
Regional Districts	17	12	0	1	1	0	6	2	5	7	3	0	0	5	59
Islands Trust	1	3	0	1	0	0	0	0	0	0	0	0	0	0	5
Improvement Districts, Library Boards, etc.	2	1	0	1	0	0	0	0	0	2	0	0	0	1	7
Schools and School Boards	62	58	6	6	4	7	31	16	137	37	43	0	0	11	418
Universities	9	11	0	2	0	0	5	3	15	3	0	0	0	2	50
University of Northern BC	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Colleges and Institutions	9	10	2	0	0	0	2	3	33	4	3	0	0	11	77
Hospitals and Hospital Boards	29	51	0	6	1	0	13	4	66	8	4	1	0	8	191
Professional Associations	177	28	1	6	1	0	29	6	30	8	2	1	0	19	308
Regional Health Boards	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Regional Hospital Districts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	3,348	4,771	112	172	107	211	665	257	2,701	973	439	27	5	645	14,433
Calls on non-jurisdictional matters	4,780														4,780
														Total files	19,213

Local Government

Get Involved

The body of legal literature does not suffer from an acute lack of materials on the philosophy of public participation and participatory democracy. Unfortunately, ... fewer ... works address or evaluate procedures and practices, whether instituted or proposed, to increase the level of public involvement in the administrative process.

Law Reform Commission of Canada, *Public Participation in the Administrative Process*, Minister of Supply and Services, 1979.

Public involvement, a founding principle of democratic government, means more than providing citizens with the opportunity to vote every few years. For local governments, it means more than meeting minimum standards for public hearings set out in the *Municipal Act.*

Local government is founded on a belief that the public interest is best served when decisions are made close to home. However, quality decision making is as much a result of commitment to the principle of public involvement as it is of the physical location of government. The Ombudsman is heartened to find examples of this commitment in local governments. From long experience with complaint investigations, the Ombudsman has found that the quality of decisions is enhanced when decision makers have made a genuine effort to consider the interests and concerns of those most affected. One of the basic principles of Ombudsmanship is to ensure that all people have the opportunity to be heard and to have their interests considered.

The District of North Vancouver established a Public Involvement Project in 1995 and developed a set of principles. They saw the project as a means of "building the longer term capacity of governments, organizations, and citizens to work together for a healthier, safer, and more vibrant community." The project resulted from increased pressure on local government to involve the public in decision making, especially during a time of shrinking resources. Consistent with findings from the BC Round Table on the Environment (June 1994), the project found that there was indeed a mistrust of "closed door" decision making and that traditional methods of public consultation lacked credibility.

In 1994, the City of North Vancouver had experienced increasing conflicts between staff and the public. As a result they saw the need for more co-operative problem-solving processes and for early public input by those directly affected by city initiatives. A project team of community residents and staff from the city's Engineering Department and Development Services prepared a Public Involvement Program Manual, which defined public involvement as:

... a mechanism by which the public is not only heard before the decision, but has the opportunity to influence the decision from the beginning to the end of the decision-making process.

Public involvement was seen as a way to help establish citizen priorities and provide guidance to council "thereby ensuring better financial planning by spending money where the community wishes it to be spent." It was also a way to help the community develop a sense of ownership and pride while increasing neighbourhood influence over local government decisions.

Local government is founded on a belief that the public interest is best served when decisions are made close to home.

There are pitfalls to avoid in promoting public involvement:

- allowing it to replace existing decision-making processes
- using it as an excuse to avoid decision making
- insisting unreasonably on always achieving consensus
- promoting tokenism or well-meaning, but poorly planned and executed initiatives
- providing inadequate resources for staff to properly implement public involvement policies.

Initiatives such as those in the District and the City of North Vancouver have documented the need for improved approaches to public involvement in local government. Planned and executed properly, public involvement will help local government officials determine the real issues and check internal perceptions of the public's opinion so that they can make informed decisions. It makes sense for local government to have an overall public involvement framework balancing effectiveness, inclusiveness and cost; clarifying roles and expectations; and giving legitimacy and authority to public involvement processes.

Principles of Effective Public Involvement

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- Leaders of public involvement processes must show integrity, commitment to the process, fairness, and objectivity.
- Public involvement processes must be meaningful to the participants, in terms of the quality of the opportunities for involvement and the real impacts on the decision-making process.
- The decision-making processes must be open to change.
- There needs to be timely feedback to those who were involved as to what has emerged from the process, and why.
- The people involved should reflect the full range of interests.
- Full access to information, and involvement in determining what facts are needed is essential.
- Building agreement first on the facts, and then on the issues and problems, is key to avoiding conflicts when looking for solutions.
- The integrity of the public involvement process must be protected from any group that tries to dominate it.
- Sufficient time, staff, volunteers, and resources must be allowed.
- Public involvement will be greater if there are many different ways for people to become involved.

Demolition Duel

A man bought a house. Several weeks before the purchase, the local government had notified the previous owner that, according to a new by-law, the house had to be demolished. The only way to save it from demolition was to bring the house up to standard. A detailed report by the building inspector outlined the remedial work that needed to be done.

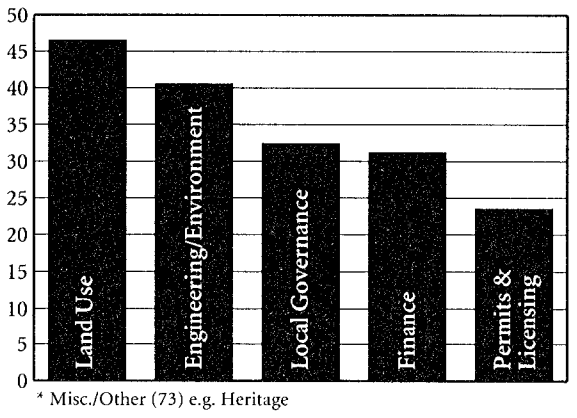
The new owner appeared before the municipal council on several occasions. He refused to sign an acknowledgement that he would conduct the necessary repairs to meet the standards established in the by-law. He was adamant that the local government first provide him with proof that they had the legal authority to demand that he meet the standards.

Several weeks had elapsed between the passing of the demolition by-law and the refusal of the owner to sign the acknowledgement. In the interim, the owner had completed only cosmetic repairs to the house. When the required sixty-day waiting period following the passage of the by-law had expired, the municipal council ordered staff to proceed with a tender process to select a demolition contractor.

At this point the owner made his complaint to the Ombudsman, maintaining that the local government was acting unfairly. He also lodged complaints with the local MLA, the media, the Office of the Premier, the Inspector of Municipalities and the RCMP.

An Ombudsman Officer contacted both the local administrator and the owner, and arranged a telephone conference. At the end of the conference the owner agreed both that the local government did have the power to demand that the house be brought up to the current by-law standards and that he needed a building permit in order to carry out the work. He agreed to sign an acknowledgement of the work to be done. The administration agreed to bring the matter before a special meeting of council to extend the waiting period for another sixty days so that the work could be completed and the building avoid demolition.

Local Government Team Top Key Words for Closed Files, January 1 to December 31, 1995



* Misc./Other (73) e.g. Heritage

In Harm's Way

A community undertook a study of various slopes/riverbanks and cliffs as part of a Hazard Area Study for the Official Community Plan. The engineering report submitted by the consulting firm indicated that a particular riverbank was a high risk. A small community of mobile homes was located at the top of the bank. City hall received the report and filed it without notifying the residents living on or near the potential slide area. Several months after the report there was a minor landslide. Fortunately, there were no injuries. However, gardening sheds were destroyed and several homesites were condemned as unsafe.

Residents complained to the Office of the Ombudsman that they had been treated unfairly because the withholding of the information about the bank stability had put them at risk. The Ombudsman investigated the complaint and determined that there had been a failure to communicate to the home owners the information about the bank instability. However, once the slide had occurred there were no remedial steps that could be taken to avoid the situation as it affected the residents. The local government took appropriate steps to ensure that a similar situation could not happen in the future. They developed a "release of information" policy concerning hazards or threats to public safety. The local government also volunteered to provide for emergency preparedness in the community by implementing fully the provisions of the *Provincial Emergency Act.*

Local Government

Boards of Variance

Boards of Variance are intended to provide flexibility in the application of zoning by-laws. Boards often refer to "minor variance" and "undue hardship" in deciding the issues before them. These terms have been defined over time through court actions and legislative amendments that have typically identified limitations on the role of a board.

A tribunal such as a Board of Variance fits very well with the principles of administrative fairness the Ombudsman seeks to promote. In general such boards provide an opportunity to review individual situations without establishing precedents or creating new policies, where the strict application of the rule poses problems. Often complaints arise when administrative systems cannot give special consideration to a unique physical situation outside a general rule. The restriction on an appointed official in this situation is deliberate. Clear regulations applied in a consistent manner are a cornerstone of our system. But the flexibility given to a Board of Variance is also deliberate. A board's explicit function is to consider specific sites and make minor adjustments where the application of the rule is seen to cause undue hardship.

Clear regulations applied in a consistent manner are a cornerstone of our system. But the flexibility given to a Board of Variance is also deliberate.

Although the nature of the applications considered by a Board of Variance may appear to be of a lower profile than what is heard in a public meeting or a council chamber, local government should keep in mind that the board is a quasi-judicial body, and must ensure that its decisions are properly grounded. The board must clearly establish its jurisdiction and ensure that the results of its deliberations are communicated effectively.

Some question whether a board must give written reasons for decisions. Boards of Variance are made up of appointees usually drawn from the local community, who give freely of their time and talent. Some consider that requiring written reasons for decisions is asking too much of volunteers.

However, decisions of Boards of Variance may be reviewed by the Supreme Court of British Columbia. The local council or regional district board cannot review these decisions. If someone feels aggrieved by a decision, she or he should be given a written explanation of the board's decision in order to determine if proper process was followed. If an appeal is launched, the Court must be able to review the findings in order to test the decision against the bench-marks set out in the legislation.

In the coming year Ombudsman staff will work with the Municipal Officers' Association to develop models for local appeal processes. A necessary part of any such process will be the establishment of guiding principles of fairness. One important principle encoded in the *Ombudsman Act* is that written reasons should be given for decisions.

Guest Comment

Musings

by Francis Caouette
Administrative Manager
Development Services
City of North Vancouver

Facing the new responsibility for investigating local government matters, the Ombudsman sought through secondments the assistance of local government staff:

- to introduce the Office to this new role
- to assist Ombudsman Officers with the necessary learning curve
- to provide a degree of direct experience in the issues likely to be handled.

The Ombudsman chose three individuals, each of us to spend a six-month term with the Office on a secondment basis. The first of the three to arrive was Bruce Williams. Bruce has worked in the City of Nanaimo, City of Prince George, Regional District of Nanaimo and currently is Deputy Administrator with the Comox Strathcona Regional District. I was fortunate to be selected and joined the Office in September 1995. Having spent twelve years with the City of North Vancouver Development Services Department and seven years prior to that with the Office of the Rentalsman as an investigator and adjudicator, I felt that I had the necessary knowledge, skills and abilities to make a meaningful contribution.

Following my term, Harv Weidner will arrive. Harv is a planner with the City of Vancouver who focuses on long-range planning. Harv has also worked for the City of Richmond in community planning.

Proclamation of the remaining sections of the Schedule to the *Ombudsman Act* has introduced approximately 500 local government authorities. In reflecting upon the nature of the work to be done, I have come to understand that providing the opportunity for Ombudsman review of local administrative processes is a clear recognition of the importance and validity of local government. The structures that are in place are vital to the communities they serve and are critical to the social and economic fabric of British Columbia. An independent review mechanism can and should serve as a tool to strengthen the local systems.

Although the institutions and functions of local government were familiar to me, the role of the Ombudsman was new and required a personal commitment. From the outset I looked at this secondment primarily as an educational opportunity. It provided a pleasing blend of acquiring new knowledge and assisting others with their own learning curve in a "real life" atmosphere. When research was carried out, it was applied immediately and provided direct feedback. As a learning environment, little more could be asked for.

In retrospect, I realize that my personal commitment was overshadowed by the commitment made by the City of North Vancouver. Without the enthusiastic support of senior management and council, I would not be here. While I am away, they must pick up and fill in as necessary; my responsibility is to bring back the knowledge and experience I have gained as a dividend on the investment they have made. As organizations grapple with rapid change and fiscal pressures, I believe that secondments are an excellent way to provide individuals and organizations with an opportunity for training and development that is hard to duplicate.

I want to thank the Ombudsman and all her staff for their hospitality and assistance over the past six months. The time has been truly memorable and worthwhile. I will observe with interest how the Ombudsman's role develops and how its unique viewpoint will be used by local governments as they seek to respond to a changing environment.

Fair Ball

A municipality faced some problems with the backstop of the minor baseball diamond:

- the backstop was located near a power line and a steep embankment
- foul balls often fell onto a busy road below
- children who used the diamond or came to watch the games were often running through moving cars in a busy parking lot that served the adjacent swimming pool
- the diamond needed to be reconfigured to provide access to a future concession and common area for the two ball diamonds within the park.

The solution: the backstop was moved from the southeast corner to the northeast corner of the field. All the problems were now solved.

But a couple who lived directly behind the newly located backstop were not happy. The foul balls now began dropping into their yard, occasionally bouncing off their motorhome. Spectators trespassed and lounged on their property during the games, leaving refuse behind. When the senior ball teams played, the couple complained of alcohol consumption, foul language and automobiles parking on or close to their residence. They complained to the municipal district and to the Ombudsman.

The Ombudsman consulted with the administrator of the municipality who already had the situation well in hand. The district erected a seven-foot fence along much of the east side of the diamond, which prevented spectators and others from encroaching on private property. Fencing also restricted cars to designated parking areas. The backstop was fitted with an overhang that virtually eliminated the problem of the foul balls. Last, but not least, the use of the diamond was restricted exclusively to minor baseball, eliminating the drinking and rowdy behaviour that had concerned the residents. Result: the municipality found a solution that balanced the need for safety and respect for private property. Well done!

Late Payment

The Ombudsman has received several complaints about the application of a late payment penalty on property taxes. Many taxpayers complained that they put their payments in the mail in advance of the due date, but they were received by the tax collector after the due date.

It is clear that taxpayers have a responsibility to ensure that they meet their obligations to pay taxes on time. However, in the coming year the Local Government Team will be looking at some systemic issues arising from these complaints to report to the Ombudsman, including:

- the application of the postal rule to mailed tax payments
- administrative review and appeal provisions that apply or should apply
- relevant *Municipal Act* provisions concerning the imposition of the penalty and the lack of discretion in waiving the penalty
- appropriate criteria for the exercise of discretion to waive the penalty
- technological advances that could improve the methods of payment for taxpayers.

Local Government

Home-loss

The Office of the Ombudsman received a call late in 1994 about the fairness of a delinquent tax sale of property. The property in question was a waterfront home that Mr. R had inherited from his mother, with an estimated market value at the time of the tax sale of approximately $350,000. The caller believed that Mr. R had a mental illness at the time of the tax sale and might still be under a disability. He had not paid municipal taxes on his property for a period of some years.

Section 457 of the *Municipal Act* provides for the recovery of delinquent taxes from sale by public auction of the real property subject to those taxes. Delinquent taxes are described by section 428 (1) of the *Municipal Act* as "...all taxes on land, improvements or both remaining unpaid on December 31 on the year following imposition ..."

The town sold Mr. R's house and land at its 1992 tax sale for $190,000. A tax sale is effective on the date of the sale, in this case, September 30, 1992, but title in the name of the purchaser can be registered only if the original owner fails to redeem within one year, in this case by September 30, 1993.

Following this tax sale the collector for the town, as required by section 466 (1) of the *Municipal Act*, sent written notice to Mr. R of the sale and of the date upon which his right to redeem the property would come to an end.

In August 1993 the town council became aware that the collector's notice had not been received by Mr. R, as service had been unsuccessful by registered mail. Council, pursuant to section 474(2) of the *Municipal Act*, resolved to cancel the tax sale and refund the purchase price of $190,000 to the purchaser, together with interest at 6 per cent per annum amounting to approximately $12,000.

The purchaser made an application under the *Judicial Review Procedure Act* for an order to set aside the resolution of the town council and filed a *lis pendens* on the property. The application was denied by the Supreme Court of British Columbia, effectively nullifying the initial tax sale. The purchaser appealed and the *lis pendens* remained on the property.

The town, however, again placed the property for sale during the September 1993 tax sale. The town applied for an order for substituted service on Mr. R, which was granted. The same purchaser bid again and, being the only bidder on this occasion, possibly because there was a *lis pendens* on the property, acquired the property at the **upset price of $10,910.98!**

Town officials had, almost from the outset, been concerned about reports of Mr. R's mental health. They addressed this concern with the Office of the Public Trustee. The Public Trustee had requested the assistance of the appropriate local mental health centre to determine Mr. R's ability to handle his own affairs. The concerted efforts of the Public Trustee and the mental health centre were frustrated, since Mr. R avoided outside contact by refusing to respond to attempts to contact him. After a number of visits to the house by a psychiatrist from the mental health centre, the Public Trustee advised the town that nothing further could be done to make this determination. The events that followed ultimately deprived Mr. R of his valuable property, leaving him completely destitute.

The Ombudsman Officer, as a follow-up to a determination of the above facts, brought together all those involved in the issue. He then contacted a friend and former neighbour of Mr. R who accompanied the psychiatrist and an Ombudsman Officer to Mr. R's residence. Mr. R was finally interviewed and declared by the psychiatrist to have a mental illness and to require hospitalization. The doctor also issued a Certificate of Incapability.

Since Mr. R is without relatives willing to assume committeeship, the conduct of his affairs was assumed by the Public Trustee who then began litigation to recover Mr. R's property or equivalent assets. The matter is currently before the court and set for trial.

My 1994 Annual Report described another local government tax sale as a previous example of gross injustice that came about as a direct result of municipal tax legislation. Similar cases in previous years can be cited. The current case again illustrates clear deficiencies in the tax sale process when a municipality cannot protect the interests of Mr. R.

On June 15, 1995 the Ombudsman acquired jurisdiction over local governments. It is my intention to address the administrative unfairness of the tax sale provisions of the *Municipal Act* with the provincial Ministry of Municipal Affairs and Housing.

Nowhere to Run

The woman had lived for a long time in a lower mainland municipal district. After a new home was constructed next door to her she came to the Ombudsman to complain about the district building inspection process.

She claimed that the neighbour's driveway, which had been filled and raised to allow access to a new garage, was damming the natural drainage and causing water to pool in her front yard. Moreover, she said, water flowing from the new driveway over uncured concrete had poisoned and killed adjacent shrubbery that had been long established on her property. Subsequent to her complaint and without informing the Ombudsman, the woman launched a small claims action against her neighbour.

The Ombudsman meanwhile discussed the problem with the city's chief building inspector who consulted with the neighbour about improving the drainage for the woman's land. While it was by no means clear that the construction of the driveway had created the drainage problem, the neighbour nevertheless offered to install drain tile along the property line of the respective properties at his expense and allow the woman to tie into the new line with tile that would drain the wet areas of her lot. The system would have carried the run-off into an existing sump at the lower end of the neighbour's property. The neighbour, while admitting no liability for either the drainage or the damage, also agreed to bear the cost of replacing the damaged shrubbery in order to harmonize relations with his neighbour.

Although lawyers recommended that their respective clients implement the proposed solution, the woman insisted upon pursuing her litigation against the neighbour, leaving improvement of the drainage in doubt.

The complaint about the municipal district inspection process could not be substantiated.

Walled and Wet

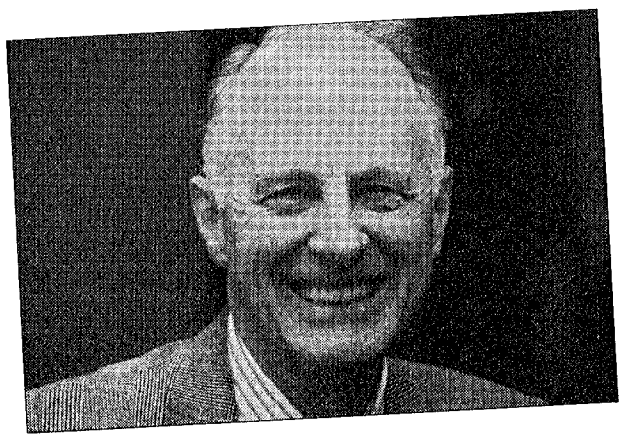
A dozen residents had settled comfortably into their new walled housing development when they discovered that their homes had suffered structural damage as a result of poor drainage. The warranty on the homes would cover the cost of correcting the drainage problem, but the subsurface water would still need to be fed into the municipal storm sewer system.

The residents petitioned the local government to install storm sewers. Since the sewers would have to be placed under the roadway within the walled complex, which was private property, the local government refused. The residents complained to the Office of the Ombudsman that they had been treated unfairly by this decision.

The Ombudsman's investigation determined that the local government was not unfair in declining to conduct public works on private land. However, the residents still had a drainage problem. Staff from the local government's engineering and inspections departments developed a cost-effective model to drain the run-off into the existing municipal drainage ditches. The tie-in could be done at the same time as the warranty repair work.

The Office of the Ombudsman brought together the residents, the community's strata council, the builder and representatives of the local government. Together they developed an action plan to implement the local government's engineering solution, and to develop a fair economic strategy for the tie-in. We commend the local government for taking an active part in helping to solve the problem, particularly as the matter related to private interests of homeowners.

Coffee, Anyone?



T.M. (Scotty) Gardiner, newly retired from the RCMP, came to the Ombudsman's Office in 1983. After thirteen years of service, always using a straight-backed chair, he retired at 4:30 p.m., February 29, 1996. He spent part of the afternoon, after his surprise retirement lunch, meeting with government employees trying to finalize an investigation he had been working on. Scotty will be fondly remembered by many in the public service and by his Ombudsman colleagues, who immortalized him in the following verse. It was engraved on a plaque attached to his infamous chair, given as a parting gift:

All those who would dare be unfair
He taught to take care and beware.
The potlickers learned
What wrath they had earned
From the laird who prepared from this chair.

Local Government Team

Files Open Dec. 31, 1994	0
Files Received in 1995	317
Closed – No Investigation	118
Closed – Investigation	161
Internal Team File Transfers	0

Natural Resources

Things Are Not Always As They Seem

Some citizens perceive that some provincial government decisions, especially by lead regulatory agencies, demonstrate complete indifference to the interests and concerns of residents of a community and to the wishes of local government. The primary cause of the resulting frustration is often a failure to understand the administrative processes of two different levels of government.

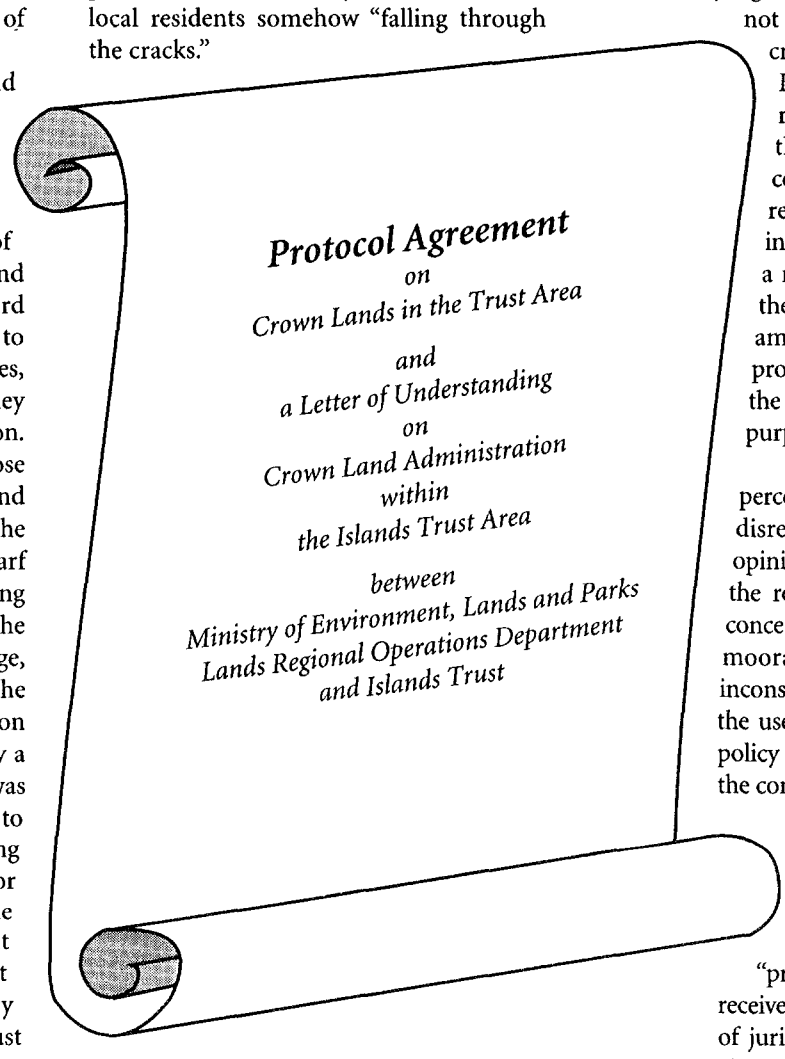
A case in point involved a Gulf Island waterfront resident who in 1993 applied to the BC Lands Division of the Ministry of Environment, Lands and Parks for a private moorage licence. The applicant, a local commercial fisherman, applied to build an L–shaped docking facility on an area of aquatic Crown land directly fronting his upland property. BC Lands, as part of the standard application review process, referred the application to pertinent referral agencies, including Federal Fisheries, the Canadian Coast Guard and the Islands Trust. They also required the applicant to advertise the application.

Islands Trust, the local government agency whose mandate under the *Islands Trust Act* is to preserve and protect the Trust Area, recommended approval of the application subject to the proposed float and wharf being made smaller to conform with local zoning by-law regulations. The Islands Trust found that the proposed 18 by 5 metre float was excessively large, especially in width, and not consistent with the requirements for private boat access. The application to BC Lands did not contain any rationale for why a float of this size was required. Only after the fact was it discovered that the applicant was intending to moor his 60-foot commercial fishing vessel during the three months a year it was not being used for commercial purposes. When he learned of the concerns of the Islands Trust, the applicant submitted a Development Variance Permit application to the Islands Trust Committee to vary the permitted dock width. In the fall of 1993 the Trust Committee, having received strong opposition from local residents, denied the variance request. Local residents then expected that BC Lands would disallow the private moorage application. This was not the case. Within a month of the denial of the variance request and unknown to both concerned residents and Islands Trust staff, the applicant submitted a revised development plan to BC Lands. The ministry reviewed the amended proposal, satisfied itself that it conformed to local zoning by-law regulations, and approved the application for private boat moorage without referring the revised application to local government. The ministry subsequently issued a ten-year Licence of Occupation in the spring of 1994.

In May 1994, an adjoining property owner, acting as spokesperson for several concerned island residents, filed a complaint with the Ombudsman in response to the granting of the private moorage licence. The complainant raised a number of issues:

- the ministry did not fully consider the recommendations of Islands Trust and the concerns of local residents
- the size of the approved moorage facility was excessively large and the use was not in keeping with the peaceful and natural setting of the bay
- the application did not properly reference upland legal boundaries
- there would be negative environmental impacts associated with alleged unauthorized filling of Crown foreshore
- the location of the facility would impair both property values and residents' enjoyment of their properties.

When they learned that the applicant intended to moor a commercial fishing vessel, local residents were convinced that he intended to use the subject Crown lands for commercial purposes in violation of the Islands Trust by-law expressly prohibiting commercial foreshore use. The residents had received earlier assurances from ministry staff that the licence would be made consistent with both the word and intent of local government zoning by-laws. What appeared to be a gross inconsistency led them to believe that the ministry had blatantly disregarded Islands Trust and its mandate. They saw the whole process as fundamentally unfair, with the concerns of local residents somehow "falling through the cracks."



The Ombudsman's investigation focused on three main concerns:

- whether the ministry's application review process was administratively fair
- how the ministry responded to the concerns of both Islands Trust and local residents and what specific steps they took to mitigate those concerns
- the apparent confusion over the ministry's application review process and Islands Trust zoning variance process, which were undertaken concurrently. BC Lands shared this concern.

As one ministry representative put it, "less than optimal circumstances resulted in a rocky approval process." This Office interviewed regional staff responsible for adjudicating the Crown land application, and reviewed ministry files. We determined that the application was processed in an appropriate manner consistent with the ministry's statutory regulations and policy. When ministry staff learned of discrepancies in the description of the area of application, they made appropriate changes and required the applicant to re-advertise the application. In the opinion of this Office, conditional responses from referral agencies addressed to a large extent concerns over public safety, navigation, environmental impact and local zoning requirements.

The Ombudsman acknowledged the efforts of the applicant, who, in consultation with local residents, further amended the development plan. The opinion of the ministry was that the revised plan specifically and intentionally mitigated not only the concerns of Islands Trust about the width of the dock and float, but also the concerns of local residents about dock length, orientation and relative location. By reviewing pertinent zoning by-law regulations and conferring with Islands Trust staff, the ministry properly satisfied itself that the revised development plan complied with local government regulations. It is the responsibility of Islands Trust and not the ministry to enforce its zoning by-law regulations. The Ombudsman felt that, under the circumstances, it would have been preferable for BC Lands to have referred the amended development plan to Islands Trust. However, there was nothing statutorily that would have compelled them to do so. Based on the judgment of regional staff that further comment was not required, the ministry properly exercised its discretion in not referring the revised plan.

Before approving the application and in direct response to public concerns, BC Lands thoroughly reconsidered the matter in the context of the revised development plan. This reconsideration took the form of an on-site inspection, meetings with concerned residents and a request to Islands Trust for an interpretation of the by-law. Upon further review, the ministry amended the licence agreement to include a provision that the licensee is prohibited from using the proposed improvements for any commercial purpose whatsoever.

Our investigation did not support the residents' perception that the ministry had acted unfairly and disregarded the Islands Trust mandate. In my opinion, the ministry fully and diligently considered the recommendations of local government and the concerns of residents. Although we appreciate that the moorage of a large commercial vessel may be inconsistent with existing aquatic land uses in the area, the use is legally permitted in the context of ministry policy and Islands Trust regulations. On these grounds the complaint was not substantiated.

I am pleased to report that since the moorage licence was issued, BC Lands has reviewed its current policies regarding processing Crown land applications within the Trust Area. As part of a revised "prescreening"process, when regional Lands staff receive a new application within the Islands Trust area of jurisdiction, they will consult with the appropriate Trust representative to see if there are any concerns. This enhanced interagency co-operation and consultation between the two levels of government has been formalized in a protocol agreement. The protocol will make it possible to develop agreements and procedures that will clarify the mandated responsibilities of each authority, and provide for co-ordinated agency responses to issues of mutual concern.

A Man's Castle

A man rented a small home from a landowner who wished to subdivide his land. The Ministry of Transportation and Highways approved the subdivision application, but with a condition. The existing house on the property had to be removed, since it would encroach on a part of the property that was to be dedicated as a ministry right-of-way for future road construction.

The tenant did not want to vacate his home. He had been living in the location for several years and had established roots in the community. He was also receiving social assistance and felt he would be unable to find another suitable home within his budget. The landlord did not wish to have the tenant displaced, but was not prepared to forsake his subdivision application simply to preserve the tenant's residence.

The tenant contacted the Ombudsman's Office. He felt it was unfair that his house had to be removed since there were no plans to expand the adjacent roadway in the near future. Following consultations with the Ombudsman's Office, the ministry agreed to grant a permit allowing the house to remain, notwithstanding the subdivision application, until the property was actually needed for road expansion. Although the tenant recognizes that the house may not be there forever, he is most happy to be allowed to stay in his home until road expansion is necessary.

Natural Resources

Wet and Dri-ve

The ecological value of wetlands and the need to preserve them is now well recognized. However, a "wetland" is hard to define. It may be a permanent pond, a meandering flowing stream, an area that experiences seasonal flooding or simply a fen. When property containing wetlands is to be developed, conflict can arise between the need for preservation and the need to provide drainage for the development. The conflict can be particularly difficult to resolve when the wetland is a fen, an area where sub-surface water continuously seeps to the surface. The boundaries of a fen are often indistinct and the fen itself can become the source of a flowing stream whose downstream waters are used for domestic or irrigation purposes.

Development of land seeks to maximize financial profit. It must also conform to a variety of regulations. If a property includes wetlands, lot design may be a problem. Road construction may also be difficult if roadbed stability and safe, right-angled intersections are in direct conflict with sloping topography and the presence of wetland.

One such case came to the Ombudsman. The developer of a subdivision felt that the demands placed upon him to preserve a fen were overly stringent. The fen had two principal values. It lay within a rare area of Coastal Douglas-fir, and its water was used by downstream property owners.

As a result of our investigation of this complaint, and with co-operation from the developer and the Ministries of Transportation and Highways; Environment, Lands and Parks; and Forests, the subdivision was redesigned. One proposed road through the fen was removed. Areas at the rear of proposed lots that bordered upon the fen were covenanted and a seasonal water run-off control structure was incorporated into the plan. All these factors contributed to the preservation of the wetland. The result was the loss to the developer of two lots. Offsetting this, however, was an improved subdivision design that offered more attractive lots with improved access and the elimination of the developer's cost of building a road through the fen. Truly this was a win-win-win situation for everyone.

Lessee Loses Licence to Log Lease

Productive agricultural land is a valuable resource in British Columbia. One way for the provincial government to bring more agricultural land into production is to issue agricultural leases on Crown land. The terms allow the lessee to clear timber in order to bring the land under cultivation. Once a specified proportion of the leased area is being cultivated, the leaseholder may apply to purchase the land outright.

Since the timber on an agricultural lease is valuable and belongs to the Crown, it may not be harvested without a licence to cut, issued by the Ministry of Forests. The *Forest Act* requires that all timber harvested on the leased lands must be scaled and the appropriate stumpage paid on it. An exemption from the scaling and stumpage requirements can be granted if the timber is used for farm improvements such as fencing and building construction.

A leaseholder acquired his agricultural lease in 1974. He cleared a substantial area and sold most of the valuable timber, but he did not put any land under cultivation. Since he had been granted an exemption from stumpage and scaling for farm improvements, he had stockpiled a large volume of logs, and lumber that he had milled from the logs. However, he had not completed any significant farm improvements using the milled lumber. His application to the ministry for approval to sell the lumber was denied.

... the ministry had a legitimate concern that the leaseholder was not using the agricultural lease for its intended purpose.

The Ministry of Forests had become concerned that the leaseholder was interested only in logging the agricultural lease and not in using it for agricultural purposes. It revoked his scaling exemption and insisted that he have the stockpiled timber scaled. The ministry also required that he submit a plan detailing how he intended to use the stumpage-free lumber for farm improvements, and to commit to completing the improvements before he obtained title to the property. He was also advised that his licence to cut would not be reissued until these conditions were met. The leaseholder complained to the Ombudsman that the ministry's actions were unfair.

After investigating the situation we concluded that the ministry had a legitimate concern that the leaseholder was not using the agricultural lease for its intended purpose. The steps the ministry took to ensure that the lease and the timber cutting approvals they had issued were consistent with that purpose were reasonable.

Since the timber on an agricultural lease is valuable and belongs to the Crown, it may not be harvested without a licence to cut, issued by the Ministry of Forests.

We did not, however, consider it fair for the ministry to require the leaseholder to scale the timber he had harvested under the scaling exemption they had granted him. We also questioned whether it was necessary to require the leaseholder to complete his farm improvements before he acquired title to the leased lands.

The Ombudsman proposed that the ministry scale the stockpiled logs and inventory the lumber and that the parties agree on a reasonable volume required for farm improvements, with stumpage to be paid on any excess.

These steps would eliminate the need for a lumber utilization plan, would spare the complainant the cost of scaling the logs and provide some control over the use of the stumpage-free timber.

Both the ministry and the complainant agreed with these proposals. The parties subsequently agreed on the volume of timber that would be stumpage free for the farm improvements the leaseholder planned to make.

Now You See It...

The small store was situated in a good spot on the Trans-Canada highway, but there was one problem. There was no direct access from the highway onto the property. The owners petitioned the Ministry of Transportation and Highways for a direct access road. They argued that potential customers often saw their store too late, and that by the time they knew the store was there, they had already passed the small road that provided indirect access. The owners felt they were losing business and that public safety was being compromised because customers had to either slow down rapidly, or turn around and come back down the highway to visit their store.

The ministry denied the store owners' request on the basis that the Trans-Canada was a restricted access highway and that public safety would be compromised if additional access points were constructed.

The store owners contacted the Ombudsman because they felt the ministry's position was unfair and that their concerns were not being addressed. As a result of consultation between the Ombudsman and the parties, the ministry agreed to take several other steps to address the store owners' concerns, including the removal of trees on a ministry right-of-way that blocked the view of the store and the existing road from the highway. Although the store owners did not achieve exactly what they wanted, they were satisfied that the result would help their business and improve public safety in the area.

Self-help in Action ☆

On occasion the Ombudsman is consulted for assistance only. We take care to ensure that we fully understand the issue and that any advice or assistance given is appropriate.

A critical problem arose when the private sewage system failed in a municipality's 150 residence subdivision. The system was old. There was a claim of poor maintenance over the years and there were questions about the lack of accounting for the fees paid for maintenance. Property values were declining and a stream was threatened by the discharge of improperly treated effluent. When faced with a sudden demand for a considerable increase in fees to repair the system, the residents organized themselves.

... the citizens wanted only advice; they were fully prepared to tackle the problem on their own.

Their question was, what do we do? They called the Ombudsman to seek advice.

The elected chairperson of the citizens' group and her two assistants attended a meeting. At the very start the chairperson made it clear: the citizens wanted only advice; they were fully prepared to tackle the problem on their own. The point was, none of them had faced such an issue before and they were unsure where to begin. Because they did not wish to be confrontational with the elected officials of the municipality or the owner of the failing sewage system, they chose to seek guidance from the Ombudsman.

Facing the municipal council a few days later, the chairperson and her colleagues put forward a proposition for a co-operative solution. Being not so well prepared, the municipal council asked for a postponement, and in that period they too prepared themselves to work co-operatively on the program.

We watched with gratification the progress made by this municipal council and the citizens as they worked together to solve their common problem.

My Office received copies of all updating correspondence and offered further advice when inquiring calls came in from the chairperson. We made it clear that we would give advice to any party, municipal council included, if we could be of help to work towards a resolution.

We watched with gratification the progress made by this municipal council and the citizens as they worked together to solve their common problem. Our first meeting took place on September 15, 1995. The chairperson's final letter confirming that the negotiations were complete and that the citizens' group was terminated, came on December 17, 1995. Achieving the success they did in this remarkably short time is a credit to those citizens and their municipal council. We recognized and documented their success in our concluding letter to the chairperson and the Mayor.

The Ombudsman cites this as but one excellent example of how understanding and co-operation can work to solve a local issue.

Natural Resources

Offer Pending?

Several individuals who were leasing lakefront recreational properties owned by the Crown wanted to purchase the properties. They submitted purchase applications to the Lands office of the Ministry of Environment, Lands and Parks. They were told that the lots would be appraised to determine current market value and that opportunities to purchase would be provided within a month. They were subsequently informed that new ministry policy required an assessment of the potential effect of these sales on aboriginal rights.

The requirement for this assessment resulted from a June 1993 BC Court of Appeal determination that certain aboriginal rights exist and are constitutionally protected. The new policy applied to all applications, including those being processed, if there was a possibility that an activity, such as the sale of Crown land, might cause infringement of an aboriginal right.

Processing the applications, making referrals to First Nations and deciding whether or not to sell the properties actually took the Land office one year. As a result, the sale prices then quoted were considerably higher than expected because of market appreciation.

The prospective buyers contacted the Ombudsman. They believed that purchase prices should be based on market value at the time applications were made. The group felt that it was unfair for them to be required to pay higher purchase prices because the ministry did not process their applications in a timely manner.

The Ombudsman reviewed BC Lands' requirement for "market value" as specified in the Pricing and Valuation Policy for Crown land dispositions. Given that Crown land is a limited public resource, there is a legitimate public expectation that sale of Crown land to private individuals will bring fair economic return. Offers for sale are based on fair market value, that is, the amount that would be paid for the fee simple interest on the open market by a willing seller to a willing buyer. Using market value as the basis for valuation of all Crown land dispositions ensures that applicants are treated in an equal and fair manner. In this particular case we found that the prices were based on fair market value determined by an independent fee appraisal based on comparable waterfront sales in the area. The appraisal was subsequently reviewed and approved by ministry staff. Although the method used for determining the value of the Crown land is appropriate, an unreasonable delay resulting in higher sale prices would be unfair.

Given that Crown land is a limited public resource, there is a legitimate public expectation that sale of Crown land to private individuals will bring fair economic return.

We reviewed the application process of the prospective purchasers to determine if the delay had been unreasonable. Although ministry staff had indicated in good faith that sale offers would be provided a year earlier, new ministry policy requiring consultation with First Nations postponed the offers. The policy required staff to establish any existing aboriginal rights, determine whether the disposition of Crown land would infringe on those rights, resolve conflicting interests and attempt to justify the infringement if it could not be avoided. Staff are further responsible for making reasonable attempts to consult with First Nations and for providing an opportunity for First Nations participation. The correspondence submitted to our Office indicated that the consultation process in this particular situation took approximately eleven months to complete.

On the basis of the information provided, the Ombudsman found that sale offers were not postponed improperly, unnecessarily or for some irrelevant reason, and therefore the delay was not unreasonable. Although the situation for the lessees was unfortunate, it was not the result of unfair treatment by the ministry.

Although this complaint was not substantiated, delays in land disposition decisions are of concern to the Ombudsman. In early 1996, representatives of the Ombudsman's Office will meet with the Executive Director, Lands Regional Operations Department, to discuss mutual concerns relating to the ministry's pricing policy on the disposition of Crown land and to delays in processing applications. The Ombudsman will provide the Ministry of Environment, Lands and Parks with her observations and make suggestions about how to ensure fairness in the Crown land disposition process.

Natural Resources Team

Files Open Dec. 31, 1994	468
Files Received in 1995	643
Closed – No Investigation	145
Closed – Investigation	587
Internal Team File Transfers	66

Guest Comment

For the Children

by Michael Redding
Director of Maintenance Enforcement
Ministry of Attorney General
at the invitation of the Ombudsman

The Family Maintenance Enforcement Program (FMEP) was established in 1988/89 as a service of the BC Ministry of the Attorney General. The program is overseen by the Family Justice Programs Division. Its operation and powers are governed by the *Family Maintenance Enforcement Act.* The FMEP operates in two emotionally charged areas: family relationships and money. Always mindful of the human element in maintenance enforcement, the program emphasizes respect and fairness in its dealings with all clients.

Consistent procedures are applied to cases, supported by a sophisticated computer system.

1. A person with a maintenance order, or a separation agreement filed in the Family Court, enrolls the order for monitoring and, where necessary, enforcement.
2. All parties to the order are sent information booklets detailing the operation of the program and its relationship to the **Recipient** (person entitled to receive maintenance) and **Payor** (person obligated to pay maintenance).
3. Payors making voluntary arrangements to repay any arrears may contact Enforcement Officers by telephone:
   - to negotiate payment plans
   - to receive assistance in resolving disputes
   - to obtain referrals to other agencies for assistance, such as Family Court Counsellors, Legal Aid and private lawyers, Debtors' Assistance, mediation, Ministry of Social Services.
4. If a payor does not voluntarily comply, the program may use its powers under the Act to compel payment by:
   - attaching wages or other sources of funds, including bank accounts, ICBC settlements, and RRSPs
   - collecting federal funds payable to the payor, such as tax refunds, Unemployment Insurance benefits, GST rebates, and Canada Pension
   - registering the maintenance order as a judgment on the title of land owned by the payor in BC; any arrears must be dealt with when the property is sold or remortgaged
   - seizing and selling valuable personal assets such as cars and recreational vehicles, or seeking the sale of land
   - initiating a court hearing.
5. If the payor is unable to make maintenance payments because of chronic unemployment, illness or disability, for example, a payor-initiated court application to reduce maintenance is available.

While operating in a mass enforcement model, the FMEP places a high value on fairness. Enforcement Officers will take regular, consistent and sometimes aggressive action to collect delinquent maintenance accounts, but are also available to resolve disputes over amounts due. For each enforcement action, payors have a dispute mechanism, access to supervisors, and always retain the right to apply to the Provincial Court to have enforcement set aside.

Given the program's strong authority and the human factors involved in maintenance, complaints are not uncommon. Most complaints today are from maintenance payors who object to enforcement action. The Family Justice Programs Division employs a full-time Client Relations Officer to deal with enquiries and complaints. In close consultation with the Ombudsman's Office, the Family Justice Programs Division and the FMEP have worked to improve the way client concerns are handled:

- fact sheets containing program information are distributed to agencies that interact with program clients
- information kits are distributed to MLA offices
- the nature of calls received by the program has been extensively studied
- all written materials are reviewed on a continuing basis to improve clarity and comprehension
- a seemingly simple change – routing most complaints received by the Ombudsman's Office and the Family Justice Programs Division back to FMEP managers directly – has resulted in greater client satisfaction, a faster resolution to problems and the ability of the program to identify and resolve systemic issues.

Staff and managers recognize the desirability and importance of trying to resolve client concerns when they first arise. In collaboration with the Ombudsman and the Director of Maintenance Enforcement, the program will continue to develop and implement a computerized Client Relations System and an effective complaints handling process that should significantly reduce complaints coming to the Ombudsman's Office and other agencies.

The enforcement of maintenance orders will probably always be highly contentious and emotionally charged. The changes in the past year have ensured that complaints are increasingly being prevented or resolved within the program.

During the 1995/96 fiscal year over $60 million will be collected for some 26,000 families who had their maintenance payments monitored by the Family Maintenance Enforcement Program.

info To contact the Family Maintenance Infoline:
356-5995 (Victoria)
775-0796 (Lower Mainland)
1-800-668-3637 (all of BC)

Attorney General

The Importance of Being Earnest

Parole decisions are important to both the inmate who applies and the public who entrust the Parole Board with the responsibility for releasing a prisoner. The Parole Board members rely on the quality of the reports and documents that reach them before they make a decision. Typically, the parole package is assembled by a staff member working inside the correctional centre. The package includes a community assessment written by a probation officer from the area where the applicant wishes to live. Recently, staff of Electronic Monitoring Programs have been writing community assessments and putting together board packages for parole applicants who are under electronic supervision in the community.

When we investigated a complaint about a decision of the BC Board of Parole we found that there appeared to have been a change in the application procedure in some cases.

In the case we investigated, we noted the absence of an important document and found the quality of the community assessment to be weak. The assessment recorded that the probation office of the receiving community had been contacted. However, the report gave insufficient detail about that contact, and the author had not contacted the Crown Counsel who had prosecuted the case. It is obviously useful to have electronic monitoring staff prepare the community assessment since they are in a unique position to evaluate an applicant's recent progress and potential. However, the receiving community, the police and the Crown Counsel from the community in which the offence occurred must have their views fully considered and reported.

When we expressed our concerns, Parole Board staff met with staff from two Electronic Monitoring Programs. The board advised the Ombudsman that staff from both the Electronic Monitoring Program and the Parole Board had committed themselves to a careful compilation of parole packages and to full consultation with receiving communities when preparing community assessments in the future.

Federal Express

Women who are serving time in a correctional institution face many difficulties. An unexpected one came to light this year at the Burnaby Correctional Centre for Women. This is a new facility housing inmates serving federal sentences (two years or more) as well as inmates on remand and those serving provincial sentences. In 1990 the Attorney General for the province of BC and the Solicitor General for Canada reached an agreement to set up this new prison as part of the phasing out of the Prison for Women in Kingston, Ontario, the prison that previously housed all female inmates in Canada serving two years or longer. The construction of BCCW was jointly funded by the two governments, and the federal government continues to contribute to the annual operating costs.

Inmates are encouraged to deal with complaints within the Corrections Branch, but they have the right to request an investigation by the Ombudsman or by the Investigation, Inspection and Standards Office of the Ministry of the Attorney General.

At the Kingston prison, if an inmate is unable to resolve a complaint within the system, she has the right to request the assistance of the Correctional Investigator of Canada (appointed under s.158 of the *Corrections and Conditional Release Act*). The investigator may make non-binding recommendations for the resolution or correction of problems. However, under the terms of the inter-governmental agreement, federal inmates at Burnaby are subject to the policies and regulations of the Corrections Branch of BC in almost all aspects of their incarceration. Inmates are encouraged to deal with complaints within the Corrections Branch, but they have the right to request an investigation by the Ombudsman or by the Investigation, Inspection and Standards Office of the Ministry of the Attorney General. The federal Correctional Investigator's jurisdiction at BCCW is limited to complaints that arise out of an inmate's previous incarceration at the Kingston Prison for Women, and complaints about the actions and decisions of the Parole Board of Canada, to which inmates serving life sentences are subject.

A readable but comprehensive brochure will be prepared for the inmates, with the Ombudsman co-ordinating the project.

The Correctional Investigator of Canada encountered some difficulty with the Corrections Branch of BC concerning access by the Correctional Investigator to inmates of the BCCW. Unable to resolve the problem with the Corrections Branch, the Executive Director for the Correctional Investigator contacted the Ombudsman for assistance. A meeting was arranged with the Executive Director for the Correctional Investigator, the Director of the correctional centre and the Director of the provincial Investigation, Inspection and Standards Office. They drafted a protocol for dealing with complaints made to the federal Correctional Investigator. After a courtesy notification to the Corrections Branch, the investigator would be free to telephone or meet with complainants. The Correctional Investigator and the Director of the Investigation, Inspection and Standards Office each agreed to redirect complaints to the other party if inmates misunderstood or misinterpreted their respective jurisdictions.

The meeting illuminated how complex the situation must seem to an inmate with a complaint. She might not be aware of how to complain or appeal within the institution and within the branch structure, or what outside agencies she might approach. A readable but comprehensive brochure will be prepared for the inmates, with the Ombudsman co-ordinating the project. Having this information readily available and in a readable form should eliminate the difficulty the inmates have been experiencing.

Test Drive ☆

If you want to drive a car in BC you must:

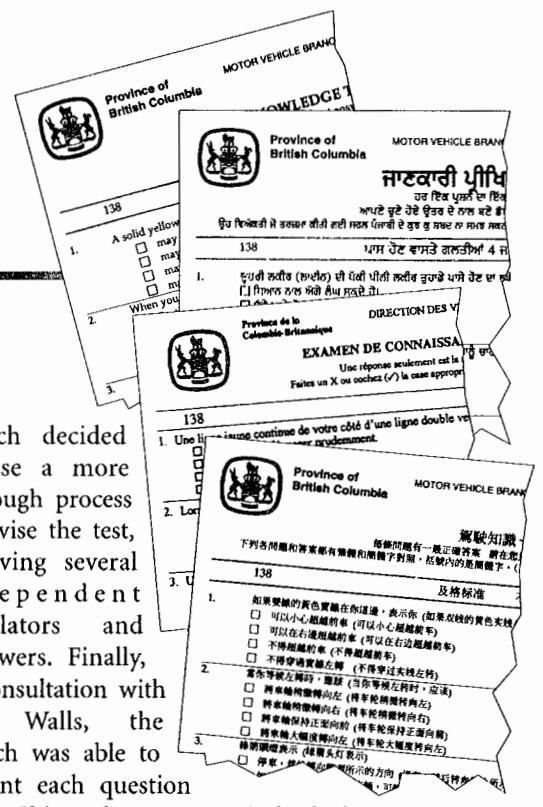
- know the rules of the road
- be skilled in driving a vehicle
- be free from any medical problems that would present a risk to the public.

The Motor Vehicle Branch is responsible for ensuring that you fulfil these conditions before they issue you a licence. Historically, all testing was done in English and individuals whose first language is not English had to supply their own interpreters. In recent years increasing numbers of people who fall into this category have applied for driver's licences. The branch became concerned that its tests of driving-related knowledge might not be accurate and that the extensive use of interpreters created too many opportunities for misinterpretation and possible coaching.

The branch clearly has an interest in providing tests in other languages since direct testing in a person's native language should produce more accurate results. Accordingly, the branch has developed versions of its Traffic Rules and Regulations Tests and Traffic Signs and Lights Tests for the Class 5 licence in French, Chinese and Punjabi. Currently the number of people speaking these three languages is sufficient to warrant the expenditures associated with translation. The branch's policy requires that individuals who are not fluent in English and who read one of these languages must take the translated version of the test instead of using an interpreter.

However, the job of producing a translation that is acceptable to all speakers of a particular language was more complicated than initially expected. The Ombudsman was approached by a number of professional interpreters who claimed that many of their Chinese clients had been denied an interpreter even though they could not fully comprehend the branch's Chinese language test. The complainants stated that individuals who speak only Mandarin, particularly those from Taiwan and certain parts of China, were at a disadvantage because the branch's translation favoured speakers of Hong Kong Cantonese.

The Motor Vehicle Branch's first response to these concerns acknowledged that there might be some difficulty for those who did not speak Cantonese. But since the existing test had already been modified to accommodate Mandarin speakers, they felt that the test should not pose an insurmountable problem for them. In researching this question further, we sought the opinion of Yvonne Walls, Director of the Chinese Culture and Communication Program of David Lam Centre for International Communication. She supported the position of the complainants that the branch's test could put Mandarin speakers at a significant disadvantage. On the basis of this independent opinion, the branch decided to use a more thorough process to revise the test, involving several independent translators and reviewers. Finally, in consultation with Ms. Walls, the branch was able to present each question on its Chinese language test in both the traditional script and the modern, simplified script, thereby ensuring that its translation will be understood by individuals from diverse Chinese language backgrounds. Partly as a result of this revision, and in response to similar complaints from the community, modifications will also be made to the Punjabi translation to minimize any regional biases that might have adversely affected some clients. The branch is also planning translations into French, Chinese and Punjabi for the traffic safety awareness questions, medical questions and the vision and hearing screening question. Our special thanks to Yvonne Walls for her assistance in this case.



Attorney General

Scrutinizing the Scrutineers

This year we received for the first time a complaint from a private investigator about ICBC's decision to stop sending him surveillance assignments. The main reason for this decision was ICBC's concern about the investigator's character and reputation. The private investigator felt that these concerns were not well founded and had not been thoroughly and impartially reviewed by ICBC.

The investigator had been handling assignments from ICBC for a little over a year when it was alleged that he had attempted to conspire with the subject of an investigation to file a helpful surveillance report in return for a share of the proceeds of the claim. The allegations were brought to the attention of the RCMP and ICBC by the claimant. Subsequently the claimant did not co-operate in the investigation of the allegations he had made and failed to identify the investigator when shown his photograph. The investigator, on the other hand, passed a polygraph test administered by the RCMP.

Provided that it is exercised fairly, we believe ICBC should have the discretion to set high standards for hiring persons charged with a task as sensitive and confidential as surveillance.

Nonetheless, ICBC was left with some residual concerns about the investigator's conduct. Shortly afterwards, ICBC became aware that the investigator had been charged with sexual assault. The investigator's licence was suspended while the prosecution went forward. However, after the preliminary inquiry, the Crown dropped the charges, and the investigator's licence was reinstated by the Security Programs Division. He then requested that ICBC resume giving him work.

As a ban on publication had been ordered by the court, ICBC could not obtain verifiable information about the reasons for the decision to drop the charges. According to the private investigator, they had been dropped because it was obvious that the witness against him was unreliable. However, it was also possible that the charges had been dropped for reasons that did not exonerate him.

Fortunately, ICBC was not forced to make a very difficult decision on the basis of these two charges. A review of the investigator's professional conduct while conducting surveillance for ICBC revealed a number of serious concerns. These concerns were sufficient in themselves to justify the decision to stop providing him with surveillance assignments.

... ICBC has a responsibility to ensure that the private investigators it retains are of the highest character and reputation.

I recommended that ICBC develop policy clarifying their discretion to refuse to assign contract work to private investigators whose character and reputation are at issue. In the course of surveillance, private investigators are inevitably given access to confidential information about members of the public. To the extent that surveillance may therefore impose some risk to the security of the subject, ICBC has a responsibility to ensure that the private investigators it retains are of the highest character and reputation.

The complaint highlights the fact that ICBC is not required to assign work to every private investigator who meets the minimum requirements. Provided that it is exercised fairly, we believe ICBC should have the discretion to set high standards for hiring persons charged with a task as sensitive and confidential as surveillance.

Ombuds Audit

Renewed emphasis on customer service by ICBC has paid off. In my 1994 Annual Report, I described the newly created unit to deal with complaints to the Ombudsman about ICBC. The department, ICBC Ombudsman Referrals, deals only with complaints referred by the Ombudsman. It handles all aspects of a complaint without the routine involvement of Ombudsman staff. However, if a complainant is dissatisfied with the work of ICBC Ombudsman Referrals, he or she may complain to this Office and we will investigate. The success of the unit has permitted the Ombudsman to reduce her investigation of complaints against ICBC and challenged ICBC to resolve complaints itself.

In order to assure the public that fairness is not compromised when complaints are handled internally, the Ombudsman will conduct regular audits of the work of ICBC Ombudsman Referrals. In future annual reports, I will give the results of these audits.

Staff at ICBC have worked with Ombudsman Officers to develop a list of criteria against which to assess the work of ICBC Ombudsman Referrals. These criteria include:

- timeliness of response to the complainant
- objectivity, impartiality and thoroughness with which the complaint was reviewed
- effectiveness in obtaining a resolution when the complaint was verified
- clarity and adequacy of communication with the complainant.

ICBC Ombudsman Referrals also intends to conduct its own follow-ups with complainants in order to be sure they were satisfied with the service they received from the corporation as a whole.

"Is That a Threat?"

On occasion people who call the Office of the Ombudsman with a complaint are very upset with the staff person of a public body whom they believe has made an unfair decision concerning them, or has treated them badly. Sometimes their feelings are so strong that their comments about the staff person of the public body constitute a threat.

In these situations, we will inform the person that:

- such comments are taken seriously
- they may constitute a criminal offence
- we shall advise the police.

Whether or not a person has the intention of carrying out a threat, threatening is a serious matter with serious, possibly criminal, implications and it will be reported to the police. Although information given to our Office is kept confidential, this is one exception. The safety of those working within the public service is considered paramount.

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Private Eyes

The complaint involved a private investigator who obtained access to a woman's home under false pretences and attempted to obtain information that could be used against her in court. The complaint to the Ombudsman was resolved when ICBC agreed that it would not use any of the information it had obtained, but it raised broader issues about the parameters under which ICBC's private investigators operate.

ICBC responded to the broad issues raised by the Ombudsman regarding surveillance by private investigators by striking a task force to study the problem. The task force clarified the guidelines under which private investigators must operate, making it clear that any breach of the guidelines or unreasonable invasion of the claimant's privacy would not be tolerated. One of the most important guidelines prohibits investigators from entering private residential property under any circumstances. The guidelines also refuse to authorize surveillance when the subject is in the privacy of a home or is in other circumstances where there would be a reasonable expectation of privacy.

As well, ICBC cancelled all existing agreements with private investigators, and required, as one of the conditions of considering a fresh application, that they attend a two-hour seminar on the new guidelines. These seminars were conducted around the province, and included input from the Security Programs Division of the Ministry of the Attorney General.

It is too early to tell whether the revised guidelines and the training package have resolved all the problems ICBC encounters in using private investigators. Even with an improved system, difficulties can arise. One obvious problem is that it is difficult to determine from the surveillance report whether the investigator has breached the guidelines or the protection of privacy laws. Investigators' reports typically are worded cryptically. The preferred wording seems to be, "it was determined that ..." Since the reader knows neither the source of the information nor the method by which it was obtained, it is difficult for ICBC to monitor the activities of private investigators to ensure compliance with the guidelines.

We have suggested to ICBC that investigators be required to identify both the source and the method by which they obtain information, perhaps in a separate schedule to the report in order to protect "trade secrets." ICBC feels that it is premature to impose this requirement, but may consider it if problems continue.

A related problem is the difficulty of monitoring the surveillance material that is filed. With the corporation spending in the area of $8 million per year on surveillance, the volume of material filed is very high. A busy adjuster may not have time to do more than glance through the reports for information relating to the validity of a claim. As well, some knowledge of technical requirements is necessary in order to evaluate the reports.

We have suggested to ICBC that adjusters be provided with a checklist against which they can assess the material. For example, the checklist might ask the adjuster to note whether the material indicates that the investigator was on private property while conducting the surveillance, or whether the investigator appears to have obtained access to information protected by privacy laws. If the adjuster identifies such problems, the material can then be passed to other designated staff who have the expertise to evaluate it in detail. In the absence of some such system, the risk is that inappropriate surveillance material may go undetected save in the unlikely event that the subject becomes aware of it and makes a complaint to the Ombudsman.

Attorney General

A New Look

The Residential Tenancy Branch has a new look. New management, and statutory changes to the *Residential Tenancy Act* both played a part. Many of the changes are consistent with recommendations the Ombudsman made in 1991 in *Public Report No. 27 – The Administration of the Residential Tenancy Branch.* The branch provides information services to residential landlords and tenants about their respective rights and obligations and arranges arbitrations for resolving their disputes.

The most significant change and one long awaited was the implementation of the new Arbitration Review Panel, effective December 1, 1995. Until December 1995, decisions of arbitrators were final and binding. The only recourse available to dissatisfied parties was a judicial review under the *Judicial Review Procedure Act.* The Ombudsman's 1991 Report concluded that costly and time-consuming judicial review was not the most appropriate remedy for residential tenancy disputes and recommended that a more accessible and timely review process be made available through legislation.

The new Arbitration Review Panel considers applications for a review of an arbitrator's decision or order. An applicant must first meet one or more of the following statutory criteria:

- she or he was unable to attend the original hearing because of extraordinary circumstances, or has new and relevant evidence that either was not available at the time of the original hearing or was not given an adequate opportunity to be heard
- the arbitrator who held the original hearing was biased or appeared to be biased, or exceeded his or her powers
- the decision or order was obtained by fraud.

If the panel grants a review hearing, the landlord and tenant will present their respective cases in person. The panel has the power to confirm the original decision of the arbitrator, set it aside or refer the decision to either the original arbitrator for reconsideration or to another arbitrator for a new hearing. The Ombudsman welcomes the new Review Panel as a positive and substantial response to the recommendation in her Public Report.

Legislative amendments during 1995 implemented several other recommendations of the Ombudsman, including:

- the use of plain language in information brochures and statutory forms
- authority for branch staff to assist landlords and tenants in resolving their disputes prior to going to arbitration
- the requirement for an arbitrator to give written reasons for all decisions. (This amendment goes beyond the 1993 amendment that required arbitrators to give written reasons for their decisions **when requested by a party**). With the advent of the new Review Panel, written reasons are particularly important for creating a record of the evidence considered, the law as applied by the arbitrator and the ultimate decision.

The branch has made other positive changes this past year. They opened additional offices to give the public improved access. The Director and her Regional Managers are working on improving the quality of service to consumers and ongoing training of both the information officers and the arbitrators. Currently they are developing written rules of procedure for arbitrators. This is an important step that should make the review process more consistent and therefore more predictable and understandable for consumers. I look forward to the implementation of the rules in the near future.

The Ombudsman's 1991 Report concluded that costly and time-consuming judicial review was not the most appropriate remedy for residential tenancy disputes ...

My Office welcomes the significant improvement in the branch's responses to legal policy and practice issues raised with them and to our requests for information. A job well done!

Clarifying the Ombuds Role

When individuals complain to the Ombudsman about self-governing professional bodies such as the Law Society, it is important that they understand what the law enables us to investigate. We try to tell people this at the outset.

Specifically regarding the Law Society there are two important restrictions governing our investigations.

1. The Ombudsman does not have the authority to review the conduct of a lawyer who is the subject of a complaint; I cannot rule on whether a lawyer has acted properly. Complaints about the conduct of lawyers must be directed to the appropriate body within the Law Society. The Ombudsman has, however, the authority to review the way the complaint is handled by the Law Society.
2. The Ombudsman does not have the authority to override solicitor-client privilege. A communication between a lawyer and a client cannot be disclosed without the consent of the client to waive the privilege. The fact that the Law Society cannot require a client to waive the privilege may limit the ability of a lawyer to provide a full response to a complaint when the complainant is not the lawyer's client.

The Ombudsman can investigate a complaint to determine the fairness and adequacy of the procedures used by the Law Society in reviewing a complaint about a lawyer. Fair procedural requirements include:

- a full opportunity to make a complaint
- a thorough review of the evidence alleged to support the complaint
- a decision that can be justified on the evidence
- an explanation of the decision.

The Ombudsman does not make recommendations about the merits of the Law Society's decision unless the assessment of the complaint is patently unreasonable in relation to the evidence presented. A mere difference of opinion about how the evidence might be assessed is not sufficient for the Ombudsman to judge a decision to be patently unreasonable.

Guest Comment

Response to Workplace Discrimination

by Gail H. Forsythe
Discrimination Ombudsperson
Law Society of BC
at the invitation of the Ombudsman

Sexual harassment, workplace discrimination and gender or racial inequality are costly and destructive. On January 1, 1995, the Law Society of British Columbia launched a unique initiative to respond to and prevent workplace discrimination by appointing its first Discrimination Ombudsperson. The Law Society is the first self-governing body of lawyers in Canada, and possibly North America, to dedicate member funds to the promotion of a healthier and more equitable work environment for staff, articled students and lawyers.

The services of the Ombudsperson are independent of the Law Society. She provides a voluntary, private and non-adversarial complaint resolution process to assist lawyers, articled students, staff members and legal employers to resolve complaints without the formality and cost of traditional procedures.

During the first year of operation, the Ombudperson responded to over fifty requests for assistance. She uses a variety of approaches to assist the parties, including confidential listening, designing creative solutions, identifying legal options, mediation and personal empowerment.

Many complainants and legal employers found their voluntary contact with the Ombudsperson highly satisfactory because:

- complex and expensive civil and human rights actions were resolved through mediation in a matter of hours instead of years
- a private approach gave the opportunity to save face, and avoided negative media coverage and escalation of the issues
- trust was re-established and valuable working relationships were preserved
- sincere written apologies were accepted and satisfying solutions focusing on education were found
- complainants were empowered to deal with their concerns directly and obtain closure
- complainants who could afford to pay for legal advice were able to address the power imbalance and feminist concerns about the mediation process frequently associated with harassment cases. The Ombudsperson designs and delivers legal education sessions to the profession, focusing on effective communication, understanding the legal and practical aspects of discrimination, personal and employer responsibilities and policy issues. The sessions are in high demand. So far, over 500 lawyers and staff members have participated in the free training sessions at their places of work.

Fair workplace policies and dispute resolution procedures are critical if the profession is to respect diversity, create equality and respond fairly to harassment and discrimination complaints. The Ombudsperson encourages legal employers to adopt procedurally sound policies. She provides law firms with policy design advice and complaint investigation training.

The Discrimination Ombudsperson's mandate does not include complaints about lawyers from the general public. Complaints from the public about a lawyer who has violated the Law Society's Rules of Professional Conduct should be directed to a Complaint Officer. Confidentiality rules exclude the Discrimination Ombudsperson from the formal complaint process. Call a Law Society Complaint Officer in Vancouver to file a formal discrimination complaint. If a person is dissatisfied with how the Law Society processes the complaint against the lawyer, she or he can complain to the Ombudsman for BC, who can investigate complaints against the Law Society.

After a critical and in-depth review, the Law Society renewed its funding for the Discrimination Ombudsperson program for 1996. The program is a model for other professional organizations or corporations who wish to fulfil their responsibilities to prevent workplace discrimination.

info **To contact:**
Discrimination Ombudsperson
687-2344 (Vancouver)
Fax: 541-7824 (Vancouver)
e-mail: legal@direct.ca
#816-938 Howe Street
Vancouver BC V6Z 1N9
Law Society Complaint Officer
669-2533 (Vancouver)

Attorney General

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It Seems Like Forever

For the third year in a row I must address the issue of the continuing delays in the handling of human rights complaints. In my annual reports to the Legislative Assembly for 1993 and 1994 I focused my comments on the responsibilities of the BC Council of Human Rights. My 1994 report featured a guest article by Professor Bill Black of the University of BC Law School who, in late 1994, completed a comprehensive review of the *Human Rights Act* and the administrative structure of the BC Council of Human Rights. Professor Black's report included recommendations to tackle some of the underlying causes of delay.

It is unacceptable that a statutory service as fundamental as that provided by the BC Council of Human Rights should be allowed to deteriorate.

In the last quarter of 1995 I expressed my concerns about the lack of progress to both the Chair of the BC Council of Human Rights and the Deputy Minister of Labour of the Ministry of Skills, Training and Labour. The Deputy was responsible for providing investigative services to the council through the Employment Standards Branch. The essence of my letters to these officials was as follows:

> *Our Office has refrained from investigating or commenting on this problem at length because it appeared to be addressed adequately in Bill Black's Human Rights Review. I am certain that we were not alone in expecting that significant action would be taken towards the alleviation of this problem within a reasonable period of time. Approximately one year has passed since Bill Black delivered his report and I am concerned that, in spite of any efforts council staff and the Employment Standards Branch may have made, the underlying causes of delay remain unresolved.*
>
> *It was particularly disturbing to learn that the problem of delay has actually worsened over the last year. We have been monitoring the situation on a regular basis with the help of council staff and were recently informed that backlogs now amount to at least a four-month wait at the intake and mediation level, another four-month wait for assignment to an investigator and an average of nearly one year to complete an investigation. Furthermore, I understand that this backlog is actually increasing. It is unacceptable that a statutory service as fundamental as that provided by the BC Council of Human Rights should be allowed to deteriorate. It is simply unfair to continue to offer the public specific protections and remedies under the* ***Human Rights Act*** *without providing the administrative capacity to deliver appropriate services in a timely fashion.*
>
> *While I appreciate that the branch and the council have faced many challenges over the past two years in coping with the structural and financial obstacles to service provision, I have an obligation to comment on the administrative fairness implications of this situation both on behalf of the individual complainants and respondents who are directly affected as well as in the general public interest.*
>
> *At this point, I do not intend to offer any detailed recommendations as to how the delays might be reduced or eliminated since I understand you have been discussing specific proposals arising from the Human Rights Review for some time. Accordingly, I would like to know what specific steps you are planning to take and how these steps might help alleviate the problem of delay. Since the backlog of complaints is continuing to increase, attention to this matter is more urgent than ever.*

At the time of writing, some steps have been taken to resolve the issues underlying unreasonable delay. A major move is the decision to transfer responsibility for complaint investigations from the Employment Standards Branch to the council, along with several full-time positions (see article below). However, the new *Human Rights Act*, which contains many of Professor Black's recommendations, has still not been proclaimed. In 1996 our Office will continue to investigate and comment on administrative fairness issues as they arise from the restructuring of services within the Human Rights Council and the Employment Standards Branch. It is time for action.

JIC

The Jericho Individual Compensation Program (JIC) was set up as a result of the *Report of Special Counsel* by Thomas Berger, O.C.,Q.C. who was appointed following the recommendation in the Ombudsman's Jericho Hill School report.

info **Toll free numbers:** TTY 1-888-711-2211
VOI 1-888-311-2211
Local numbers: TTY 660-0319
VOI 660-0300
Fax: 660-0315 (Vancouver)
Address: JIC
Metrotower II
Suite 628
4720 Kingsway
Burnaby, BC
V5H 4N2

The Time Is Right

Since our letters to the Chair of the BC Council of Human Rights and the Deputy Minister responsible for the Employment Standards Branch there have been several developments that may eventually reduce the excessive, unreasonable delays that currently plague the delivery of human rights services.

Council gets its own investigators

In January 1996 Assistant Deputy Ministers for the then Ministry of Skills, Training and Labour and the Ministry of the Attorney General agreed to transfer a number of full-time positions from the Employment Standards Branch (ESB) to the BC Council of Human Rights. Effective April 1, 1996 the council will have its own investigators. For many years the council has had to rely on ESB Industrial Relations Officers to investigate human rights complaints. All human rights files not already assigned to an Industrial Relations Officer will now be investigated directly by the council's investigative staff.

A process to speed the completion of files

In March 1996 the ESB and the BC Council of Human Rights established a transition team consisting of two ESB Regional Managers and the council's Manager of Investigations. The team will ensure that all outstanding investigations currently assigned to Industrial Relations Officers are completed as quickly and efficiently as possible. With the full support of senior ministry officials, as well as the collegial support of the other Regional Managers, the ESB Regional Managers will facilitate file closure. They will assist Industrial Relations Officers to identify when enough information has been gathered for the council to decide whether the complaint should be dismissed or referred to a hearing. If files have been stalled at the report writing stage, a report writing specialist may be assigned. The primary role of the council's Manager of Investigations will be to assist in the review of these cases to ensure that completed investigation reports meet the council's standards. The Chair of the council has assured the team that completed ESB investigations will be given immediate attention for a decision to dismiss a complaint or hold a hearing.

Council undergoes "re-engineering"

In August 1995 the government announced that administrative responsibility for the Council of Human Rights would be shifted from the then Ministry of Government Services to the Ministry of the Attorney General. To help the council prepare for the acquisition of its own investigative staff, and in anticipation of the proclamation of the new *Human Rights Amendment Act*, 1995 (Bill 32 passed third reading in the legislature June 27, 1995), the Ministry of the Attorney General initiated a "re-engineering" project. Selected council members and staff, representatives of the ministry and an outside consultant identified problems with the current policies and procedures and proposed more efficient approaches. Will the resulting changes eliminate unreasonable delay, improve client satisfaction and ensure that the standards of administrative fairness are met? We are anxious to see some real changes at the council. The problems have long been identified and now solutions are required. We will continue to monitor the work at the council during 1996 and will provide an update in next year's annual report.

The Ombudsman received thirty-seven enquiries regarding the Human Rights Council in 1995 and sixty-four complaints. Of the complaints, twenty-five are still being actively investigated. Eight of the sixty-four were referred to other available remedies. Thirty cases were closed after investigation, twenty-five without findings. Five were settled and one was substantiated with recommendations made.

Attorney General Team

Files Open Dec. 31, 1994	559
Files Received in 1995	2,203
Closed – No Investigation	383
Closed – Investigation	2,085
Internal Team File Transfers	25

Officers of the Legislature

Clear and Open Government

by George Morfitt, FCA
Auditor General of British Columbia

The Auditor General is appointed by the provincial legislature to regularly audit the accounts of the government of British Columbia. We ensure that the Legislative Assembly and the people receive independent assessments of government administration, and we work with government to help improve the measurement of government performance.

In this my second term, a top priority is to make sure that the Legislative Assembly and the public receive the kind of information that allows the government's performance to be openly and clearly known, and to assess whether the information that government provides to the Legislative Assembly and the public is meaningful, reliable and timely. For this purpose, the Office performs three types of audits on behalf of the provincial legislature:

Financial statement attestation

We provide the legislature with an independent, professional opinion as to whether the financial statements of the government and certain of its related entities are fairly presented in accordance with appropriate accounting policies and whether or not internal control systems are designed and operated with sufficient effectiveness.

Compliance with authorities

We undertake audit work to ensure that public money is spent only for the purposes for which it is appropriated by the legislature, and that government has complied with laws passed by the legislature.

Performance

We provide the legislature with performance, or value-for-money audits, independent assessments of whether government programs are implemented and administered in an economic and efficient manner, and whether Members of the Legislative Assembly and the public are given appropriate information that allows them to assess whether or not taxpayers are getting good value for money.

During the 1994/95 fiscal year, and to date in the 1995/96 fiscal year, my Office has issued, in addition to my report on the Public Accounts of the Province of British Columbia, the following value-for-money audit reports:

- purchasing in school districts
- management of the Agricultural Land Commission
- management of government debt
- fleet and terminal maintenance management and operational safety in the British Columbia Ferry Corporation.

We also issued two reports relating to compliance-with-authorities audits and reviews. These reports commented on compliance with various statutes including the *Elevating Devices Safety Act*, the *Travel Agents Act*, the *Land Tax Deferment Act*, the Guarantee and Indemnity sections of the *Financial Administration Act*, and the Home Support Service provisions of the *Continuing Care* and *GAIN Acts*.

In this my second term, a top priority is to make sure that the Legislative Assembly and the public receive the kind of information that allows the government's performance to be openly and clearly known ...

The reports issued by my Office are tabled in the legislature and referred to the Public Accounts Committee. The Committee reviews the reports and then submits a report of its own to the Legislative Assembly, which includes recommendations to the assembly as well as to government.

In addition to conducting audits, the Office works to improve the accountability of the provincial government to the Legislative Assembly and the public. Accountability for results means knowing what results are being sought, having valid measurement criteria and effective monitoring systems, understanding why results are as they are, and learning from results to improve future performance.

The Office has been working with public sector managers to improve the information they have about their performance through three major initiatives:

- We work with the Deputy Ministers' Council to develop a comprehensive results-focused accountability framework.
- We conducted a study on Crown corporation governance. The study examines the legislation, role, authorities and relationships, and internal workings of boards that are responsible for providing direction to Crown corporations.
- We are promoting through workshops the *Twelve Attributes of Effectiveness* model developed by the Canadian Comprehensive Auditing Foundation as a tool for managers to use in assessing their own performance, and in gathering the information needed for good public reporting.

I encourage members of the community who have information that they feel would improve public sector administration to contact my Office.

My Office enjoys a very productive relationship with the Office of the Ombudsman and with the other Officers of the BC legislature. I look forward to our continued co-operation in providing independent, professional services to the legislature and the public.

info **Copies of the Auditor General's reports are available to the public:**
387-6803 (Victoria)
On the Internet at http://www.aud.gov.bc.ca

Conflict of Interest

by E.N.(Ted) Hughes
Commissioner of Conflict of Interest

Since my term as British Columbia's first Commissioner of Conflict of Interest expires soon, I am happy to respond to the Ombudsman's request that I write a farewell piece highlighting the services provided by this Office and commenting on changes that I would recommend.

The standard of conduct for members is that they not use their public office for private gain, nor be perceived to be doing so in the mind of the reasonably well-informed person.

The *Members' Conflict of Interest Act* was passed in 1990 and amended in 1992. It is my understanding that it was enacted to promote public confidence in the elected members of the Legislative Assembly of British Columbia as they conduct the business of the province. Although the legislation very adequately addresses conflict of interest issues, it does not deal with other initiatives that, if adopted, could significantly add to the building of that public confidence.

The standard of conduct for members is that they not use their public office for private gain, nor be perceived to be doing so in the mind of the reasonably well-informed person. Each member is expressly prohibited from exercising an official power or performing an official duty or function if the member has an actual or apparent conflict of interest. Other prohibitions in the Act deal with insider information, use of influence and the acceptance of gifts.

The Commissioner has three primary roles:

Disclosure role

All members must annually file a statement of assets, liabilities and sources of income. The Commissioner meets with the member (and the member's spouse, if available) to review the statement and to advise on avoidance of conflict of interest situations. The Commissioner then compiles and files with the Clerk of the Legislature a public disclosure statement for that member.

Advisory role

Any member may seek an opinion or recommendation from the Commissioner on any matter concerning her or his obligations under the Act. Cabinet and the Legislative Assembly may also seek opinions from the Commissioner.

Investigative role

Following a complaint by a member or a citizen that, in his or her opinion, a member of the legislature has acted in violation of one of the prohibitions of the Act, the Commissioner must carry out an investigation and report his findings publicly. If a violation of the Act is found to have occurred, the Commissioner may recommend a penalty for imposition by the legislature ranging from a reprimand to a recommendation that the member's seat be declared vacant. The Commissioner can also undertake special investigative assignments for Cabinet or the legislature.

In January 1996, I issued a five-year report card on what my Office has achieved, along with a blueprint for improvements. Some of the main points of the report are:

- Over my five-year term, I have had occasion, following the receipt of a complaint, to find only one member in violation of the *Members' Conflict of Interest Act* and I have never had occasion to recommend the imposition of a penalty. I believe this is truly good news. Considering the current widespread negativism about the performance of elected representatives, I am pleased to highlight this significant achievement.
- I believe that the legislation is working positively, giving members a yardstick by which to measure their conduct concerning conflict of interests. The overwhelming majority are honourable members who would never knowingly conduct themselves in a manner that breaches the Act.
- I recommended that a Federal Code principle be placed in the British Columbia statute by way of amendment, and that violation of its provisions be subject to sanction and enforcement in the same way as with other prohibitions currently in the *Members' Conflict of Interest Act*. The principle reads:

  Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

- The Federal Code principle would, if enacted, apply to the seventy-five members of the legislature. I recommended that consideration be given to applying the Act and any amendments to **senior officials** in government. Because of the responsible and sensitive position they hold, these officials are more often confronted with ethical dilemmas and potential conflict of interest situations than are backbenchers in the legislature.
- The municipal government sector is the source of the greatest number of nonjurisdictional inquiries that come to the Commissioner. I recommended that a form of conflict of interest and ethical conduct legislation be extended to municipal government, one that would embrace the disclosure, advisory and investigative functions of this Office.

Officers of the Legislature

Balancing the Power

by Joyce Preston
Child, Youth and Family Advocate
Province of British Columbia

A CHILD ADVOCATE IS BORN – so said the Ombudsman in her 1994 Annual Report. It is now my privilege to write about these past ten months as the first Child, Youth and Family Advocate for the Province of BC.

An **Advocate** is someone who is close to you, whom you trust, who can provide whatever help you need to be fully informed, to know your rights, to have your say and be included in the drama that is your life. An **Advocate** is the person who helps balance the power when children, youth and their families are dealing with formal service systems.

My job is to ensure in all communities around the province that advocacy is available for children, youth and their families who are receiving or are trying to get services from the Ministry of Social Services. My job is to support local counsellors, social workers, foster parents, other youth in care – those people who work in your community, who can help you when things aren't going well. Individuals who work locally don't always feel safe about being advocates because it challenges the "system." My job is to give them protection and support so they can advocate strongly without fear of reprisal. I have had the opportunity to visit over forty communities in all parts of the province and have found dedicated people working to provide support, information and advice to children and youth.

The current focus of my work is about services offered by the Ministry of Social Services. Within the next six months this should expand to include services offered by the Ministry of the Attorney General, the Ministry of Health, and youth services that involve several ministries of government. Further, I intend to support the advocacy work that is developing in the Ministry of Education, specifically through the Advocacy Project under the Parent Advisory Committee umbrella.

Finally, as Provincial Advocate, my job is to advise government about the availability and effectiveness of the services they offer. The Gove Report sets clear new directions for social services. While we are working to bring about these changes we must continue *today* to offer effective, relevant, respectful and inclusive services to children, youth and their families. I am one of many people who must ensure that this happens.

My vision:

- Children and youth should know their rights, and adults have an obligation to ensure this happens.
- Children and youth have a right to be treated with dignity and respect.
- Children and youth have the right to be fully informed about what is happening to them, especially when they are receiving services from government.
- Children and youth have the right to have their say and to be heard by those around them.
- Children and youth have the right to expect that what they want or hope for will be given fair and serious consideration when decisions are made.
- Children and youth, and the significant people in their lives, need to be included when plans are being made for them.

The work of an **Advocate** is to ensure that these things happen!

info **If you think we can help you, call the Child, Youth and Family Advocate's office:**
1-800-476-3933
775-3203 (from within the lower mainland)

Protection of Privacy

by David H. Flaherty
Information and Privacy Commissioner
for British Columbia

Reflecting on my daily work during the past year has made me more aware of the three main roles that I choose to concentrate on among the myriad choices I have as Information and Privacy Commissioner under section 42 of the *Freedom of Information and Protection of Privacy Act.* The first is answering requests to review decisions of public bodies by holding inquiries and writing orders. When applicants seek personal or general information from the public bodies as defined in the Act, and are not satisfied with the response, they may bring a request for review to my Office. It remains of great satisfaction to me that my colleagues mediate a settlement in over 95 per cent of cases. I deal with the remaining 5 per cent by reaching a decision in a quasi-judicial proceeding, which requires me to observe the principles of natural justice and due process.

My second major role, as the self-proclaimed privacy watchdog for the province, is much more proactive and aggressive than the decision-making function. On the privacy side of our work, my colleagues and I investigate and respond to complaints about perceived invasions of individual privacy, offer invited and gratuitous advice to public bodies about the privacy implications of various proposals and practices, and audit information-handling practices during site visits to such diverse organizations as Social Services offices, hospitals, municipal police departments, municipalities, colleges, government agents and professional associations, such as the Law Society of British Columbia. This is largely a consciousness-raising activity for the staff of these organizations about the importance of following fair information practices and ensuring appropriate security in the collection, storage and disclosure of personal information entrusted to them.

Our third major role is the public education of interested persons about their rights and responsibilities under the *Freedom of Information and Protection of Privacy Act,* and about the resources and activities of my Office. We issue news releases about orders, investigative reports and related privacy issues, and speak to the media about current privacy or access issues of general concern to the public. We also give informal talks, speeches and written presentations, and host conferences highlighting the current information and privacy issues. I remain optimistic that with each passing month more and more British Columbians are becoming aware of their rights of access to general government information and to the protection of their privacy.

Every day brings a new challenge as specific cases come before me, as events in the news reveal privacy and access issues of concern to the public, and as technology develops and, in the name of progress, works to erode the fundamental claim we may wish to make about the protection of our personal privacy and our right to know what is going on in our governments. I take heart in the hard work of my colleagues and in the growing interest of the public in keeping me poised and vigilant in my role as the information and privacy watchdog for British Columbia.

Elections BC

by Robert Patterson
Chief Electoral Officer

Robert Patterson is the first Chief Electoral Officer to be appointed by an all-party select Committee of the Legislature.

On September 1, 1995 the new *Election Act* and the *Recall and Initiative Act* came into force in their entirety and Elections BC was severed from the Ministry of the Attorney General and became an independent office of the legislature.

The Election Act

Although Elections BC has always been responsible for ensuring a fair and impartial election in accordance with the provisions of the *Election Act,* the new *Election Act* has added some responsibilities. Some of the highlights include:

Voter Access

- Voting places must be accessible to those with physical disabilities.
- Mail voting is open to all voters who are unable to attend Advance or General Voting.
- Special Voting allows people in extended care facilities, hospitals or remote work sites to vote with much greater ease.

Openness

- Political parties and constituency associations must register with Elections BC in order to issue tax receipts for donations and to incur election expenses.
- Political party and constituency association registration information is available for public inspection.
- Full disclosure of election contributions and expenses is required of candidates and registered parties.
- All election advertising must disclose the sponsor.

Modernization

- The new *Election Act* is written in plain and modern language.
- Penalties for significant election offences include fines of up to $10,000 and/or up to two years in prison.

In addition to administering the new *Election Act,* which affects provincial elections and by-elections, Elections BC maintains and updates the provincial voters' list, trains election officials and registration personnel, prepares and distributes election materials and supplies, and publishes all advertising information about the election and voter registration. Following an election, the Chief Electoral Officer reviews procedures and legislation and reports the election results to the Legislature.

Recall and Initiative Act

As a result of the *Recall and Initiative Act* Elections BC is now charged with administering the recall and initiative process. British Columbians can now petition to remove a Member of the Legislative Assembly between elections, and petition for new laws or to change existing legislation. Elections BC is responsible for co-ordinating and implementing the petition process, including signature verification, by-elections for recalled members and initiative votes.

Independent Officer of the Legislature

Under this new mandate the Chief Electoral Officer (CEO) has a new role as an independent Officer of the Legislature. Similar to the Office of the Ombudsman and of the Information and Privacy Commissioner, Elections BC works as a non-partisan agency at arm's length from government. In this impartial position, the CEO cannot be a member of any political party, nor make contributions to a party or candidate, nor vote in any election.

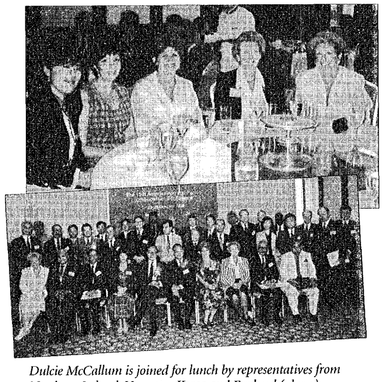
The CEO has far greater powers of discretion and autonomy under the new *Election Act.* He has emergency powers to disregard the Act, if necessary, in special circumstances. He can create new regulations in a wide range of administrative areas.The CEO acts as the chair of the newly created Election Advisory Committee, made up of representatives from all political parties represented in the legislature and all those registered parties that had candidates in at least half of the electoral districts in the last general election.

info **For more information about Elections BC call 1-800-661-8683.**

Ombuds World at a Glance

Hong Kong Hosts Conference

The fifteenth annual Australasian and Pacific Ombudsman Conference was held in Hong Kong on October 23-25, followed by a one-day International Ombudsman Symposium. Both were hosted by Mr. Andrew So, Commissioner for Administrative Complaints for Hong Kong. Forty-three delegates and observers attended, from twenty countries.



Dulcie McCallum is joined for lunch by representatives from Northern Ireland, Vanuatu, Korea and England (above)

Full delegation of the International Conference (below)

The delegates came from Australia, Fiji, New Zealand, Hong Kong, Papua New Guinea, the Solomon Islands, Vanuatu and Western Samoa. Observers from thirteen countries attended, including Dulcie McCallum, Ombudsman for British Columbia. The delegates and observers heard papers and discussed topics of mutual interest, including: Maladministration, Corruption and the Ombudsman's Role; Enhancing Community Access to the Ombudsman; Ombudsman and Ethical Practices in Public Administration; Public Access to Justice and to the Ombudsman; and Profile of a Good Ombudsman.

The days were very long and full, but participants had time to exchange informally with other delegates, and to visit Hong Kong and its surrounding areas.

Mr. So and his staff were perfect hosts. My respect and gratitude are extended to everyone in his office.

Guest Comment

Hong Kong's Way

by Mr. Andrew So, OBE, JP
Commissioner for Administrative Complaints
Hong Kong
at the invitation of the Ombudsman

I had the honour of hosting the 15th Australasian and Pacific Ombudsman Conference and an International Ombudsman Symposium in Hong Kong in October 1995. It was the first time that such important international events were held in Hong Kong. They were attended by over forty delegates from twenty countries and territories, including your Ombudsman, Ms. Dulcie McCallum.

Hong Kong's Ombudsman system came into being in 1989 when the Office of the Commissioner for Administrative Complaints (COMAC) Hong Kong was established by the *Commissioner for Administrative Complaints Ordinance.* As COMAC, my powers are largely similar to those of the classical Ombudsman in many other countries and territories. These include:

- conducting independent investigations into complaints of alleged maladministration by government departments and some major statutory organizations (including the two municipal councils, Hospital Authority, Housing Authority and Mass Transit Railway Corporation)
- initiating direct investigations without receipt of complaints
- summoning of witnesses and entry to premises
- publishing investigation reports.

Following implementation of the pilot scheme of the *Code on Access to Information in Hong Kong* in March 1995, COMAC is also responsible for investigating any alleged breaches of the Code. As of January 1996, fifty-seven government departments and branches will be included in the Code.

The direct access system that came into force in June 1994 allows the public to take their complaints directly to me instead of through a member of the Legislative Council as in the past. Since then, the numbers of complaints and enquiries have increased very considerably. In 1995, we received 2,607 complaints and 4881 enquiries. The numbers indicate the increased awareness by the people of Hong Kong of their right to expect a fair, open and efficient public administration, and increased confidence and support of the community in the work of our COMAC system.

I was appointed COMAC in February 1994. In the last two years, I have spent time in consolidating the work of my predecessor and further developing our COMAC system, including the expansion of COMAC's powers and jurisdictions and further strengthening and improving the resources of the Office. Overall, I consider that the COMAC Office has established its credibility by means of a more proactive approach in addressing the concerns of the complainants through our investigations and has demonstrated my commitment and pledge to rid the public service of any maladministration coming to my attention.

In my next three years, I shall aim to further enhance the professionalism in the work of the COMAC Office. As Hong Kong will become the Special Administrative Region of China in 1997, I hope to see our well-developed COMAC system continue to serve the community and to make a positive contribution towards the prosperous future of Hong Kong.

COMAC

Malaysia's Pledge

taken from the 1994 Annual Report of the Public Complaints Bureau, Prime Minister's Department, Malaysia

Objectives of the Public Complaints Bureau

"To assist the public who are aggrieved with the public service machinery and to take remedial action towards redressing complaints that are justified and to utilize complaints as an input for government agencies to improve accountability, quality and productivity in the public service."

Client's Charter

The Public Complaints Bureau, as the main agency for managing public complaints against government agencies, hereby pledges to:

- Receive every complaint from the public without any prejudice;
- Attend to every complainant who comes to the office within five minutes;
- Issue an acknowledgement letter to the complainant before he/she leaves the office and within seven days if the complaint is made through the mail;
- Initiate investigation within fourteen days from the date of receiving the complaint;
- Investigate every complaint fairly and justly;
- Inform the complainant of the progress of the case monthly until the case is settled;
- Inform the complainant of the result of the investigation within seven days after a decision is made.

If any of the above pledges are not met, please request to see the Deputy Director General 1 or 2 or the Director General.

Fairness Checklist Travels

The British Columbia Ombudsman's 1993 New and Improved Administrative Fairness Checklist is travelling the world. The Ombudsman for Hong Kong, called the Commissioner for Administrative Complaints, has adapted the checklist for modified use in his office.

BC Checklist *excerpts*

Courtesy
Are all people treated with courtesy and respect?

Complaint Procedures
Are there clearly defined complaint procedures at all levels? Are there procedures for actively promoting public input for improvement in service?

Hong Kong Checklist *excerpts*

Courtesy
Are all people treated with courtesy and respect? Do we admit our mistakes responsibly and frankly? Are apologies given where they are due?

Complaint Procedures
Are there realistic and clearly defined complaint procedures at all levels? Are there up-to-date performance pledges and customer liaison groups which will facilitate public monitoring of standards of services and input for improvements?

New in Hong Kong's Checklist

Performance Pledges
Do they reflect realistically the standards achievable? Are there systems in place to constantly strive for improvements?

Concluding Remarks
We believe that fairness should be demonstrated by voluntarily correcting personal or organizational mistakes and improprieties and refusing to take unfair advantage of mistakes or ignorance of others.

Concordia University

The Montreal university has adapted BC's New and Improved Administrative Fairness Checklist for their Ombuds office.

To Moldova with Love

Brent Parfitt, the Deputy Ombudsman, was one of six persons forming a United Nations mission to the Republic of Moldova from October 23 to November 4, 1995. The mission was led by Mr. Brian Burdekin, Special Advisor to the UN High Commission for Human Rights.

Moldova is a small republic of four-and-a-half million people bordered by Romania and the Ukraine, part of the former Soviet Union. The objective of the mission, which was requested by the government of Moldova, was "to assist the Government with regard to establishing appropriate human rights mechanisms to promote and protect the rights of women, children, minorities and other vulnerable or disadvantaged groups."

Moldova already has a vast array of provisions for human rights and freedoms enshrined in legislation, including the *Universal Declaration of Human Rights*, the *UN Convention on the Rights of the Child*, and the *International Convention on Elimination of all Forms of Racial Discrimination.* Interestingly, once ratified, these Declarations and Conventions supersede even the Constitution of the Republic should the Constitution be in conflict with them.

An earlier mission in February 1995 by the UN Centre for Human Rights had done a needs assessment recommending the establishment of a national institution for the protection and promotion of human rights. Subsequently Moldova was admitted to the Council of Europe and adopted the *European Convention for the Protection and Promotion of Human Rights and Fundamental Freedoms.*

Parliament Buildings, Chisinau, Moldova

The October mission consulted broadly with many groups and individuals, including parliament, political parties, the judiciary, non-governmental organizations and national minorities. The key recommendation of the group was that the UN assist Moldova to develop a national institution with a mandate to protect and promote those rights set out in the international treaties and conventions to which Moldova is a signatory. They proposed a two-step approach:

- To provide the opportunity for decision makers and opinion leaders to learn first-hand about the operation of Ombudsman/human rights institutions, to consider alternative approaches to legislation, and to assess the experience of other countries in working with such institutions.
- To provide assistance to support the parliamentary working group charged with the preparation of legislation and assist in planning for the establishment of the institution, preparing its budget, staff and equipment plans, and in defining and implementing its operational program for the first two years of its mandate.

Mr. Parfitt has been asked to participate in further meetings in Moldova in May 1996. These meetings will plan to implement changes designed to protect the constitutional rights of citizens, especially those who are vulnerable.

Youth Vision Statement

from a presentation by the Youth Caucus at the Fourth World Conference on Women in Beijing, September 15, 1995.

We are here today on behalf of the thousands of young women who have participated in both the NGO Forum and the Fourth World Conference on Women.

We present to you an indication of our vision for a future that will be free of today's problems. A future where every girl and young woman will have access and a right to education free of discrimination. A future where all women, young and old, will have full access to health care, related information and complete control of their bodies. A future where women and men will share equally in the sense of ownership of the achievements of their countries.

Also, a future where women can actively participate in determining a New World Order free from armed conflict and guided by the principles upheld in the Culture of Peace. A future where a commitment to the preservation of our natural environment is reflected in all our international, national and local development plans. A future where work done by women is recognized as an indispensable contribution to the world's economic growth.

Duma Approves Rights Law

In a 303-2 vote with one abstention, the Duma finally approved the constitutional law on the Russian Federation Human Rights Commissioner, first submitted to the Duma in July 1944, ITAR-TASS reported on April 17, 1996. The bill had been blocked by deputies from the Liberal Democratic Party and the Russian Regions faction, who disagreed with the provisions on the appointment of the Commissioner. Consensus was finally reached after amendments were introduced stipulating that each nominee for the post must be approved by a two-thirds majority and that the successful candidate must also win the support of two-thirds of the deputies in the final, secret ballot. The Commissioner will have the right to demand information from government organs to review complaints about human rights violations.

Host: New Brunswick

The annual Canadian Ombudsman Conference was hosted by Ombudsman Ellen King of New Brunswick. And quite a host she was. The conference began with a lobster feast few could match. And the working sessions proved very beneficial for our Ombudsman work. Some highlights were: *The State in Transition* by the Ombudsman from Quebec, Daniel Jacoby; *Managing People who Engage in Fear-inducing Behaviour* by Dr. Eugene LeBlanc; *Service Equity* by the Ontario Ombudsman, Roberta Jamieson and *The Ombudsman and the Media* by Arthur Doyle. After being toured through the New Brunswick Legislature by the Clerk of the Assembly, Ms. Loredana Catalli Sonier, the Ombudsman hosted a dinner at the Beaverbrook Art Gallery where we were thrilled by local Celtic musical talents. The whole event was delightful. A special thank you to Ellen King who put on a superb conference, working, as we all are, within very limited resources. New Brunswick can be proud of their Ombudsman and her very capable staff.

In 1996 we plan to meet either in the Northwest Territories or Saskatchewan, or hold a joint conference with the USOA in Portland, Oregon.

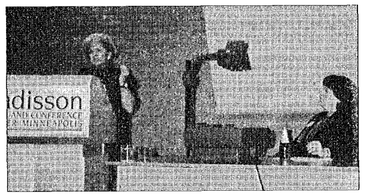
McCallum Elected to USOA Board

by Rosa Garner, President, USOA

USOA's Mission Statement

Promoting and supporting fairness, accountability and equity in government through the public sector Ombudsman.

The United States Ombudsman Association (USOA), founded in 1977, is the oldest national organization serving public sector Ombudsman professionals. Membership from local, state and federal governments include general jurisdiction and specialty Ombudsman offices. USOA organizes an annual training conference; publishes newsletters; maintains a member directory and archive of annual reports, research papers and laws establishing Ombudsman Offices; and offers consultations throughout the year. Internet services are under development to provide instantaneous communication among Ombudsman Offices.



Rosa Garner, President of the USOA listens to Dulcie McCallum, Ombudsman for BC, addressing US Ombudsman Conference

Throughout the years, Canadian Ombudsmans have worked co-operatively with USOA's members to promote and support Ombudsman activities in North America and around the world. In 1995, Dulcie McCallum was the first Canadian Ombudsman to be elected to USOA's Board of Directors. Ms. McCallum serves as a vice-president and head of USOA's Committee on Training. She contributes the unique perspective of a Canadian Ombudsman, together with her delightful sense of humour, extensive life experiences and enormous energy for promoting fairness in government. We hope that our Canadian colleagues will continue to work with us to ensure that our governments provide quality services to our citizens.

info USOA
c/o Joint Office of Citizen Complaints
Suite 208, 15 East 4th Street
Dayton, Ohio 45402-2199 USA

Gracias

from a letter to the Ombudsman, Dulcie McCallum, from Señor Carlos Mauricio Molina Fonseca, first Ombudsman of El Salvador

My term as the first Ombudsman of El Salvador (February 1992 – February 1995) is ending. After three years of tireless work in the area of education and promotion of human rights I can say with satisfaction that I have fulfilled my mandate for the first phase of the establishment and consolidation of the Office of the Ombudsman, in spite of the serious problems we had to overcome.

Our biggest success has been to generate the confidence of the citizens of El Salvador on the institution that protects human rights, although we continue to worry about the high numbers of violations that still go on. Our efforts have been aimed at trying to reduce these violations; something that should also be the concern of society at large and the rest of the public institutions.

Thank you for your invaluable contribution in the establishment of the Office of the Ombudsman for the Republic of El Salvador. I can honestly say that without your understanding and assistance our success could not have happened. Thank you distinguished friend for your support and confidence in our work.

Community, Adult Services & Education

And Now for Something Completely Different

Income Assistance Reform 1995

Although the provincial government introduced major policy and legislative changes late in 1995, the impact of some of the changes cannot yet be fully assessed. The rapid pace of these initiatives and delay in the publication of the revisions led to some confusion and uncertainty both within and outside of the ministry. There has been considerable public debate regarding the nature of some of the policy changes affecting eligibility and the level of benefits. The Ombudsman will monitor complaints in the coming year to identify any administrative fairness issues arising from these sweeping changes.

Changes to the Income Assistance Appeal System

Previous Ombudsman reports highlighted the need to provide a consistent and timely review system for both appealable and non-appealable matters. They also emphasized that information about reviews and appeals had to be clearly presented and accessible, and that appeal kits had to be readily available. The ministry has made considerable improvements in the complaint review system within the last two years.

The new regulations and policy set out the review procedures to be followed when a person disagrees with a decision of a financial assistance worker. Under the new legislation there are now two levels of appeal:

Tribunal Appeals

The first level of appeal is a three-person tribunal made up of a nominee selected by the appellant, a nominee chosen by the ministry and a chairperson selected by the two nominees. Under the new system, in most cases the nominees select the chairperson from a list of persons who have completed new training funded by the ministry. The Ombudsman recommended in 1993 that appeal tribunal members be trained and paid. She is pleased that under the new regulations, nominees and chairpersons on tribunals will now receive payment for their services, and that training is available to chairpersons.

Income Assistance Appeal Board

Under the old system, the only recourse for a person or the ministry objecting to a tribunal decision was to go to court. There is now a second level of appeal to an Income Assistance Appeal Board, composed of three to six members appointed by the Lieutenant Governor in Council. However, the only grounds for appeal to this board are questions of law or an erroneous finding of fact made by a tribunal "in a perverse or capricious manner or without regard to the material before it." The legislation allows the board to dismiss an appeal summarily if the appeal does not meet either of those grounds or if the board considers the appeal to be frivolous or vexatious. The new regulations repealed the provision that allowed a tribunal to reopen the appeal and hold further hearings on the basis of new evidence presented within thirty days. If an appeal is filed to the board within that period, the tribunal decision is set aside until the board renders its decision. The decision of the board is final and conclusive. This second level of appeal may provide a remedy for individuals who may not be able to go to court. Since the legislation creating the board came into effect only in December 1995, my 1996 Annual Report will assess the operation of the Income Assistance Appeal Board.

Assignment of benefits

The Ministry created a number of categories under which persons would be ineligible for regular income assistance but could be considered for hardship benefits, a separate category of assistance. Hardship benefits are provided on a one-month basis and in most cases require repayment. The denial of hardship benefits is appealable, but there is no reinstatement of benefits if an appeal is filed.

In 1994 the provincial government concluded an agreement with the federal government whereby the income assistance benefits paid to those having financial difficulty while awaiting unemployment insurance benefits would be repaid. Under this plan, claimants sign a form authorizing the federal government to deduct repayment funds from their unemployment insurance payments and send them directly to the Ministry of Social Services. We have had some complaints since then that the deductions caused some individuals additional hardship, and that the amounts deducted by the federal agency were greater than had been expected. Uncertainty about the repayment formula has made it difficult for some individuals to plan their finances with any certainty.

Rate changes and work programs

The new regulations reduce by $46 the monthly rate of single people and couples between nineteen and twenty-four who are without dependent children or are not medically unemployable. The continuing eligibility of employable individuals will now depend on their participation in job search and work preparation programs. The amount of exempt earnings has also been reduced. The Ombudsman is concerned that the announced job programs may not come into effect in 1996 in time to assist those individuals who are affected by the rate reduction. She will monitor the availability of the job programs in the coming year.

Three-month residency requirement

A major regulation change imposed a three-month residency requirement for eligibility for benefits, with exceptions made to some applicants with dependents who had been out of the province for less than 180 days and had resided in the province for three months immediately prior to their absence or who had returned to this province under an agreement with another province. The regulation disentitling claimants applied as well to refugees and refugee claimants arriving in this province. A number of people complained that they had been denied assistance under this provision. The Ombudsman advised the minister that she found the regulation was contrary to the cost-sharing agreement with the federal government. The regulation was adversely impacting particular groups. She will report on the outcome of her investigation in 1996 after the matter has been dealt with by the courts.

Changes to handicapped status

The Ombudsman welcomes the more expansive regulations governing the provision of benefits to people with disabilities (still referred to as handicapped, but scheduled for a change to the term "disabled"). A disabled designation results in a higher monthly benefit. The restrictive criteria for the disabled designation has been a source of complaints to this Office over the years. To qualify under the previous criteria, applicants had to have a permanent disability that could not be improved by remedial therapy and that rendered them permanently unemployable. A number of medical conditions were excluded by that definition, since a doctor might certify that a condition was chronic and debilitating, but might not be able to predict its permanence. Under the new regulations, a person over eighteen years may apply for disabled benefits if there is a medical opinion that the impairment is likely to continue for two years, or is likely to continue for at least one year and is likely to recur. In addition, the individual must, as a direct result of a significant mental or physical challenge, require extensive assistance or supervision, or require unusual and continuous monthly expenditures for transportation, dietary or other unusual but essential and continuous needs. This regulatory amendment recognizes the changing nature of medical knowledge and assessment and a shift in attitude about people with disabilities; it also provides more discretion for staff. Equally important, the new definition does not prevent people from receiving retraining or remedial treatment while receiving benefits and recognizes that people with a disability may work as they are able.

Complaints about Income Assistance

Complaints to the Ombudsman about income assistance are initially handled by intake analysts, who tell callers about review and appeal procedures available within the Ministry of Social Services. The complainant may request a review by a district supervisor and a more formal administrative review by an area manager, or appeal their decisions, if appropriate.

The appeal process is available only for decisions involving the refusal, discontinuance or reduction of income assistance benefits. Complaints about other, non-appealable matters, such as delay, communication difficulties or procedural issues, or matters that require clarification or suggest significant hardship, are referred by the intake analyst to an Ombudsman Officer for investigation. The Ombudsman may investigate complaints from those who are not satisfied with the results of the ministry's internal review process.

In 1995 the ministry appointed a Client Call Administrator who is responsible for ensuring a timely and consistent response to inquiries and client calls about adult income assistance. The administrator also analyzes the number and type of complaints and reports to senior executives of the ministry. The Ombudsman refers appropriate complaints to the Client Call Administrator, and many cases referred through this process are resolved satisfactorily. The Ombudsman will still investigate complaints that are not resolved through the involvement of the administrator.

In 1995 the ministry appointed a Client Call Administrator who is responsible for ensuring a timely and consistent response to inquiries and client calls about adult income assistance.

In 1996 the Ombudsman hopes to have an automated Ombuds-Information Centre in place to provide this information to the public through an easy access telephone system. This information centre will be available twenty-four hours a day, seven days a week.

Community, Adult Services & Education

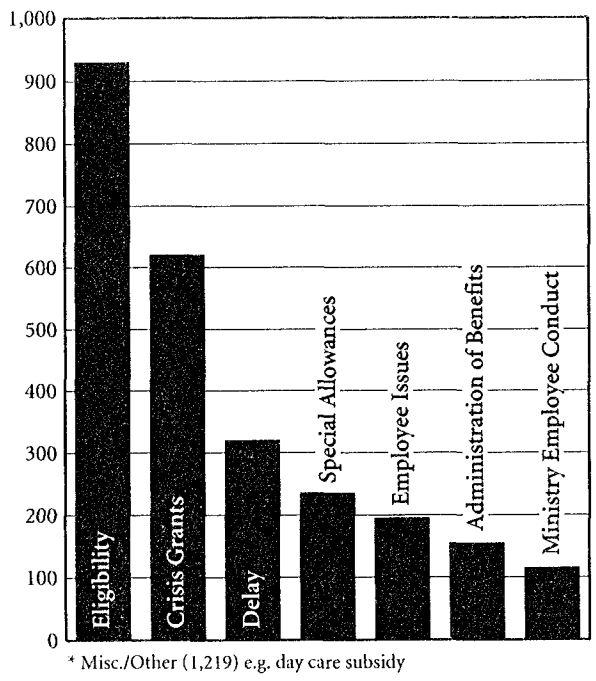
Sometimes the Early Bird Has to Wait

Income assistance applicants in one regional office were required to line up outside a Ministry of Social Services office before the office opened every morning in order to get an appointment – and this in the thick of winter. This process did not seem fair to the people who complained to the Ombudsman, especially since receiving a number was no guarantee of an appointment on the same day. Those people who either did not get a number at all on a particular day or whose number was not called, had to start the process all over the following day. The Ombudsman heard from one man who arrived as early as 6:30 a.m. and found twenty-five people already lined up ahead of him. The next day he arrived at 5:30 a.m., was sixteenth in line and still did not get a number or an appointment for that day. We heard of line-ups starting as early as 2:30 a.m. during the very cold winter weather.

We contacted the regional office and asked why applicants were not given appointments, as is the practice in most other ministry offices. We also asked why the office was issuing more numbers than the appointments available. We were told that the office dealt with a high volume of applicants and under an intake-by-appointment system, the waiting period for an appointment was up to four weeks. In addition, we were told that people who applied for assistance at that office were, for the most part, transients, and if the office were to issue appointments, several of the applicants might not show. We were also told that it was not possible to anticipate the number of appointments available each day because staff were absent for various reasons.

The Ombudsman did not think the office practice was fair. Since we had not received similar complaints about other high volume offices with similar clientele, we did not accept this office's rationale for their system. I proposed that the ministry review the situation and help the office find a different way to provide service to the public. I suggested that while the issue was being reviewed, if there were applicants unserved at the end of the day, a "rain-check" system be implemented. The ministry has decided on a plan to address both the volume of applications and the staff workload. I hope all of these issues will be solved before the snow comes again.

Adult Income Assistance Top Key Words for Closed Files, January 1 to December 31, 1995



* Misc./Other (1,219) e.g. day care subsidy

Training, Anyone?

In 1995 the provincial government introduced the first of a series of extensive and significant changes in the area of skills development, training and employment counselling for income assistance recipients. A significant change was the relocation of these services and staff from the Ministry of Social Services to the Ministry of Skills, Training and Labour. The rapid introduction of new initiatives combined with the reorganization of staff resulted in some confusion within both ministries as well as in the community.

The Ombudsman has received complaints about the inability to access services, delays in telephone calls being returned and appointments set up, confusion regarding the criteria upon which workers make decisions and the availability of the appeal process. Representatives from the Ministry of Skills, Training and Labour met with Ombudsman staff and confirmed that they are working towards rectifying these problems in the coming year. Because new initiatives were being planned and introduced so rapidly, programs were announced before policy was in place. This contributed to confusion and to the perception of unfairness. In the latter part of 1995 the government announced the introduction of *BC Benefits*, described as a renewal of British Columbia's social safety net. The program included the introduction of a Family Bonus and the Healthy Kids programs for low and moderate income families; the revamping of services to people with disabilities under the banner of Access to Independence; and the creation of new job search and work preparation programs for youth and employable adults. The responsibility for this program has now been transferred to the Ministry of Education, Skills and Training. The Ombudsman will continue to monitor the implementation of this program over the coming year.

The Razor's Edge

Mr. Z complained that he had failed an examination conducted by the Barbers' Board of Examiners. His appeal to the Minister of Skills, Training and Labour found there was insufficient evidence to warrant reversing the original decision.

Mr. Z had been employed as a licensed barber for many years in another province and required certification to continue working in BC. He believed the grading of the examiners was unfair and the standards against which he was being measured were outdated and old-fashioned. Specifically he believed that the requirement to complete a shave was outdated and the so-called "modern trend" haircut was out of fashion. The examination criteria are established by a board composed of members of the industry. Even if the Ombudsman were a barber, she could not comment on the appropriateness of the examination content. There is clearly a subjective aspect to this type of practical examination that can be difficult to measure and can easily lead to a dispute.

When the Ombudsman contacted the Director of the Apprenticeship Branch he said that Mr. Z was eligible for re-examination. He agreed that the man could select an independent examiner, agreeable to all parties, to audit the practical examination and submit a separate report to the Director on his findings. Mr. Z was satisfied with this resolution.

The Apprenticeship Branch provides leadership and direction to the provincial apprenticeship training and certification system. It consults with the Provincial Apprenticeship Board and industry through a network of Provincial Trade Advisory Committees. The branch is aso responsible for apprenticeship curriculum and examination development, and maintenance of the apprenticeship registration and certification system.

Home Sweet Home?

The BC Housing Management Commission, more commonly known as BC Housing, was established to manage, operate, maintain and control public housing made available under federal-provincial cost-sharing agreements. The commission's main mandate is to provide housing for people in need who are unable to secure adequate, affordable housing in the private market.

Although the decisions of the commission do not generate a large number of complaints, there is a pattern to the complaints we receive. Many continue to relate to the length of the waiting period for housing. Although it is extremely hard for people in need to be told that there are others in greater need or that there are no suitable units available at present, the fact remains that there are too few units available to meet the demand.

BC Housing representatives have been very responsive when contacted by the Ombudsman ...

In most cases the public is not well informed about the "point system" BC Housing uses to set priorities for housing applications. Applicants are not always aware of the importance of keeping BC Housing informed about changes that might affect their position on the waiting list by changing their points entitlement. There is no doubt that the commission has a difficult job trying to balance the allocation of housing according to the wait list with the need to accommodate emergency situations.

We also receive complaints relating to tenant disputes and rent subsidy calculations. BC Housing representatives have been very responsive when contacted by the Ombudsman and have tried to meet with the complainants to resolve the issue. A number of these problems, similar to the case below, have been resolved satisfactorily over the past year.

In most cases the public is not well informed about the "point system" BC Housing uses to set priorities for housing applications.

The mother of a 2 1/2 year old child complained that her son had fallen out of a second story window in her home. The child, who fell approximately fifteen feet, was hospitalized and later returned home. The woman, who lived in a BC Housing unit, alleged that the child had fallen because the windows were not properly installed. After the accident she requested that BC Housing replace or secure the windows, but at the time of her call to the Ombudsman, two days after the accident, no action had been taken.

We contacted BC Housing Management Commission. Although they denied that the windows were improperly installed, they agreed to secure the existing windows. We were pleased to hear that within a matter of hours arrangements were made to secure the windows in the woman's unit and check the windows in other units in the complex.

Community, Adult Services & Education

A Fairer Search

A university search committee was set up in 1994 to select and recommend candidates for the position of director of a research centre. We received complaints that the university had not fulfilled its commitments to involve the research centre community in the process and that there was bias against one candidate, a former director of the centre. The complainants had understood that:

- the selection process would follow the procedures used to recommend appointments of department heads
- the position would be advertised widely
- the selection committee would include members of the centre's faculty and representatives of the community external to the university.

Once the search committee completed screening the candidates and narrowing the list to two, it had recommended one name to the President. The former director of the centre was not selected. During the Ombudsman's investigation we found that there were significant inconsistencies in the evaluation of the candidates, which rendered the process unfair for all the candidates. I underscore that I made no judgment about the attributes or suitability of any of the candidates.

I found that:

- the committee lacked a clear and shared understanding of the criteria on which the candidates would be evaluated
- there was no process to ensure that all candidates would have a similar opportunity to be heard by all the search committee members
- there was no consistent process to acquire information about the candidates from the referees whose names the candidates had provided, or from a group of appropriate referees agreed upon by the committee
- the committee failed to have a complete discussion of relevant information before votes were canvassed and ranked.

I raised these concerns with the university and notified the successful candidate, as a party potentially adversely affected. Subsequently, I made two recommendations:

- that the curricula vitae of the four candidates be examined and ranked by external experts according to accepted criteria
- that the university incorporate the requirements of fair process and natural justice into all its administrative appointments procedures.

The President responded by initiating a review of the search procedures and putting the appointment of a director of the research centre on hold until the review process was completed.

... we found that there were significant inconsistencies in the evaluation of the candidates ...

Though there was agreement to review the appointment guidelines, the university was initially reluctant to change a process that was used at other universities and had been found to work well for many years. I was further told that the university valued the flexibility of the process because it allowed the richness of the different perspectives of committee members and that a more rigid process might limit the opportunities for competent peer evaluation.

The university has recently completed its review of the Guidelines on Academic Administrative Appointments. We are satisfied that the revisions made to the guidelines, which are now in effect, reflect a conscientious effort to provide an appointment procedure that is more administratively fair. The research centre was re-structured and an internal search for a director resulted in the appointment of the former director for a three-year period.

Time is Money

A student left the country after completing a post-secondary program at a local university. About a year after finishing school and while he was still away, he applied for student loan remission. The student's application was denied because it had been submitted after the one-year deadline from the end of his study. He was told that he could appeal the decision within sixty days and that he should provide proof of graduation, because the transcripts he had submitted with his application did not show that he had obtained a degree. As the student was overseas, he was not able to apply for graduation until his return to the country several months later. After obtaining the necessary documentation from the university, the student appealed the earlier decision, only to have his appeal denied for the same reason his original application had been denied – late application. He complained to the Ombudsman.

The purpose of the remission program is to reduce the outstanding debt to a reasonable level. Denial of remission may cost students several thousands of dollars that would otherwise have been deducted from their debt. The one-year period is not a statutory requirement, but a policy established primarily for accounting and budgetary purposes. Given that the student had complied with all the requirements, denying him remission on the basis of an arbitrary deadline did not seem fair. We asked that the Student Services Branch take a second look at the student's circumstances. After they had done so, we were informed that the student's application for remission was approved.

This case is just one example of several complaints received by the Ombudsman about this issue. We are encouraged to see that the branch has undertaken a review of the remission policy and are optimistic that some positive changes will be made.

Reach Out and Touch Someone

Certain facts of life are annoying, but must be tolerated because we have no control over them. We doubt that the problems encountered by students who want to know if their student loan application has been approved fall within this category. However, that is what representatives of the Ministry of Skills, Training and Labour told our Office when we approached them with concerns about access to information.

Students who require financial assistance to cover educational costs, such as tuition fees, books and supplies may apply for a student loan. Those with a touch-tone phone can obtain direct information about the status of their loan application on a toll free line. We hear from a number of students, usually around the commencement of the fall and winter semesters, that they cannot get through on the toll free line. We also hear from students who reach the information line, but find that the information provided is inaccurate. When they ask to talk to a "real" person, the system cuts them off. In some cases, these difficulties in accessing information cause not only anxiety for the students who need to plan their school year, but delays in processing their applications. We will continue to discuss our concerns with the ministry and will report further in the next annual report.

Higher Education

Complaints about universities and colleges are broad and diverse, and come from students, faculty, employees and members of the public.

Examples of complaints from students:

- refusals of admission
- penalties for misconduct
- denials of refunds
- awarding of fellowships
- housing costs
- safety procedures
- parking tickets
- practicum and co-operative programs
- harassment
- intellectual property rights
- transferability of courses

from faculty:

- hiring procedures
- research arrangements
- sabbaticals
- pension plans

from members of the public:

- scholarly integrity issues
- access to premises
- granting of contracts.

All colleges, universities and public post-secondary training institutes have dispute resolution procedures to review grades and many other types of complaints. Students or faculty contacting our Office are informed about review procedures available within the institution, if they have not yet tried to resolve the matter through existing mechanisms. We advise complainants that we may investigate if they remain dissatisfied after they receive a final decision from the college, university or institute. Some Ombudsman investigations have led to the development of new procedures or revisions of existing ones.

A common element in many of the complaints is a lack of clear communication.

The Ombudsman receives a number of complaints about student grades or evaluation and the appeal processes following a failure. It is not the Ombudsman's role to reassess the academic merits of a student appraisal, but she does review the administrative fairness of the decision-making process. A common element in many of the complaints is a lack of clear communication. Whether students are in a practicum or an academic program, they need to know what is expected for a passing grade, and how their work will be measured. They need to have enough notice about any potential problems assessed by the instructor, and what steps to take if they disagree with a grade or review. Clear criteria at the outset and effective communication as the course progresses may prevent disputes and complaints about the evaluation at a later date.

Community, Adult Services & Education Team

Files Open Dec. 31, 1994	179
Files Received in 1995	944
Closed – No Investigation	195
Closed – Investigation	746
Internal Team File Transfers	29

Health

Follow-up **Ombuds***report 1994* *page 27*

The College Responds

Ombudsman Special Report No. 16 dealt with an investigation of the College of Physicians and Surgeons regarding its handling of the complaint of sexual assault brought by Ms. Nikki Merry against a physician, a member of the College. The Ombudsman's key recommendations were summarized.

Response of the College of Physicians and Surgeons:

1. **Re: policies and procedures**

- Written guidelines for investigators now incorporate all six areas outlined by the Ombudsman:
  - gather facts only and leave the testing of facts to the counsel of the college
  - formalize the complaint in writing within a reasonable period of time
  - clarify the role of the college staff support person
  - adopt a policy to clarify when a support person can be used by the complainant; how to advise a complainant of this right; that the complainant may choose the support person
  - instruct the investigators on when the "reasonable woman" standard may be relevant
  - develop investigation standards for interviewing complainants.
- All issues raised by the Nikki Merry case have been discussed with college investigators.
- Information has been shared with other professional colleges about the training of investigators and the types of issues and concerns that can arise during the complaint process.

2. **Re: the use of s.50.6 of the *Medical Practitioners' Act*, namely the interim suspension power.**

- The college reviews s.50.6 of the *Medical Practitioners' Act* whenever there is a suggestion of risk to the public.
- Reliance is placed on voluntary undertakings by the college only when the undertakings can be appropriately monitored and when the college considers that voluntary undertakings afford the best legal avenue available to protect the public.

3. **Re: communications from the Ministries of Health and Attorney General regarding changes to the college's governing statute.**

- Communication regarding the proclamation of amendments to the *Medical Practitioners' Act* has not improved to the extent desired. The college is concerned about this.

4. **Re: resource materials**

- The improvement of existing written materials for complainants and the development of new materials is an ongoing process.
- During 1995, the college held a conference on the issue of communication; a Communications Committee, with both medical and public representatives, has been formed to review the college's communications with various parties, including complainants and the public. The college will be developing further brochures, explaining not only the complaint process but also the role and functions of the college and its committees. They considered producing a video but found the cost prohibitive. They continue to focus on individual discussions with complainants to ensure that they are fully informed and are comfortable with the processes of the college.

5. **Re: restrictions by way of Resolution**

- The recommendation regarding the distinction between "prescription" and "administration" of controlled and narcotic drugs was, to a considerable extent, peculiar to the facts found in the Nikki Merry case. The college indicates that this recommendation has been duly noted.
- Peer reviews are appropriately diarized to ensure timeliness.
- The college continues to release to the media information about restrictions placed on a physician's practice following disciplinary action. Other means of notification to the public being explored include having the physician in question inform all hospitals or non-hospital medical/surgical facilities to which she or he applies for medical staff privileges that she or he was the subject of disciplinary proceedings by the college.
- The college is exploring the use of patient surveys as one way to monitor physician conduct.

6. **Re: information from Crown Counsel**

- The college is still waiting for a protocol and policy from the Office of Crown Counsel in order to improve the exchange of information among the police, the Criminal Justice Branch and the College of Physicians and Surgeons. They are waiting for clarification of how the *Freedom of Information and Protection of Privacy Act* will affect this exchange.

The college has made good progress during the year following the Special Report.

Getting to Know You

"You are guilty of incompetence, and of conduct contrary to the ethical standards of the nursing profession." With these words, a nurse's registration was cancelled by the Professional Conduct Committee of the Registered Nurses' Association of BC(RNABC) in April 1993. In July 1993 the woman was diagnosed with a mental disorder. The committee did not have this evidence at the time of its decision in April. The woman appealed the decision to the full board of the RNABC, presenting the new evidence about her mental health. The board denied the appeal. Since they gave no reasons, she was unable to find out whether the board had considered the evidence regarding her mental health. She felt this was unfair and complained to the Ombudsman shortly after the Office was given jurisdiction over self-governing professional and occupational bodies in 1993.

I wrote to the RNABC with my tentative findings in January 1995 and forwarded my final recommendations, pursuant to section 22 of the *Ombudsman Act*, in May 1995.

My recommendations were:

- that the RNABC provide adequate and appropriate reasons for denying an appeal, as a significant element of administrative fairness. In the case of this complaint, a statement of reasons would have helped the woman to understand what steps she needed to take in order to rectify the issues identified by the board, and work towards regaining full membership in her profession.
- that the quorum (for the purpose of appeals only) be reduced from a simple majority to five members to facilitate hearing appeals and preparing reasons for decisions.

The Ombudsman recognized the difficulties faced by the board of directors in drafting reasons, given the number of board members who historically attended appeal hearings. The 1994 annual meeting of the RNABC had passed amendments to the by-laws, later approved by order in council, which established that the quorum for the board be set at a simple majority, thirteen of its twenty-four members. However, it was established practice that the full board attend such hearings. The Ombudsman suggested that the process for appeal hearings would be more efficient if fewer of the members attended.

It was, both for the RNABC and for the Ombudsman, a process of "getting to know you."

The board of directors accepted the Ombudsman's recommendation about giving reasons for its decisions on appeals.

Regarding the number of board members attending an appeal hearing, although the RNABC did not adopt an interim policy, the Ombudsman's letter did foster a climate that allowed the board to keep participation at slightly above the simple majority, currently established as the quorum. The smaller number made it easier for the board hearing an appeal to reach agreement on full and appropriate reasons for its decision in any given appeal.

The RNABC is acting on the Ombudsman's recommendation to reduce the quorum to five for the purpose of hearing appeals. This item is included in the proposed by-law amendments to be considered at the RNABC's annual meeting in April 1996. The Association also invited the Ombudsman to speak on the issue at this meeting. Following approval by order in council, the amended by-law should be in place by the autumn of 1996, at which time, if it passes, I will consider the matter fully rectified.

This complaint was one of the first investigated after the Ombudsman assumed jurisdiction to investigate complaints about the RNABC and other self-governing professions and occupations. It was, both for the RNABC and for the Ombudsman, a process of "getting to know you." The RNABC learned about the Ombudsman and her role, and the Ombudsman learned about the role and function of the RNABC. The result is a positive working relationship, in which the RNABC now sees the Ombudsman as a source of valuable insight and information that enhances the Association's ongoing quality review. Meanwhile, the complainant has received her interim permit, and is now able to practise nursing under supervision, while the RNABC assesses the quality of her practice.

Follow-up **Ombuds***report 1994* *page 25*

Universal Precautions

We reported our concerns regarding the Ambulance Service's policy on universal precautions. We found that the policy included ambiguous and conflicting instructions, making reference to precautions taken "when transporting AIDS patients," while at the same time suggesting universal precautions for all patients. The Ambulance Service agreed to show the Ombudsman the final draft of revisions to its policy manual.

I have been provided with a copy of the updated draft policy, specifying that appropriate precautions apply to **all patients**. I am satisfied that our concerns have been addressed.

Health

Toothless in Masset

When he contacted the Ombudsman in January 1995, the man had been without his dentures for six months. He was taken by air ambulance from Masset to Prince Rupert and then to St. Paul's Hospital in Vancouver. He claimed that the BC Ambulance Service had lost his dentures en route. When he returned home he still did not have his teeth.

We contacted the Ambulance Service who reviewed the circumstances, accepted responsibility for the loss, and invited the man to submit a receipt for the cost of his replacement dentures. However, the man explained that he did not have enough money to replace the dentures. We then spoke to his dentist, who agreed to replace the dentures and bill the Ambulance Service directly. The Ambulance Service, in turn, agreed to pay the dentist upon receipt of the bill for service. This resolved the complaint, and the man had his dentures replaced.

Seeing Is Believing ☆

Persons with handicaps are often at a serious disadvantage when seeking professional services such as dentistry or optometry, for example, if they are unable to communicate in the "usual" manner. A man who was profoundly deaf had this experience. He arranged an eye examination with an optometrist, carefully explaining the limitations of his hearing disability. During the exam, the man was unable to "read" the practitioner's lips because he was either speaking too quickly, or working behind equipment. It appeared that the optometrist had ignored the man's request for accommodation.The examination resulted in what the man described as a seriously inaccurate prescription and he refused to accept the glasses provided by the optometrist. He was even more angry when he learned that the Medical Services Plan would not pay for another eye examination for two years. He felt he was being penalized for the poor service provided by the optometrist and contacted our Office, using a Telecommunications Device for the Deaf (TDD/TTY).

Relying on BC Tel's Message Relay Service, we discussed the matter further with the complainant. We suggested that he take his complaint about the optometrist to the Board of Examiners in Optometry. We then contacted MSP to discuss the issue of a second eye examination. At first they were prepared to pay only if it was done by the same practitioner. They felt the same problem would occur if the man went elsewhere. We pointed out that as there was now an obvious personality conflict between patient and practitioner, especially as the complainant was planning to pursue the issue with the Board of Examiners, such a condition seemed unfair. MSP concurred, and agreed to authorize a second examination with a practitioner of the person's choice. When we gave this information to the man via the Message Relay Service, he expressed considerable satisfaction with the resolution.

Well done MSP!

Love Your Neighbour As Yourself

A potentially tragic situation was averted for an elderly man by the actions of several good neighbours. This was the situation. An individual who claimed to be a long-time acquaintance of the man, who was resident in a Long Term Care facility, had obtained a court order appointing him the agent or "Committee," under the *Patients' Property Act*, of the man and his financial affairs. The individual was telling the facility that he did not want anyone to visit with the resident without his permission. Staff had also heard from former neighbours of the resident who believed the Committee was taking actions with respect to the man's property that were not in his best interests. A staff person in the facility contacted the Ombudsman on behalf of the resident about the adequacy of the Public Trustee's screening of the Committee.

Under the *Patients' Property Act*, any person may apply to court to become Committee of another adult. The applicant must provide affidavits from two physicians stating their opinion that the subject of the application is incapable of managing himself or herself, or her or his financial affairs, by reason of mental incapacity. One problem with the statute is that it permits the service of the application for Committeeship on the person affected to be waived by the court. Since the court waived service in this case, as in many others, the resident was not aware of the application. Before an application is heard in court, it is reviewed by the Public Trustee, who has the opportunity to require more information or to oppose the application. The Public Trustee found this particular application to be in order and, without any party opposing it, the court granted the Committeeship order as requested.

Thanks to the concern and the responsible actions of the residence staff person and the neighbours, a serious infringement of this man's rights was averted.

As it turned out, the man's former neighbours were also concerned and took a new application to court. They had their friend reassessed by a geriatric specialist, who found him to be capable of managing his affairs if given some support and assistance. They also provided evidence to show a conflict of interest between the Committee and their friend. The court agreed, and rescinded the Committeeship order. Thanks to the concern and the responsible actions of the residence staff person and the neighbours, a serious infringement of this man's rights was averted.

... several of the problems identified in this case have been addressed by the Adult Guardianship Act, passed by the legislature in 1993 but still awaiting full proclamation.

The Ombudsman investigated how the Public Trustee had gone about its review of the original application. We learned that for resource reasons, almost all such reviews are "paper reviews" and do not include any personal contact. Although understandable, the failure to interview the person concerned poses a problem, especially when the adult affected is not given notice of the application. The Office of the Public Trustee agreed that in future cases, when the adult resides in a care facility, it would contact the director of the facility to see if she or he had any concerns about the application. It also agreed to examine ways in which possible conflicts of interest could be identified in its review, perhaps by doing a property title search or obtaining additional affidavit information. We will continue to follow this issue.

It is important to note that several of the problems identified in this case have been addressed by the *Adult Guardianship Act*, passed by the legislature in 1993 but still awaiting full proclamation. This statute will require that an application for guardianship be served on the adult in all cases, and that a comprehensive care and needs assessment be provided to the court as a basis for decision making. The new law should provide legislative safeguards in cases such as this one.

Keeping House

Mr. T was a person with a disability. He was receiving both a federal pension and benefits through the Ministry of Social Services for medical expenses, as well as a bus pass. He had also been receiving housekeeping services. He complained to the Ombudsman when he received a notice in the mail from the Long Term Care Manager telling him that his housekeeping services would be discontinued.

Our investigation showed that, mainly because of budget concerns, the Ministry of Health had reviewed the entire Continuing Care housekeeping program. Staff were told that the budget for this service would stay at the previous year's level for the foreseeable future. They then developed screening criteria, a checklist and a scoring process to review all clients receiving housekeeping services. They decided to maintain housekeeping services for those individuals for whom the service was considered essential for their health and for those who, without the service, would likely have to go into hospital or an institution.

Staff reviewed the circumstances of all those receiving the service and assigned scores according to how the person fit into the screening criteria. Since Mr. T's score did not meet the minimum, his housekeeping service had been terminated.

We also learned that Mr. T had appealed the decision to terminate his service. His situation was twice reviewed but no changes were made to the original decision.

We reported to Mr. T that we were unable to substantiate his complaint of unfair treatment. We explained that after examining the ministry's policies and processes, we found that:

- the review mechanisms used by the Health Department's Long Term Care staff to determine an individual's risk factors were both reasonable and fair
- in the face of shrinking resources, their screening criteria for deciding the number of clients entitled to housekeeping services were also reasonable.

We pointed out that he had been given two opportunities to have his situation reviewed and neither review had changed the original decision.

Health

All Good Things Must Come to an End

The Ombudsman's *Public Report No. 33 – Listening: A Review of Riverview Hospital* was released in May 1994. A year and a half later the Ombudsman was pleased to note that virtually all of her ninety-four recommendations had been accepted. All were either implemented or nearing implementation. We take the opportunity presented by the annual report to highlight several of the most significant changes, congratulate those whose efforts have brought them about, and formally bring to a close the Public Report phase of our relationship with Riverview Hospital and the Ministry of Health. Bringing closure simply means the Ombudsman's oversight role in the implementation of *Listening* will cease, but the report will continue to be a beacon to guide the hospital in its work. The report has also gained wide international attention and in 1995 found its way into the State Legislature in Minnesota and to a conference in Hong Kong.

Riverview Hospital

Riverview Hospital accepted all of the recommendations directed to it in *Listening*. The board, administration and staff collaborated on a comprehensive planning process to make change based on the recommendations a reality. A few of the most impressive developments are the following:

- Riverview *Hospital's Charter of Patient Rights* was officially launched on November 1, 1995. We were pleased to attend the ceremony that marked this occasion, a true celebration of a major achievement. The *Charter* is the strongest and most detailed statement of its kind of which we are aware, and serves as a commitment to making the hospital a more open and patient-centred facility.
- In August 1995, Riverview contracted Dr. Patricia Fisher as a consultant to develop a new program of sexual abuse counselling for patients and survivors. Dr. Fisher works closely with a hospital steering committee, chaired by Ms. Jill Stainsby, Riverview's Patient Relations Co-ordinator.
- The position of Co-ordinator of Patient Relations, started in late 1994, went well beyond the guidelines set out in *Listening*. Riverview employed two Co-ordinators, one a consumer of mental health services. They played a leading role in the following activities, among others:
  - design and co-ordination of a Service Feedback, or complaints handling, policy
  - preparation of a Guidebook for understanding and acting on the *Hospital's Charter of Patient Rights*
  - co-ordination of changes in hospital policy required by the *Charter* and *Listening*
  - acting as liaison for our Office on individual complaint matters.
- The Patient Empowerment Society (PES), the patients' self-advocacy organization at the hospital, continued to be welcomed as a participant in a host of policy and service design activities.
- A group of important initiatives in admissions and discharge planning policy were moved forward in a package of reforms intended to make "psychosocial rehabilitation" the accepted approach in all hospital treatment programs.

We now feel confident that Riverview has in place a means of responding effectively to patients and family members with concerns about any aspect of hospital services.

What is most gratifying to the Ombudsman is the overall impression created by these and other actions, that Riverview Hospital is much more open and responsive to its client groups than was the case a few years ago. Indeed, that it is "listening." More than one person who told us during the investigation of their frustrations and serious concerns about Riverview Hospital has recently said, "Riverview is fine now; the problem is getting the same message out to some other parts of the mental heath system."

Ministry of Health

Listening directed several recommendations to the Ministry of Health. Perhaps the most important was the recommendation that provided:

That the Provincial Government appoint 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 BC and on the issues being encountered by consumers, service providers, advocates and those they support; and*
- *to provide a single information and referral source for advocacy resources in mental health services in BC.*

That the model be based on a consultation with community organizations and that the Ministry of Health make a proposal for the model within 2 to 3 months of this Report.

The Ombudsman is pleased to report that the Ministry of Health continues to hold a strong commitment to the idea of appointing a Mental Health Advocate. The consultation we recommended got underway midway through 1995 and through that process a mandate for the position was developed that incorporated many of the elements discussed in *Listening*. The Advocate will engage in systemic advocacy aimed at improving the quality of life of consumers of mental health services. To be appointed by the Minister of Health, the Advocate nevertheless has a cross-ministry role, and is expected to be a strong and independent voice on mental health issues throughout the system. The Advocate's stated duties are to include:

- To comment on acceptable and uniform levels of mental health standards and service systems throughout the province.
- To advise government ministries that provide services to people with mental illness (e.g., Social Services, Health and Attorney General) on the provision of more effective mental health services and an improved system of care.
- To establish a framework for effective and efficient individual advocacy and to support the creation of individual advocacy networks.
- To provide a referral resource for individual advocacy issues.
- To report annually, or more frequently if deemed necessary, on systemic advocacy issues and on the state of mental health services in British Columbia.

We are particularly pleased with the first of these duties, and the fact that the scope of the Advocate's activity may include "new regional governance authorities and community health councils." The Advocate should be in a good position to speak out if mental health services receive less than the priority they deserve as regional health plans are developed. The Ombudsman looks forward to working with the provincial Mental Health Advocate, and assisting her or him in fulfilling these laudable goals.

Bringing closure to a Public Report is not something the Ombudsman does lightly. In many instances, the follow-up to a Public Report goes on for several years. In the case of *Listening*, closure does not mean that recommendations not yet accepted or implemented will be forgotten. We note, for instance, as we did last year, that the Ministry of Health has declined to embark on public consultation regarding needed changes to the *Mental Health Act*. We will continue to pursue this and other issues raised in *Listening*. Bringing closure does, however, represent a public recognition by the Ombudsman that the affected authorities have complied in substance and in spirit with the overall direction of the Public Report. In bringing *Listening* to a close and returning to the ordinary course of our relationship with Riverview Hospital, we congratulate the hospital, the Ministry of Health and all those interested people – consumers and family members alike – who helped us during and after the investigation. You all made an important contribution and a significant difference.

Don't Tell My Mom

A man complained to the Ombudsman that a staff person from the local Mental Health Unit had contacted his mother without his permission, and had discussed his mental health with her. The man maintained that the call had caused his mother great distress, and furthermore, since he was over forty years old, he felt that staff should not be discussing his health with his mother.

We found that in June 1995, the complainant had entered into an agreement involving his psychiatrist, his mental health worker and his mother, which stated that the complainant's mother was to be contacted if the worker believed that he was not doing well, or had stopped taking his medication. It appeared that the complainant had given permission for the worker to contact his mother. Indeed, the reason the mental health worker had contacted the complainant's mother was that she was concerned that he was not doing well.

When told of the complaint, the Acting Director of the Mental Health Unit concluded that the complainant no longer consented to the arrangement, and assured us that no further contact would take place. Since the mother had been calling the complainant's worker seeking an update on her son's condition, the Acting Director said that staff would attempt to obtain the complainant's permission to notify his mother that the agreement of June 1995 was now void.

In an effort to build up our data about facilities in the province providing residential care and services for seniors the Ombudsman's Health Team contacted all the Long Term Care facilities in the province for information about them and their complaint resolution processes.

Our reasons for doing this are:

- to obtain information about resources for seniors for potential referral and investigative reasons
- to learn more about the complaint processes of the care facilities and services
- to offer help and advice to those who have not yet developed their own complaint resolution processes.

In 1996 Ombudsman staff will continue our outreach program to inform seniors about how our Office might help them. If your organization would like some assistance, please contact the Health Team in the Ombudsman's Office.

We hope that this message will remind those Long Term Care facilities that have not yet responded to our request, to send us information about your facility and copies of your complaint resolution mechanisms.

Health

It Pays to Read the Stuff

A woman who was qualified as a physical therapist in England moved to Canada in 1992, obtaining status as a temporary registrant of the (then) Association of Physiotherapists and Massage Practitioners. (The College of Physical Therapists of BC was established in December 1994 and now regulates the profession of physical therapy). The woman's temporary registration had been extended for two more one-year terms, the maximum allowable. She understood that she would have to take an examination before qualifying for permanent registration, but found out that she must first undergo a credentialling process before she could sit the examination. As she did not hold a degree in physical therapy, she expected that the educational assessment would result in a requirement that she undergo further education before sitting the examination. Since her temporary registration could not be granted beyond three years, and she was in her third and final year of temporary registration, this change meant that she would be unable to practise while preparing for the examination. The woman had received some information from the Association about the coming changes, but she argued that this information was inadequate, ambiguous and confusing. She felt that the whole process was unfair and contacted the Ombudsman.

Our investigation found that the Association had given ample notice of the change, including the possibility of avoiding the credentialling process by enrolling for the national or provincial examination prior to December 1992, later extended to December 31, 1993. We noted that the overwhelming majority of the Association's members on the temporary registry found the information provided by the Association to be clear. We also noted that while the Association repeatedly invited anyone concerned about the changes to contact the office for further information, the woman concerned did not do so until the summer of 1994, by which time it was too late for her to complete the credentialling and examination process within her three year temporary registration. Her complaint of unfair treatment was not substantiated.

Through Their Eyes

The newly established College of Opticians of British Columbia adopted the American Board of Opticianry and National Contact Lens Examiners (ABO/NCLE) certification as the standard for British Columbia. They required everyone who wished to be a registered optician in the province to write the ABO/NCLE exam. A practising optician contacted the Ombudsman in March. She had obtained her ABO/NCLE certification out of Fairfax, Virginia before beginning to practise here. She felt that it was unfair of the college to require that she and others in like circumstances rewrite the exam.

The Ombudsman contacted the college and discovered the following:

- although the college was using the ABO/NCLE examination, it intended to disregard eight items dealing with American regulations and standards, and mark the exam out of 92 instead of 100. As a result, someone who had obtained the required 70 per cent when the exam was marked out of 100, could fail to attain the passing grade when the examination was marked out of 92
- the ABO/NCLE considered certification valid for only three years, after which those who wished to maintain certification had to secure continuing education credits.

She felt that it was unfair of the college to require that she and others in like circumstances rewrite the exam.

The Ombudsman suggested that the college offer those opticians who had obtained ABO/NCLE certification within the past three years the option of having their transcripts reassessed using the college's marking criteria, in lieu of writing the examination. Those who were approved would be registered. The college intended to charge a fee of $150 for this reassessment. We considered this result to be a fair and equitable solution.

Pay'n Stay ☆

The Ombudsman was contacted on behalf of a resident of a mental health facility who was being charged a user fee. The facility was one of the first psychiatric tertiary care community-based residences developed as part of the Mental Health Plan to replace beds at Riverview Hospital. As such, it was designated as a "provincial mental health facility" under the *Mental Health Act*, and so could house involuntarily detained, or certified, residents. The fee the facility was charging residents, including those certified under the Act, was the per diem user fee applicable to all provincial extended care beds.

It was evident to Ombudsman staff who toured the facility that significant success had already been achieved in creating a home-like environment ...

However, the *Mental Health Act* and Regulations exempt involuntarily detained patients from paying the user fee. The basis for the exemption is that people who have no choice about residing in a mental health facility should not be charged for living there. The Ombudsman brought this to the attention of both the Mental Health Division of the Ministry of Health and the management of the facility in question. The management immediately agreed to stop charging the user fee to certified residents, and to return the fees that had already been collected.

Our investigation discovered that management had simply not been aware of how the provisions of the *Mental Health Act* worked. In addition, however, it had viewed the payment of user fees as a form of charging for room and board, in keeping with the facility's philosophy of "normalizing" the lives of its formerly institutionalized residents. It was evident to Ombudsman staff who toured the facility that significant success had already been achieved in creating a home-like environment, with resulting quality of life benefits for residents. This case illustrates just one of the many issues that will arise as BC's mental health services move through transition to a more community-based model.

Breaking Up Is Hard to Do

For this woman, going to the hospital to have her baby was not a simple matter. Although she chose to stay in a ward when the baby was born in the fall of 1994, her husband told her that he had splurged and paid for her to stay in a semi-private room. She had no idea that her husband had not paid the bill.

Subsequently, she and her husband separated, and the husband moved out of her home. She no longer accepted responsibility for bills addressed to him. In February 1995, when her son was admitted to the hospital's emergency department, the woman learned of the debt owed to the hospital.

She spoke to the receptionist. The receptionist deleted the address listed for the husband when the woman told her they were no longer together.

On May 10, 1995, when the woman was in the process of divorcing her husband, she received a letter from a debt collector requesting payment of $250 for her hospital room. The hospital had never sent a bill to her prior to taking action with a collection agency. All the bills from the hospital had been addressed to her ex-husband.

She spoke to the billing department of the hospital. They told her that because she was the patient, she was responsible for the bill. Although the woman had in fact informed the receptionist in the emergency department about her situation, the billing department had not been informed that the woman and her husband had separated.

She spoke to the collection agency. They told her that the hospital could change the name of the responsible party.

She spoke to the hospital again. They were unwilling to change the name but did, however, agree to send the bill to her ex-husband.

She finally spoke to the Ombudsman. She related the steps she had taken to resolve the problem. She objected to the collection method used by the hospital and to the damage their methods may have caused to her credit rating.

On May 12, 1995, the Ombudsman notified the hospital of this complaint. We asked the hospital to investigate and to report back to both the complainant and our Office. The complainant was informed that if she was unhappy with the outcome of the hospital's investigation, she could contact our Office again.

The hospital apologized to the woman and told her ... that she would not be held responsible for the bill.

The hospital's investigation determined that the woman was not personally responsible for the semi-private room charges incurred during her stay. Upon reviewing the history of the account in question, it was clear that the woman's husband had signed the necessary forms to accept responsibility for the preferred accommodation.

The problems for the woman stemmed from the hospital's internal collection process that involves sending statements accompanied by notices with increasing degrees of urgency. Unfortunately, none of the statements addressed to the complainant's husband were being returned to the hospital. Consequently, the hospital assumed the addressee was receiving the bills.

The hospital apologized to the woman and told her that they would take the necessary steps to ensure that her name was removed from the collection agency's records and that she would not be held responsible for the bill.

Health Team

Files Open Dec. 31, 1994	296
Files Received in 1995	589
Closed – No Investigation	175
Closed – Investigation	428
Internal Team File Transfers	20

Children & Youth

Fair Schools

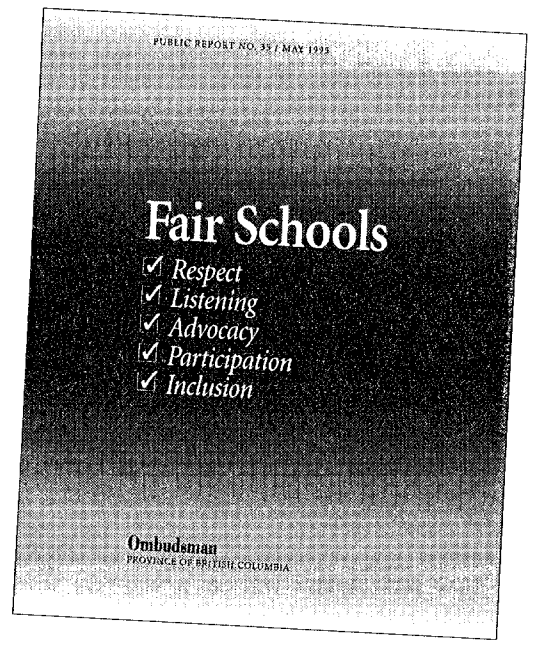
Public schools are the ideal place for our children to learn about democracy. We adults have the opportunity to demonstrate to children by example that dignity and respect are the cornerstones of any fair and equitable system. Schools are one logical place for children to learn how to question authority, how to solve problems and how to advocate for themselves and others who need support. We need to encourage children to be participating members of their school communities.

This statement is taken from the Ombudsman's open letter in *Public Report No. 35 – Fair Schools,* which was released in May 1995. It encompasses the key principles on which the report was built. The report contains twelve suggestions for the improvement of the education system, intended to generate discussion and debate among individuals involved with children and education.

Reaction to the report has been favourable. Many school service providers and consumers have initiated discussions with this Office on the specifics of the suggestions and the barriers that prevent implementation. Some, however, still experience the school system as non-inclusive, and are concerned at the lack of integrated services.

School service providers are committed to meeting the individual needs of students. This commitment is hampered by a system that is experiencing a shrinking of the resources required to serve students with diverse and unique needs. Educators advise that in the current school environment they are working with many student groups that present challenges:

- students with visible and non-visible disabilities
- students requiring ESL (English as a Second Language)programming
- families that feel overwhelmed by the many roles and responsibilities they must assume in today's society.



The commitment of educators is not at issue. At a time when all child-serving government ministries are required to be creative with the resources available, it is critical that educators be given the tools to meet these challenges. Both high-level ministry staff and those who are charged with drafting policy must recognize the changing needs of students and teachers.

Main complaints

The overriding complaint the Ombudsman hears is that students are not treated with dignity and respect. This concern is embedded in school complaints to the Ombudsman in the following areas:

- Lack of integrated services to meet individual needs of students particularly those with exceptional needs.
- The manner in which teaching assistants are assigned to students with exceptional needs.
- Insufficient knowledge about informal review mechanisms and the section 11 appeal process under the *School Act.*
- The disregard shown for students' right to be heard in decisions that affect them.
- The timeliness of appeals related to suspensions, expulsions and exclusions.
- The availability of suitable transportation.

The Ombudsman has heard that the school system needs to be more accountable and respectful in dealing with students who find themselves adversely affected by a decision or policy. Students and their parents or guardians have expressed concern that while informal review processes may be in place, too frequently students are judged and consequences allotted before their appeal is heard informally or formally by school officials or school board trustees. The Ombudsman receives complaints that when students are removed or suspended from school the process of appeal is delayed. This situation results in students, parents and guardians experiencing and feeling that the system is unfair because of the appearance of being prejudged. This circumstance speaks to the principles that a person has a right to be heard before a decision is made and that "justice delayed is justice denied."

Investigation of complaints

The focus of any investigation is not to find fault but to determine fair process and find a resolution that is reasonable, equitable and appropriate for all parties. To a great extent, the way decisions are made determines whether a system is fair or not. An unfair decision is one that is unjust, arbitrary, discriminatory, unreasonable or based on a mistake of law or fact. Although decisions are being made daily at every level of the education system, these must be within the guidelines set by the legislature in statutes or acts.

The Ombudsman can resolve complaints in a variety of ways. The first is to encourage informal communication at the classroom or local school level. Mediation and internal review can also resolve complaints before a student or parent proceeds with a formal section 11 appeal as provided for under the *School Act.* The Ombudsman can review the policies, practices, guidelines and laws that were applied in a particular case to ensure that they were fair.

Knowing Your Boundaries ☆

The Ombudsman is heartened by the knowledge that many school districts have responded favourably to ***Fair Schools*** *and try to follow the suggestions and apply the principles of that report in resolving complaints that come to their attention. The following case exemplifies the positive impact that a school board had on several youths and their families by applying the principles of respect, listening, advocacy, participation and inclusion.*

Two separate families came to the Ombudsman. They objected to the fact that their school district had implemented a closed boundary and their children, who were in grade ten, were refused at appeal the right to attend the larger school of their choice. The few remaining grade ten students who had been denied at appeal had to find room and board away from their families if they chose to attend the larger school, or remain in the smaller island school that had only three students in the grade ten class. The parents objected to the board's policy on the closed boundary, and believed that the appeal process was flawed and wrong in law. Both families stated that they thought the small island school had excellent teachers and programs. However, they felt that as other grade ten students had been given the right to cross the boundary in earlier years, and that there was not a viable grade ten class at the island school, the school board had applied its closed boundary policy in an unfair and inconsistent manner.

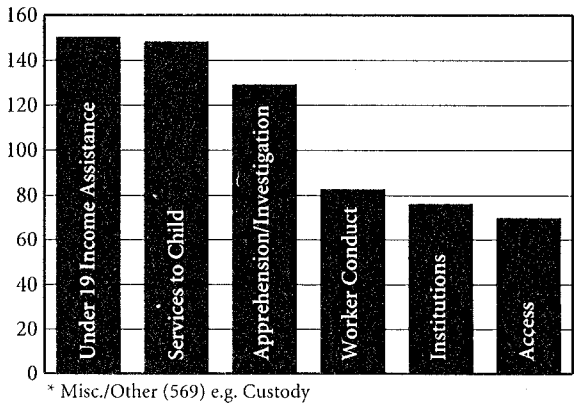
While the Ombudsman was looking into the situation, the people closest to the problem took some action. Parents, advocates, citizens from the community and the MLA met together with the Superintendent of Schools and with the school board in an effort to remedy the matter. The superintendent acknowledged that when students or their parents requested cross-boundary transfer, he routinely gave them an appeal form. This led the parents to believe that they were in fact having a decision of the superintendent appealed, as required by section 11 of the *School Act.* The superintendent explained that parents were not undergoing a formal appeal. The closed boundary policy was a decision of the previous school board and his intention in giving the parents the appeal form was to allow them an opportunity to have their concern reviewed before the board. He acknowledged that giving the appeal form to the parents may have caused confusion. It is notable that the school board in this district continues to be open to reviewing any decision or concern brought to its attention, and that it has clarified to parents that this review is not the same as a formal section 11, which provides for an appeal of a decision, including a decision not to decide, of employees of the board.

It is notable that the school board in this district continues to be open to reviewing any decision or concern brought to its attention ...

The school board held several meetings to deal with the closed boundary issue and other board business. They passed a motion at the second special meeting permitting grade ten students to attend the larger school if they wished to. This motion was put into effect immediately. The Board Chair struck a committee to look into the long-term issue about what the community wants regarding grade configuration in the smaller island school. The committee was to be made up of representatives from the Parent Advisory Council, the community, the island school, members of the school board and the Board Chair. It was to seek wide input from the community through town meetings and any other available avenues and to bring its recommendations to the school board by the end of January 1996.

The Ombudsman applauds the efforts of this school district to hear the concerns of parents and students and to involve them in reaching a longer-term policy regarding cross-boundary transfer. She commends them for acknowledging that, in their desire to be open to all school related concerns, the practice of supplying parents with appeal forms when they simply made a request for boundary transfer was technically wrong and would cease. The school board was firm in its view that it would, however, continue to have an open door policy for review.

Children & Youth Team Top Key Words for Closed Files, January 1 to December 31, 1995



* Misc./Other (569) e.g. Custody

Children & Youth

Guest Comment

Matthew's Legacy

by the Honourable Judge Thomas J.Gove
at the invitation of the Ombudsman

In May 1994, I was appointed Commissioner of Inquiry to look into the life and death of five-year-old Matthew Vaudreuil and to make recommendations to improve child protection services. I concluded that our current child welfare system is not protecting children. This is not new information to those who work with children. What is new is the public profile given to our failure to protect children.

Matthew and his mother received a stunning range of child welfare services from social workers, physicians and many other child-care specialists. These services did not prevent Matthew's abuse, neglect or death.

During the Inquiry I kept asking:

How could this happen in a society that claims to respect children and which has developed elaborate systems and services intended to protect children from abuse and neglect? More troubling, was what happened to Matthew an aberration, or was he only one of many children who are not protected?

From Matthew's birth in 1986 to the date our research ended nine years later, Inquiry research found that at least 264 children in the Ministry's protective care died. Many more suffered without adequate protection. Matthew's case was not unique. Fundamental flaws exist in our child-serving systems.

Where do we go from here? I made many recommendations for reform. I conclude that it is not enough to reform only that part of the system that steps in *after* a child has been abused. Indeed, *Matthew's Story* is another tragic example of what can occur when child welfare services are compartmentalized.

We are in this predicament because our child welfare system has been designed from the top down. From the perspective of children it makes no sense. At least five government ministries share important child welfare responsibilities but operate with separate funding, accountability and priorities. We must stop, go back to first principles and design a new child welfare system.

We need to start with children and provide services that address their needs. We need administrative structures that will enable us to do this in a principled manner. I recommended to government that the new child welfare system should be *universal, accountable, efficient and, above all, child-centred,* which means:

- **Being clear about our core values concerning children.**
  Designing services that support the child's right to be treated with respect and dignity (we do not abuse or neglect those we respect).
- **Being clear that the child is the client.**
  Ensuring that child welfare services, including those that support parents, have positive outcomes for children.
- **Providing children with multi-disciplinary services.**
  We start with the child. We identify the child's needs. We develop a plan to address the child's needs. We deliver services that are responsive, accessible and co-ordinated.
- **Providing a voice for children.**
  As long as we continue to allow the current administrative structures to drive the delivery of child welfare services, we will have the unprincipled, dysfunctional and inefficient system that contributed to the suffering and death of Matthew and others like him.

We need a paradigm shift, a total reorientation of our thinking about child welfare. *Rather than letting structure dictate services, we must ensure that the needs and interests of children dictate the structure.* How can this happen?

First, all those providing core child welfare services must physically work together.

Second, core child welfare workers must have a common employer and common loyalty to a multi-disciplinary team.

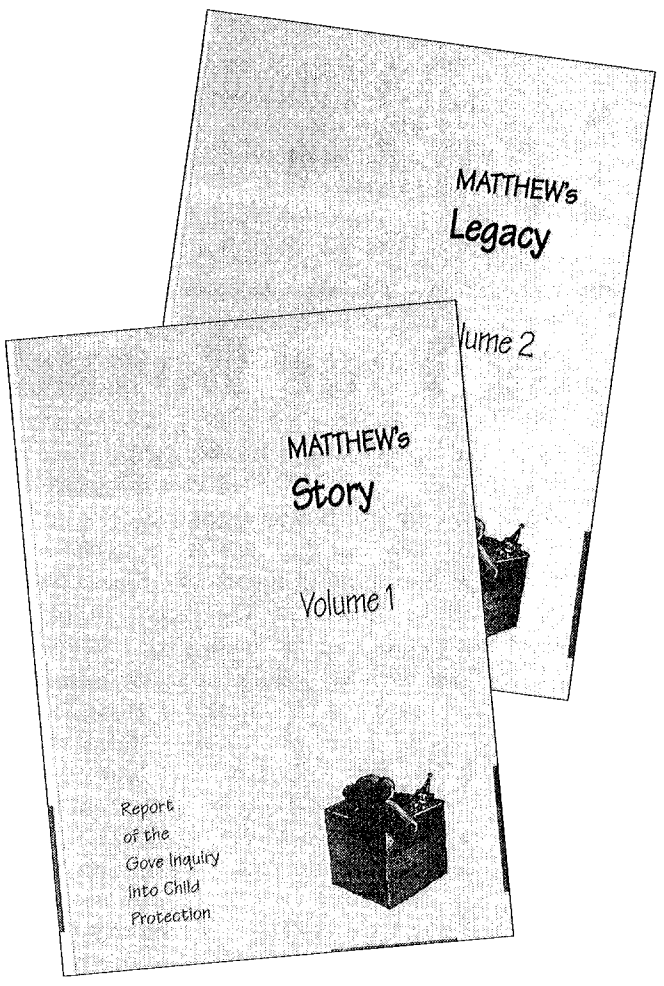
Third, the provincial government should get out of *service delivery*, establish provincial child welfare standards and devolve responsibility to regional child welfare boards who would manage the delivery of services through local *Children's Centres.*

Fourth, the province's remaining child welfare responsibilities should be brought together into a *Ministry for Children and Youth.*

I am calling for radical change. I have no illusions about how difficult this will be. It will take strong leadership, and an unwavering commitment to children to overcome inevitable resistance to change.

I disagree with those who suggest that the Inquiry report is a *starting point* for discussion. Discussions have been ongoing for twenty-five years. It is time for *action.* The public wants change and children deserve it. But timing is crucial, given that the public interest will last only until the story fades.

Matthew has spoken to us and has touched us all. We must now choose whether to listen to, and learn from, his story. The choice is clear. We can tinker, knowing that tinkering cannot restore a flawed system. Or we can, together, build a new child welfare system that puts children in the centre. This would be *Matthew's Legacy.*



The government has met the deadline for the first recommendation to be implemented under Judge Gove's Report. A Transition Commissioner, Cindy Moreton, was appointed January 29, 1996 to oversee the design and implementation of the Gove Report over the next three years. Also, an all-party House Committee to monitor this work will first meet in March 1996.

Ombudsman Agrees

The Ombudsman has advised government of her willingness to follow through on the recommendations of Judge Gove's report, and in particular, to do the following:

117. If the Ombudsman supports the recommendations contained in this report, the Ombudsman should monitor the Ministry of Social Services' implementation of the interim reforms and the province's development of the proposed new child welfare system, and report to the Legislative Assembly as appropriate.

118. The province should report to the Ombudsman:

a. within two months after delivery of this report, on its progress respecting the appointment of the Commissioner for Transition to the Ministry for Children and Youth, and

b. within six months after delivery of this report, on its plans for implementation of the other recommendations contained in this report.

Gove Goes to School

The Honourable Judge Thomas Gove in his recommendations for the integration of services to children envisions Children's Centres. These would be multi-disciplinary, community-based centres where core child welfare service providers would be commonly employed and commonly funded. The recommendation suggests that all core child and youth services should be delivered from one of the Children's Centres available in local communities. The core services Judge Gove would have housed and administered under one ministry include:

- all child welfare services (including adoption and services to children who have mental disabilities)
- mental health services
- public health nursing programs
- infant and child development programs
- alcohol and drug treatment programs
- youth forensic psychiatric services
- **school-based child and youth care services** *(our emphasis)*
- **special education services** *(our emphasis)*
- family court counselling services
- youth and probation services
- child care subsidies
- funding for child care resources.

Judge Gove reasons that "professionals working together on a daily basis to meet the needs of their clients would not owe allegiance to a variety of authorities that may or may not share common values and priorities." In addition, he asserts that protocols and special committees designed to achieve integration of service delivery to children have failed. Bringing together the actual core service providers and services, Judge Gove argues, will lead to a "more comprehensive understanding of each child's needs, a greater understanding and appreciation of the skills and expertise of each team member, and greater likelihood that multi-disciplinary 'brainstorming' will result in a comprehensive, responsive case plan." When this recommendation is implemented it should also ensure that needs of students and their parents are met in a holistic manner. Fragmentation and lack of needed services give rise to additional problems for children, youth and their families. Although Judge Gove does not recommend the amalgamation of existing school boards and regional Child Welfare Boards, he is persuaded that bringing together the core service providers will strengthen service delivery to all children and youth including those requiring specialized services in schools.

Children & Youth

Joyce Preston

Appointed Child, Youth and Family Advocate (see also page 15)

Joyce Preston is a social worker with over thirty years of experience. She comes to this position with credentials in social work from the Universities of Chicago, British Columbia and Western Ontario.

She began her career working with children, youth and their families in mental health settings. Following a three-year term as an Instructor at the School of Social Work at the University of British Columbia she moved north to Prince George and began a long career with the now Ministry of Social Services.

Joyce Preston being sworn in as Child, Youth and Family Advocate by George MacMinn, Q.C., Clerk of the House

Her various positions provided her with a wide range of experience and knowledge about issues facing children, youth and families. Until her appointment as the Child, Youth and Family Advocate for the province of British Columbia, Ms. Preston was the Director of Social Planning, City of Vancouver. She held this position for five years. This position gave Ms. Preston an opportunity to work with a range of community-based organizations as well as civic government departments. Additionally, the Social Planning Department has been the "home" of the Child and Youth Advocate of the City of Vancouver and Ms. Preston has worked closely with both people who have held that position.

In November 1991 Joyce was appointed to the Community Panel reviewing provincial child protection legislation. *Making Changes: a Place to Start,* the Community Panel report, recommended the establishment of an independent advocate's office for children, youth and families.

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Abuse of Deaf Children

The Ombudsman detailed her investigation into the abuse of deaf students who attended or resided at Jericho Hill Provincial School. In that report, the Ombudsman concluded that children had been abused and that government had failed to ensure their safety. She recommended that government establish a means for former students to seek compensation in a manner that did not require them to hire a lawyer and appear in court (see page 13).

In response, the government appointed Thomas Berger,Q.C. to advise on a non-litigious model for compensation. The Attorney General accepted Justice Berger's proposed model. He announced in June 1995 that the government would establish the Jericho Individual Compensation Program, to be operational in 1996.

Mr. Berger modeled his recommendation on a compensation package offered to former residents of Grandview Training School for Girls in Ontario. The Attorney General has agreed to establish a panel that will consider and determine applications for compensation. Compensation will be for pain and suffering, not for lost wages nor punitive damages. Amounts will range from $3,000 for any person who establishes that she or he was the victim of abuse, to a maximum of $60,000 for a person who suffered sexual abuse that was serious and prolonged. Justice Berger also recommended that entitlement to income assistance should not be affected by an award under the compensation program and the government has accepted this recommendation.

The Ombudsman is pleased that the government has responded positively to the recommendation in the Jericho Hill School Report. In addition to the Jericho Individual Compensation Program, the government has addressed other recommendations:

- responsibility for management of student residences has been transferred from the Ministry of Education to the Ministry of Social Services
- ASL (American Sign Language) has been recognized as a language in its own right.

The Ombudsman looks forward to concluding her role in monitoring the implementation of the recommendations she made in Ombudsman *Public Report No. 32* by announcing in 1996 that all recommendations have been acted upon.

Guest
Comment

Protecting Children's Rights

by Bernd Walter
Chair
BC Child and Family Review Board
at the invitation of the Ombudsman

The Child and Family Review Board was created under the *Child, Family and Community Service Act,* passed by the legislature in 1994. In addition to the Review Board, the Act also created a set of rights for children in care. The Review Board provides a formal avenue of complaint if a child, his or her parent or somebody representing the child feels that the child's rights have been breached.

The Review Board also reviews any matters referred to it by the Minister of Social Services, for example, conducting investigations into critical incidents such as the death of a child in care, or periodic evaluations of the BC Child Welfare system. Further, the Review Board is responsible for reviewing other matters that are to be specified by Regulation, yet to be developed. For all of these matters, the Review Board will have the powers of a Commissioner of Inquiry, which include the ability to call evidence, summon witnesses and require the production of documents.

Appointed as first Chair of the Review Board, I was formerly Assistant Deputy Minister responsible for Family and Children's Services in the Ministry of Social Services. I was also Alberta's first Children's Advocate and served in that capacity from 1989 to 1993. The *Child, Family and Community Service Act* establishes that the Review Board will have up to fifteen members, selected on the basis of criteria established by Regulation. To be eligible for appointment to the board, a person must demonstrate an understanding of:

- key aspects of BC's child, family and community service system, including governing legislation, policy and service delivery mechanisms
- the essential elements of conducting a fair and objective review
- child and youth development and the special circumstances, rights and needs of children in care
- the characteristics of BC's diverse cultural, racial, linguistic and religious communities
- the importance of handling personal information in a confidential manner.

Following a call for applications in December 1995 six members were appointed to the board by the Minister of Social Services: Rheal Brant-Hall, Bruce Hardy, Kelly MacDonald, Jane Parlee, Lex Reynolds and Dr. Syd Segal.

The board's role is to ensure a fair, independent and impartial review. Members must hear from all sides in any dispute and listen carefully to the opinions of people who may not be used to putting their views before decision makers. This opportunity to be heard is especially important for children in care because their lives are often governed by decisions made by adults without any input from the child or youth.

A process that allows people to challenge decisions is an empowering and responsible problem-solving alternative. Children and their families are more likely to accept decisions that are fair, reasoned and based on objective criteria when they feel that their voices have been heard.

Stand by Them

Two parents recognized a need for advocates to help other parents resolve issues positively on behalf of their children. The Advocacy Project of the British Columbia Confederation of Parent Advisory Councils grew from the work they began in the Qualicum School District. The project received funding from the Ministry of Education to apply the lessons learned province wide.

The Advocacy Project has worked to promote fair, impartial, consistent and effective resolution to the problems of students in the public school system.

Project workers found basic advocacy materials relating to the rights and entitlements of students in such documents as the BC *School Act,* the *Fair Schools* Public Report from the Office of the Ombudsman, the *UN Convention on the Rights of the Child* and the *Canadian Charter of Rights and Freedoms.* They defined three types of advocacy: systems, self and individual, in relation to the role of Parent Advisory Councils, District Councils and parents and students in BC's public school system.

Before a district embarked on an advocacy initiative participants acknowledged advocacy's common ground:

- that children and youth have the right to be treated with dignity and respect, to express their views and to participate in the decisions that affect them
- that advocates ensure processes are fair and work for the best interest of the student, that they act with integrity and give those they deal with the same respect and fairness they advocate for on behalf of children.

The Advocacy Project has worked to promote fair, impartial, consistent and effective resolution to the problems of students in the public school system. It has focused on ensuring that students' basic rights were upheld and their needs met while respecting the rights of others.

Children & Youth Team

Files Open Dec. 31, 1994	732
Files Received in 1995	1,193
Closed – No Investigation	390
Closed – Investigation	1,023
Internal Team File Transfers	19

Finance & Employment

BC Securities Commission – a Report Card

The Ombudsman issued *Public Report No. 28 – The Sale of Promissory Notes in British Columbia by Principal Group Ltd.* on October 7, 1991. Although the report concluded that the BC Securities Commission was not responsible for the losses suffered by purchasers of Principal Group Ltd. promissory notes, it nevertheless concluded that there were areas in which the Securities Commission could improve in order to lessen the likelihood of a similar tragedy. Accordingly the report made six recommendations.

As it was the Ombudsman's general opinion that if potential purchasers had more information they would be better protected from unscrupulous sellers, my recommendations dealt with ways of providing that kind of information. We broke a sale down into three components:

- general information about the marketplace
- specific information at the time of sale
- information on a right to reconsider directly after the sale.

In summary, my recommendations were:

- Publish a brochure outlining the market and give it widespread distribution so that persons are advised **before** they buy.
- Establish a toll free line or arrange with Enquiry BC to transfer inquiries at no cost to the Securities Commission so that persons with questions can get answers.
- As promissory notes are not regulated by the commission because the purchasers are supposedly "sophisticated" then make sure they are! The traditional way of establishing sophistication is financial: if someone has lots of money they must be sophisticated. The amounts that would indicate "sophistication" change over time, yet the amount used by the commission remained unchanged. We recommended that they update the minimum amounts for purchasing promissory notes.
- Either disallow short-term promissory note sales to individuals altogether or ensure that at the time of sale the individual receives a warning that there has not been a judgment on the worth of the note by government.
- At the time of purchase warn purchasers of long-term promissory notes that government has not passed on the worth of the notes.
- Give purchasers a two-day "cooling off" period after the purchase in which rescission can take place, similar to what is done on some other security sales.

That all happened in October 1991. What happened after that? The following report provides insight not only into response time but also into the substance of the commission's response. We break down the response into three categories: speed, effort and achievement and we provide letter grades to the commission in each category. By way of background, a brief history.

October 7, 1991:

The Ombudsman's Report is made public.

April 15, 1992:

My Office requests a progress update on the recommendations.

September 23, 1992:

The commission responds. Regarding the first two recommendations it says that it has a large pamphlet available in its reception area and can see no need for more. As well, we are told that all questions are already channelled through Enquiry BC. Regarding the other recommendations, the commission said that it was drafting amendments for publication and comment from the investment community.

December 23, 1992:

We responded to the commission pointing out the need for a brochure and the fact that Enquiry BC was in fact **not** referring calls to the commission. With the rest, we acknowledged that the commission was in the process of consultation.

July 22, 1993:

The Commission responded to our Annual Report on its progress: they had decided to create and distribute widely a brochure; they were going to train Enquiry BC staff to handle questions; they were soon going to publish draft amendments for feedback from the investment community.

October 20, 1994:

The Ombudsman wrote again asking for an update.

November 8, 1994:

The commission wrote back saying that they hoped to have the brochure promised in July 1993 ready by the new year. With reference to the amendments to be circulated for comments, as first mentioned to us in September 1992, we were informed that they were sent out on October 7, 1994.

January 8, 1996:

We wrote for our annual update.

January 25, 1996:

The commission wrote back enclosing its new brochure and giving us its e-mail number, toll free number and internet site. All the substantive responses to recommendations had been made and were to take effect January 1, 1996.

THE REPORT CARD

B – very good	**P** – pass	**F** – fail

Speed – F

- It took from October 1991 until sometime after July 22, 1993 to arrange to talk with Enquiry BC.
- It took from October 1991 until July 1993 to decide to do an accordion brochure, and from then until January 1995 to actually produce it.
- It took from October 1991 to January 1996 to make the changes addressed in recommendations three through six.

Effort – P

Little effort appears to have been put into addressing our recommendations, at least during the years immediately following the report. More recently the efforts have improved.

Achievement – B

Where it really counts the commission did much better. While it did not follow all of the recommendations, it followed their spirit. We believe that more could have been done in certain areas and will continue to monitor the commission's efforts to provide reasonable and fair information to the public.

When the Mortgage Comes Due

Mr. M failed to pay his property taxes for 1987 and 1988. In November 1988 the Ministry of Finance and Corporate Affairs sent him a Final Notice of Forfeiture. The property was forfeited to the Crown on December 1, 1988. In 1991 Mr. M's mortgage company launched an unsuccessful Supreme Court challenge to regain the property; however, in September 1992 they were successful on appeal. The court ruled that the ministry had misinterpreted the legislation and the forfeiture was a nullity. Mr. M returned to his property. However, in October of that year the mortgage company declared the mortgage due. They also put him on notice that they would be seeking recovery of their legal fees from him. The mortgage company foreclosed in late February 1993 with the understanding that Mr. M would not be required to make up any deficiency.

Mr. M came to the Ombudsman seeking reimbursement of over $100,000 from the ministry for legal fees, rental profits, lost equity and interest charges as well as damage to reputation and financial credibility and loss of future return on investment.

Damages are a matter for the courts. We determined that the mortgage company had absorbed the legal costs. The rent monies derived during the years Mr. M had been required to move off the property had been applied with consent of his lawyer against property taxes accrued from 1987 to 1992. This left only the equity issue to address.

At the time of foreclosure, Mr. M, far behind in his obligation to the mortgager, had made some effort to sell the property. We reasoned that had the ministry not intervened, he might have realized some small profit after satisfying his mortgage and tax obligations. We negotiated with the ministry what this sum might be. The ministry, maintaining, with perhaps some justification, that Mr. M was largely the author of his own misfortune, was reluctant to accept our recommendation. Finally, the ministry agreed so long as payout was based on assessed property values at the critical time. We confirmed that it was and concurred with the ministry's offer of $7,200 plus relevant interest. Mr. M, however, would not accept the offer. He was left to pursue whatever other course he felt might be open to him.

This incident underlines the point that the Ombudsman does not act as an advocate for the complainant. Our role is to advocate for administrative fairness.

Public Servants Who Serve

Often we are pleasantly surprised at the extent to which officials will go to help us sort out people's problems. The owner of a sand and gravel company operated fourteen trucks, twelve of which were registered in his name and qualified for fleet rate insurance. His two new trucks had been mistakenly registered in his company name by his insurance agent and did not qualify for fleet rate. In order to register these two with the others he would have to go through a transfer process. His complaint was that this transfer process would cost him almost $7,000 in provincial sales tax.

When we explained the problem to an official at the Consumer Taxation Branch he immediately responded that if the complainant could furnish proof that the two vehicles in question were part of the same fleet, he would provide ICBC with authorization to bill accordingly. We put the fleet operator in touch with this official and told him, if the problem persisted, to contact us again, which he did not do. Congratulations to the helpful official on an effective remedy!

Finance & Employment

Audit Anxiety

Representatives of a group that performed a special function within the provincial court system came to the Ombudsman to complain about an investigation of their activities conducted by the Internal Audit Branch of the Ministry of Finance and Corporate Relations. Specifically, they claimed the investigators had:

- made threats and denied right to counsel
- taken private documents away
- failed to provide proper receipts
- transported to Victoria records needed for daily work
- contacted clients of the group
- gone beyond the time frame and scope set for the investigation
- failed to provide adequate notice of what was being investigated
- returned documents to the wrong staff person
- failed to provide the group with a copy of the investigation report.

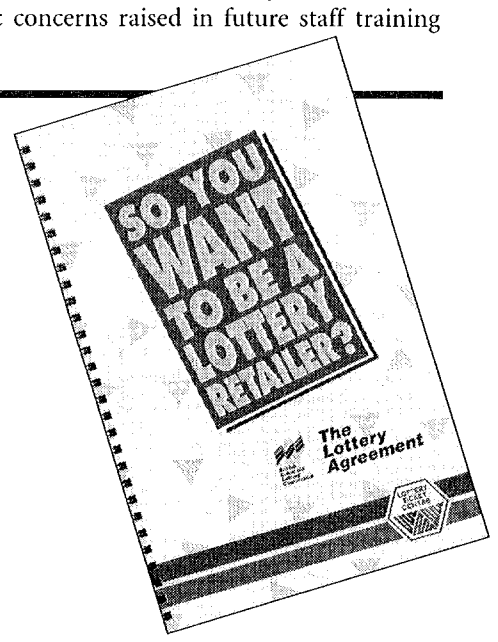
After a review of voluminous materials, we began to suspect both that the group objected to having their activities audited and possibly that they were reluctant to face the auditors' findings. We could not substantiate the claims made in their complaint. What constituted threatening remarks was not clear, and members of the audit team would have had no authority to deny counsel to anyone. The auditors had obtained a legal opinion to the effect that the so-called private documents were in fact government documents and were required for the auditors to complete their work. They had also sought legal advice regarding client contact. We determined that such contact was necessary for verification purposes and was conducted in a non-intrusive manner.

At the outset of an operation it is often difficult to determine its scope precisely. New information may require that the terms of reference of an audit be expanded and this possibility was allowed for in the audit team's original terms of reference. At any rate, the appropriateness of terms of reference is usually determined between those who request the audit and those who perform it.

We also suggested that the branch take every measure possible to minimize inconvenience to organizations undergoing audit.

The notification issue actually centred on a fear that the auditors might have been searching for fraud. The branch contends that if evidence of such activity had surfaced it would most certainly have put any affected party on notice. The irony in this instance is that the audit dispelled any suspicion of fraud where such might have existed. And, although the report was prepared for officials other than the audited group, the group was able to obtain a copy of the report.

The branch agreed to the Ombudsman's proposal that they consider revising their receipting procedures. We also suggested that the branch take every measure possible to minimize inconvenience to organizations undergoing audit. They acknowledged that this was a sensitive issue and agreed to address the specific concerns raised in future staff training sessions.



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Lottery Info

The Ombudsman suggested that the BC Lottery Corporation consider preparing and distributing information about its appeal process to retailers who dispute decisions regarding lottery outlets.

The Ombudsman is pleased to report that BCLC has taken this initiative a step further and has drafted a new publication called, *So You Want to Be a Lottery Retailer.* This publication provides detailed information to individuals who are interested in becoming lottery retailers, those who are and wish to remain so, and those who used to be lottery retailers and wish they still were. The publication gives the reader a well organized, concise historical overview of the BC Lottery Corporation. It details the process involved in applying for and operating a lottery terminal and outlines clearly the internal review and appeal process.

The Ombudsman has met with the Lottery Corporation and reviewed the information package and its relationship to BCLC's policy and procedural mandate. The Ombudsman commends the Lottery Corporation for embracing the principles of administrative fairness. Information about an internal appeal process, in a format that is understandable, uses plain language and is accessible certainly will go a long way to ensure a continued win-win process for the corporation and the public.

We at the Corporation are often asked how someone can become a lottery retailer. Sometimes we are asked why a certain applicant cannot become a lottery retailer ... In an effort to be clear, we may not have been as precise in our wording as the actual Lottery Retailers Agreement is in terms of "legalese." If any contradiction exists, this booklet bows to the wording and meaning of the agreement. To help clarify the privilege of having a Lottery Retailers Agreement, this booklet is presented.

Director, Sales and Retail Development,
BC Lottery Corporation

Guest Comment

Employment Equity

by Brian Dagdick
Director
Equity and Diversity Branch
at the invitation of the Ombudsman

Employment Equity is proceeding in the BC public service. It is now part of the *Public Service Act* and clearly defined in a Public Service Employee Relations Commission (PSERC) policy directive. Over the past year ministries developed and began to implement employment equity action plans. Working with the Union Management Steering Committee of Employment Equity, ministry representatives laid out detailed plans for achieving employment equity in their organizations. After approval by the Commissioner of PSERC, the plans were forwarded to the Deputy Ministers' Council. Progress reports, due in May 1996, will be sent to Cabinet.

Employment equity is about developing a workforce that is at all levels representative of the diverse population it serves and about ensuring that no individual is denied employment or advance for reasons unrelated to ability to do the job. Ministries are addressing this tall order on several fronts:

- training on employment-related topics
- removal of employment barriers
- setting in place remedial measures to resolve problems of under-representation of designated groups.

To assist ministries, the Equity and Diversity Branch of PSERC has developed a number of tools and processes. In February 1994, a self-identification questionnaire called *Count Yourself In* was given to all employees. The resulting data provided information on the number of aboriginal employees, visible minority employees, persons with disabilities and women in the BC public service. The questionnaire is given to all new employees and reports are published every six months. Data is maintained under the confidentiality requirements of the *Statistics Act* and privacy legislation so that no information about individuals is released to anyone. Reports compare the number of designated group employees with the number of designated group members in the external workforce and the population at large. Ministries then know what changes they must make to ensure they have a representative workforce.

Another tool to help ministries improve their representation of designated groups is a publication called *Employment Equity and the Staffing Process.* Designed to encourage outreach recruitment, it includes a directory of over 400 associations that provide hiring support to designated groups.

To help ministries identify and remove employment-related barriers, the Equity and Diversity Branch developed a Barriers paper. Based upon examination of Employment Systems Reviews carried out in a number of jurisdictions, including the BC Ministry of Environment, Lands and Parks, the paper provided direction on removing common barriers in such areas as staffing, training and development, working conditions, and organizational culture and structure. Posting jobs with qualifications that are not job-related, for example, is a barrier to potential applicants who may not have the *stated* qualifications but may be qualified to do the job.

A key issue for employment equity in the months to come will be reasonable accommodation, defined in the policy directive as "adjustments to the workplace to allow persons with disabilities or others protected under the *Human Rights Act* to carry out their work." Since reasonable accommodation is provided on a case-by-case basis no single approach fits all situations. As a result managers must consider each situation on its own merits. Employees who have special needs related to a disability, for example, need to discuss their situation with their supervisor who must be well informed about the employer's duty to accommodate.

Implementation of ministry employment equity action plans and the development of new programs such as a government-wide mentoring program are laying the groundwork for a diverse, more representative and barrier-free workplace.

In 1995 the Ombudsman voluntarily submitted an Employment Equity Plan for her Office in keeping with the spirit of the government policy.

Finance & Employment

Workers' Compensation Board

The Ombudsman considers different approaches when dealing with complaints received by her Office. The traditional approach is to investigate individual complaints with a focus on providing a remedy where there has been an unfairness. These investigations are the mainstay of the business of the Office.

However, the Office of the Ombudsman has helped pioneer two other approaches. When I receive several complaints that raise similar issues I undertake a systemic review in order to discover the root cause or causes of these complaints. Then I recommend changes to legislation, regulations, policy, procedures or practices as necessary. This has the effect of ensuring, as much as possible, that similar problems do not occur.

A third method by which we address complaints is to encourage the public body to take responsibility for its own quality control. Some authorities are large and serve a great number of people. They can be the focus of many individual complaints, as well as some systemic ones. We have successfully helped some public bodies to set up their own Ombuds-like complaint handling department. Such a practice has several advantages:

- it allows the public body the opportunity of discovering its own weaknesses
- it encourages staff to actively seek solutions
- it trains staff to recognize fairness issues.

The WCB provides an example of this multi-tiered approach to imaginative complaint handling.

The individual complaint

A worker informed us that his previous employer had been deducting WCB "premiums" and that he had reported that situation to the board. Although the board had acknowledged that this practice was prohibited by law, the worker was concerned with the board's apparent unwillingness to pursue the matter. We consulted the Manager of Assessments who assured us that the matter would be fully investigated and that a legal opinion would be sought regarding possible legal action against the employer. The worker was advised to contact the Audit Manager for details of the investigation.

The systemic review – Medical Review Panels

Section 58 of the *Workers' Compensation Act* authorizes resolution of bona fide medical disputes arising from decisions made by a board adjudicator, the Review Board or the Appeal Division. A bona fide medical dispute is defined by a certificate from a physician registered in the province of British Columbia. This certificate gives details that support disagreement with the decision made on a medical question. The vehicle for resolution is the Medical Review Panel (MRP). The panel, independent of the board, consists of three appointed community-based physicians. After reaching a decision, the panel is disbanded.

Significant and important change takes time. In July 1987 the Ombudsman published *Public Report No. 7 – Workers' Compensation System Study.* The report included a review of the MRP process. In summary, the *WCB System Study* identified five problem areas and made nine specific recommendations for change.

Significant and important change takes time.

In September 1991 the board retained Dr. Leonard Jenkins to conduct his own study of the MRP. Representatives from this Office met with Dr. Jenkins during the course of his study and the results of his work were presented to the Board of Governors in August 1992. He identified 158 issues and made 131 recommendations regarding the resolution of disagreements about medical issues.

Before the board made any decisions that would effect changes to policy or give rise to initiatives for amendments to the *Workers' Compensation Act,* they undertook a process of consultation with the community. The process began in 1993, and in 1994 a public hearing was held. Along with oral and written submissions made by others, my Office made a written submission dated June 1994. Later in 1994 the board published a very comprehensive report that included a transcript of the oral submissions, copies of the written submissions, proposals for new sections in the board's *Rehabilitation Services and Claims Manual* regarding MRPs and proposals for statutory change.

A number of significant changes have now been made. These include:

- the correction of inaccuracies in the board's *Rehabilitation Services and Claims Manual*
- reorganization and/or modification of pre-existing sections to make them more clear
- the addition of new sections that make the manual more useful in guiding and understanding the process of resolution.

Setting up an Ombuds-like department

We have had for some time a referral system with the Compensation Division of the board for handling certain complaints such as delays in the adjudication of claims and difficulties in communication. We refer the complaint to the Board Manager responsible for that claim, who will review the file and contact the worker, usually within two working days of our referral. This referral process has proven effective in resolving many complaints.

... the provincial Ombudsman retains the legislated authority to investigate a complaint at any time.

As noted above, the Ombudsman strongly believes that authorities should develop their own internal public complaints process and establish a fixed point of responsibility to provide fair services and processes in the first instance. An internal Ombuds-like position reporting to the Chief Executive Officer can provide invaluable information to management on how to make systems and practices effective as well as fair and to scrutinize the quality of services agency-wide. It is important to point out that the provincial Ombudsman retains the legislated authority to investigate a complaint at any time.

I am pleased to report that Mr. Dale Parker, President and CEO of the Workers' Compensation Board, has agreed to establish an internal corporate Ombuds position at the WCB. He has appointed Mr. Peter Hopkins as the first internal Ombudsman for the Board. I wish to congratulate Mr. Parker for his prompt response and openness to my recommendation last year for such a position to be established. I am confident that the model being put in place by the board will assist the WCB to respond more quickly and fairly to the concerns of those it serves.

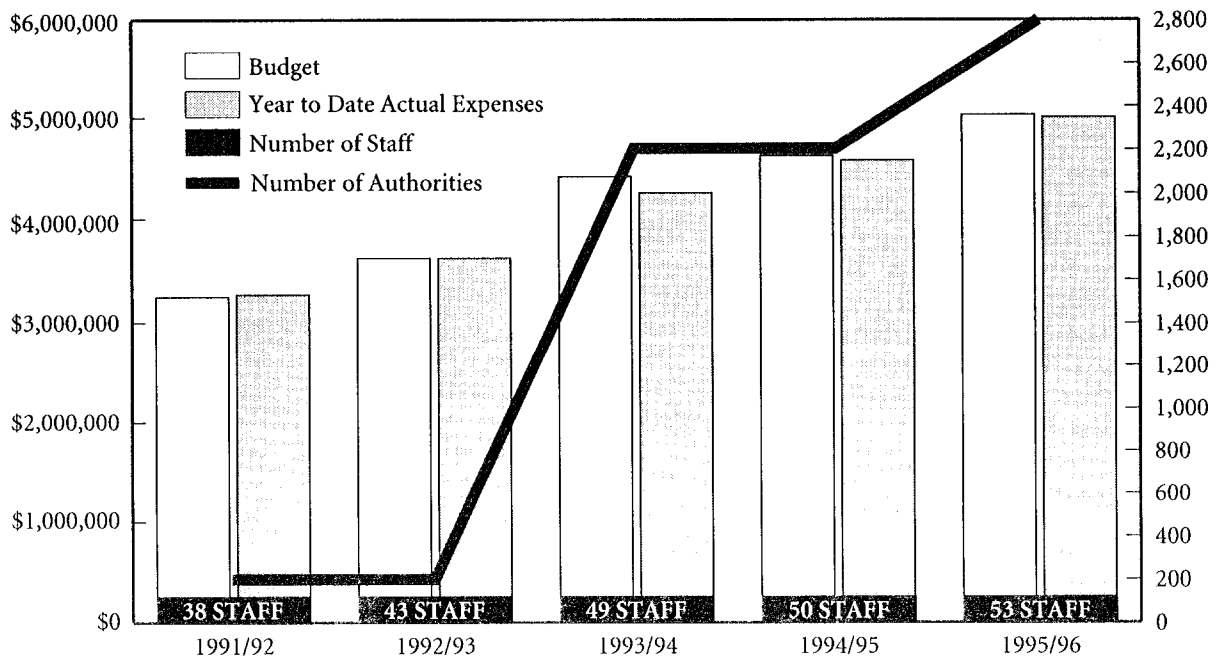
info **WCB Ombudsman:**
276-3053 (in Vancouver)
1-800-335-9330 (all of BC)

You Can Bank on It

Company B had gotten behind in its payments of provincial sales taxes and had accumulated penalties and interest. The Revenue Administration Branch of the Ministry of Finance and Corporate Relations is responsible for collecting these taxes from the province's businesses. The company believed it had struck a suitable repayment arrangement with the branch when it discovered that the branch had issued a demand notice on its business account. As a result of this notice, several cheques the company had issued could not be honoured and each such cheque added to an accumulating bank charge. The company complained to the Ombudsman.

Our investigation found that the company had a lengthy history of payment delinquency, had not really lived up to its current agreement with the branch and once in the past had experienced similar action against its bank account. What was absent in this round was the mailing of a legal notice, as required by branch policy, notifying the company of such possible action. Once this deficiency was drawn to the attention of branch staff they agreed to reimburse the company the amount of extra charges incurred, once they received suitable documentation.

Growth in the Ombuds Office



Finance & Employment

Two Jobs Are Better than One

Mr. G was hired to do a job as a director in a government ministry. As was required by the *Public Service Act*, he was put on six-months probation. His ministry was experiencing staff turnover, and it did not have enough directors to go around. Mr. G's work was impressive; so much so that his ministry assigned him to "double-up" duties. He was given a second directorship in another city and told to do his best balancing the imperatives of both jobs. Meanwhile, a crisis had developed in a third region, which also did not have a director. Since Mr. G was obviously doing well, into the breach he went. He kept his original directorship, was relieved of his duties in his second directorship, and was given the duties of the third directorship. Soon after he arrived, the problems in the third region were seen to be so serious that Mr. G was advised to put the duties of the job he was hired for on the back burner until the next year (for a period after his probation would have expired).

About this time Mr. G's star began to dim. His relationship with his executive director soured and ten days before his probation was up, she informed him that she was recommending that he be rejected on probation. He was shocked. He requested an immediate review by the Deputy Minister, as was his right under government policy. No such review was conducted. He lost his job.

Mr. G came to the Ombudsman immediately upon rejection from probation. We reviewed the circumstances thoroughly. How was it, we said, that the government could hire a person to do a specific job, then a couple of weeks later expect him to do a second, different job in a geographically different area? And then drop that second job and add a third? And then order him to stop doing the job he was hired for and do only the third job? And then reject him on probation for the job for which he was first hired, saying his work was inadequate? All that, and then deny him his right to a review.

We met with the Deputy Minister. He agreed that Mr. G had not been fairly treated and stated that he had no objection to offering Mr. G another employment opportunity at an equivalent position. However, he pointed out that only the Commissioner of PSERC had the power to appoint Mr. G directly to the public service in "unusual or exceptional circumstances." We wrote to the then commissioner and explained the situation. The commissioner refused to appoint Mr. G. He said that Mr. G's remedy lay in the courts; he could sue. We met. Again, the commissioner refused. Although he acknowledged that the government had not followed its own policy or procedure, he was not prepared to offer Mr. G an opportunity to enjoy a "fair" probation.

A new commissioner was appointed. We met. The commissioner reviewed our recommendation. He agreed that Mr. G deserved a second chance because the Ministry of Health had promised Mr. G that it would bring him back. Although honouring a promise is an important reason for the appointment, more important is the fact that the Ministry of Health offered Mr. G a job because *it* recognized that it had treated him unfairly during his probation. PSERC supported the offer of re-employment. We applaud the new commissioner for showing a willingness to right the wrong.

Mr. G is happily back at work.

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Rescind and Reconsider

An employee of the Liquor Distribution Branch was unsuccessful in her application for a promotion. We reviewed the competition and determined that the LDB had not followed the direction of the Public Service Appeal Board. It "rescinded" the competition; it did not "reconsider" it as directed. At the time of going to press last year the LDB, rather than await our recommendation, re-posted the competition, beginning the process all over again. The woman was again unsuccessful.

Subsequent to our Annual Report going to press our complainant appealed the competition but lost her appeal. We took the issue to the commissioner of PSERC and recommended that he directly appoint the woman to an equivalent position. The commissioner declined to follow our recommendation. He did acknowledge that the policy on what to do when the Public Service Appeal Board directs that a competition be rescinded and reconsidered is unclear. As a result he has initiated a review of the area. Although we agree that this is necessary, it does not achieve a remedy for our complainant. It is important that government address the consequences of its errors.

NEWSFLASH

In February 1996 the government, in response to the Ombudsman's *Special Report No. 17 – Regulation of Newport Realty Incorporated by the Superintendent of Brokers* announced a compensation package for investors in Newport Realty Incorporated and Newport Capital Corporation. Those who invested new money between August 6, 1986 and February 20, 1987 are to be reimbursed 25 per cent of their original investment. This was the only outstanding recommendation from the report. The others, that included changes to notice to investors and the development of a brochure, were acted upon in the year immediately following the report.

An Extra Pay Cheque

An unusual case was closed in 1995. An ex-worker for a care-providing society was seeking additional pay after she had left a society's employ. She had been employed at the time the responsible ministry gave additional funding to the society as part of an employment equity program. The employer did not disburse the funds at that time since contract negotiations were underway. Before disbursement could take place the woman left for different employment. Following disbursement she submitted a claim for back pay, which the employer rejected.

We determined that the wording of the contract between the ministry and the society made clear that the employer was responsible to the province and consequently the Ombudsman had jurisdiction.

Our investigation supported the woman's claim. She had been included in the list of employees upon which the ministry based its additional infusion of funds. She had been employed by the society when the funds were paid by the ministry and, but for the exceptional circumstances at that time, would have had the increase passed on to her. We therefore considered she was entitled to the money she sought.

We felt the ministry shared some responsibility for the situation since they had not been clear in their instructions to contractors as to how the additional funds should be disbursed in such situations. The ministry maintained that the responsibility lay with the contractor. Eventually the contractor made an *ex gratia* offer of $300, which the woman accepted.

When a government chooses a mandate, enacts legislation that imposes responsibilities on itself, delegates those responsibilities to regulators, and then fails to appoint enough individuals to carry out the required tasks, it cannot excuse itself from its responsibilities. When there is serious wrongdoing and public risk, it is appropriate for government to accept ultimate responsibility if personnel are unable to fulfil the statutory responsibilities. In my view when statutory responsibility is relaxed because of shortage of staff, the inadequate allocation of resources amounts to administrative negligence.

Excerpt from the Ombudsman's Open Letter in *Special Report No. 17.*

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PSERC

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.

Although it takes time to work through important issues I can safely say that I have had some productive discussions with PSERC during 1995 and that our Offices are moving towards an ever-improved understanding of our respective roles.

Third Time Lucky

Mr. J was dismissed from his job. He felt that he was due severance pay plus some miscellaneous expenses. His claim was denied after an Employment Standards Branch investigation as well as after a review of the decision by the branch director. He complained to the Ombudsman. In checking out Mr. J's story we discovered some salient facts that had not come to light during the earlier investigation. We relayed this information to the Director of Employment Standards who agreed that a new hearing would be appropriate. Before the hearing date, his ex-employer settled the issue by paying Mr. J the amount he had originally sought – just under $1,000, less deductions.

Finance & Employment Team

Files Open Dec. 31, 1994	257
Files Received in 1995	1,465
Closed – No Investigation	823
Closed – Investigation	629
Internal Team File Transfers	29

From Cobwebs to Computers

Need a copy of the third reading of the latest amendment to the *Municipal Act*? Got to have the executive summary of the Gove report? Heard about the new publication concerning the increase of young offenders in custody? Want a copy of that article written about five years ago in the Pennsylvania Law Review concerning Natural Justice? Need that court decision that came down yesterday in Nanaimo? This is just a sample of the requests that Ombudsman Officers make through their library as it enters its third year as an automated resource facility.

The library collection spans the broad jurisdictions the Officers work within. Monographs, updating services, legal reporting series, government documents, clipping services, current legislation and legal opinions all make up the Ombuds collection. The library is expanded further through the use of resource sharing networks on a provincial, national and international level.

But libraries are no longer just about paper. Internet connections make it possible to "surf" remote databases such as the collection at UBC or the Bulletin Board at the Queen's Printer or the Supreme Court of Canada home page. Connections to Quick Law satisfy those urgent requests for up-to-date legal research.

The library ensures that the Office participates in the cataloguing in publication and depository programs that operate within the province. These programs standardize the cataloguing of Ombuds publications and make them readily available to the public through the existing network of public and post-secondary libraries. We are proud of the Ombuds library!

Public Accountability through Annual Reports

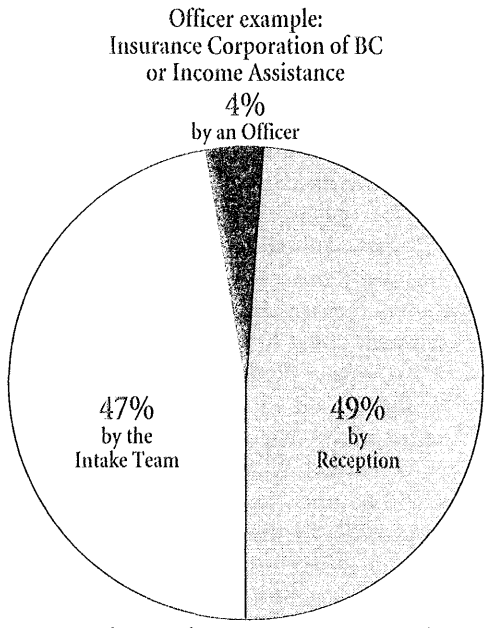
As ministries seek ways to reduce expenses, public accountability initiatives may seem attractive candidates for cost-cutting. Over the past year (or years) many ministries have failed to issue annual reports, even though many of them are obligated to do so by law. During the coming year, I urge ministries to recognize the importance of the duty to report and the benefits of keeping the public informed of their activities through issuing an annual report. In my 1996 Annual Report I will present a report card for authorities on this issue.

Sample Survey

Ministry	Is there a statutory requirement to issue an Annual Report?	Most recent Annual Report
Social Services	No	1992/93
Attorney General	Yes	1994/95
Environment, Lands and Parks	Yes	1993-95

Receptive at Reception

How Enquiries Are Handled



Intake example: matters we cannot investigate because they fall outside our jurisdiction, such as police

Reception example: referred to Enquiry BC for provincial issues or Reference Canada for Federal Government matters

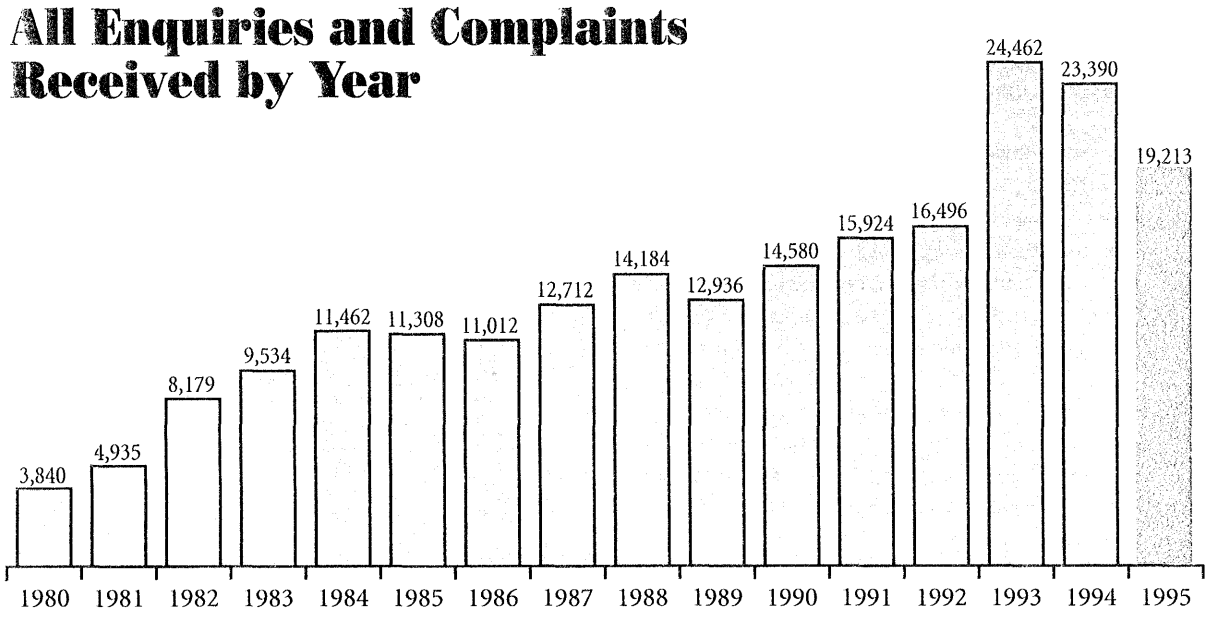
The Referral Rationale

The *Ombudsman Act* allows the Ombudsman to refrain from investigating a complaint if in her opinion an existing administrative procedure provides a remedy adequate in the circumstances. Many authorities have established procedures to handle complaints and we frequently refer people to those procedures once we are satisfied they are fair and otherwise appropriate. For example, we refer almost all people with complaints about Riverview Hospital to the Co-ordinators of Patient Relations, who were appointed in response to the *Listening* Report. When we receive complaints from inmates about medical treatment at Correctional Centres, we refer the inmates to the physician who is responsible for those health services. The expertise of the people who staff internal complaint handling or review mechanisms often makes them better suited than the Ombudsman's staff to assess the merits of a complaint.

Referring complaints to the internal review processes of authorities allows the Ombudsman to monitor the effectiveness of those processes. When we refer people, we invite them to call our Office back if they believe their concerns were not adequately addressed by the review. The people who call us back provide useful feedback regarding the effectiveness of internal review processes.

By making referrals we encourage authorities to take responsibility for dealing with public concerns. We compliment those public bodies who have implemented such processes. The Ombudsman will continue to support these initiatives.

All Enquiries and Complaints Received by Year



Ombudsman Publications

Annual Reports

1979-1995

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)
17. Regulation of Newport Realty Incorporated by the Superintendent of Brokers, February 1996.
18. A Complaint Regarding an Unfair Public Hearing Process (City of Port Moody), February 1996.

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)
35. Fair Schools, 1995 (Education)

Discussion Papers

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

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